

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 242

Short Title: Amend Nonprofit Corporation Act.

(Public)

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Sponsors: Senators Hartsell, Soles, Allran, and Simpson.

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Referred to: Judiciary I/Constitution

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February 22, 1995

A BILL TO BE ENTITLED

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

5 The General Assembly of North Carolina enacts:

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

7 "**§ 55A-5-01. Registered office and registered agent.**

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

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

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

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

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

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

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 to increase or decrease the number of votes any member  
6 is entitled to cast on any member action shall be approved by the members entitled to  
7 vote on that ~~action~~ action by a vote that would be sufficient to take the action."

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

9       (b) A bylaw amendment to increase or decrease the vote required for any member  
10 action shall be approved by the members entitled to vote on that ~~action~~ action by a vote  
11 that would be sufficient to take the action."

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

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

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

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

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

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

32       (4) A business or nonprofit corporation other than a charitable or religious  
33 corporation, provided that: (i) on or prior to the effective date of the  
34 merger, assets with a value equal to the greater of the fair market value  
35 of the net tangible and intangible assets (including goodwill) of the  
36 charitable or religious corporation or the fair market value of the  
37 charitable or religious corporation if it were to be operated as a business  
38 concern are transferred or conveyed to one or more persons who would  
39 have received its assets under ~~G.S. 55A-14-06(a)(5) and (6)~~ G.S. 55A-14-  
40 03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey  
41 any assets held by it upon condition requiring return, transfer or  
42 conveyance, which condition occurs by reason of the merger, in  
43 accordance with such condition; and (iii) the merger is approved by a

1 majority of directors of the charitable or religious corporation who are  
2 not and will not become members or shareholders in or directors,  
3 officers, employees, agents, or consultants of the surviving corporation."

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

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

7 (1) The merger is permitted by the law of the state or ~~county~~ country under  
8 whose law each foreign corporation is incorporated and each foreign  
9 corporation complies with that law in effecting the merger;

10 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the  
11 surviving corporation of the merger; and

12 (3) Each domestic nonprofit corporation complies with the applicable  
13 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the  
14 surviving corporation of the merger, with G.S. 55A-11-04."

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

17 "**§ 55A-11-08. Merger with business corporation.**

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

20 (1) Each domestic business corporation complies with the applicable  
21 provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

22 (2) In a merger involving one or more foreign business corporations, the  
23 merger is permitted by the law of the state or country under whose law  
24 each foreign business corporation is incorporated and each foreign  
25 business corporation complies with that law in effecting the merger;

26 (3) The domestic or foreign business corporation complies with G.S. 55A-  
27 11-04 if it is the surviving corporation; and

28 (4) Each domestic nonprofit corporation complies with the applicable  
29 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the  
30 surviving corporation, with G.S. 55A-11-04.

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

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

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

40 "(c) If the Secretary of State finds that the application conforms to law, the  
41 Secretary of State shall:

42 (1) Endorse on the application and an exact or conformed copy thereof the  
43 word 'filed', and the hour, day, month, and year of the filing thereof;

- 1 (2) File the application in the Secretary of State's office; and  
2 (3) Issue a certificate of withdrawal to which the Secretary of State shall  
3 affix the exact or conformed copy of the ~~application.~~ application; and  
4 (4) Send to the foreign corporation or its representative the certificate of  
5 withdrawal together with the exact or conformed copy of the application  
6 affixed thereto."

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

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

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

14 **"§ 55A-15-33. Inapplicability of Administrative Procedure Act.**

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

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

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

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

25 **"§ 55-11-09. Merger with nonprofit corporation.**

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

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

39 (b) Upon the merger taking effect, if the domestic or foreign nonprofit corporation  
40 is the surviving corporation, then it is deemed:

- 41 (1) To appoint the Secretary of State as its agent for service of process in a  
42 proceeding to enforce any obligation or the rights of dissenting  
43 shareholders of each domestic corporation party to the merger; and

1           (2) To agree that it will promptly pay to the dissenting shareholders of each  
2           domestic corporation party to the merger the amount, if any, to which  
3           they are entitled under Article 13 of this Chapter.

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

7           Sec. 14. This act is effective upon ratification and applies to corporate actions  
8           that give rise to proceedings for revocating of certificates of authority occurring on or  
9           after the date of ratification.