

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 168*
Senate Finance Committee Substitute Adopted 8/28/01

Short Title: Corporate Asset Transfers.

(Public)

Sponsors:

Referred to:

February 20, 2001

A BILL TO BE ENTITLED

AN ACT TO PERMIT A CORPORATION TO TRANSFER ASSETS TO A WHOLLY OWNED UNINCORPORATED ENTITY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE TECHNICAL CHANGES TO HOUSE BILL 1073 AND SENATE BILL 842, AS ENACTED BY THE 2001 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-12-01 reads as rewritten:

"§ 55-12-01. Sale of assets in regular course of business and mortgage of assets.

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the shareholders:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or
- (2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation."

SECTION 2. Section 175(a) of S.L. 2001-387 (Senate Bill 842, 2001 General Assembly), reads as rewritten:

"SECTION 175.(a) Section 173 of this act is effective when it becomes law. Section 59A of this act becomes effective September 1, 2001. The remainder of this act becomes effective January 1, 2002."

SECTION 3. G.S. 55-14-22(a1), as enacted by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

1 "(a1) If, at the time the corporation applies for reinstatement, the name of the
2 corporation is not distinguishable from the name of another entity authorized to be used
3 under ~~G.S. 55-4-01~~, G.S. 55D-21, then the corporation must change its name to a name
4 that is distinguishable upon the records of the Secretary of State from the name of the
5 other entity before the Secretary of State may prepare a certificate of reinstatement."

6 **SECTION 4.** G.S. 55-14-22(b), as amended by S.L. 2001-390 (House Bill
7 1073, 2001 General Assembly), reads as rewritten:

8 "(b) If the Secretary of State determines that the application contains the
9 information required by subsection (a) of this section, that the information is correct,
10 and that the name of the corporation complies with ~~G.S. 55-4-01~~G.S. 55D-21 and any
11 other applicable section, the Secretary of State shall cancel the certificate of dissolution
12 and prepare a certificate of reinstatement that recites the Secretary of State's
13 determination and the effective date of reinstatement, file the original of the certificate,
14 and mail a copy to the corporation."

15 **SECTION 5.** G.S. 55A-14-22(a1), as amended by S.L. 2001-390 (House
16 Bill 1073, 2001 General Assembly), reads as rewritten:

17 "(a1) If, at the time the corporation applies for reinstatement, the name of the
18 corporation is not distinguishable from the name of another entity authorized to be used
19 under ~~G.S. 55A-4-01~~, G.S. 55D-21, then the corporation must change its name to a
20 name that is distinguishable upon the records of the Secretary of State from the name of
21 the other entity before the Secretary of State may prepare a certificate of reinstatement."

22 **SECTION 6.** G.S. 55A-14-22(b), as amended by S.L. 2001-390 (House Bill
23 1073, 2001 General Assembly), reads as rewritten:

24 "(b) If the Secretary of State determines that the application contains the
25 information required by subsection (a) of this section, that the information is correct,
26 and that the name of the corporation complies with ~~G.S. 55A-4-01~~G.S. 55D-21 and any
27 other applicable section, the Secretary of State shall cancel the certificate of dissolution
28 and prepare a certificate of reinstatement that recites the Secretary of State's
29 determination and the effective date of reinstatement, file the original of the certificate,
30 and mail a copy to the corporation."

31 **SECTION 7.** G.S. 57C-6-03(c), as amended by S.L. 2001-390 (House Bill
32 1073, 2001 General Assembly), reads as rewritten:

33 "(c) A limited liability company administratively dissolved under this section may
34 apply to the Secretary of State for reinstatement. The procedures for reinstatement and
35 for the appeal of any denial of the limited liability company's application for
36 reinstatement shall be the same procedures applicable to corporations under G.S.
37 55-14-22, 55-14-23, and 55-14-24. If, at the time the limited liability company applies
38 for reinstatement, the name of the limited liability company is not distinguishable from
39 the name of another entity authorized to be used under ~~G.S. 57C-2-30~~, G.S. 55D-21,
40 then the limited liability company must change its name to a name that is
41 distinguishable upon the records of the Secretary of State from the name of the other
42 entity before the Secretary of State may prepare a certificate of reinstatement. The effect

1 of reinstatement of a limited liability company shall be the same as for a corporation
2 under G.S. 55-14-22."

3 **SECTION 8.** G.S. 59-210(g), as enacted by S.L. 2001-387 (Senate Bill 842,
4 2001 General Assembly) reads as rewritten:

5 "(g) A limited liability limited partnership shall be subject to the provisions of
6 ~~G.S. 59-84.4(f)~~ G.S. 59-84.4 regarding annual reports and revocation of registration as
7 if it were a registered limited liability partnership."

8 **SECTION 9.** Sections 3 through 8 of this act become effective January 1,
9 2002. The remainder of this act is effective when it becomes law, and Section 1 of this
10 act applies to transfers occurring on or after that date.