



Rep. David Harris

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1 AMENDMENT TO HOUSE BILL 391

2 AMENDMENT NO. _____. Amend House Bill 391 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Business Corporation Act of 1983 is amended
5 by changing Sections 13.70, 14.30, 15.35, 15.65, 15.97, and
6 16.05 as follows:

7 (805 ILCS 5/13.70) (from Ch. 32, par. 13.70)

8 Sec. 13.70. Transacting business without authority.

9 (a) No foreign corporation transacting business in this
10 State without authority to do so is permitted to maintain a
11 civil action in any court of this State, until the corporation
12 obtains that authority. Nor shall a civil action be maintained
13 in any court of this State by any successor or assignee of the
14 corporation on any right, claim or demand arising out of the
15 transaction of business by the corporation in this State, until
16 authority to transact business in this State is obtained by the

1 corporation or by a corporation that has acquired all or
2 substantially all of its assets.

3 (b) The failure of a foreign corporation to obtain
4 authority to transact business in this State does not impair
5 the validity of any contract or act of the corporation, and
6 does not prevent the corporation from defending any action in
7 any court of this State.

8 (c) A foreign corporation that transacts business in this
9 State without authority is liable to this State, for the years
10 or parts thereof during which it transacted business in this
11 State without authority, in an amount equal to all fees,
12 franchise taxes, penalties and other charges that would have
13 been imposed by this Act upon the corporation had it duly
14 applied for and received authority to transact business in this
15 State as required by this Act, but failed to pay the franchise
16 taxes that would have been computed thereon, and thereafter
17 filed all reports required by this Act; and, if a corporation
18 fails to file an application for authority within 60 days after
19 it commences business in this State, in addition thereto it is
20 liable for a penalty of either 10% of the filing fee, license
21 fee and franchise taxes or \$500 ~~\$200~~ plus \$25 ~~\$5.00~~ for each
22 month or fraction thereof in which it has continued to transact
23 business in this State without authority therefor, whichever
24 penalty is greater. The Attorney General shall bring
25 proceedings to recover all amounts due this State under this
26 Section.

1 (d) The Attorney General shall bring an action to restrain
2 a foreign corporation from transacting business in this State,
3 if the authority of the foreign corporation to transact
4 business has been revoked under subsection (m) of Section 13.50
5 of this Act.

6 (Source: P.A. 95-515, eff. 8-28-07.)

7 (805 ILCS 5/14.30) (from Ch. 32, par. 14.30)

8 Sec. 14.30. Cumulative report of changes in issued shares
9 or paid-in capital.

10 (a) Each domestic corporation and each foreign
11 corporation authorized to transact business in this State that
12 effects any change in the number of issued shares or the amount
13 of paid-in capital prior to January 1, 2016 that has not
14 theretofore been reported in any report other than an annual
15 report, interim annual report, or final transition annual
16 report, shall execute and file, in accordance with Section 1.10
17 of this Act, a report with respect to the changes in its issued
18 shares or paid-in capital:

19 (1) that have occurred subsequent to the last day of
20 the third month preceding its anniversary month in the
21 preceding year and prior to the first day of the second
22 month immediately preceding its anniversary month in the
23 current year; or

24 (2) in the case of a corporation that has established
25 an extended filing month, that have occurred during its

1 fiscal year; or

2 (3) in the case of a statutory merger or consolidation
3 or an amendment to the corporation's articles of
4 incorporation that affects the number of issued shares or
5 the amount of paid-in capital, that have occurred between
6 the last day of the third month immediately preceding its
7 anniversary month and the date of the merger,
8 consolidation, or amendment or, in the case of a
9 corporation that has established an extended filing month,
10 that have occurred between the first day of its fiscal year
11 and the date of the merger, consolidation, or amendment; or

12 (4) in the case of a statutory merger or consolidation
13 or an amendment to the corporation's articles of
14 incorporation that affects the number of issued shares or
15 the amount of paid-in capital, that have occurred between
16 the date of the merger, consolidation, or amendment (but
17 not including the merger, consolidation, or amendment) and
18 the first day of the second month immediately preceding its
19 anniversary month in the current year, or in the case of a
20 corporation that has established an extended filing month,
21 that have occurred between the date of the merger,
22 consolidation or amendment (but not including the merger,
23 consolidation or amendment) and the last day of its fiscal
24 year.

25 (b) The corporation shall file the report required under
26 subsection (a) not later than (i) the time its annual report is

1 required to be filed in 1992 and in each subsequent year and
2 (ii) not later than the time of filing the articles of merger,
3 consolidation, or amendment to the articles of incorporation
4 that affects the number of issued shares or the amount of
5 paid-in capital of a domestic corporation or the certified copy
6 of merger of a foreign corporation.

7 (c) The report shall net decreases against increases that
8 occur during the same taxable period. The report shall set
9 forth:

10 (1) The name of the corporation and the state or
11 country under the laws of which it is organized.

12 (2) A statement of the aggregate number of shares which
13 the corporation has authority to issue, itemized by classes
14 and series, if any, within a class.

15 (3) A statement of the aggregate number of issued
16 shares as last reported to the Secretary of State in any
17 document required or permitted by this Act to be filed,
18 other than an annual report, interim annual report or final
19 transition annual report, itemized by classes and series,
20 if any, within a class.

21 (4) A statement, expressed in dollars, of the amount of
22 paid-in capital of the corporation as last reported to the
23 Secretary of State in any document required or permitted by
24 this Act to be filed, other than an annual report, interim
25 annual report or final transition annual report.

26 (5) A statement, if applicable, of the aggregate number

1 of shares issued by the corporation not theretofore
2 reported to the Secretary of State as having been issued,
3 and a statement, expressed in dollars, of the value of the
4 entire consideration received, less expenses, including
5 commissions, paid or incurred in connection with the
6 issuance, for, or on account of, the issuance of the
7 shares, itemized by classes, and series, if any, within a
8 class; and in the case of shares issued as a share
9 dividend, the amount added or transferred to the paid-in
10 capital of the corporation for, or on account of, the
11 issuance of the shares; provided, however, that the report
12 shall also include the date of each issuance made prior to
13 the current reporting period, and the number of issued
14 shares and consideration received in each case.

15 (6) A statement, if applicable, expressed in dollars,
16 of the amount added or transferred to paid-in capital of
17 the corporation without the issuance of shares; provided,
18 however, that the report shall also include the date of
19 each increase made prior to the current reporting period,
20 and the consideration received in each case.

21 (7) In case of an exchange or reclassification of
22 issued shares resulting in an increase in the amount of
23 paid-in capital, a statement of the manner in which it was
24 effected, and a statement, expressed in dollars, of the
25 amount added or transferred to the paid-in capital of the
26 corporation as a result thereof, except any portion thereof

1 reported under any other subsection of this Section as a
2 part of the consideration received by the corporation for,
3 or on account of, its issued shares; provided, however,
4 that the report shall also include the date of each
5 exchange or reclassification made prior to the current
6 reporting period and the consideration received in each
7 case.

8 (8) If the consideration received for the issuance of
9 any shares not theretofore reported as having been issued
10 consists of labor or services performed or of property,
11 other than cash, then a statement, expressed in dollars, of
12 the value of that consideration as fixed by the board of
13 directors.

14 (9) In the case of a cancellation of shares or a
15 reduction in paid-in capital made pursuant to Section 9.20,
16 the aggregate reduction in paid-in capital; provided,
17 however, that the report shall also include the date of
18 each reduction made prior to the current reporting period.

19 (10) A statement of the aggregate number of issued
20 shares itemized by classes and series, if any, within a
21 class, after giving effect to the changes reported.

22 (11) A statement, expressed in dollars, of the amount
23 of paid-in capital of the corporation after giving effect
24 to the changes reported.

25 (d) No additional license fees or franchise taxes shall be
26 payable upon the filing of the report to the extent that

1 license fees or franchise taxes shall have been previously paid
2 by the corporation in respect of shares previously issued which
3 are being exchanged for the shares the issuance of which is
4 being reported, provided those facts are shown in the report.

5 (e) The report shall be made on forms prescribed and
6 furnished by the Secretary of State.

7 (f) Until the report under this Section or a report under
8 Section 14.25 shall have been filed in the Office of the
9 Secretary of State showing a reduction in paid-in capital, the
10 basis of the annual franchise tax payable by the corporation
11 shall not be reduced, provided, however, in no event shall the
12 annual franchise tax for any taxable year be reduced if the
13 report is not filed prior to the first day of the anniversary
14 month or, in the case of a corporation which has established an
15 extended filing month, the extended filing month of the
16 corporation of that taxable year and before payment of its
17 annual franchise tax.

18 (Source: P.A. 90-421, eff. 1-1-98.)

19 (805 ILCS 5/15.35) (from Ch. 32, par. 15.35)

20 Sec. 15.35. Franchise taxes payable by domestic
21 corporations. For the privilege of exercising its franchises in
22 this State, each domestic corporation shall pay to the
23 Secretary of State the following franchise taxes, computed on
24 the basis, at the rates and for the periods prescribed in this
25 Act:

1 (a) An initial franchise tax at the time of filing its
2 first report of issuance of shares.

3 (b) An additional franchise tax at the time of filing (1) a
4 report of the issuance of additional shares, or (2) a report of
5 an increase in paid-in capital without the issuance of shares,
6 or (3) an amendment to the articles of incorporation or a
7 report of cumulative changes in paid-in capital, whenever any
8 amendment or such report discloses an increase in its paid-in
9 capital over the amount thereof last reported in any document,
10 other than an annual report, interim annual report or final
11 transition annual report required by this Act to be filed in
12 the office of the Secretary of State.

13 (c) An additional franchise tax at the time of filing a
14 report of paid-in capital following a statutory merger or
15 consolidation, which discloses that the paid-in capital of the
16 surviving or new corporation immediately after the merger or
17 consolidation is greater than the sum of the paid-in capital of
18 all of the merged or consolidated corporations as last reported
19 by them in any documents, other than annual reports, required
20 by this Act to be filed in the office of the Secretary of
21 State; and in addition, the surviving or new corporation shall
22 be liable for a further additional franchise tax on the paid-in
23 capital of each of the merged or consolidated corporations as
24 last reported by them in any document, other than an annual
25 report, required by this Act to be filed with the Secretary of
26 State from their taxable year end to the next succeeding

1 anniversary month or, in the case of a corporation which has
2 established an extended filing month, the extended filing month
3 of the surviving or new corporation; however if the taxable
4 year ends within the 2 month period immediately preceding the
5 anniversary month or, in the case of a corporation which has
6 established an extended filing month, the extended filing month
7 of the surviving or new corporation the tax will be computed to
8 the anniversary month or, in the case of a corporation which
9 has established an extended filing month, the extended filing
10 month of the surviving or new corporation in the next
11 succeeding calendar year.

12 (d) An annual franchise tax payable each year with the
13 annual report which the corporation is required by this Act to
14 file.

15 (e) The provisions of this Section shall not apply to
16 require the payment of any franchise tax that would otherwise
17 have been due and payable on or after January 1, 2016. There
18 shall be no refunds or proration of franchise tax for any taxes
19 due and payable prior to January 1, 2016 on the basis that a
20 portion of the corporation's taxable year extends beyond
21 January 1, 2016. This amendatory Act of the 99th General
22 Assembly shall not affect any right accrued or established, or
23 any liability or penalty incurred prior to January 1, 2016.

24 (Source: P.A. 86-985.)

25 (805 ILCS 5/15.65) (from Ch. 32, par. 15.65)

1 Sec. 15.65. Franchise taxes payable by foreign
2 corporations. For the privilege of exercising its authority to
3 transact such business in this State as set out in its
4 application therefor or any amendment thereto, each foreign
5 corporation shall pay to the Secretary of State the following
6 franchise taxes, computed on the basis, at the rates and for
7 the periods prescribed in this Act:

8 (a) An initial franchise tax at the time of filing its
9 application for authority to transact business in this State.

10 (b) An additional franchise tax at the time of filing (1) a
11 report of the issuance of additional shares, or (2) a report of
12 an increase in paid-in capital without the issuance of shares,
13 or (3) a report of cumulative changes in paid-in capital or a
14 report of an exchange or reclassification of shares, whenever
15 any such report discloses an increase in its paid-in capital
16 over the amount thereof last reported in any document, other
17 than an annual report, interim annual report or final
18 transition annual report, required by this Act to be filed in
19 the office of the Secretary of State.

20 (c) Whenever the corporation shall be a party to a
21 statutory merger and shall be the surviving corporation, an
22 additional franchise tax at the time of filing its report
23 following merger, if such report discloses that the amount
24 represented in this State of its paid-in capital immediately
25 after the merger is greater than the aggregate of the amounts
26 represented in this State of the paid-in capital of such of the

1 merged corporations as were authorized to transact business in
2 this State at the time of the merger, as last reported by them
3 in any documents, other than annual reports, required by this
4 Act to be filed in the office of the Secretary of State; and in
5 addition, the surviving corporation shall be liable for a
6 further additional franchise tax on the paid-in capital of each
7 of the merged corporations as last reported by them in any
8 document, other than an annual report, required by this Act to
9 be filed with the Secretary of State, from their taxable year
10 end to the next succeeding anniversary month or, in the case of
11 a corporation which has established an extended filing month,
12 the extended filing month of the surviving corporation; however
13 if the taxable year ends within the 2 month period immediately
14 preceding the anniversary month or the extended filing month of
15 the surviving corporation, the tax will be computed to the
16 anniversary or, extended filing month of the surviving
17 corporation in the next succeeding calendar year.

18 (d) An annual franchise tax payable each year with any
19 annual report which the corporation is required by this Act to
20 file.

21 (e) The provisions of this Section shall not apply to
22 require the payment of any franchise tax that would otherwise
23 have been due and payable on or after January 1, 2016. There
24 shall be no refunds or proration of franchise tax for any taxes
25 due and payable prior to January 1, 2016 on the basis that a
26 portion of the corporation's taxable year extends beyond

1 January 1, 2016. This amendatory Act of the 99th General
2 Assembly shall not affect any right accrued or established, or
3 any liability or penalty incurred prior to January 1, 2016.

4 (Source: P.A. 92-33, eff. 7-1-01.)

5 (805 ILCS 5/15.97) (from Ch. 32, par. 15.97)

6 Sec. 15.97. Corporate Franchise Tax Refund Fund.

7 (a) Beginning July 1, 1993, a percentage of the amounts
8 collected under Sections 15.35, 15.45, 15.65, and 15.75 of this
9 Act shall be deposited into the Corporate Franchise Tax Refund
10 Fund, a special Fund hereby created in the State treasury. From
11 July 1, 1993, until December 31, 1994, there shall be deposited
12 into the Fund 3% of the amounts received under those Sections.
13 Beginning January 1, 1995, and for each fiscal year beginning
14 thereafter, 2% of the amounts collected under those Sections
15 during the preceding fiscal year shall be deposited into the
16 Fund.

17 (b) Beginning July 1, 1993, moneys in the Fund shall be
18 expended exclusively for the purpose of paying refunds payable
19 because of overpayment of franchise taxes, penalties, or
20 interest under Sections 13.70, 15.35, 15.45, 15.65, 15.75, and
21 16.05 of this Act and making transfers authorized under this
22 Section. Refunds in accordance with the provisions of
23 subsections (f) and (g) of Section 1.15 and Section 1.17 of
24 this Act may be made from the Fund only to the extent that
25 amounts collected under Sections 15.35, 15.45, 15.65, and 15.75

1 of this Act have been deposited in the Fund and remain
2 available. Within a reasonable time after the 30th day of June
3 of each year, the Secretary of State shall direct and the
4 Comptroller shall order transferred to the General Revenue Fund
5 all amounts in excess of \$100,000 remaining in the fund as of
6 June 30. Notwithstanding the above, for the period commencing
7 on the effective date of this amendatory Act of the 99th
8 General Assembly and continuing through December 31, 2018,
9 amounts in the fund shall not be transferred to the General
10 Revenue Fund and shall be used to pay refunds in accordance
11 with the provisions of this Act. Within a reasonable time after
12 January 1, 2019, the Secretary of State shall direct and the
13 Comptroller shall order transferred to the General Revenue Fund
14 all amounts remaining in the fund.

15 (c) This Act shall constitute an irrevocable and continuing
16 appropriation from the Corporate Franchise Tax Refund Fund for
17 the purpose of paying refunds upon the order of the Secretary
18 of State in accordance with the provisions of this Section.

19 (Source: P.A. 93-59, eff. 7-1-03.)

20 (805 ILCS 5/16.05) (from Ch. 32, par. 16.05)

21 Sec. 16.05. Penalties and interest imposed upon
22 corporations.

23 (a) Each corporation, domestic or foreign, that fails or
24 refuses to file any annual report or report of cumulative
25 changes in paid-in capital and pay any franchise tax due

1 pursuant to the report prior to the first day of its
2 anniversary month or, in the case of a corporation which has
3 established an extended filing month, the extended filing month
4 of the corporation shall pay a penalty of 10% of the amount of
5 any delinquent franchise tax due for the report. From February
6 1, 2008 through March 15, 2008, no penalty shall be imposed
7 with respect to any amount of delinquent franchise tax paid
8 pursuant to the Franchise Tax and License Fee Amnesty Act of
9 2007. Notwithstanding the above, commencing on January 1, 2016,
10 each corporation, domestic or foreign, that fails or refuses to
11 file any annual report prior to the first day of its
12 anniversary month, or in the case of a corporation which has
13 established an extended filing month, the extended filing month
14 of the corporation, shall pay a penalty of \$50 plus \$10 for
15 each calendar month or part of the month that it is delinquent.

16 (b) Each corporation, domestic or foreign, that fails or
17 refuses to file a report of issuance of shares or increase in
18 paid-in capital within the time prescribed by this Act is
19 subject to a penalty on any obligation occurring prior to
20 January 1, 1991, and interest on those obligations on or after
21 January 1, 1991, for each calendar month or part of month that
22 it is delinquent in the amount of 2% of the amount of license
23 fees and franchise taxes provided by this Act to be paid on
24 account of the issuance of shares or increase in paid-in
25 capital. From February 1, 2008 through March 15, 2008, no
26 penalty shall be imposed, or interest charged, with respect to

1 any amount of delinquent license fees and franchise taxes paid
2 pursuant to the Franchise Tax and License Fee Amnesty Act of
3 2007.

4 (c) Each corporation, domestic or foreign, that fails or
5 refuses to file a report of cumulative changes in paid-in
6 capital or report following merger within the time prescribed
7 by this Act is subject to interest on or after January 1, 1992,
8 for each calendar month or part of month that it is delinquent,
9 in the amount of 2% of the amount of franchise taxes provided
10 by this Act to be paid on account of the issuance of shares or
11 increase in paid-in capital disclosed on the report of
12 cumulative changes in paid-in capital or report following
13 merger, or \$1, whichever is greater. From February 1, 2008
14 through March 15, 2008, no interest shall be charged with
15 respect to any amount of delinquent franchise tax paid pursuant
16 to the Franchise Tax and License Fee Amnesty Act of 2007.
17 Notwithstanding the above, commencing on January 1, 2016, each
18 corporation, domestic or foreign, that fails or refuses to file
19 any report following merger within the time prescribed by this
20 Act, shall pay a penalty of \$50 plus \$10 for each calendar
21 month or part of the month that it is delinquent.

22 (d) If the annual franchise tax, or the supplemental annual
23 franchise tax for any 12-month period commencing July 1, 1968,
24 or July 1 of any subsequent year through June 30, 1983,
25 assessed in accordance with this Act, is not paid by July 31,
26 it is delinquent, and there is added a penalty prior to January

1 1, 1991, and interest on and after January 1, 1991, of 2% for
2 each month or part of month that it is delinquent commencing
3 with the month of August, or \$1, whichever is greater. From
4 February 1, 2008 through March 15, 2008, no penalty shall be
5 imposed, or interest charged, with respect to any amount of
6 delinquent franchise taxes paid pursuant to the Franchise Tax
7 and License Fee Amnesty Act of 2007.

8 (e) If the supplemental annual franchise tax assessed in
9 accordance with the provisions of this Act for the 12-month
10 period commencing July 1, 1967, is not paid by September 30,
11 1967, it is delinquent, and there is added a penalty prior to
12 January 1, 1991, and interest on and after January 1, 1991, of
13 2% for each month or part of month that it is delinquent
14 commencing with the month of October, 1967. From February 1,
15 2008 through March 15, 2008, no penalty shall be imposed, or
16 interest charged, with respect to any amount of delinquent
17 franchise taxes paid pursuant to the Franchise Tax and License
18 Fee Amnesty Act of 2007.

19 (f) If any annual franchise tax for any period beginning on
20 or after July 1, 1983, is not paid by the time period herein
21 prescribed, it is delinquent and there is added a penalty prior
22 to January 1, 1991, and interest on and after January 1, 1991,
23 of 2% for each month or part of a month that it is delinquent
24 commencing with the anniversary month or in the case of a
25 corporation that has established an extended filing month, the
26 extended filing month, or \$1, whichever is greater. From

1 February 1, 2008 through March 15, 2008, no penalty shall be
2 imposed, or interest charged, with respect to any amount of
3 delinquent franchise taxes paid pursuant to the Franchise Tax
4 and License Fee Amnesty Act of 2007.

5 (g) Any corporation, domestic or foreign, failing to pay
6 the prescribed fee for assumed corporate name renewal when due
7 and payable shall be given notice of nonpayment by the
8 Secretary of State by regular mail; and if the fee together
9 with a penalty fee of \$5 is not paid within 90 days after the
10 notice is mailed, the right to use the assumed name shall
11 cease.

12 (h) Any corporation which (i) puts forth any sign or
13 advertisement, assuming any name other than that by which it is
14 incorporated or otherwise authorized by law to act or (ii)
15 violates Section 3.25, shall be guilty of a Class C misdemeanor
16 and shall be deemed guilty of an additional offense for each
17 day it shall continue to so offend.

18 (i) Each corporation, domestic or foreign, that fails or
19 refuses (1) to answer truthfully and fully within the time
20 prescribed by this Act interrogatories propounded by the
21 Secretary of State in accordance with this Act or (2) to
22 perform any other act required by this Act to be performed by
23 the corporation, is guilty of a Class C misdemeanor.

24 (j) Each corporation that fails or refuses to file articles
25 of revocation of dissolution within the time prescribed by this
26 Act is subject to a penalty for each calendar month or part of

1 the month that it is delinquent in the amount of \$50.
2 (Source: P.A. 95-233, eff. 8-16-07; 95-707, eff. 1-11-08;
3 96-1121, eff. 1-1-11.)".