

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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

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 G.S. 55-7-28.

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

1 for the expense of such certification. If the corporation involved is not a domestic
2 corporation, a similar certificate by any competent authority in the jurisdiction of
3 incorporation may be registered in accordance with this section."

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

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

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

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

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

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

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

20 **"§ 55-7-21.1. Rights of holders of debt securities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "**§ 55-10-05. Amendment before issuance of shares.**

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

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

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

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

43 "(3) If approval of the shareholders of one or more corporations party to the
44 merger or share exchange was required ~~(i) the designation, number of~~

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

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

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

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

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

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

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

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

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

36 "**§ 55-15-21. Withdrawal of foreign corporation by reason of a merger.**

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

1 business in this State the articles of merger or certificate must be accompanied by an
2 application which must set forth:

3 (1) The name of each merged corporation authorized to transact business
4 in this State and the name of the surviving corporation and a statement
5 that the surviving corporation is not authorized to transact business in
6 this State;

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

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

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

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

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

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

22 (3) Issue a certificate of withdrawal; and

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

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

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

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

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

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

34 "(a) Shares entitled to vote as a separate voting group may take action
35 on a matter at a meeting only if a quorum ~~of those shares~~ of that voting group exists with
36 respect to that matter, except that, in the absence of a quorum at the opening of any
37 meeting of shareholders, such meeting may be adjourned from time to time by the vote
38 of a majority of the ~~shares voting~~ votes cast on the motion to adjourn. Unless the articles
39 of incorporation, a bylaw adopted by the shareholders, or this act provides otherwise, a
40 majority of the votes entitled to be cast on the matter by the voting group constitutes a
41 quorum of that voting group for action on that matter."

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

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

- 1 (1) The meeting notice or proxy statement accompanying the notice states
2 conspicuously that cumulative voting is authorized; or
3 (2) A shareholder or proxy who has the right to cumulate his votes
4 announces in open meeting, before voting for directors starts, his
5 intention to vote cumulatively; and if such announcement is made, the
6 chair shall declare that all shares entitled to vote have the right to vote
7 cumulatively and shall announce the number of ~~shares present~~ votes
8 represented in person and by proxy, and shall thereupon grant a recess
9 of not less than one hour nor more than four hours, as he shall
10 determine, or of such other period of time as is unanimously then
11 agreed upon."

12 Sec. 17. G.S. 55-7-28(e) reads as rewritten:

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

15 (1) The corporation was in existence prior to July 1, 1957, under a charter
16 which does not grant the right of cumulative voting and at the time of
17 the election the stock transfer book of such corporation discloses, or it
18 otherwise appears, that there is at least one stockholder who owns or
19 controls more than one-fourth of the voting stock of such corporation
20 (shares represented at a meeting by revocable proxy relating to that
21 meeting or adjourned meetings thereof shall not be deemed shares
22 'controlled' within the meaning of this subsection), or if

23 (2) The corporation was incorporated on or after July 1, 1957, and before
24 July 1, 1990,
25 unless, when the stock transfer books are closed or at the record date fixed to determine
26 the shareholders entitled to receive notice of and to vote at the meeting of shareholders,
27 ~~shares of any class or series are listed on a national securities exchange or are held of record by~~
28 ~~more than 2,000 shareholders.~~ the corporation is a public corporation as defined in G.S.
29 55-1-40(18a). This right to vote cumulatively may be denied or limited by amendment
30 to the articles of incorporation, but no such amendment shall be made when the number
31 of shares voting against the amendment would be sufficient to elect a director by
32 cumulative voting if such shares are entitled to be voted cumulatively for the election of
33 directors."

34 Sec. 18. This act becomes effective upon ratification.