

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 398
Judiciary I Committee Substitute Adopted 4/25/91
House Committee Substitute Favorable 6/25/91

Short Title: Amend Business Corporation Act.

(Public)

Sponsors:

Referred to:

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 AND TO AMEND CERTAIN OTHER STATUTES PERTAINING TO CORPORATIONS.

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:

1 "(b) The Secretary of State shall adopt uniform certificates of merger or
2 consolidation, to be furnished for registration, and shall adopt such fees as are necessary
3 for the expense of such certification. If the corporation involved is not a domestic
4 corporation, a similar certificate by any competent authority in the jurisdiction of
5 incorporation may be registered in accordance with this section."

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

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

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

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

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

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

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

22 "**§ 55-7-21.1. Rights of holders of debt securities.**

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

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

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

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

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

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

2 "(e) Unless otherwise provided in the articles of incorporation or a bylaw adopted
3 by the shareholders, the entire board of directors may be removed from office with or
4 without cause by the affirmative vote of a majority of the votes entitled to be cast at any
5 election of directors."

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

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

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

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

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

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

- 21 (1) A majority of the votes entitled to be cast on the amendment by any
22 voting group with respect to which the amendment would create
23 dissenters' rights; and
24 (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other
25 voting group entitled to vote on the amendment."

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

27 "**§ 55-10-05. Amendment before issuance of shares.**

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

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

32 "**§ 55-10-06. Articles of amendment.**

33 A corporation amending its articles of incorporation shall deliver to the Secretary of
34 State for filing articles of amendment setting forth:

- 35 (1) The name of the corporation;
36 (2) The text of each amendment adopted;
37 (3) If an amendment provides for an exchange, reclassification,
38 or cancellation of issued shares, provisions for implementing the
39 amendment if not contained in the amendment itself;
40 (4) The date of each amendment's adoption;
41 (5) If an amendment was adopted by the incorporators or board of
42 directors without shareholder action, a statement to that effect and ~~that~~
43 a brief explanation of why shareholder action was not required;

1 (6) If an amendment was approved by the shareholders ~~(i) the designation,~~
2 ~~number of outstanding shares, number of votes entitled to be cast by~~
3 ~~each voting group entitled to vote separately on the amendment, and~~
4 ~~number of votes of each voting group indisputably represented at the~~
5 ~~meeting (ii) either the total number of votes cast for and against the~~
6 ~~amendment by each voting group entitled to vote separately on the~~
7 ~~amendment or the total number of undisputed votes cast for the~~
8 ~~amendment by each voting group and a statement that the number cast~~
9 ~~for the amendment by each voting group was sufficient for approval by~~
10 ~~that voting group, a statement that shareholder approval was obtained~~
11 ~~as required by this Chapter.”~~

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

13 "(3) If approval of the shareholders of one or more corporations party to the
14 merger or share exchange was required ~~(i) the designation, number of~~
15 ~~outstanding shares, and number of votes entitled to be cast by each~~
16 ~~voting group entitled to vote separately on the plan as to each~~
17 ~~corporation, and (ii) either the total number of votes cast for and~~
18 ~~against the plan by each voting group entitled to vote separately on the~~
19 ~~plan or the total number of undisputed votes cast for the plan~~
20 ~~separately by each voting group and a statement that the number cast~~
21 ~~for the plan by each voting group was sufficient for approval by that~~
22 ~~voting group, a statement that the merger or share exchange was~~
23 ~~approved by the shareholders as required by this Chapter.”~~

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

25 "(3) ~~With respect to the shareholders (i) the number of votes entitled to be~~
26 ~~cast on the proposal to dissolve, and (ii) either the total number of~~
27 ~~votes cast for and against dissolution or the total number of undisputed~~
28 ~~votes cast for dissolution and a statement that the number cast for~~
29 ~~dissolution was sufficient for approval. A statement that shareholder~~
30 ~~approval was obtained as required by this Chapter.~~

31 (4) ~~If voting by voting groups was required, the information required by~~
32 ~~subparagraph (3) must be separately provided for each voting group~~
33 ~~entitled to vote separately on the plan to dissolve.”~~

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

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

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

41 "(3) Consummation of a sale or exchange of all, or substantially all, of the
42 property of the corporation other than ~~in the usual and regular course of~~
43 ~~business as permitted by G.S. 55-12-01~~, including a sale in dissolution,
44 but not including a sale pursuant to court order or a sale pursuant to a

1 plan by which all or substantially all of the net proceeds of the sale
2 will be distributed in cash to the shareholders within one year after the
3 date of sale;"

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

6 **"§ 55-15-21. Withdrawal of foreign corporation by reason of a merger.**

7 (a) Whenever the separate existence of a foreign corporation authorized to
8 transact business in this State ceases as a result of a statutory merger permitted by the
9 laws of the state or country under which it was incorporated, the surviving corporation
10 shall apply for a certificate of withdrawal for the merged corporation by delivering to
11 the Secretary of State for filing a copy of the articles of merger or a certificate reciting
12 the facts of the merger, duly authenticated by the Secretary of State or other official
13 having custody of corporate records in the state or country under the laws of which such
14 statutory merger was effected. If the surviving corporation is not authorized to transact
15 business in this State the articles of merger or certificate must be accompanied by an
16 application which must set forth:

17 (1) The name of each merged corporation authorized to transact business
18 in this State and the name of the surviving corporation and a statement
19 that the surviving corporation is not authorized to transact business in
20 this State;

21 (2) That the surviving corporation consents that service of process based
22 upon any cause of action arising in this State, or arising out of business
23 transacted in this State, during the time each merged corporation was
24 authorized to transact business in this State may thereafter be made on
25 such corporation by service thereof on the Secretary of State;

26 (3) A mailing address to which the Secretary of State may mail a copy of
27 any process served on him under subdivision (a)(2); and

28 (4) A commitment to notify the Secretary of State in the future of any
29 change in its mailing address.

30 (b) If the Secretary of State finds that the articles of merger or certificate and the
31 application for withdrawal, if required, conforms to law he shall:

32 (1) Endorse on the articles of merger or certificate and the application for
33 withdrawal, if required, the word 'filed' and the hour, day, month and
34 year of the filing thereof;

35 (2) File the articles of merger or certificate and the application, if required;

36 (3) Issue a certificate of withdrawal; and

37 (4) Send to the foreign corporation or its representative the certificate of
38 withdrawal, together with the exact or conformed copy of the
39 application, if required, affixed thereto."

40 Sec. 14. G.S. 55-15-31 is amended by adding a new subsection (f) to read:

41 "(f) The corporation shall not be granted a new certificate of authority until each
42 ground for revocation has been substantially corrected to the reasonable satisfaction of
43 the Secretary of State."

44 Sec. 15. G.S. 55-1-20 is amended by adding a new subsection to read:

1 "(j) Any signature on any document authorized to be filed with the Secretary of
2 State under any provision of this Chapter may be a facsimile."

3 Sec. 16. (a) G.S. 55-7-25(a) reads as rewritten:

4 "(a) Shares entitled to vote as a separate voting group may take action
5 on a matter at a meeting only if a quorum ~~of those shares~~ of that voting group exists with
6 respect to that matter, except that, in the absence of a quorum at the opening of any
7 meeting of shareholders, such meeting may be adjourned from time to time by the vote
8 of a majority of the ~~shares voting votes cast~~ on the motion to adjourn. Unless the articles
9 of incorporation, a bylaw adopted by the shareholders, or this act provides otherwise, a
10 majority of the votes entitled to be cast on the matter by the voting group constitutes a
11 quorum of that voting group for action on that matter."

12 (b) G.S. 55-7-28(d) reads as rewritten:

13 "(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively
14 at a particular meeting unless:

15 (1) The meeting notice or proxy statement accompanying the notice states
16 conspicuously that cumulative voting is authorized; or

17 (2) A shareholder or proxy who has the right to cumulate his votes
18 announces in open meeting, before voting for directors starts, his
19 intention to vote cumulatively; and if such announcement is made, the
20 chair shall declare that all shares entitled to vote have the right to vote
21 cumulatively and shall announce the number of ~~shares present votes~~
22 represented in person and by proxy, and shall thereupon grant a recess
23 of not less than one hour nor more than four hours, as he shall
24 determine, or of such other period of time as is unanimously then
25 agreed upon."

26 Sec. 17. (a) G.S. 55-7-02(a) reads as rewritten:

27 "(a) A corporation shall hold a special meeting of shareholders:

28 (1) On call of its board of directors or the person or persons authorized to
29 do so by the articles of incorporation or bylaws; or

30 (2) ~~If~~ Within 30 days after the holders of at least ten percent (10%) of all
31 the votes entitled to be cast on any issue proposed to be considered at
32 the proposed special meeting sign, date, and deliver to the
33 corporation's secretary one or more written demands for the meeting
34 describing the purpose or purposes for which it is to be held; except
35 however that, unless otherwise provided in the articles of incorporation
36 or bylaws, the call of a special meeting by shareholders is not available
37 to the shareholders of a public corporation."

38 (b) G.S. 55-7-03(a) reads as rewritten:

39 "(a) The superior court of the county where a corporation's principal office (or, if
40 none in this State, its registered office) is located may, after notice is given to the
41 corporation, summarily order a meeting to be held:

42 (1) On application of any shareholder if an annual meeting of the
43 shareholders was not held within 15 months after the corporation's last
44 annual meeting; or

- 1 (2) On application of a shareholder who signed a demand for a special
2 meeting valid under G.S. 55-7-02, if ~~(i) notice of the special meeting~~
3 ~~was not given within 30 days after the date the demand was received~~
4 ~~by the corporation's secretary; or (ii) the special meeting was not held~~
5 ~~in accordance with the notice, the corporation does not proceed to hold~~
6 the meeting as required by that section."

7 Sec. 18. G.S. 55-10-07(d) reads as rewritten:

8 "(d) A corporation restating its articles of incorporation shall deliver to the
9 Secretary of State for filing articles of restatement which shall:

- 10 (1) Set forth the name of the corporation;
11 (2) Attach as an exhibit thereto the text of the restated articles of
12 incorporation;
13 (3) State whether the restated articles of incorporation contain an
14 amendment to the articles requiring shareholder approval and, if they
15 do not, that the board of directors adopted the restated articles of
16 incorporation; and
17 (4) If the restated articles of incorporation contain an amendment to the
18 articles requiring shareholder approval, ~~set forth the information required~~
19 ~~by G.S. 55-10-06, state that shareholder approval was obtained as~~
20 required by this Chapter."

21 Sec. 19. G.S. 55-7-28(e) reads as rewritten:

22 "(e) Shareholders of a corporation incorporated in this State shall have the right to
23 cumulate their votes for directors if

- 24 (1) The corporation was in existence prior to July 1, 1957, under a charter
25 which does not grant the right of cumulative voting and at the time of
26 the election the stock transfer book of such corporation discloses, or it
27 otherwise appears, that there is at least one stockholder who owns or
28 controls more than one-fourth of the voting stock of such corporation
29 (shares represented at a meeting by revocable proxy relating to that
30 meeting or adjourned meetings thereof shall not be deemed shares
31 'controlled' within the meaning of this subsection), or if
32 (2) The corporation was incorporated on or after July 1, 1957, and before
33 July 1, 1990,

34 unless, when the stock transfer books are closed or at the record date fixed to determine
35 the shareholders entitled to receive notice of and to vote at the meeting of shareholders,
36 ~~shares of any class or series are listed on a national securities exchange or are held of record by~~
37 ~~more than 2,000 shareholders, the corporation is a public corporation as defined in G.S.~~
38 55-1-40(18a). This right to vote cumulatively may be denied or limited by amendment
39 to the articles of incorporation, but no such amendment shall be made when the number
40 of shares voting against the amendment would be sufficient to elect a director by
41 cumulative voting if such shares are entitled to be voted cumulatively for the election of
42 directors."

43 Sec. 20. G.S. 55B-15 reads as rewritten:

44 "**§ 55B-15. Applicability of Chapter.**

1 This Chapter shall not apply to any corporation which prior to June 5, 1969, was
2 permitted by law to render professional services as herein defined or to the corporate
3 successor of any such corporation by merger or otherwise by operation of law, provided
4 there is no substantial change in the direct or indirect beneficial ownership of the shares
5 of such corporation as the result of such merger or other transaction; for purposes of
6 this section, a change of twenty percent (20%) or less shall not be considered
7 substantial; provided, however, any . Any such corporation or successor corporation
8 rendering 'professional service' as defined in G.S. 55B-2(6) may be brought within the
9 provisions of this Chapter by the filing of an amendment to its articles of incorporation
10 declaring that its shareholders have elected to bring the corporation within the
11 provisions of this Chapter and to make the same conform to all of the provisions of this
12 Chapter."

13 Sec. 21. G.S. 105-232 reads as rewritten:

14 **"§ 105-232. Corporate rights restored; receivership and liquidation.**

15 (a) Any corporation whose articles of incorporation or certificate of authority to
16 do business in this State has been suspended by the Secretary of State, State as provided
17 in G.S. 105-230, ~~which complies within five years after such suspension, that complies~~ with
18 all the requirements of this Subchapter and pays all State taxes, fees, or penalties due
19 from it (which total amount due may be computed, for years prior and subsequent to
20 ~~said the~~ suspension, in the same manner as if ~~such the~~ suspension had not taken place),
21 and ~~upon payment~~ pays to the Secretary of Revenue ~~of a~~ fee of twenty-five dollars
22 (\$25.00) to cover the cost of reinstatement, ~~shall be~~ is entitled to exercise again its rights,
23 privileges, and franchises in this State. The Secretary of Revenue shall notify the
24 Secretary of State of ~~such this~~ compliance and the Secretary of State shall reinstate the
25 corporation by appropriate entry upon the records of ~~his office.~~ the Office of Secretary of
26 State. The Secretary of State shall immediately notify the corporation of the
27 reinstatement.

28 (b) When the ~~certificate or~~ articles of incorporation or certificate of authority to do
29 business in this State ~~have~~ has been suspended by the Secretary of State, State as
30 provided in G.S. 105-230, ~~or similar provisions of prior or subsequent Revenue Acts, and~~
31 and the corporation has ceased to operate as a going concern, if there remains property
32 held in the name of the corporation, or undisposed of at the time of such the suspension,
33 or there remain ~~possibilities of reverters, reversionary interests, rights of reentry or other~~
34 future interests that may accrue to the corporation or its successors or stockholders, ~~and~~
35 ~~the time within which the corporate rights might be restored as provided by this section has~~
36 ~~expired, any stockholder or any bona fide creditor~~ any stockholder, bona fide creditor, or
37 other interested party may apply to the superior court for the appointment of a receiver.
38 Application for ~~such the~~ receiver may be made in a civil action to which all stockholders
39 or their representatives or next of kin shall be made parties. Stockholders whose
40 whereabouts are ~~unknown and unknown,~~ unknown stockholders and stockholders,
41 unknown heirs and next of kin of deceased stockholders stockholders, creditors, dealers,
42 and other interested persons may be served by ~~publication, as well as creditors, dealers and~~
43 ~~other interested persons, and a publication.~~ A guardian ad litem may be appointed for any
44 stockholders or their representatives who may be an infant or incompetent. The receiver

1 shall enter into ~~such a bond with such sureties as may be set by~~ if the court requires one
2 and shall give ~~such~~ notice to creditors by publication or otherwise as the court may
3 prescribe. Any creditor who ~~shall fail~~ fails to file ~~his a~~ claim with the receiver within the
4 time set shall be barred of the right to participate in the distribution of the assets. ~~Such~~
5 The receiver shall have authority to ~~may~~ (i) ~~sell such the property or possibilities of~~
6 ~~reverters, reversionary interests, rights of reentry, or other future interests,~~ interests of the
7 corporation upon such terms and in such manner as shall be ordered by the court, ~~the court~~
8 may order, (ii) apply the proceeds to the payment of any debts of ~~such the~~ corporation,
9 and (iii) distribute the remainder among the stockholders or their representatives in
10 proportion to their interests ~~therein.~~ in the property interests. Shares due to any
11 stockholder who is unknown or whose whereabouts are unknown shall be paid into the
12 office of the clerk of the superior court, ~~by him~~ to be disbursed according to ~~law,~~ in law.
13 In the event the stock books of the corporation shall be lost or shall are lost or do not
14 reflect the latest stock transfers, the court shall determine the respective interests of the
15 stockholders from the best evidence available, and the receiver shall be protected in
16 acting in accordance with such finding. ~~Such the court's finding.~~ This proceeding is
17 authorized for the sole purpose of providing a procedure for disposing of the corporate
18 assets by the payment of corporate debts, including franchise taxes which had accrued
19 prior to the suspension of the corporate charter and any other taxes the assessment or
20 collection of which is not barred by a statute of limitations, and by the transfer to the
21 stockholders or their representatives their proportionate shares of the assets owned by
22 the corporation."

23 Sec. 22. This act is effective upon ratification.