

The House Committee on Judiciary offers the following substitute to SB 436:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 14 of the Official Code of Georgia Annotated, relating to corporations,  
2 partnerships, and associations, so as to change provisions relating to the corporate code; to  
3 provide for certain filing fees for late filing of annual registration, filing of articles of  
4 dissolution or intent to dissolve, or application of withdrawal for a business corporation, a  
5 nonprofit corporation, a foreign limited liability partnership, a partnership under the "Georgia  
6 Revised Uniform Limited Partnership Act," or a limited liability company; to change  
7 provisions relating to voting for directors in publicly traded corporations; to provide for a  
8 contingency resignation of a director, which may be irrevocable; to change certain provisions  
9 relating to vacancies on a board; to change certain provisions relating to amending bylaws  
10 by the board of directors or shareholders; to correct cross-references; to change provisions  
11 relating to reinstatement of a corporation, nonprofit corporation, or limited liability company  
12 after such entity was administratively dissolved; to provide for related matters; to repeal  
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 SECTION 1.

16 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,  
17 and associations, is amended by revising Code Section 14-2-122, relating to filing fees and  
18 penalties, as follows:

19 "14-2-122.

20 The Secretary of State shall collect the following fees and penalties when the documents  
21 described in this Code section are delivered to him or her for filing:

22	<u>Document</u>	<u>Fee</u>
23	(1) Articles of incorporation .....	\$ 100.00
24	(2) Application for certificate of authority .....	225.00
25	(3) Annual registration .....	30.00

1	<u>(4) Penalty for late filing of annual registration</u> . . . . .	<u>25.00</u>
2	<del>(4)</del> <u>(5)</u> Agent's statement of resignation . . . . .	No fee
3	<del>(5)</del> <u>(6)</u> Certificate of judicial dissolution . . . . .	No fee
4	<u>(7) Articles of dissolution or intent to dissolve</u> . . . . .	<u>No fee</u>
5	<u>(8) Application of withdrawal</u> . . . . .	<u>No fee</u>
6	<del>(6)</del> <u>(9)</u> Application for reservation of a corporate name . . . . .	25.00
7	<del>(7)</del> <u>(10)</u> Civil penalty for a foreign corporation transacting business in this state	
8	without a certificate of authority . . . . .	500.00
9	<del>(8)</del> <u>(11)</u> Statement of change of address of registered agent...\$5.00 per	
10	corporation but not less than . . . . .	20.00
11	<del>(9)</del> <u>(12)</u> Application for reinstatement . . . . .	100.00
12	<del>(10)</del> <u>(13)</u> Certificate of conversion . . . . .	95.00
13	<del>(11)</del> <u>(14)</u> Any other document required or permitted to be filed by this chapter	20.00"

## 14 **SECTION 2.**

15 Said title is further amended by revising subsection (a) of Code Section 14-2-728, relating  
16 to voting for directors and cumulative voting, as follows:

17 "(a) Unless otherwise provided in:

18 (1) The the articles of incorporation; or

19 (2) A bylaw that fixes a greater voting requirement for the election of directors and that  
20 is adopted by the board of directors of a corporation having shares listed on a national  
21 securities exchange or regularly traded in a market maintained by one or more members  
22 of a national or affiliated securities association,

23 directors are elected by a plurality of the votes cast by the shares entitled to vote in the  
24 election. Action to elect directors may be taken at a meeting ~~at which~~ only if a quorum is  
25 present."

## 26 **SECTION 3.**

27 Said title is further amended by revising Code Section 14-2-807, relating to resignation of  
28 directors, as follows:

29 "14-2-807.

30 (a) A director may resign at any time by delivering notice in writing or by electronic  
31 transmission to the board of directors, its ~~chairman~~ chairperson, or to the corporation.

32 (b) A resignation is shall be effective when the notice is delivered unless the notice  
33 specifies either a later effective date or an effective date determined upon the happening  
34 of an event.

1 (c) A resignation that is conditioned upon the happening of an event may provide that it  
2 is irrevocable."

#### 3 **SECTION 4.**

4 Said title is further amended by revising subsection (c) of Code Section 14-2-810, relating  
5 to vacancy on a board, as follows:

6 "(c) A vacancy that ~~will~~ may occur at a ~~specific~~ later date (by reason of a resignation  
7 effective at a later date under subsection (b) of Code Section 14-2-807 or otherwise) may  
8 be filled before the vacancy occurs, but the new director may not take office until the  
9 vacancy occurs."

#### 10 **SECTION 5.**

11 Said title is further amended by revising subsection (b) of Code Section 14-2-1020, relating  
12 to an amendment by a board of directors or shareholders, as follows:

13 "(b) A corporation's shareholders may amend or repeal the corporation's bylaws or adopt  
14 new bylaws even though the bylaws may also be amended or repealed by its board of  
15 directors; provided, however, that unless the articles of incorporation provide otherwise,  
16 the shareholders may not amend (but may repeal) a bylaw adopted by the board of directors  
17 pursuant to subsection (a) of Code Section 14-2-728 or adopt a bylaw changing the  
18 plurality standard for the election of directors set forth in such subsection."

#### 19 **SECTION 6.**

20 Said title is further amended by revising Code Section 14-2-1021, relating to bylaws  
21 increasing quorum or voting requirement for shareholders, as follows:

22 "14-2-1021.

23 (a) Except as provided in subsection (b) of Code Section 14-2-1020, a ~~A~~ bylaw adopted  
24 by the shareholders may fix a greater quorum or voting requirement for shareholders (or  
25 voting groups of shareholders) than is required by this chapter. A bylaw in effect on July  
26 1, 1989, fixing a greater quorum or voting requirement for shareholders (or voting groups  
27 of shareholders) than is required by this chapter shall remain valid until amended or  
28 repealed as provided in subsection (b) of this Code section.

29 (b) Except as provided in Code Section 14-2-1020, 14-2-1113, or 14-2-1133, a bylaw  
30 adopted by the shareholders that fixes a greater quorum or voting requirement for  
31 shareholders under subsection (a) of this Code section ~~may~~ shall not be adopted, amended,  
32 or repealed by the board of directors."

**SECTION 7.**

Said title is further amended by revising subsections (a) and (b) of Code Section 14-2-1422, relating to reinstatement following administrative dissolution, as follows:

"(a) A corporation administratively dissolved under Code Section 14-2-1421 may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application ~~must~~ shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

~~(3) State that the name by which the corporation will be known after reinstatement satisfies the requirements of Code Section 14-2-401~~ Either be executed by the registered agent or an officer, director, or shareholder of the corporation, in each case as set forth in the most recent annual registration of the corporation filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was an officer, director, or shareholder, or an heir, successor, or assign of a person who was an officer, director, or shareholder, of the corporation at the time that the corporation was administratively dissolved, stating that such person or decedent was an officer, director, or shareholder of the corporation at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(4) Contain a statement by the corporation reciting that all taxes owed by the corporation have been paid; and

(5) Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods.

~~(b) If the corporation's name no longer satisfies the requirements of Code Section 14-2-401, the corporation shall, as a condition of reinstatement, include in its application for reinstatement the adoption of a corporate name that is available in accordance with Code Section 14-2-401 and that has been reserved pursuant to Code Section 14-2-402. If the application for reinstatement contains a new corporate name, the articles of incorporation shall be deemed to have been amended to change the name of the corporation to the name so adopted. The Secretary of State shall reserve the name of a corporation administratively dissolved under Code Section 14-2-1421 for such corporation's specific use for a period of five years after the effective date of the dissolution or until the corporation is reinstated, whichever is sooner."~~

**SECTION 8.**

Said title is further amended by revising Code Section 14-3-122, relating to filing fees for nonprofit corporations, as follows:

"14-3-122.

(a) The Secretary of State shall collect the following fees when the documents described in this ~~subsection~~ Code section are delivered for filing:

<u>Document</u>	<u>Fee</u>
(1) Articles of incorporation . . . . .	\$ 100.00
(2) Application for certificate of authority . . . . .	225.00
(3) Annual registration . . . . .	30.00
<u>(4) Penalty for late filing of annual registration . . . . .</u>	<u>25.00</u>
<del>(4)</del> <u>(5)</u> Agent's statement of resignation . . . . .	No fee
<del>(5)</del> <u>(6)</u> Certificate of judicial dissolution . . . . .	No fee
<u>(7) Articles of dissolution or intent to dissolve . . . . .</u>	<u>No fee</u>
<u>(8) Application of withdrawal . . . . .</u>	<u>No fee</u>
<del>(6)</del> <u>(9)</u> Application for reservation of a corporate name . . . . .	25.00
<del>(7)</del> <u>(10)</u> Statement of change of address of registered agent...\$5.00 per corporation but not less than . . . . .	20.00
<del>(8)</del> <u>(11)</u> Application for reinstatement . . . . .	100.00
<del>(9)</del> <u>(12)</u> Any other document required or permitted to be filed by this chapter . . . . .	20.00

~~(b) Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year shall not be required to pay any penalty for so failing or refusing to file its annual report, but such corporation may be subject to administrative dissolution as provided in Code Section 14-3-1420."~~

**SECTION 9.**

Said title is further amended by revising subsections (a) and (b) of Code Section 14-3-1422, relating to reinstatement following administrative dissolution of a nonprofit corporation, as follows:

"(a) A corporation administratively dissolved under Code Section 14-3-1421 may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application ~~must~~ shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) ~~State that the name by which the corporation will be known after reinstatement satisfies the requirements of Code Section 14-3-401~~ Either be executed by the registered agent or an officer, director, or shareholder of the corporation, in each case as set forth in the most recent annual registration of the corporation filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was an officer, director, or shareholder, or an heir, successor, or assign of a person who was an officer, director, or shareholder, of the corporation at the time that the corporation was administratively dissolved, stating that such person or decedent was an officer, director, or shareholder of the corporation at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(4) Contain a statement by the corporation reciting that all taxes owed by the corporation have been paid; and

(5) Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods.

(b) ~~If the corporation's name no longer satisfies the requirements of Code Section 14-3-401, the corporation shall, as a condition of reinstatement, include in its application for reinstatement the adoption of a corporate name that is available in accordance with Code Section 14-3-401 and that has been reserved pursuant to Code Section 14-3-402. If the application for reinstatement contains a new corporate name, the articles of incorporation shall be deemed to have been amended to change the name of the corporation to the name so adopted.~~ The Secretary of State shall reserve the name of a corporation administratively dissolved under Code Section 14-2-1421 for such corporation's specific use for a period of five years after the effective date of the dissolution or until the corporation is reinstated, whichever is sooner."

## SECTION 10.

Said title is further amended by revising Code Section 14-8-57, relating to filing fees pertaining to foreign limited liability partnerships, as follows:

"14-8-57.

The Secretary of State shall collect the following fees and penalties when the documents described below are delivered to the Secretary of State for filing pursuant to the chapter:

### Document

### Fee

(1) Application for certificate of authority to transact business . . . . . \$ 200.00

(2) Statement of change of registered office or registered agent...\$5.00 per foreign limited liability partnership, but not less than	20.00
(3) Registered agent's statement of resignation pursuant to subsection (e) of Code Section 14-8-46	No fee
(4) Annual registration	25.00
<u>(5) Penalty for late filing of annual registration</u>	<u>25.00</u>
<u>(6) Application of withdrawal</u>	<u>No fee</u>
<del>(5)</del> <u>(7)</u> Any other document required or permitted to be filed by this chapter	20.00"

### SECTION 11.

Said title is further amended by revising Code Section 14-9-1101, relating to fees under the "Georgia Revised Uniform Limited Partnership Act," as follows:

"14-9-1101.

The Secretary of State shall charge and collect for filing:

<u>Document</u>	<u>Fee</u>
(1) <del>Filing a</del> <u>A</u> certificate of limited partnership	\$ 100.00
(2) <del>Filing a</del> <u>A</u> registration of a foreign limited partnership	225.00
(3) <del>Filing an</del> <u>An</u> annual registration	30.00
<u>(4) Penalty for late filing of annual registration</u>	<u>25.00</u>
<del>(4)</del> <u>(5)</u> Agent's statement of resignation	No fee
<u>(6) Certificate of cancellation</u>	<u>No fee</u>
<u>(7) Application of withdrawal</u>	<u>No fee</u>
<del>(5)</del> <u>(8)</u> Statement of change of address of registered agent or registered office...\$5.00 per limited partnership but not less than	20.00
<del>(6)</del> <u>(9)</u> <del>Filing of an</del> <u>An</u> amendment to a certificate of limited partnership for the purpose of becoming a limited liability partnership	100.00
<del>(7)</del> <u>(10)</u> Certificate of election to become a limited partnership	80.00
<del>(8)</del> <u>(11)</u> Certificate of conversion	95.00
<del>(9)</del> <u>(12)</u> Application for reservation of a name	25.00
<del>(10)</del> <u>(13)</u> <del>Filing any</del> <u>Any</u> other document required or permitted pursuant to this chapter	20.00"

**SECTION 12.**

Said title is further amended by revising paragraph (4) of subsection (b) of Code Section 14-11-603, relating to judicial and administrative dissolution of limited liability companies, as follows:

"(4) A limited liability company administratively dissolved under this Code section may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application ~~must~~ shall:

(A) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(B) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(C) ~~State that the limited liability company's name satisfies the requirements of Code Section 14-11-207~~ Either be executed by the registered agent or a member or manager of the limited liability company, in each case as set forth in the most recent annual registration of the limited liability company filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was a member or manager, or an heir, successor, or assign of a person who was a member or manager, of the limited liability company at the time that the limited liability company was administratively dissolved, stating that such person or decedent was a member or manager of the limited liability company at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(D) Contain a statement by the limited liability company reciting that all taxes owed by the limited liability company have been paid; and

(E) Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods.

If the Secretary of State determines that the application contains the information required by this paragraph and that the information is correct, he or she shall prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred."

**SECTION 13.**

Said title is further amended by adding a new paragraph to subsection (b) of Code Section 14-11-603, relating to judicial and administrative dissolution of limited liability companies, to read as follows:

"(6) The Secretary of State shall reserve the name of a limited liability company administratively dissolved under Code Section 14-2-1421 for such limited liability company's specific use for a period of five years after the effective date of the dissolution or until the limited liability company is reinstated, whichever is sooner."

**SECTION 14.**

Said title is further amended by revising subsection (a) of Code Section 14-11-1101, relating to filing fees and penalties for limited liability companies, as follows:

"(a) The Secretary of State shall collect the following fees when the documents described below are delivered to the Secretary of State for filing pursuant to this chapter:

<u>Document</u>	<u>Fee</u>
(1) Articles of organization . . . . .	\$ 100.00
(2) Articles of amendment . . . . .	20.00
(3) Articles of merger . . . . .	20.00
(4) Certificate of election under Code Section 14-11-212 (together with articles of organization) . . . . .	95.00
(5) Application for certificate of authority to transact business . . . . .	225.00
(6) Statement of commencement of winding up . . . . .	<del>20.00</del> <u>No Fee</u>
(7) Certificate of termination . . . . .	<del>20.00</del> <u>No Fee</u>
<u>(8) Application of withdrawal</u> . . . . .	<u>No fee</u>
<del>(8)</del> <u>(9)</u> Articles of correction . . . . .	20.00
<del>(9)</del> <u>(10)</u> Application for reservation of a name . . . . .	25.00
<del>(10)</del> <u>(11)</u> Statement of change of registered office or registered agent...\$5.00 per limited liability company (foreign or domestic), but not less than . . . . .	20.00
<del>(11)</del> <u>(12)</u> Registered agent's statement of resignation pursuant to subsection (d) of Code Section 14-11-209 or subsection (d) of Code Section 14-11-703 . . . . .	No fee
<del>(12)</del> <u>(13)</u> Certificate of judicial dissolution . . . . .	No fee
<del>(13)</del> <u>(14)</u> Annual registration (foreign or domestic) . . . . .	30.00
<u>(15) Penalty for late filing of annual registration</u> . . . . .	<u>25.00</u>
<del>(14)</del> <u>(16)</u> Reinstatement fee . . . . .	100.00

4 **SECTION 15.**  
5 All laws and parts of laws in conflict with this act are repealed.

## SECTION 15.

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