



# HOUSE BILL 388: Amend Business Corporations Act.

2025-2026 General Assembly

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<b>Committee:</b>		<b>Date:</b>	June 24, 2025
<b>Introduced by:</b>	Rep. Stevens	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Fourth Edition		Staff Attorney

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## **OVERVIEW:** *House Bill 388 would do the following things:*

- *Amend the North Carolina Business Corporations Act, as recommended by the North Carolina Bar Association (Sections 1-7).*
- *Authorize the probate of a certified paper copy of an attested written will that has been stored by an attorney as an electronic record (Section 8).*
- *Modify the sunset for provisions authorizing emergency video notarization and emergency video witnessing (Section 9).*
- *Update the elective share statutes (Section 10).*
- *Update the trust administration statutes (Section 11).*
- *Revise the year's allowance statutes (Section 12).*

## **BILL ANALYSIS:**

### **PARTS I – VII. NORTH CAROLINA BUSINESS CORPORATIONS ACT AMENDMENTS.**

**Section 1** of House Bill 388 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.

**Section 2** of the bill 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.

**Section 3** 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

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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 bringing an internal corporate claim in the courts of this State or require the claims to be determined by arbitration.

**Section 4** 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 scrip holder a written statement of information required on certificates by G.S. 55-6-25(b) and the terms of the scrip.

**Section 5** 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. 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.

Section 5 would also 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. This section would also determine which party bears the burden of proof in certain situations of determining whether G.S. 55-7-44(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.

**Section 6** 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.

**Section 7** 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.
- Remove the requirement that the articles of merger set forth:
  - The terms and conditions of the merger.
  - The manner of converting interests in the merging business into interests of the surviving entity, into cash or other property, or of cancelling the interests.
- Add a requirement that the articles of merger include a statement that the plan of merger has been approved by each merging business entity.
- Replace certain provisions with cross-references to substantially identical provisions found elsewhere in Article 11 of Chapter 55.

## **PART VIII. ELECTRONIC STORAGE OF ATTESTED WRITTEN WILLS BY AN ATTORNEY**

**Section 8** would:

- Enact new Article 11 in Chapter 31 of the General Statutes with the following sections:
  - G.S. 31-71, defining the terms "electronic" and "record" as used in Article 11.
  - G.S. 31-72, authorizing an attorney licensed in this State to create an electronic record of an attested written will at the direction of the testator and during the testator's life, and requiring the electronic record to include the attorney's certification that the electronic record is a

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complete, true, and accurate copy of the attested written will, that the attorney was authorized by the testator to store it as an electronic record, and that the testator was advised that creation of the electronic record eliminates the testator's ability to revoke the attested written will by physical act.

- G.S. 31-73, authorizing an attorney licensed in this State to create a certified paper copy of an attested written will stored as an electronic record by certifying by affidavit that the paper copy is a complete, true, and accurate copy of that electronic record. This statute would also authorize the probating of the certified paper copy of the attested written will.
- Amend G.S. 28A-2A-8 to establish the manner of probate for a certified paper copy of an attested written will stored as an electronic record pursuant to Article 11 of Chapter 31.
- Make conforming and technical changes to Chapters 28A and 31 of the General Statutes.

## **PART IX. MODIFICATION OF EMERGENCY VIDEO SUNSETS**

**Section 9** would modify the current July 1, 2025, sunset on the statutory authorization for emergency video notarization and emergency video witnessing. As amended, these provisions would expire upon the earlier of 12:01 a.m. July 21, 2026, or the date the Secretary of State issues the first license to an electronic notarization platform pursuant to G.S. 10B-134.19.

## **PART X. UPDATES TO ELECTIVE SHARE STATUTES**

**Section 10** would do the following to update the statutes governing a spouse's elective share:

- Provide additional guidance in drafting trusts that would count 100% towards the spouse's elective share, to make clear that the trust must be under the control of a nonadverse trustee, including successor trustees, at all times during the lifetime of the surviving spouse, and that this requirement would be met if the surviving spouse serves as their own trustee.
- Clarify that the only requirement for a surviving spouse's elective share claim to be timely filed is that the verified petition must be filed with the clerk within six months of the issuance of letters testamentary or letters of administration.

## **PART XI. TRUST ADMINISTRATION/CONTEST UPDATES**

**Section 11** would amend the laws governing trust administration to clarify what may and may not be done by a trustee when a trust contest is pending or may be pending.

## **PART XII. REVISIONS TO YEAR'S ALLOWANCE STATUTES**

**Section 12.1** would clarify that an allowance under Article 4 of Chapter 30 of the General Statutes is an estate proceeding within the meaning of Article 2, Chapter 28A and would clarify the priority between a spousal and child's year's allowance when a surviving spouse fails to petition for the spousal allowance within six months after the death of the decedent.

**Section 12.2** would amend G.S. 30-17 (child's allowance) to clarify that an allowance under Article 4 of Chapter 30 of the General Statutes is an estate proceeding within the meaning of Article 2, Chapter 28A and to clarify that an adult child who is otherwise entitled to a child's allowance may petition for and receive his or her own money.

**Section 12.3** would amend G.S. 30-20 by deleting subsection (c), which currently allows a clerk, on his or her own motion, to determine that a hearing is necessary to determine whether a year's allowance should be awarded.

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**Section 12.4** would amend G.S. 30-23.1 to make conforming changes related to the deletion of G.S. 30-20(c) and to clarify that any proceeding brought to challenge the award of a year's allowance must be conducted as an estate proceeding in accordance with Article 2 of Chapter 28A of the General Statutes.

**Section 12.5** would amend G.S. 28A-25-6 to allow the clerk to disburse estate funds as provided for by statute when no petition for the spousal or child's year's allowance is filed within six months of the decedent's death.

**EFFECTIVE DATE:** Sections 1, 2, 3, 4, 5, and 7 of this act would become effective October 1, 2025. Section 8 of this act would become effective January 1, 2026, and would apply to attested written wills stored as electronic records on or after that date, regardless of when the will was executed. Section 10 of this act would become effective January 1, 2026, and would apply to elective share claims filed on or after that date. Section 11 of this act would become effective January 1, 2026, and would apply to settlors dying on or after that date. Sections 12.1 through 12.4 would become effective January 1, 2026, and would apply to petitions filed on or after that date. The remainder of this act would become effective when it becomes law.

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