This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 388: Amend Business Corporations Act.

2025-2026 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 16, 2025
Introduced by:	Rep. Stevens	**Prepared by:**	Bill Patterson* Committee Co-Counsel
Analysis of:	Second Edition		

OVERVIEW: House Bill 388 would amend the North Carolina Business Corporations Act, as recommended by the North Carolina Bar Association.

BILL ANALYSIS:

Part I would permit a corporation in its articles of incorporation to set forth a provision limiting or eliminating in certain situations the personal liability of any officer arising out of an action for monetary damages for breach of any duty as an officer. Personal liability would not be limited or eliminated in a situation where the corporation is pursuing a claim by or in right of the corporation against the officer.

An officer would be defined as an individual appointed in accordance with G.S. 55-8-40 as either of the following:

- President, chief executive officer, chief operating officer, chief financial officer, chief legal officer, secretary, controller, treasurer, or chief accounting officer of the corporation.
- Any officer of the corporation designated by resolution of the board of directors as an officer.

Part II would clarify that emergency bylaws may only become effective during an emergency if adopted in advance of an emergency.

During an emergency, unless the emergency bylaws say otherwise, the board of directors would be permitted to postpone a meeting of shareholders for which notice had been given or allow for remote participation. The corporation would be required to give notice to shareholders of any postponement and means of permissible remote communication.

Part III would allow for articles of incorporation to require internal corporate claims be brought exclusively in any specified court or courts of this State and any additional courts in this State or in any other jurisdictions with which the corporation has a reasonable relationship, provided that personal and subject matter jurisdiction exists. It would invalidate any provision in the articles of incorporation or bylaws that prohibit brining an internal corporate claim in the courts of this State or require the claims to be determined by arbitration.

Part IV would prohibit corporations from issuing scrip or share certificates in bearer form and only allow for the issuance of scrip in certificated or uncertificated form. If a corporation issued scrip in uncertificated form, the corporation would be required to, within a reasonable time after issuance, deliver to the scripholder a written statement of information required on certificates by G.S. 55-6-25(b) and the terms of the scrip.

Part V would require that, prior to the commencement of a derivative proceeding, a written demand be delivered to the corporation which describes the reasons for the demand and the action being requested.

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If the shareholder is a beneficial shareholder or an unrestricted voting trust beneficial owner, the written demand would also be accompanied by evidence of the beneficial ownership.

It would clarify that a determination that a derivative proceeding is not in the best interests of the corporation may be made before or after the commencement of the derivative proceeding.

Once a determination has been made that the derivative proceeding is not in the best interest of the corporation, the plaintiff would have to allege facts establishing that the requirements of G.S. 55-7-44(a) have not been met.

It would also determine which party bears the burden of proof in certain situations of determining whether G.S. 55-77-44(a) have been met.

The court would be permitted to order the payment of a party's reasonable expenses incurred in responding to the demand or defending the proceeding if commenced without reasonable cause.

Part VI would allow a board of directors to delegate to a board committee the authority to amend articles of incorporation if the amendment does not require shareholder approval.

Part VII would provide that in certain mergers between a parent unincorporated entity and a subsidiary corporation, the parent entity must approve a written plan of merger.

It would also remove certain requirements from the articles of merger to be delivered to the Secretary of State and add the requirement that the articles of merger include a statement that the plan of merger has been approved by each merging business entity.

The provisions of G.S. 55-11-10(c1) and (c2) would apply to any merger described in G.S. 15-11-12.

EFFECTIVE DATE: Part I, II, III, IV, V, and VII of this act would become effective October 1, 2025. The remainder of this act would become effective when it becomes law.

**Staff Attorney Hannah Kendrick, Legislative Analysis, substantially contributed to this summary.*