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Short Title: Business Corp. Act Amendments.

(Public)

Sponsors:

Referred to:

March 25, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA BUSINESS CORPORATION ACT
AND TO AMEND G.S. 54-139 RELATING TO FOREIGN COOPERATIVE
CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION AND TO MAKE OTHER AMENDMENTS TO THE BUSINESS
CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-23(c) reads as rewritten:

"(c) ~~The~~ Except as provided in G.S. 55-2-03(b), the fact that a document has
become effective under this section does not determine its validity or invalidity or the
correctness or incorrectness of the information contained in the document."

Sec. 2. G.S. 55-1-25 reads as rewritten:

"§ 55-1-25. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing
satisfies the requirements of this Chapter, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing
'Filed', together with his name and official title and the date and time of filing, on both
the original and the document copy. After filing a document, except as provided in G.S.
55-5-03 and G.S. 55-15-09, the Secretary of State shall deliver the document copy to the
domestic or foreign corporation or its representative.

1 (c) If the Secretary of State refuses to file a document, he shall return ~~it~~, by
2 personal delivery or by first-class mail postage prepaid, to the domestic or foreign
3 corporation or its representative within five days after the document was received,
4 together with a brief, written ~~explanation of~~ statement of the date and the reason for his
5 refusal.

6 (d) The Secretary of State's duty is to review and file documents that satisfy the
7 requirements of this Chapter. His filing or refusing to file a document does not:

- 8 (1) ~~Affect~~ Except as provided in G.S. 55-2-03(b), affect the validity or
9 invalidity of the document in whole or part;
10 (2) Relate to the correctness or incorrectness of information contained in
11 the document;
12 (3) Create a presumption that the document is valid or invalid or that
13 information contained in the document is correct or incorrect."

14 Sec. 3. G.S. 55-1-32 reads as rewritten:

15 "**§ 55-1-32. Penalties imposed upon corporations, officers, and directors for failure**
16 **to answer interrogatories.**

17 (a) ~~If a corporation, domestic or foreign, fails or refuses~~ The knowing failure or
18 refusal of a domestic or foreign corporation to answer truthfully and fully within the
19 time prescribed in this Chapter interrogatories propounded by the Secretary of State in
20 accordance with the provisions of this Chapter, ~~the Secretary of State may suspend its~~
21 ~~articles of incorporation or its certificate of authority to do business.~~ Chapter shall constitute
22 grounds for administrative dissolution under G.S. 15-14-20 or for revocation under G.S.
23 55-15-30, as the case may be.

24 (b) Each officer and director of a domestic or foreign corporation, ~~domestic or~~
25 ~~foreign, corporation~~ who knowingly fails or refuses within the time prescribed by this
26 Chapter to answer truthfully and fully interrogatories propounded to him by the
27 Secretary of State in accordance with the provisions of this Chapter shall be guilty of a
28 misdemeanor."

29 Sec. 4. G.S. 55-1-40(4) reads as rewritten:

30 "(4) 'Corporation' or 'domestic corporation' means a corporation for profit
31 or a corporation having capital stock that is incorporated under or
32 subject to the provisions of this Chapter and that is not a foreign
33 corporation except that in G.S. 55-9-01 and G.S. 55-15-21
34 'corporation' includes domestic and foreign corporations."

35 Sec. 5. G.S. 55-1-41 reads as rewritten:

36 "**§ 55-1-41. Notice.**

37 (a) Notice under this Chapter shall be in writing unless oral notice is authorized
38 in the corporation's articles of incorporation or ~~bylaws.~~ bylaws and written notice is not
39 specifically required by this Chapter.

40 (b) Notice may be communicated in person; by telephone, telegraph, teletype, or
41 other form of wire or wireless communication, or by facsimile transmission; or by mail
42 or private carrier. If these forms of personal notice are impracticable as to one or more
43 persons, notice may be communicated to such persons by publishing notice in a
44 newspaper in the county wherein the corporation has its principal place of business in

1 the State, or if it has no principal place of business in the State, the county wherein it
2 has its registered office; or by radio, television, or other form of public broadcast
3 communication.

4 (c) Written notice by a domestic or foreign corporation to its shareholder is
5 effective when deposited in the United States mail with postage thereon prepaid and
6 correctly addressed to the shareholder's address shown in the corporation's current
7 record of shareholders.

8 (d) Written notice to a domestic or foreign corporation (authorized to transact
9 business in this State) may be addressed to its registered agent at its registered office or
10 to the corporation or its secretary at its principal office shown in its most recent annual
11 report on file in the office of the Secretary of State or, in the case of a foreign
12 corporation that has not yet delivered an annual report, in its application for a certificate
13 of authority.

14 (e) Except as provided in subsection (c), written notice is effective at the earliest
15 of the following:

16 (1) When received;

17 (2) Five days after its deposit in the United States mail, as evidenced by
18 the ~~postmark~~, postmark or otherwise, if mailed with at least first-class
19 postage thereon prepaid and correctly addressed;

20 (3) On the date shown on the return receipt, if sent by registered or
21 certified mail, return receipt requested, and the receipt is signed by or
22 on behalf of the addressee.

23 (f) Oral notice is effective when actually communicated to the person entitled
24 thereto.

25 (g) If this Chapter prescribes notice requirements for particular circumstances,
26 those requirements govern. If articles of incorporation or bylaws prescribe notice
27 requirements not inconsistent with this section or other provisions of this Chapter, those
28 requirements govern."

29 Sec. 6. G.S. 55-2-02(b) reads as rewritten:

30 "(b) The articles of incorporation may set forth any provision that under this
31 Chapter is required or permitted to be set forth in the bylaws, and may also set forth:

32 (1) The names and addresses of the individuals who are to serve as the
33 initial directors;

34 (2) Provisions not inconsistent with law regarding (i) the purpose or
35 purposes for which the corporation is organized; (ii) managing the
36 business and regulating the affairs of the corporation; (iii) defining,
37 limiting, and regulating the powers of the corporation, its board of
38 directors, and shareholders; (iv) a par value for authorized shares or
39 classes of shares; (v) the imposition of personal liability on
40 shareholders for the debts of the corporation to a specified extent and
41 upon specified conditions; (vi) any limitation on the duration of the
42 corporation; and

43 (3) A provision limiting or eliminating the personal liability of ~~each~~ any
44 director arising out of an action whether by or in the right of the

1 corporation or otherwise for monetary damages for breach of any duty
2 as a director. No such provision shall be effective with respect to (i)
3 acts or omissions that the director at the time of such breach knew or
4 believed were clearly in conflict with the best interests of the
5 corporation, (ii) any liability under G.S. 55-8-33, (iii) any transaction
6 from which the director derived an improper personal benefit, or (iv)
7 acts or omissions occurring prior to the date the provisions became
8 effective. As used herein, the term 'improper personal benefit' does
9 not include a director's reasonable compensation or other reasonable
10 incidental benefit for or on account of his service as a director, officer,
11 employee, independent contractor, attorney, or consultant of the
12 corporation. A provision permitted by this Chapter in the articles of
13 incorporation, bylaws, or a contract or resolution indemnifying or
14 agreeing to indemnify a director against personal liability shall be fully
15 effective whether or not there is a provision in the articles of
16 incorporation limiting or eliminating personal liability."

17 Sec. 7. G.S. 55-4-04 reads as rewritten:

18 **"§ 55-4-04. Reserved and registered names, powers of the Secretary of State.**

19 The Secretary of State may revoke any reservation or registration of a corporate
20 name if he finds, upon a hearing not less than ~~20-15~~ days after ~~written notice has been sent~~
21 the effective date of written notice given by registered or certified mail, return receipt
22 requested, to the person or corporation who made the reservation or registration, that the
23 application ~~thereof~~ therefor or any transfer thereof was not made in good faith or that
24 any statement contained in the application for reservation or registration was false when
25 such application was filed or has thereafter become false."

26 Sec. 8. G.S. 55-6-30(b)(3) reads as rewritten:

27 "(3) There is no preemptive right with respect to (i) shares issued as
28 compensation to directors, officers, agents, or employees of the
29 corporation, its subsidiaries or affiliates; (ii) shares issued to satisfy
30 conversion or option rights created to provide compensation to
31 directors, officers, agents, or employees of the corporation, its
32 subsidiaries or affiliates; (iii) shares authorized in articles of
33 incorporation that are issued within six months from the effective date
34 of incorporation; (iv) shares issued for considerations, other than
35 money, deemed by the board of directors in good faith to be
36 advantageous to the corporation's ~~business~~ business; and (v) shares
37 issued by a public corporation unless otherwise provided in its articles
38 of incorporation."

39 Sec. 9. G.S. 55-7-20 reads as rewritten:

40 **"§ 55-7-20. Shareholders' list for meeting.**

41 (a) After fixing a record date for a meeting, a corporation shall prepare an
42 alphabetical list of the names of all its shareholders who are entitled to notice of a
43 shareholders' meeting. The list must be arranged by voting group (and within each

1 voting group by class or series of shares) and show the address of and number of shares
2 held by each shareholder.

3 (b) The shareholders' list must be available for inspection by any shareholder,
4 beginning two business days after notice of the meeting is given for which the list was
5 prepared and continuing through the meeting, at the corporation's principal office or at a
6 place identified in the meeting notice in the city where the meeting will be held. A
7 shareholder, ~~or his agent or attorney,~~ personally or by or with his representative, is
8 entitled on written demand to inspect and, subject to the requirements of G.S. 55-16-
9 02(c), to copy the list, during regular business hours and at his expense, during the
10 period it is available for inspection.

11 (c) The corporation shall make the shareholders' list available at the meeting, and
12 any shareholder, ~~his agent, or attorney~~ personally or by or with his representative, is
13 entitled to inspect the list at any time during the meeting or any adjournment.

14 (d) If the corporation refuses to allow a ~~shareholder, his agent, or attorney~~
15 shareholder or his representative to inspect the shareholders' list before or at the meeting
16 (or copy the list as permitted by subsection (b)), the superior court of the county where a
17 corporation's principal office (or, if none in this State, its registered office) is located, on
18 application of the shareholder, after notice is given to the corporation, may summarily
19 order the inspection or copying at the corporation's expense and may postpone the
20 meeting for which the list was prepared until the inspection or copying is complete.

21 (e) Refusal or failure to prepare or make available the shareholders' list does not
22 affect the validity of action taken at the meeting."

23 Sec. 10. G.S. 55-8-06 reads as rewritten:

24 "**§ 55-8-06. Staggered terms for directors.**

25 If the number of directors is fixed at nine or more directors, the articles of
26 incorporation or bylaws adopted by the shareholders may provide for staggering their
27 terms by dividing the total number of directors into ~~two two, or three~~ or four groups,
28 with each group containing ~~one-half one-half, or one-third~~ or one-fourth of the total, as
29 near as may be. In that event, the terms of directors in the first group expire at the first
30 annual shareholders' meeting after their election, the terms of the second group expire at
31 the second annual shareholders' meeting after their election, ~~and~~ the terms of the third
32 group, if any, expire at the third annual shareholders' meeting after their election and the
33 terms of the fourth group, if any, expire at the fourth annual shareholders' meeting after
34 their election. At each annual shareholders' meeting held thereafter, directors shall be
35 chosen for a term of ~~two two, years or three years~~ or four years, as the case may be, to
36 succeed those whose terms expire."

37 Sec. 11. G.S. 55-8-30(d) reads as rewritten:

38 "(d) A director is not liable for any action taken as a director, or any failure to take
39 any action, if he performed the duties of his office in compliance with this section. The
40 duties of a director weighing a change of control situation shall not be any different, nor
41 the standard of care any higher, than otherwise provided in this section."

42 Sec. 12. G.S. 55-8-50(b) reads as rewritten:

43 "(b) Definitions in this Part:

- 1 (1) ~~'Corporation' includes any domestic or foreign predecessor entity of a~~
2 ~~corporation in a merger or other transaction in which the predecessor's~~
3 ~~existence ceased upon consummation of the transaction. corporation~~
4 ~~absorbed in a merger which, if its separate existence had continued,~~
5 ~~would have had the obligation or power to indemnify its directors,~~
6 ~~officers, employees, or agents, so that a person who would have been~~
7 ~~entitled to receive or request indemnification from such corporation if~~
8 ~~its separate existence had continued shall stand in the same position~~
9 ~~under this Part with respect to the surviving corporation.~~
- 10 (2) 'Director' means an individual who is or was a director of a corporation
11 or an individual who, while a director of a corporation, is or was
12 serving at the corporation's request as a director, officer, partner,
13 trustee, employee, or agent of another foreign or domestic corporation,
14 partnership, joint venture, trust, employee benefit plan, or other
15 enterprise. A director is considered to be serving an employee benefit
16 plan at the corporation's request if his duties to the corporation also
17 impose duties on, or otherwise involve services by, him to the plan or
18 to participants in or beneficiaries of the plan. 'Director' includes,
19 unless the context requires otherwise, the estate or personal
20 representative of a director.
- 21 (3) 'Expenses' means expenses of every kind incurred in defending a
22 proceeding, including counsel fees.
- 23 (4) 'Liability' means the obligation to pay a judgment, settlement, penalty,
24 fine (including an excise tax assessed with respect to an employee
25 benefit plan), or reasonable expenses incurred with respect to a
26 proceeding.
- 27 (4a) 'Officer', 'employee', or 'agent' includes, unless the context requires
28 otherwise, the estate or personal representative of a person who acted
29 in that capacity.
- 30 (5) 'Official capacity' means: (i) when used with respect to a director, the
31 office of director in a corporation; and (ii) when used with respect to
32 an individual other than a director, as contemplated in G.S. 55-8-56,
33 the office in a corporation held by the officer or the employment or
34 agency relationship undertaken by the employee or agent on behalf of
35 the corporation. 'Official capacity' does not include service for any
36 other foreign or domestic corporation or any partnership, joint venture,
37 trust, employee benefit plan, or other enterprise.
- 38 (6) 'Party' includes an individual who was, is, or is threatened to be made a
39 named defendant or respondent in a proceeding.
- 40 (7) 'Proceeding' means any threatened, pending, or completed action, suit,
41 or proceeding, whether civil, criminal, administrative, or investigative
42 and whether formal or informal."

43 Sec. 13. G.S. 55-8-03(b) reads as rewritten:

1 "(b) The shareholders may from time to time increase or decrease the number of
2 directors by amendment to the articles of incorporation or the bylaws, but no such
3 decrease shall be made for a corporation to which G.S. 55-7-28(e) is applicable when
4 the number of shares voting against the proposal for decrease would be sufficient to
5 elect a director by cumulative voting if such shares are entitled to be voted cumulatively
6 for the election of directors. If a board of directors has power under the articles of
7 incorporation or bylaws to fix or change the number of directors and if the shareholders
8 do not have the right to cumulate their votes for directors, the board may increase or
9 decrease the number of directors by not more than thirty percent (30%) during any 12-
10 month period."

11 Sec. 14. G.S. 55-11-03(g) reads as rewritten:

12 "(g) Action by the shareholders of the surviving corporation on a plan of merger is
13 not required if:

- 14 (1) The articles of incorporation of the surviving corporation will not
15 differ (except for amendments enumerated in G.S. 55-10-02) from its
16 articles before the merger;
- 17 (2) Each shareholder of the surviving corporation whose shares were
18 outstanding immediately before the effective date of the merger will
19 hold the same ~~number of~~ shares, with identical designations,
20 preferences, limitations, and relative rights, immediately after the
21 effective date of the merger;
- 22 (3) The number of voting shares outstanding immediately after the
23 merger, plus the number of voting shares issuable as a result of the
24 merger (either by the conversion of securities issued pursuant to the
25 merger or the exercise of rights and warrants issued pursuant to the
26 merger), will not exceed by more than twenty percent (20%) the total
27 number of voting shares of the surviving corporation outstanding
28 immediately before the merger; and
- 29 (4) The number of participating shares outstanding immediately after the
30 merger, plus the number of participating shares issuable as a result of
31 the merger (either by the conversion of securities issued pursuant to
32 the merger or the exercise of rights and warrants issued pursuant to the
33 merger), will not exceed by more than twenty percent (20%) the total
34 number of participating shares outstanding immediately before the
35 merger."

36 Sec. 15. G.S. 55-14-20 reads as rewritten:

37 "**§ 55-14-20. Grounds for administrative dissolution.**

38 The Secretary of State may commence a proceeding under G.S. 55-14-21 to dissolve
39 administratively a corporation if:

- 40 (1) The corporation does not pay within 60 days after they are due any
41 penalties, fees, or other payments due under this Chapter;
- 42 (2) The corporation does not deliver its annual report to the Secretary of
43 State within 60 days after it is due;

- 1 (3) The corporation is without a registered agent or registered office in this
2 State for 60 days or more;
- 3 (4) The corporation does not notify the Secretary of State within 60 days
4 that its registered agent or registered office has been changed, that its
5 registered agent has resigned, or that its registered office has been
6 discontinued; ~~or~~
- 7 (5) The corporation's period of duration stated in its articles of
8 incorporation ~~expires~~-expires; or
- 9 (6) The corporation knowingly fails or refuses to answer truthfully and
10 fully within the time prescribed in this Chapter interrogatories
11 propounded by the Secretary of State in accordance with the
12 provisions of this Chapter."

13 Sec. 16. G.S. 55-15-01(a) reads as rewritten:

14 "(a) A foreign corporation may not transact business in this State until it obtains a
15 certificate of authority from the Secretary of State ~~under this Chapter or under Chapter 55A~~
16 ~~of the General Statutes.~~ State."

17 Sec. 17. G.S. 55-15-08 is amended by adding a new subsection to read:

18 "(c) A foreign corporation authorized to transact business in this State may change
19 its registered office or registered agent by including in its annual report required by G.S.
20 55-16-22 the information and any written consent required by subsection (a) of this
21 section."

22 Sec. 18. G.S. 55-15-30(a) reads as rewritten:

23 "(a) The Secretary of State may commence a proceeding under G.S. 55-15-31 to
24 revoke the certificate of authority of a foreign corporation authorized to transact
25 business in this State if:

- 26 (1) The foreign corporation does not deliver its annual report to the
27 Secretary of State within 60 days after it is due;
- 28 (2) The foreign corporation does not pay within 60 days after they are due
29 any penalties, fees, or other payments due under this Chapter;
- 30 (3) The foreign corporation is without a registered agent or registered
31 office in this State for 60 days or more;
- 32 (4) The foreign corporation does not inform the Secretary of State under
33 G.S. 55-15-08 or G.S. 55-15-09 that its registered agent or registered
34 office has changed, that its registered agent has resigned, or that its
35 registered office has been discontinued within 60 days of the change,
36 resignation, or discontinuance;
- 37 (5) An incorporator, director, officer, or agent of the foreign corporation
38 signed a document he knew was false in any material respect with
39 intent that the document be delivered to the Secretary of State for
40 filing;
- 41 (6) The Secretary of State receives a duly authenticated certificate from
42 the secretary of state or other official having custody of corporate
43 records in the state or country under whose law the foreign corporation

1 is incorporated stating that it has been dissolved or disappeared as the
2 result of a merger;

3 (7) The corporation is exceeding the authority conferred upon it by this
4 ~~Chapter.~~ ~~Chapter;~~ or

5 (8) The corporation knowingly fails or refuses to answer truthfully and
6 fully within the time prescribed in this Chapter interrogatories
7 propounded by the Secretary of State in accordance with the
8 provisions of this Chapter."

9 Sec. 19. G.S. 55-16-02 is amended by adding new subsections to read:

10 "(h) A qualified shareholder of a corporation that has the power to elect, appoint,
11 or designate a majority of the directors of another domestic or foreign corporation or of
12 a domestic or foreign nonprofit corporation, shall have the inspection rights provided in
13 this section with respect to the records of that other corporation.

14 (i) Notwithstanding the provisions of this section or any other provisions of this
15 Chapter or interpretations thereof to the contrary, a shareholder of a public corporation
16 shall have no common law rights to inspect or copy any accounting records of the
17 corporation or any other records of the corporation that may not be inspected or copied
18 by a shareholder of a public corporation as provided in G.S. 55-16-02(b)."

19 Sec. 20. G.S. 54-139 reads as rewritten:

20 "**§ 54-139. ~~Domestication of foreign~~ Foreign cooperative corporations; limitation on**
21 **use of word 'cooperative.'**

22 (a) A foreign corporation (with or without capital stock) that can qualify as an
23 association, as defined in G.S. 54-130(2)b1 and 2, ~~may, under the provisions of Article 8,~~
24 ~~Chapter 55A, if it be a nonstock corporation, or under the provisions of Article 10, Chapter 55,~~
25 ~~if it be a stock corporation, may~~ be authorized to transact business in this State. State under
26 the provisions of Chapter 55A of the General Statutes.

27 (b) No person other than an association organized under this Subchapter, or a
28 foreign corporation ~~domesticated~~ authorized to transact business in this State pursuant to
29 subsection (a) of this section, or an electric or telephone membership corporation
30 domesticated pursuant to G.S. 117-28, or an organization created under or governed by
31 Subchapter IV of Chapter 54 of the General Statutes, shall be entitled to organize,
32 domesticate, or transact business in this State if the corporate or other business name or
33 title of such person contains the word 'cooperative.'"

34 Sec. 21. This act becomes effective October 1, 1993.