

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 242
Judiciary I/Constitution Committee Substitute Adopted 5/10/95

Short Title: Amend Nonprofit Corporation Act.

(Public)

Sponsors:

Referred to:

February 22, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA NONPROFIT CORPORATION ACT
3 AND TO MAKE A CONFORMING AMENDMENT TO THE BUSINESS
4 CORPORATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 55A-5-01 reads as rewritten:

8 "**§ 55A-5-01. Registered office and registered agent.**

9 (a) Each corporation shall continuously maintain in this State:

10 (1) A registered office that may be the same as any place where it conducts
11 affairs; and

12 (2) A registered agent, who shall be:

13 a. An individual who resides in this State and whose office is
14 identical with the registered office;

15 b. A domestic business or nonprofit corporation whose office is
16 identical with the registered office; or

17 c. A foreign business or nonprofit corporation authorized to transact
18 business or conduct affairs in this State whose office is identical
19 with the registered office.

1 (b) The sole duty of the registered agent to the corporation is to forward to the
2 corporation at its last known address any notice, process, or demand that is served on the
3 registered agent."

4 Sec. 2. G.S. 55A-7-21(c) reads as rewritten:

5 "(c) ~~A bylaw amendment~~ An amendment to the articles of incorporation or bylaws
6 on which members are entitled to vote, the purpose of which is to increase or decrease the
7 number of votes any member is entitled to cast on any member ~~action~~ action, shall be
8 approved by the members entitled to vote on that ~~action~~ action by a vote that would be
9 sufficient to take the action before the amendment."

10 Sec. 3. G.S. 55A-7-23(b) reads as rewritten:

11 "(b) ~~A bylaw amendment~~ An amendment to the articles of incorporation or bylaws
12 on which members are entitled to vote, the purpose of which is to increase or decrease the
13 vote required for any member ~~action~~ action, shall be approved by the members entitled to
14 vote on that ~~action~~ action by a vote that would be sufficient to take the action before the
15 amendment."

16 Sec. 4. G.S. 55A-10-03(a) reads as rewritten:

17 "(a) If the corporation has members entitled to vote thereon, then, unless this
18 Chapter, the articles of incorporation, bylaws, the members (acting pursuant to subsection
19 (b) of this section), or the board of directors (acting pursuant to subsection (c) of this
20 section) require a greater vote or voting by class, an amendment to a corporation's articles
21 of incorporation to be adopted shall be approved:

- 22 (1) By the board or in lieu thereof in writing by the number or proportion of
23 members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to
24 consider such amendment;
- 25 (2) By the members by entitled to vote thereon by two-thirds of the votes
26 cast or a majority of the votes entitled to be cast on the ~~amendment;~~
27 amendment, whichever is less; and
- 28 (3) In writing by any person or persons whose approval is required by a
29 provision of the articles of incorporation authorized by G.S. 55A-10-
30 30."

31 Sec. 5. G.S. 55A-11-01(a) reads as rewritten:

32 "(a) Subject to the limitations set forth in G.S. 55A-11-02, one or more nonprofit
33 corporations may merge into a business or another nonprofit corporation, if the plan of
34 merger is approved as provided in G.S. 55A-11-03."

35 Sec. 6. G.S. 55A-11-02(a)(4) reads as rewritten:

36 "(4) A business or nonprofit corporation other than a charitable or religious
37 corporation, provided that: (i) on or prior to the effective date of the
38 merger, assets with a value equal to the greater of the fair market value
39 of the net tangible and intangible assets (including goodwill) of the
40 charitable or religious corporation or the fair market value of the
41 charitable or religious corporation if it were to be operated as a business
42 concern are transferred or conveyed to one or more persons who would
43 have received its assets under G.S. 55A-14-06(a)(5) and (6) G.S. 55A-14-

03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members or shareholders in or directors, officers, employees, agents, or consultants of the surviving corporation."

Sec. 7. G.S. 55A-11-06(a) reads as rewritten:

"(a) Except as provided in G.S. 55A-11-02, one or more foreign ~~business or~~ nonprofit corporations may merge with one or more domestic nonprofit corporations if:

- (1) The merger is permitted by the law of the state or ~~county~~ country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the merger; and
- (3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04."

Sec. 8. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"§ 55A-11-08. Merger with business corporation.

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

- (1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;
- (2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;
- (3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving corporation; and
- (4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04.

(b) Upon the merger taking effect, if the surviving corporation does not have a registered agent in this State, it shall be deemed to have appointed the Secretary of State as its registered agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the merger, until such time as it appoints a registered agent in this State.

(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise."

Sec. 9. G.S. 55A-15-20(c) reads as rewritten:

1 (c) If the Secretary of State finds that the application conforms to law, the
2 Secretary of State shall:

- 3 (1) Endorse on the application and an exact or conformed copy thereof the
4 word 'filed', and the hour, day, month, and year of the filing thereof;
5 (2) File the application in the Secretary of State's office; ~~and~~
6 (3) Issue a certificate of withdrawal to which the Secretary of State shall
7 affix the exact or conformed copy of the ~~application.~~ application; and
8 (4) Send to the foreign corporation or its representative the certificate of
9 withdrawal together with the exact or conformed copy of the application
10 affixed thereto."

11 Sec. 10. G.S. 55A-15-31 is amended by adding the following new subsection
12 to read:

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

16 Sec. 11. Article 15 of Chapter 55A of the General Statutes is amended by
17 adding the following new section to read:

18 **"§ 55A-15-33. Inapplicability of Administrative Procedure Act.**

19 The Administrative Procedure Act shall not apply to any proceeding or appeal
20 provided for in G.S. 55A-15-30 through G.S. 55A-15-32."

21 Sec. 12. G.S. 55A-17-01(b) reads as rewritten:

22 (b) The provisions of this Chapter relating to foreign corporations shall apply to all
23 ~~such~~ corporations conducting affairs in this State for purposes for which a corporation
24 might be organized under this Chapter. A foreign corporation authorized to conduct
25 affairs in this State on July 1, 1994, is subject to this Chapter but is not required to obtain
26 a new certificate of authority to conduct affairs under this Chapter."

27 Sec. 13. Article 11 of Chapter 55 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 55-11-09. Merger with nonprofit corporation.**

30 (a) One or more domestic or foreign nonprofit corporations may merge with one
31 or more domestic corporations if:

- 32 (1) Each domestic nonprofit corporation complies with the applicable
33 provisions of G.S. 55A-11-01 through G.S. 55A-11-03;
34 (2) In a merger involving one or more foreign nonprofit corporations, the
35 merger is permitted by law of the state or country under whose law each
36 foreign nonprofit corporation is incorporated and each foreign nonprofit
37 corporation complies with that law in effecting the merger;
38 (3) The domestic or foreign nonprofit corporation complies with G.S. 55-
39 11-05 if it is the surviving corporation; and
40 (4) Each domestic corporation complies with the applicable provisions of
41 G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving
42 corporation, with G.S. 55-11-05.

- 1 **(b)** Upon the merger taking effect, if the domestic or foreign nonprofit corporation
2 is the surviving corporation, then it is deemed:
- 3 **(1)** To appoint the Secretary of State as its agent for service of process in a
4 proceeding to enforce any obligation or the rights of dissenting
5 shareholders of each domestic corporation party to the merger; and
- 6 **(2)** To agree that it will promptly pay to the dissenting shareholders of each
7 domestic corporation party to the merger the amount, if any, to which
8 they are entitled under Article 13 of this Chapter.
- 9 **(c)** This section does not limit the power of a domestic or foreign nonprofit
10 corporation to acquire all or part of the shares of one or more classes or series of a
11 domestic corporation through a voluntary exchange or otherwise."
- 12 Sec. 14. This act is effective upon ratification.