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SENATE BILL DRS15116-MV-12

Short Title: Amend Business Corporations Act. (Public)

Sponsors: Senators Galey and Sawrey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA BUSINESS CORPORATIONS ACT, AS
3 RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.
4 The General Assembly of North Carolina enacts:

6 **PART I. PROVIDE FOR OFFICER EXCULPATION**

7 **SECTION 1.** G.S. 55-2-02 reads as rewritten:

8 "**§ 55-2-02. Articles of incorporation.**

9 ...

10 (b) The articles of incorporation may set forth any provision that under this Chapter is
11 required or permitted to be set forth in the bylaws, and may also set forth any or all of the
12 following:

- 13 (1) The names and addresses of the individuals who are to serve as the initial
14 directors.
- 15 (2) Provisions not inconsistent with law regarding (i) the purpose or purposes for
16 which the corporation is organized; (ii) managing the business and regulating
17 the affairs of the corporation; (iii) defining, limiting, and regulating the powers
18 of the corporation, its board of directors, and shareholders; (iv) a par value for
19 authorized shares or classes of shares; (v) the imposition of personal liability
20 on shareholders for the debts of the corporation to a specified extent and upon
21 specified conditions; and (vi) any limitation on the duration of the corporation.
- 22 (3) A provision limiting or eliminating the personal liability of any director
23 arising out of an action whether by or in the right of the corporation or
24 otherwise for monetary damages for breach of any duty as a ~~director~~ director
25 or limiting or eliminating the personal liability of any officer arising out of an
26 action for monetary damages for breach of any duty as an officer. No such
27 provision shall be effective with respect to (i) acts or omissions that the
28 director or officer at the time of ~~such the~~ breach knew or believed were clearly
29 in conflict with the best interests of the corporation, (ii) in the case of a
30 director, any liability under G.S. 55-8-33, (iii) any transaction from which the
31 director or officer derived an improper personal benefit, ~~or~~ (iv) acts or
32 omissions occurring prior to the date the ~~provisions~~ provision became
33 ~~effective~~ effective, or (v) in the case of an officer, any claim by or in the right
34 of the corporation. As used ~~herein,~~ in this subdivision, the term "improper
35 personal benefit" does not include a director's reasonable compensation or
36 other reasonable incidental benefit for or on account of ~~his~~ the director's



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1 service as a director, officer, employee, independent contractor, attorney, or
 2 consultant of the corporation. A provision permitted by this Chapter in the
 3 articles of incorporation, bylaws, or a contract or resolution indemnifying or
 4 agreeing to indemnify a director against personal liability ~~shall be~~ is fully
 5 effective whether or not there is a provision in the articles of incorporation
 6 limiting or eliminating personal liability.

7 (4) A provision limiting or eliminating any duty of a director, an officer, or any
 8 other person, to offer the corporation the right to have or participate in one or
 9 more specific classes or categories of business opportunities, prior to the
 10 pursuit or taking of the opportunity by the director, officer, or other person.

11 (c) The articles of incorporation need not set forth any of the corporate powers
 12 enumerated in this Chapter.

13 (d) Articles of incorporation filed to effect the conversion of another business entity
 14 pursuant to Article 11A of this Chapter shall also include the statements required by
 15 G.S. 55-11A-03(a).

16 (e) For purposes of subdivision (b)(3) of this section, unless the articles of incorporation
 17 otherwise provide, "officer" means an individual appointed in accordance with G.S. 55-8-40 as
 18 (i) president, chief executive officer, chief operating officer, chief financial officer, chief legal
 19 officer, secretary, controller, treasurer, or chief accounting officer of the corporation and (ii) any
 20 officer of the corporation designated by resolution of the board of directors as an officer for
 21 purposes of subdivision (b)(3) of this section. The board of directors may from time to time by
 22 resolution determine that one or more of the officers designated by resolution of the board in
 23 accordance with this subsection is no longer an officer for purposes of subdivision (b)(3) of this
 24 section, but no such resolution is effective as to an officer, or any act or omission of the officer,
 25 prior to the adoption of that resolution."

27 PART II. CLARIFY PROVISIONS FOR EMERGENCY BYLAWS AND EMERGENCY 28 POWERS

29 SECTION 2.(a) G.S. 55-2-07 reads as rewritten:

30 "§ 55-2-07. Emergency bylaws.

31 (a) Unless the articles of incorporation provide otherwise, the ~~board of directors of a~~
 32 ~~corporation may adopt bylaws to be~~ bylaws may contain provisions that become effective only
 33 in an emergency defined in subsection (d). during an emergency if the provisions are adopted in
 34 advance of an emergency. The emergency bylaws, which are subject to amendment or repeal by
 35 the shareholders, may make bylaws may contain all provisions necessary for managing the
 36 corporation during the an emergency, including:including all of the following:

- 37 (1) Procedures for calling a meeting of the board of ~~directors;~~ directors.
- 38 (2) Quorum requirements for the ~~meeting; and~~ meeting.
- 39 (3) Designation of additional or substitute directors.

40 (b) All provisions of the regular bylaws consistent with the emergency bylaws remain
 41 effective during the emergency. ~~The emergency bylaws are not effective after the emergency~~
 42 ~~ends.~~

43 (c) Corporate action taken in good faith in accordance with the emergency bylaws binds
 44 the corporation and the fact that the action was taken by special procedures ~~may~~ shall not be used
 45 to impose liability on a corporate director, officer, employee, or agent.

46 (d) An emergency exists for purposes of this section if a quorum of the corporation's
 47 directors cannot readily be assembled because of some catastrophic event."

48 SECTION 2.(b) G.S. 55-3-03 reads as rewritten:

49 "§ 55-3-03. Emergency powers.

50 (a) ~~In anticipation of or during an emergency defined in subsection (d), the board of~~
 51 ~~directors of a corporation may:~~

- 1 (1) ~~Modify lines of succession to accommodate the incapacity of any director,~~
2 ~~officer, employee, or agent; and~~
- 3 (2) ~~Relocate the principal office, designate alternative principal offices or~~
4 ~~regional offices, or authorize the officers to do so.~~
- 5 (b) ~~During an emergency defined in subsection (d), emergency,~~ unless emergency bylaws
6 provide ~~otherwise; otherwise,~~ both of the following apply:
- 7 (1) Notice of a meeting of the board of directors need be given only to those
8 directors whom it is practicable to reach and may be given in any practicable
9 manner, including by publication and ~~radio; and radio.~~
- 10 (2) One or more officers of the corporation present at a meeting of the board of
11 directors may be deemed to be directors for the meeting, in order of rank and
12 within the same rank in order of seniority, ~~as to the extent~~ necessary to achieve
13 a quorum.
- 14 (b1) During an emergency, unless emergency bylaws provide otherwise, the board of
15 directors may postpone a meeting of shareholders for which notice has been given or authorize
16 shareholders to participate in a meeting by any means of remote communication that conforms
17 with G.S. 55-7-09(b). The corporation shall give notice to shareholders, by such means and with
18 such shorter advance notice as are reasonable in the circumstances, of any postponement,
19 including any new date, time, or place, and shall describe any means of remote communication
20 to be used.
- 21 (c) Corporate action taken in good faith under this section during an emergency ~~under~~
22 ~~this section~~ to further the ordinary business affairs of the corporation binds the corporation and
23 the fact that ~~said~~ the action is taken by special procedures ~~may~~ shall not be used to impose liability
24 on a corporate director, officer, employee, or ~~agent; agent~~ of the corporation.
- 25 (d) An emergency exists for purposes of subsection (b) of this section if a quorum of the
26 corporation's directors cannot readily be assembled because of some catastrophic event. An
27 emergency exists for purposes of subsection (b1) of this section if, because of some catastrophic
28 event, it is impracticable to convene a meeting of shareholders in accordance with this Chapter
29 or the bylaws or as specified in a notice previously given for the meeting."

31 PART III. CLARIFY PROVISIONS FOR SELECTION OF EXCLUSIVE FORUM

32 **SECTION 3.(a)** Article 2 of Chapter 55 of the General Statutes is amended by adding
33 a new section to read:

34 **"§ 55-2-08. Forum selection provisions.**

35 (a) The articles of incorporation or the bylaws may require that any or all internal
36 corporate claims shall be brought exclusively in any specified court or courts of this State and, if
37 so specified, in any additional courts in this State or in any other jurisdictions with which the
38 corporation has a reasonable relationship.

39 (b) A provision of the articles of incorporation or bylaws adopted under subsection (a) of
40 this section does not have the effect of conferring jurisdiction on any court or over any person or
41 claim and does not apply if none of the courts specified by the provision has the requisite personal
42 and subject matter jurisdiction. If the court or courts of this State specified in a provision adopted
43 under subsection (a) of this section do not have the requisite personal and subject matter
44 jurisdiction and another court of this State does have the requisite jurisdiction, then the internal
45 corporate claim may be brought in the other court of this State, notwithstanding that the other
46 court of this State is not specified in the provision. Additionally, the internal corporate claim may
47 be brought in any other court specified in the provision that has the requisite jurisdiction.

48 (c) No provision of the articles of incorporation or the bylaws may prohibit bringing an
49 internal corporate claim in the courts of this State or require the claims to be determined by
50 arbitration.

1 (d) For the purposes of this section, "internal corporate claim" means any of the
2 following:

- 3 (1) A claim that is based on a violation of a duty under the laws of this State by a
4 current or former director, officer, or shareholder in such capacity.
5 (2) A derivative proceeding brought on behalf of the corporation.
6 (3) An action asserting a claim arising pursuant to any provision of this Chapter
7 or the articles of incorporation or bylaws.
8 (4) An action asserting a claim governed by the internal affairs doctrine that is not
9 otherwise included in subdivisions (1) through (3) of this subsection."

10 **SECTION 3.(b)** G.S. 55-7-50 is repealed.

11
12 **PART IV. PROHIBITION AGAINST THE ISSUANCE OF SCRIP IN BEARER FORM**

13 **SECTION 4.(a)** G.S. 55-6-04 reads as rewritten:

14 **"§ 55-6-04. Fractional shares.**

15 (a) A corporation ~~may~~may issue fractions of a share or, in lieu of doing so, may do any
16 of the following:

- 17 (1) ~~Issue fractions of a share or pay in money~~Pay in cash the value of fractions
18 ~~of a share;~~share.
19 (2) ~~Arrange for disposition of fractional shares by the shareholders;~~Dispose of the
20 fractional shares and pay the proceeds to the holders of those shares.
21 (3) Issue scrip in ~~registered or bearer~~certificated or uncertificated form entitling
22 the holder to receive a full share upon surrendering enough scrip to equal a
23 full share.

24 (b) Each certificate representing scrip ~~must~~shall be conspicuously labeled "scrip" and
25 ~~must~~shall contain the information required by G.S. 55-6-25(b). A corporation shall not issue
26 scrip certificates in bearer form. Within a reasonable time after the issuance or transfer of scrip
27 without certificates, the corporation shall deliver to the scripholder a written statement of the
28 information required on certificates by G.S. 55-6-25(b) and the terms of the scrip.

29 (c) The holder of a fractional share is entitled to exercise the rights of a shareholder,
30 including the ~~right~~rights to vote, to receive dividends, and to ~~participate in the assets of the~~
31 ~~corporation~~receive distributions upon liquidation. The holder of scrip is not entitled to any of
32 these rights unless the scrip provides for them.

33 (d) The board of directors may authorize the issuance of scrip subject to any condition
34 considered desirable, ~~including~~including the following:

- 35 (1) ~~That the~~The scrip will become void if not exchanged for full shares before a
36 specified ~~date;~~and date.
37 (2) ~~That the~~The shares for which the scrip is exchangeable may be sold and the
38 proceeds paid to the scripholders."

39 **SECTION 4.(b)** G.S. 55-6-25 reads as rewritten:

40 **"§ 55-6-25. Form and content of certificates.**

41 (a) Shares ~~may~~may, but need ~~not~~not, be represented by certificates. Share certificates
42 shall not be issued in bearer form. Unless this act-Chapter or another statute expressly provides
43 otherwise, the rights and obligations of shareholders are identical regardless of whether ~~or not~~
44 their shares are represented by certificates.

45 (b) At a minimum each share certificate ~~must~~shall state all of the following on its face:

- 46 (1) The name of the issuing corporation and that it is organized under the law of
47 North ~~Carolina;~~Carolina.
48 (2) The name of the person to whom ~~issued;~~and issued.
49 (3) The number and class of shares and the designation of the series, if any, the
50 certificate represents.

1 (c) If the issuing corporation is authorized to issue different classes of shares or different
 2 series within a class, the designations, relative rights, preferences, and limitations applicable to
 3 each class and the variations in rights, preferences, and limitations determined for each series
 4 (and the authority of the board of directors to determine variations for future series) ~~must~~ shall
 5 be summarized on the front or back of each certificate. Alternatively, each certificate may state
 6 conspicuously on its front or back that the corporation will furnish the shareholder this
 7 information on request in writing and without charge.

8 (d) Each share certificate ~~(1) must~~ (i) shall be signed (either manually or in facsimile) by
 9 two officers designated in the bylaws or by the board of directors and ~~(2) (ii)~~ may bear the
 10 corporate seal or its facsimile.

11 (e) If the person who signed ~~in any capacity~~ (either manually or in facsimile) a share
 12 certificate no longer holds office when the certificate is issued, the certificate is nevertheless
 13 valid."
 14

15 PART V. CLARIFY AND REVISE DERIVATIVE PROCEEDING PROCEDURES

16 SECTION 5.(a) G.S. 55-7-40.1 reads as rewritten:

17 "§ 55-7-40.1. Definitions.

18 In this Part:

- 19 (1) "Derivative proceeding" means a civil suit in the right of a domestic
 20 corporation or, to the extent provided in G.S. 55-7-47, in the right of a foreign
 21 ~~corporation~~ corporation, to recover for an injury to the corporation.
 22 (2) "Shareholder" has the same meaning as in G.S. 55-1-40 and includes a
 23 beneficial owner whose shares are held in a voting trust or held by a nominee
 24 on the beneficial owner's behalf."

25 SECTION 5.(b) G.S. 55-7-42 reads as rewritten:

26 "§ 55-7-42. Demand.

27 No shareholder may commence a derivative proceeding ~~until~~ until both of the following have
 28 occurred:

- 29 (1) A written demand has been ~~made upon~~ delivered to the corporation to take
 30 suitable ~~action; and~~ action. The written demand shall describe in reasonable
 31 detail the reasons for the demand and the action being requested and state that
 32 the shareholder may commence a derivative proceeding if the action is not
 33 taken. If the shareholder is a beneficial shareholder or an unrestricted voting
 34 trust beneficial owner, the written demand shall be accompanied by evidence
 35 of the beneficial ownership.
 36 (2) 90 days have expired from the date the demand was made unless, prior to the
 37 expiration of the 90 days, the shareholder was notified that the corporation
 38 rejected the demand, or unless irreparable injury to the corporation would
 39 result by waiting for the expiration of the 90-day period."

40 SECTION 5.(c) G.S. 55-7-44 reads as rewritten:

41 "§ 55-7-44. Dismissal.

42 (a) The court shall dismiss a derivative proceeding on motion of the corporation if a
 43 determination is made, whether before or after the commencement of the derivative proceeding,
 44 by one of the groups specified in subsection (b) or (f) of this section determines of this section
 45 in good faith ~~faith~~, after conducting a reasonable inquiry upon which its conclusions are ~~based~~
 46 based, that the maintenance of the derivative proceeding is not in the best interest of the
 47 corporation.

48 (b) ~~Unless a panel is appointed pursuant to subsection (f) of this section, the~~ The inquiry
 49 and determination in subsection (a) of this section shall be made by any of the following:

- 50 (1) A majority vote of independent directors present at a meeting of the board of
 51 directors if the independent directors constitute a ~~quorum; or~~ quorum.

1 (2) A majority vote of a committee consisting of two or more independent
2 directors appointed by majority vote of independent directors present at a
3 meeting of the board of directors, whether or not the independent directors
4 constituted a quorum.

5 (3) Upon motion by the corporation, by a panel of one or more individuals
6 appointed by the court.

7 (c) For purposes of this section, none of the following factors by itself shall cause a
8 director to be considered not independent:

9 (1) The nomination or election of the director by ~~persons who are defendants~~any
10 person who is a defendant in the derivative proceeding or against whom action
11 is demanded;demanded.

12 (2) The naming of the director as a defendant in the derivative proceeding or as a
13 person against whom action is ~~demanded;~~ordemanded.

14 (3) The approval by the director of the act being challenged in the derivative
15 proceeding or demand if the act resulted in no personal benefit to the director.

16 (d) ~~If a derivative proceeding is commenced after a determination has been made~~
17 ~~rejecting a demand by a shareholder, the complaint made by one of the groups specified in~~
18 subsection (b) of this section that maintaining the derivative proceeding is not in the best interest
19 of the corporation, in order to contest the determination, the plaintiff shall allege with
20 particularity facts establishing that the requirements of subsection (a) of this section have not
21 been met. Defendants may make a motion to dismiss a complaint under subsection (a) of this
22 section for failure to comply with this subsection. Prior to the court's ruling on such a the motion
23 to dismiss, the plaintiff shall be is entitled to discovery only with respect to the issues presented
24 by the motion and only if and to the extent that the plaintiff has alleged such the facts with
25 particularity. The preliminary discovery shall be limited solely to matters germane and necessary
26 to support the facts alleged with particularity relating solely to the requirements of subsection (a)
27 of this section.

28 (e) ~~If a majority of the board of directors does not consist of independent directors at the~~
29 ~~time the determination is made, The burden of proving whether the requirements of subsection~~
30 (a) of this section have been met is determined as follows:

31 (1) If the determination was made by one of the groups specified in subdivision
32 (b)(1) or (b)(2) of this section, then the plaintiff has the burden of proving that
33 the requirements of subsection (a) of this section have not been met unless the
34 plaintiff has alleged with particularity facts establishing that a majority of the
35 board of directors at the time the determination was made did not consist of
36 independent directors, in which case the corporation shall have has the burden
37 of proving that the requirements of subsection (a) of this section have been
38 met.

39 (2) ~~If a majority of the board of directors consists of independent directors at the~~
40 ~~time the determination is made, If the determination was made by a panel~~
41 appointed pursuant to subdivision (b)(3) of this section, then the plaintiff shall
42 have has the burden of proving that the requirements of subsection (a) of this
43 section have not been met.

44 (f) ~~The court may appoint a panel of one or more independent persons upon motion of~~
45 ~~the corporation to make a determination whether the maintenance of the derivative proceeding is~~
46 ~~in the best interest of the corporation. The plaintiff shall have the burden of proving that the~~
47 ~~requirements of subsection (a) of this section have not been met. The court on its own motion or~~
48 on the motion of any party may order that any motion to dismiss under subsection (a) of this
49 section be made within a specified reasonable time."

50 **SECTION 5.(d)** G.S. 55-7-46 reads as rewritten:

51 **"§ 55-7-46. Payment of expenses.**

On termination of the derivative proceeding, the court ~~may~~may do any of the following:

- (1) Order the corporation to pay the plaintiff's reasonable expenses, including attorneys' fees, incurred in the derivative proceeding if it finds that the derivative proceeding has resulted in a substantial benefit to the ~~corporation~~corporation.
- (2) Order the plaintiff to pay the corporation's or any defendant's reasonable expenses, including attorneys' fees, incurred in responding to the demand or defending the derivative proceeding if it finds that the demand was made or the derivative proceeding was commenced or maintained without reasonable cause or for an improper ~~purpose~~purpose.

...."

PART VI. MAKE CLARIFYING AND TECHNICAL CHANGES REGARDING THE AUTHORITY OF BOARD COMMITTEES

SECTION 6.(a) G.S. 55-8-25 reads as rewritten:

"§ 55-8-25. Committees.

...

- (e) A committee shall not, however, do any of the following:
 - (1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors.
 - (2) Approve or propose to shareholders action that this ~~aet~~Chapter requires be approved by shareholders.
 - (3) Fill vacancies on the board of directors or on any of its committees.
 - (4) ~~Amend articles of incorporation pursuant to G.S. 55-10-02.~~
 - (5) Adopt, amend, or repeal bylaws.
 - (6) Approve a plan of merger not requiring shareholder approval.

...."

SECTION 6.(b) This section is effective when it becomes law.

PART VII. CLARIFY PROVISIONS FOR MERGERS BETWEEN PARENT ENTITIES AND SUBSIDIARY CORPORATIONS

SECTION 7.(a) G.S. 55-11-04(f) is repealed.

SECTION 7.(b) G.S. 55-11-12 reads as rewritten:

"§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or corporations.

(a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent unincorporated entity owning shares of a domestic subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary corporation and that have the power to vote in the election of directors at the time of a merger under this section may merge the subsidiary corporation or corporations into itself, or merge itself and one or more subsidiary corporations into another subsidiary corporation, without approval of the board of directors or shareholders of the subsidiary corporation or corporations, unless the articles of incorporation ~~for~~of the subsidiary corporation or corporations require approval of the shareholders of the subsidiary corporation or corporations, if ~~both~~all of the following requirements are met:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity.
- (2) Each merging business entity complies with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

- 1 (3) The parent unincorporated entity approves, in the manner required by laws of
2 the state or country governing the organization and internal affairs of the
3 parent unincorporated entity, a written plan of merger containing all of the
4 provisions required by G.S. 55-11-10(c).
5 ...
- 6 (d) The surviving business entity shall deliver articles of merger to the Secretary of State
7 for filing. The articles of merger shall set forth all of the following:
- 8 (1) For each merging business entity, its name, type of business entity, and the
9 state or country whose laws govern its organization and internal affairs.
- 10 ~~(2) The terms and conditions of the merger.~~
- 11 ~~(3) The manner and basis of converting the interests in each merging business~~
12 ~~entity into interests, obligations, or securities of the surviving business entity,~~
13 ~~or into cash or other property in whole or in part, or of cancelling the interests.~~
- 14 (4) The name of the merging business entity that shall survive the merger and, if
15 the surviving business entity is not authorized to transact business or conduct
16 affairs in this State, a designation of its mailing address and a commitment to
17 file with the Secretary of State a statement of any subsequent change in its
18 mailing address.
- 19 (5) If the surviving business entity is a domestic corporation, any amendment to
20 its articles of incorporation as provided in a plan of ~~merger or board~~
21 ~~resolution.~~merger.
- 22 (6) A statement that the plan of merger has been approved by each merging
23 business entity in the manner required by law.
- 24 (e) The provisions of ~~the articles of merger may be made dependent on facts objectively~~
25 ~~ascertainable outside the articles of merger if the articles of merger set forth the manner in which~~
26 ~~the facts will operate upon the affected provisions. The facts may include any of the following:~~
- 27 (1) ~~Statistical or market indices, market prices of any security or group of~~
28 ~~securities, interest rates, currency exchange rates, or similar economic or~~
29 ~~financial data.~~
- 30 (2) ~~A determination or action by the corporation or by any other person, group,~~
31 ~~or body.~~
- 32 (3) ~~The terms of, or actions taken under, an agreement to which the corporation~~
33 ~~is a party, or any other agreement or document.~~G.S. 55-11-10(c1) and (c2)
34 apply to any merger described in this section.
- 35 (f) A merger takes effect when the articles of merger become effective."

37 **PART VIII. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS**

38 **SECTION 8.(a)** The Revisor of Statutes shall cause to be printed, as annotations to
39 Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to
40 the Model Business Corporation Act and all explanatory comments of the drafters of this act as
41 the Revisor may deem appropriate.

42 **SECTION 8.(b)** Except as otherwise provided, this act is effective as of October 1,
43 2025.