

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 649
PROPOSED COMMITTEE SUBSTITUTE H649-PCS10377-RN-27

Short Title: Amend Corp. Gov/Shareholder Derivative Suits.

(Public)

Sponsors:

Referred to:

April 14, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATUTES RELATING TO THE PROCEDURES IN
3 SHAREHOLDER DERIVATIVE SUITS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 55-7-40.1 reads as rewritten:

6 "**§ 55-7-40.1. Definitions.**

7 In this Part:

8 (1) ~~"Derivative proceeding" means a Complaint.~~ – A civil complaint filed in a
9 derivative proceeding.

10 (1a) Derivative proceeding. – A civil suit in the right of a domestic corporation
11 or, to the extent provided in G.S. 55-7-47, in the right of a foreign
12 corporation.

13 (2) ~~"Shareholder" has Shareholder.~~ – Has the same meaning as in G.S. 55-1-40
14 and includes a beneficial owner whose shares are held in a voting trust or
15 held by a nominee on the beneficial owner's behalf."

16 **SECTION 2.** G.S. 55-7-42 reads as rewritten:

17 "**§ 55-7-42. Demand.**~~Demand; rejection of demand.~~

18 (a) No shareholder may commence a derivative proceeding until:

19 (1) A written demand has been made upon the corporation to take suitable
20 action; and

21 (2) 90 days have expired from the date the demand was made ~~unless, unless one~~
22 of the following applies:

23 a. ~~prior~~ Prior to the expiration of the 90 days, the shareholder was
24 notified that the corporation rejected the ~~demand, or unless demand.~~

25 b. The court determines that imminent irreparable injury to the
26 corporation would result by waiting for the expiration of the 90-day
27 period.

28 (b) The failure of the corporation to respond to a demand shall not be deemed to be a
29 decision or acknowledgement that the derivative proceeding is in the best interest of the
30 corporation or should proceed, and such a failure does not compromise or affect any of the
31 rights of the corporation under this Part or other applicable law.

32 (c) In the event that the corporation rejects a demand, the corporation shall promptly
33 provide the shareholder written notice of the rejection. The notice must include a summary of
34 the reasons for the rejection of the demand and the identity of the directors of the corporation
35 who approved the rejection of the demand."

36 **SECTION 3.** G.S. 55-7-45(a) reads as rewritten:



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1 "(a) A derivative proceeding may not be discontinued or settled without the court's
2 approval. If the court determines that a proposed discontinuance or settlement will substantially
3 affect the interests of the corporation's shareholders or a class of shareholders, the court shall
4 direct that notice be given to the shareholders affected. Notice may be provided in any method
5 approved by the court, including, for a public corporation, by publication of a press release
6 through a news release service with national distribution."

7 **SECTION 4.** G.S. 55-7-47 reads as rewritten:

8 "**§ 55-7-47. Applicability to foreign corporations.**

9 In any derivative proceeding in the right of a foreign corporation, the matters covered by
10 this Part shall be governed by the laws of the jurisdiction of incorporation of the foreign
11 corporation except for the matters governed by G.S. 55-7-43, 55-7-45, and 55-7-46. The repose
12 period in G.S. 55-7-48(2) applies to a foreign corporation if its principal office is located in
13 North Carolina."

14 **SECTION 5.** This act becomes effective October 1, 2015, and applies to demands
15 made and complaints filed on or after that date.