

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 644  
HOUSE BILL 715

AN ACT TO MAKE TECHNICAL CHANGES TO THE RULES RELATING TO  
CANCELLATION AND RESTORATION OF CORPORATE CHARTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-230 reads as rewritten:

"§ 105-230. **Charter suspended for failure to report.** – If a corporation required by the provisions of this Subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to the Secretary of State. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify by ~~certified~~-mail every such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or ~~place of business~~ registered office of such corporation is located in this State with instructions to ~~said~~ the register of deeds, and it shall be the register's duty to record and index the suspension in the Record of Incorporations; ~~promptly.~~ a ~~After the recordations, the register shall note the fact of recordation on the said copy and return it to the corporation or its representative. If the corporation or its representative cannot be located, the register may destroy the copy certificate.~~"

Sec. 2. G.S. 105-232 reads as rewritten:

"§ 105-232. **Corporate rights reinstated; receivership and liquidation.** – Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, ~~or similar provisions of prior Revenue Acts, upon the filing, which complies~~ within five years after such suspension, ~~or cancellation under previous acts, with the Secretary of State, of a certificate from the Secretary of Revenue that it has complied with all the requirements of this Subchapter and paid~~ pays all State taxes, fees, or penalties due from

it (which total amount due may be computed, for years prior and subsequent to said suspension, ~~or cancellation,~~ in the same manner as if such suspension ~~or cancellation~~ had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State; ~~and the Secretary of State shall cancel the entry made by him under the provisions of G.S. 105-230 or similar provisions of prior Revenue Acts, and shall issue his certificate entitling such corporation to exercise again its rights, privileges, and franchises, and certify such reinstatement to the register of deeds in the county in which the principal office or place of business of such corporation is located with instructions to said register of deeds, and it shall be his duty to cancel from his records the entry showing suspension of corporate privileges. The Secretary of Revenue shall notify the Secretary of State of such compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of his office. The Secretary of State shall immediately notify the corporation of the reinstatement and certify such reinstatement to the register of deeds of the county in which the suspension was recorded. It shall thereupon be the register's duty, upon receipt of the fee specified in G.S. 161-10 from the corporation, to record and index the reinstatement in the Records of Corporations. The Register of Deeds shall note the fact of recordation on the certificate and forward it to the corporation or its representative.~~

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian **ad litem** may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverters, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him to be disbursed

according to law, in the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.