

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Hardin

SENATE BILL 332

As engrossed 2-10-87

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 576 OF 1965, AS AMENDED, THE ARKANSAS BUSINESS CORPORATION ACT, TO PROVIDE THAT A DESIGNATION OF A SERIES OF SHARES OF PREFERRED OR SPECIAL CLASSES OF STOCK AND A FILED STATEMENT THEREOF SHALL NOT CONSTITUTE AN AMENDMENT TO THE ARTICLES OF INCORPORATION, TO DEFINE THE SCOPE OF AUTHORITY OF AN EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS, AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 17 of Act 576 of 1965, the same being Arkansas Statutes Section 64-202, is hereby amended to read as follows:

"Section 17. Issuance of shares of preferred or special classes in series. -- If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

A. The rate of dividend, the time of payment of dividends and date from which dividends shall be cumulative.

B. The price at and the terms and conditions on which shares may be redeemed.

C. The amount payable upon shares in event of involuntary liquidation.

D. The amount payable upon shares in event of voluntary liquidation.

E. Sinking fund provisions for the redemption or purchase of shares.

F. The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

If the articles of incorporation shall expressly vest such authority in the board of directors, then to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority (in respect to shares to be issued) to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established through resolution adopted by the board of directors, the corporation shall cause to be executed and filed in accordance with Section 15 of this act a statement setting forth:

(a) The name of the corporation.

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.

(c) The date of adoption of such resolution.

(d) That such resolution was duly adopted by the board of directors.

The resolution of the board of directors and the statement required to be filed pursuant to this section shall not be considered an amendment to the articles of incorporation of such corporation."

SECTION 2. Section 36 of Act 576 of 1965, the same being Arkansas Statutes Section 64-301, is hereby amended to read as follows:

"Section 36. Board of directors. -- A. All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation. Directors

need not be residents of this State or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

B. Directors may not vote by proxy."

SECTION 3. Section 41 of Act 576 of 1965, the same being Arkansas Statutes Section 64-306, is hereby amended to read as follows:

"Section 41. Executive committee. -- A. The articles of incorporation or bylaws may provide for the creation by the board of directors from its membership of an executive committee, to consist of not less than three directors. To the extent specified by the board of directors or in the articles of incorporation or bylaws, the executive committee may exercise the authority of the board of directors under Section 36 of this act. The executive committee may not, however:

1. authorize distributions;
2. approve or propose to shareholders action that this act requires to be approved by shareholders;
3. fill vacancies on the board of directors or on any of its committees;
4. amend the articles of incorporation;
5. adopt, amend, or repeal bylaws;
6. approve a plan of merger not requiring shareholder approval;
7. authorize or approve the reacquisition of shares, except according to a formula or method prescribed by the board of directors; or
8. authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within the limits specifically prescribed by the board of directors.

B. The executive committee shall serve at the pleasure of the board of directors and shall act only in the intervals between the meetings of the board of directors, and shall be subject to the control and direction of the board.

C. Unless otherwise provided in the articles of incorporation or bylaws, the executive committee may act by a majority of its members at a meeting or informally without a meeting provided all members sign a writing reflecting such informal action.

D. An act or authorization of an act by the executive committee with the authority lawfully delegated to it shall be as effective for all purposes as the act or authorization of the directors; but the designation of such committee, and the delegation thereto of authority, shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law."

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 6. It is found and declared that the authority of an executive committee of a business corporation to designate and price a series of shares of preferred or special classes of stock is a matter of uncertainty which requires immediate clarification. This Act is immediately necessary in order to facilitate such corporate action by an executive committee within limits prescribed by the board of directors. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/ Hardin

