

The House Committee on Judiciary offered the following substitute to SB 211:

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to business corporations, so as to provide for the use by corporations of a single written notice to two or more shareholders with the same address under certain circumstances; to define certain terms; to require certain notice and contents be provided to shareholders in advance of a meeting to restate articles of incorporation; to provide that the terms of a plan of merger or share exchange may be made dependent on facts ascertainable outside of the plan if the manner in which such facts shall operate on the terms of the merger or share exchange are clearly and expressly set forth in the plan; to revise certain provisions concerning mergers with subsidiaries; to confirm that a merger does not result in a conveyance, transfer, or reassignment of property; to correct a typographical error; to revise shareholders' right of dissent in certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to business corporations, is amended by striking subsection (h) of Code Section 14-2-141, relating to notice, and inserting in lieu thereof new subsections (h) and (i) to read as follows:

"(h) Without limiting the manner by which notice otherwise may be given effectively under this chapter:

(1) Any notice by a corporation under any provision of this chapter, the articles of incorporation, or the bylaws to record or beneficial holders of its shares shall be effective if given by a single written notice to two or more such holders who share an address if consented to by those holders. Any such consent shall be revocable by a holder by written notice to the corporation. Except as provided in paragraph (2) of this subsection, any such consent shall be in writing and signed by each record or beneficial holder with respect to which such single written notice is to be effective.

1 (2) Any record or beneficial holder of shares of any class or series which are either listed  
2 on a national securities exchange or held of record by more than 500 shareholders who  
3 fails to object in writing to the corporation, within 60 days of having been given written  
4 notice by the corporation of its intention to send the single notice permitted under  
5 paragraph (1) of this subsection to such holders, shall be deemed to have consented to  
6 receiving such single written notice.

7 (i) If this chapter prescribes notice requirements for particular circumstances, those  
8 requirements govern. If articles of incorporation or bylaws prescribe notice requirements,  
9 not inconsistent with this Code section or other provisions of this chapter, those  
10 requirements govern."

## 11 SECTION 2.

12 Said chapter is further amended by striking subsection (h) of Code Section 14-2-601, relating  
13 to authorized shares, and inserting in lieu thereof new subsections (h) and (i) to read as  
14 follows:

15 "(h) As used in this Code section, the term 'facts' includes, but is not limited to, the  
16 occurrence of any event, including a determination or action by any person or body,  
17 including the corporation.

18 (i) Nothing contained in this Code section shall be deemed to limit the board of directors'  
19 authority or discretion to determine the terms and conditions of rights, options, or warrants  
20 issuable pursuant to Code Section 14-2-624."

## 21 SECTION 3.

22 Said chapter is further amended by striking subsection (c) of Code Section 14-2-602, relating  
23 to terms of class or series determined by board of directors, and inserting in lieu thereof a  
24 new subsection (c) to read as follows:

25 "(c) Except to the extent otherwise permitted by Code Section 14-2-624, all shares of a  
26 class or, if applicable, series within a class must have preferences, limitations, and relative  
27 rights identical with those of other shares of the same class or series and, except to the  
28 extent otherwise provided in the description of the series, all shares of a series must have  
29 preferences, limitations, and relative rights identical with those of other series of the same  
30 class; provided, however, that any of the voting powers, preferences, designations, rights,  
31 qualifications, limitations, or restrictions of or on the class or series of shares, or the  
32 holders thereof, may be made dependent upon facts ascertainable outside the articles of  
33 incorporation if the manner in which the facts shall operate upon the voting powers,  
34 designations, preferences, rights, qualifications, limitations, or restrictions of or on the  
35 shares, or the holders thereof, is clearly and expressly set forth in the articles of

1 incorporation. As used in this Code section, the term 'facts' includes, but is not limited to,  
2 the occurrence of any event, including a determination or action by any person or body,  
3 including the corporation."

#### 4 SECTION 4.

5 Said chapter is further amended by striking subsection (c) of Code Section 14-2-624, relating  
6 to share options, and inserting in lieu thereof a new subsection (c) to read as follows:

7 "(c) The terms of the rights, options, or warrants, including the time or times, the  
8 conditions precedent, and the prices at which and the holders by whom the rights, options,  
9 or warrants may be exercised, as well as their duration, (1) may preclude or limit the  
10 exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any  
11 rights, options, or warrants and (2) may be made dependent upon facts ascertainable  
12 outside the documents evidencing the rights, or the resolution providing for the issue of the  
13 rights, options, or warrants adopted by the board of directors, if the manner in which the  
14 facts shall operate upon the exercise of rights is clearly and expressly set forth in the  
15 document evidencing the rights or in the resolution. Such terms and conditions need not  
16 be set forth in the articles of incorporation. As used in this Code section, the term 'facts'  
17 includes, but is not limited to, the occurrence of any event, including a determination or  
18 action by any person or body, including the corporation."

#### 19 SECTION 5.

20 Said chapter is further amended by striking subsection (c) of Code Section 14-2-1007,  
21 relating to restated articles of incorporation, and inserting in lieu thereof a new subsection  
22 (c) to read as follows:

23 "(c) If the board of directors submits a restatement for shareholder action, the corporation  
24 shall notify each shareholder entitled to vote of the proposed shareholders' meeting in  
25 accordance with Code Section 14-2-705. The notice must also state that the purpose, or one  
26 of the purposes, of the meeting is to consider the proposed restatement and contain or be  
27 accompanied by a copy of the restatement that identifies any amendment or other change  
28 it would make in the articles or contain or be accompanied by a full and complete summary  
29 of any such amendment or other change."

#### 30 SECTION 6.

31 Said chapter is further amended by adding a new subsection (d) to Code Section 14-2-1101,  
32 relating to merger, to read as follows:

33 "(d) Any of the terms of the plan of merger may be made dependent upon facts  
34 ascertainable outside of the plan of merger, provided that the manner in which such facts

1 shall operate upon the terms of the merger is clearly and expressly set forth in the plan of  
2 merger. As used in this subsection, the term 'facts' includes, but is not limited to, the  
3 occurrence of any event, including a determination or action by any person or body,  
4 including the corporation."

#### 5 SECTION 7.

6 Said chapter is further amended by striking subsection (d) of Code Section 14-2-1102,  
7 relating to share exchange, and inserting in lieu thereof new subsections (d) and (e) to read  
8 as follows:

9 "(d) Any of the terms of the plan of share exchange may be made dependent upon facts  
10 ascertainable outside of the plan of share exchange, provided that the manner in which such  
11 facts shall operate upon the terms of the share exchange is clearly and expressly set forth  
12 in the plan of share exchange. As used in this subsection, the term 'facts' includes, but is  
13 not limited to, the occurrence of any event, including a determination or action by any  
14 person or body, including the corporation.

15 (e) This Code section does not limit the power of a corporation to acquire all or part of the  
16 shares of one or more classes or series of another corporation through a voluntary exchange  
17 of shares or otherwise."

#### 18 SECTION 8.

19 Said chapter is further amended by striking Code Section 14-2-1104, relating to merger with  
20 subsidiary, and inserting in lieu thereof a new Code Section 14-2-1104 to read as follows:

21 "14-2-1104.

22 (a) A parent corporation ~~owning~~ that owns at least 90 percent of the outstanding shares of  
23 each class and series of a subsidiary corporation may ~~either~~ merge the subsidiary into itself  
24 or into another such subsidiary or merge itself into the subsidiary ~~corporation~~ without the  
25 approval of the board of directors or shareholders of the ~~parent or subsidiary~~ except as  
26 ~~provided in subsection (b) of this Code section~~ subsidiary.

27 (b) ~~If a parent corporation merges itself into a subsidiary corporation as provided in~~  
28 ~~subsection (a) of this Code section, the parent corporation shall comply with the~~  
29 ~~requirements of Code Section 14-2-1103 unless:~~

30 ~~(1) Immediately following the effective time of the merger, the articles of incorporation~~  
31 ~~and the bylaws of the surviving corporation are identical, except for any differences in~~  
32 ~~the articles of incorporation permitted by amendments enumerated in Code Section~~  
33 ~~14-2-1002, to the articles of incorporation and the bylaws of the parent corporation~~  
34 ~~immediately prior to the effective time of the merger;~~

~~(2) Each shareholder of the parent corporation whose shares were outstanding immediately prior to the effective time of the merger will receive a like number of shares of the surviving corporation, with designations, preferences, limitations, and relative rights identical to those previously held by each shareholder;~~

~~(3) The number and kind of shares of the surviving corporation outstanding immediately following the effective time of the merger, plus the number and kind of shares issuable as a result of the merger and by conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number and kind of shares of the parent corporation authorized by its articles of incorporation immediately prior to the effective time of the merger; and~~

~~(4) The directors of the parent corporation become or remain the directors of the surviving corporation upon the effective time of the merger.~~

~~(c)~~ The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the parent or subsidiary into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or in part.

~~(d) (c)~~ Within ten days after the corporate action is taken, the surviving corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary or parent who does not waive the mailing requirement in writing. If, as provided under subsection (a), approval of a merger by the subsidiary's shareholders is not required, the surviving corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(d) Except as provided in subsections (a), (b), and (c) of this Code section, a merger between a parent and a subsidiary shall be governed by the provisions of Article 11 of this chapter applicable to mergers generally.

(e) If the parent corporation is the surviving corporation, articles of merger or a certificate of merger under this Code section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in Code Section 14-2-1002). Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term 'facts' includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

**SECTION 9.**

Said chapter is further amended by striking Code Section 14-2-1106, relating to the effect of merger or share exchange, and inserting in lieu thereof a new Code Section 14-2-1106 to read as follows:

"14-2-1106.

(a) When a merger governed by Article 11 of this chapter takes effect:

(1) Every other corporation or entity party to the merger merges into the surviving corporation or entity and the separate existence of every corporation or entity except the surviving corporation or entity ceases;

(2) The title to all real estate and other property owned by and every contract right possessed by, each corporation or entity party to the merger is vested in the surviving corporation or entity without reversion or impairment, without further act or deed, and without any conveyance, transfer, or assignment having occurred;

(3) The surviving corporation or entity has all liabilities of each corporation or entity party to the merger;

(4) A proceeding pending against any corporation or entity party to the merger may be continued as if the merger did not occur or the surviving corporation or entity may be substituted in the proceeding for the corporation or entity whose existence ceased;

(5) The articles of incorporation or other governing documents of the surviving corporation or entity are amended to the extent provided in the plan of merger; and

(6) The shares of each corporation party to the merger and the shares of each of the entities party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former holders of the shares are entitled only to the rights provided in the plan of merger or to their rights ~~under Article 13 of this chapter~~ otherwise provided by law.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the share exchange rights provided in the plan of share exchange or to their rights under Article 13 of this chapter.

(c) For purposes of this Code section, the definitions contained in Code Section 14-2-1109 shall be applicable."

**SECTION 10.**

Said chapter is further amended by striking paragraph (8) of subsection (a) and subsections (e) and (f) of Code Section 14-2-1109, relating to merger with other entities, and inserting

in lieu thereof a new paragraph (8) of subsection (a) and new subsections (e), (f), and (g) to read as follows:

"(8) 'Shareholder' includes every member of a limited liability company or a joint-stock association that is a party to a merger or holder of a share of stock or other evidence of financial or beneficial interest therein."

"(e) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term 'facts' includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(f) For a plan of merger to be approved, the board of directors of each merging corporation must recommend the plan of merger to the shareholders in the same manner and to the same extent as provided in Code Section 14-2-1103. In the case of any other entity, the plan of merger shall be approved in the manner required by its governing agreements and in compliance with any applicable laws of the state or jurisdiction under which it was formed. In addition, each of the corporations shall comply with all other Code sections of this chapter which relate to the merger of domestic corporations. Each other entity shall comply with all other provisions of its governing agreements and all provisions of the laws, if any, of the state or jurisdiction in which it was formed which relate to the merger.

~~(f)~~ (g) Each merging corporation shall comply with the requirements of Code Section 14-2-1105."

## SECTION 11.

Said chapter is further amended by striking Code Section 14-2-1302, relating to the right to dissent, and inserting in lieu thereof a new Code Section 14-2-1302 to read as follows:

"14-2-1302.

(a) A record shareholder of the corporation is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(A) If approval of the shareholders of the corporation is required for the merger by Code Section 14-2-1103 or ~~14-2-1104~~ or the articles of incorporation and the shareholder is entitled to vote on the merger, unless the corporation:

(i) is merging into a subsidiary corporation pursuant to Code Section 14-2-1104;

(ii) each shareholder of the corporation whose shares were outstanding immediately prior to the effective time of the merger shall receive a like number of shares of the

1 surviving corporation, with designations, preferences, limitations, and relative rights  
 2 identical to those previously held by each shareholder; and  
 3 (iii) the number and kind of shares of the surviving corporation outstanding  
 4 immediately following the effective time of the merger, plus the number and kind of  
 5 shares issuable as a result of the merger and by conversion of securities issued  
 6 pursuant to the merger, shall not exceed the total number and kind of shares of the  
 7 corporation authorized by its articles of incorporation immediately prior to the  
 8 effective time of the merger; or

9 (B) If the corporation is a subsidiary that is merged with its parent under Code Section  
 10 14-2-1104;

11 (2) Consummation of a plan of share exchange to which the corporation is a party as the  
 12 corporation whose shares will be acquired, if the shareholder is entitled to vote on the  
 13 plan;

14 (3) Consummation of a sale or exchange of all or substantially all of the property of the  
 15 corporation if a shareholder vote is required on the sale or exchange pursuant to Code  
 16 Section 14-2-1202, but not including a sale pursuant to court order or a sale for cash  
 17 pursuant to a plan by which all or substantially all of the net proceeds of the sale will be  
 18 distributed to the shareholders within one year after the date of sale;

19 (4) An amendment of the articles of incorporation with respect to a class or series of  
 20 shares that reduces ~~that materially and adversely affects rights in respect of a dissenter's~~  
 21 ~~shares because it:~~

22 ~~(A) Alters or abolishes a preferential right of the shares;~~

23 ~~(B) Creates, alters, or abolishes a right in respect of redemption, including a provision~~  
 24 ~~respecting a sinking fund for the redemption or repurchase, of the shares;~~

25 ~~(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares~~  
 26 ~~or other securities;~~

27 ~~(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate~~  
 28 ~~votes, other than a limitation by dilution through issuance of shares or other securities~~  
 29 ~~with similar voting rights;~~

30 ~~(E) Reduces the number of shares~~ of a class or series ~~owned by the shareholder to a~~  
 31 ~~fraction of a share if the fractional share so created is to be acquired for cash under~~  
 32 ~~Code Section 14-2-604; or~~

33 ~~(F) Cancels, redeems, or repurchases all or part of the shares of the class; or~~

34 (5) Any corporate action taken pursuant to a shareholder vote to the extent that Article  
 35 9 of this chapter, the articles of incorporation, bylaws, or a resolution of the board of  
 36 directors provides that voting or nonvoting shareholders are entitled to dissent and obtain  
 37 payment for their shares.



1 (b) A shareholder entitled to dissent and obtain payment for his or her shares under this  
2 article may not challenge the corporate action creating his or her entitlement unless the  
3 corporate action fails to comply with procedural requirements of this chapter or the articles  
4 of incorporation or bylaws of the corporation or the vote required to obtain approval of the  
5 corporate action was obtained by fraudulent and deceptive means, regardless of whether  
6 the shareholder has exercised dissenter's rights.

7 (c) Notwithstanding any other provision of this article, there shall be no right of dissent  
8 in favor of the holder of shares of any class or series which, at the record date fixed to  
9 determine the shareholders entitled to receive notice of and to vote at a meeting at which  
10 a plan of merger or share exchange or a sale or exchange of property or an amendment of  
11 the articles of incorporation is to be acted on, were either listed on a national securities  
12 exchange or held of record by more than 2,000 shareholders, unless:

13 (1) In the case of a plan of merger or share exchange, the holders of shares of the class  
14 or series are required under the plan of merger or share exchange to accept for their  
15 shares anything except shares of the surviving corporation or another publicly held  
16 corporation which at the effective date of the merger or share exchange are either listed  
17 on a national securities exchange or held of record by more than 2,000 shareholders,  
18 except for scrip or cash payments in lieu of fractional shares; or

19 (2) The articles of incorporation or a resolution of the board of directors approving the  
20 transaction provides otherwise."

## 21 **SECTION 12.**

22 All laws and parts of laws in conflict with this Act are repealed.