

THE ALABAMA BUSINESS CORPORATION LAW OF 2019

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BACKGROUND

- Act 2019-94, the Alabama Business Corporation Law of 2019, was signed into law on May 1, 2019. This is a complete revision of the Alabama Business Corporation Law.
- There are several changes to the existing law and several new additions.
- The ABA's Business Law Section published the original Model Business Corporation Act over 60 years ago, and it has been substantially adopted by a majority of the States. A version of the Model Act is the foundation for Alabama's Business Corporation Law.
- Alabama's Business Corporation Law has not been significantly amended since 1994.

BACKGROUND (CONTINUED)

- Over the last several years, the ABA Committee has prepared a “top to bottom” revision of the Model Act.
- The Business Entities Committee of the Alabama Law Institute utilized the Revised Model Act and added certain provisions from the Delaware General Corporation Law to prepare the new Alabama Business Corporation Law of 2019.
- The revised Alabama Business Corporation Law of 2019 has been codified as Chapter 2A of the Alabama Business and Nonprofit Entity Code. The law will also contain accompanying commentary prepared by the ABA Committee and edited by the Business Entities Committee in order to highlight the principal changes to the existing statute.

INCORPORATION

- The Act provides for centralized filing of corporate documents with Alabama Secretary of State.
- An Alabama corporation is incorporated under the new law by filing a Certificate of Incorporation with the Secretary of State. (Sec. 10A-2A-2.01)
- Under the old law, Articles of Incorporation were filed on the county level with the judge of probate.
- Begins to help make Alabama consistent with other 49 states.

AMENDMENT AND DISSOLUTION FILINGS

- Certificates of Amendment and Certificates of Dissolution are also filed with the Secretary of State under the new law. (Sec. 10A-2A-10.06 and Sec. 10A-2A-14.03)
- Under the old law, Articles of Amendment and Articles of Dissolution were filed on the county level with the judge of probate.

PREEMPTIVE RIGHTS

- The stockholders of a corporation do not have a preemptive right to acquire the corporation's unissued stock except to the extent the Certificate of Incorporation provides. (Sec. 10A-2A-6.30)
- Under the old law, stockholders had a preemptive right unless it was denied in the Articles of Incorporation.

CORPORATE OPPORTUNITIES

- The Certificate of Incorporation may contain a provision limiting or eliminating any duty of a director or any other person to offer a business opportunity to the corporation before pursuing it themselves. (Sec. 10A-2A-2.02)

ACTION BY WRITTEN CONSENT

- Actions may be taken by stockholders by written consent, without a meeting, if the number of stockholders having not less than the minimum number of votes needed to take the action at a meeting so consent. (Sec. 10A-2A-7.04)
- Previously, unanimous consent was required.

ACTION BY BOARD OF DIRECTORS

- The Act eliminates current restrictions on the power of the board of directors to fix or change the number of directors, and the Act eliminates the current requirement that a “classified” or “staggered” board of directors must be comprised of nine or more directors. The Act allows the board to be staggered in two or three groups. (Sec. 10A-2A-8.03; Sec. 10A-2A-8.06)
- The Act adds a provision allowing the board of directors to adopt certain amendments to the certificate of incorporation without stockholder approval (i.e., delete names and addresses of incorporators, change issued and unissued authorized shares of stock, and other minor ministerial changes). (Sec. 10A-2A-10.05)

FORUM SELECTION CLAUSES

- The Certificate of Incorporation or the bylaws may require that internal corporate claims be brought exclusively in any specified court of the state, and, if so specified, in any additional courts in any other jurisdictions with which the corporation has a reasonable relationship. (Sec. 10A-2A-2.07)

RATIFICATION OF DEFECTIVE ACTS

- The Act creates a procedure where a board of directors may take actions to ratify a defective corporate act and where a circuit court may take certain actions regarding the validity of corporate acts and ratifications. (Sec. 10-2A-1.45 through Sec. 10A-2A-1.52)
- This includes the over-issuance of stock.

REMOTE PARTICIPATION IN MEETINGS

- The Act allows stockholders of any class or series to participate in any meeting of stockholders by means of remote communication to the extent the board of directors authorizes participation for that class or series. (Sec. 10A-2A-7.09)
- This would include remote communication such as Video Teleconferences (VTC), conference calls, Skype, FaceTime, etc.

VIRTUAL STOCKHOLDER MEETINGS

- The board of directors may also determine to hold a stockholders' meeting solely by means of remote communication unless the Certificate of Incorporation or bylaws requires the meeting to be held at a place. (Sec. 10A-2A-7.09)

VOTING ON MERGERS

- Unless the Certificate of Incorporation or the board of directors requires a greater vote, a plan of merger requires the approval of the stockholders consisting of a majority of the votes entitled to be cast on the plan. (Sec. 10A-2A-11.04)
- The old law required a two-thirds vote unless otherwise provided by the articles or board.

ELIMINATION OF CERTAIN DISSENTERS' OR APPRAISAL RIGHTS

- The Act provides for the elimination of stockholder dissenters' or appraisal rights with respect to certain types of corporations. (Sec. 10A-2A-13.02)
- This provision generally applies to larger, publicly registered entities.

TRANSITION PROVISIONS

- The new law applies to all corporations incorporated on or after January 1, 2020.
- The new law applies to a corporation incorporated before January 1, 2020, which elects, by amending or restating the corporation's certificate of incorporation, to be governed by the new law.
- On and after January 1, 2021, all corporations will be governed by the new law. (Sec. 10A-2A-17.01)

CONVERSION

- The Act adds a new Article 9 which provides for the conversion of another organization to a corporation or the conversion of a corporation to another organization. (Sec. 10A-2A-9.01, et seq.)
- Likewise, Alabama's Limited Liability Company act was amended to incorporate the same conversion features as the Business Corporation Act of 2019. (Sec. 10A-5A-10.01, et seq.)

Questions?

