

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 265  
SENATE BILL 280

AN ACT TO REWRITE CHAPTER 55 OF THE GENERAL STATUTES RELATING  
TO BUSINESS CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 55 of the General Statutes is rewritten to read:

"Chapter 55.

"N.C. Business Corporation Act.

"ARTICLE 1.

"General Provisions.

"Part 1. Short Title and Reservation of Power.

**"§ 55-1-01. Short title.**

This act shall be known and may be cited as the 'North Carolina Business Corporation Act'.

**"§ 55-1-02. Reservation of power to amend or repeal.**

The General Assembly has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

"Part 2. Filing Documents.

**"§ 55-1-20. Filing requirements.**

(a) To be entitled to filing by the Secretary of State under this act, a document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements.

(b) The document must be one that is required or permitted by this act to be filed in the office of the Secretary of State.

(c) The document must contain the information required by this act. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language.

A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary; and
- (3) An acknowledgement, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for the document under G.S. 55-1-21, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees and taxes required by this act.

**"§ 55-1-21. Forms.**

(a) The Secretary of State may promulgate and furnish on request forms for:

- (1) An application for a certificate of existence;
- (2) A foreign corporation's application for a certificate of authority to transact business in this State;
- (3) A foreign corporation's application for a certificate of withdrawal; and
- (4) The annual report.

If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

**"§ 55-1-22. Reserved for future codification purposes.**

**"§ 55-1-23. Effective time and date of document.**

(a) Except as provided in subsection (b) and G.S. 55-1-24(c), a document accepted for filing is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

**"§ 55-1-24. Correcting filed document.**

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

- (b) A document is corrected:
  - (1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and
  - (2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**"§ 55-1-25. Filing duty of Secretary of State.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with his name and official title and the date and time of filing, on both the original and the document copy. After filing a document, except as provided in G.S. 55-5-03 and G.S. 55-15-10, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five days after the document was received, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter. His filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**"§ 55-1-26. Appeal from Secretary of State's refusal to file document.**

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may, within 30 days after such refusal, appeal the refusal to the superior court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for his refusal to file. The appeal to the superior court is not governed by the Administrative Procedure Act and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**"§ 55-1-27. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the Secretary of State, bearing his signature (which may be in facsimile) and the seal of his office and certifying that said copy is a true copy of said document, is conclusive evidence that the original document is on file with the Secretary of State.

**"§ 55-1-28. Certificate of existence.**

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this State;
- (2) That (i) the domestic corporation is duly incorporated under the law of this State, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this State;
- (3) That all fees, taxes, and penalties owed to this State have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
- (4) That its most recent annual report required by G.S. 55-16-22 has been delivered to the Secretary of State;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this State.

**"§ 55-1-29. Penalty for signing false document.**

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor.

"Part 3. Secretary of State.

**"§ 55-1-30. Powers.**

The Secretary of State has the power reasonably necessary to perform the duties required of him by this act.

**"§ 55-1-31. Interrogatories by Secretary of State.**

The Secretary of State may propound to any corporation, domestic or foreign which he has reason to believe is subject to the provisions of this act, and to any officer or director thereof, such written interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation is subject to the provisions of this act or has complied with all the provisions of this act applicable to it. Subject to applicable jurisdictional requirements, such interrogatories shall be answered within 30

days after the mailing therefor, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice-president, secretary or assistant secretary thereof. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this act, requiring or permitting action by the Attorney General.

**"§ 55-1-32. Penalties imposed upon corporations, officers, and directors for failure to answer interrogatories.**

(a) If a corporation, domestic or foreign, fails or refuses to answer truthfully and fully within the time prescribed in this act interrogatories propounded by the Secretary of State in accordance with the provisions of this act, the Secretary of State may suspend its articles of incorporation or its certificate of authority to do business.

(b) Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this act to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this act shall be guilty of a misdemeanor.

**"§ 55-1-33. Information disclosed by interrogatories.**

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action or proceedings by this State.

"Part 4. Definitions.

**"§ 55-1-40. Act definitions.**

In this act unless otherwise specifically provided:

- (1) 'Articles of incorporation' include amended and restated articles of incorporation and articles of merger.
- (2) 'Authorized shares' means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (3) 'Conspicuous' means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) 'Corporation' or 'domestic corporation' means a corporation for profit or a corporation having capital stock that is incorporated under or subject to the provisions of this act and that is not a foreign corporation except that in G.S. 55-9-01 'corporation' includes domestic and foreign corporations.
- (5) 'Deliver' includes mail.
- (6) 'Distribution' means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a

corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

- (6a) 'Dividend credit' as used in G.S. 55-6-01(d)(5) means the aggregate of all yearly dividend credits. 'Yearly dividend credit' means with respect to noncumulative preferred shares, the amount by which the full dividend preference of such a share, to the extent that such preference is earned by the corporation with respect to such a share in a particular fiscal year, exceeds the dividends paid on said share for that year; provided, that no dividend credit shall accrue unless, and only to the extent that, there exists an earned surplus at the end of such fiscal year. Computations of earnings allocable to classes of shares made in good faith by the board of directors in accordance with generally accepted accounting principles shall be conclusive. For the purpose of this definition, a dividend is deemed paid if it has been declared and funds for its payment have been set aside.
- (7) 'Effective date of notice' is defined in G.S. 55-1-41.
- (8) Reserved for future codification purposes.
- (9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.
- (10) 'Foreign corporation' means a corporation for profit or a corporation having capital stock incorporated under a law other than the law of this State.
- (11) 'Governmental subdivision' includes authority, county, district, and municipality.
- (12) 'Includes' means a partial definition.
- (13) 'Individual' denotes a natural person legally competent to act and also includes the estate of an incompetent or deceased individual.
- (13a) An item is 'mailed' when it is deposited in the United States mail with postage thereon prepaid and correctly addressed. When a corporation mails an item to a shareholder, 'correctly addressed' means addressed to the shareholder's address as shown in the corporation's current record of shareholders.
- (14) 'Means' denotes an exhaustive definition.
- (14a) 'Merger' as used in Article 9 includes a 'share exchange' as used in Article 11.
- (15) 'Notice' includes demand and is defined in G.S. 55-1-41.
- (16) 'Person' includes individual and entity.

- (17) 'Principal office' means the office (in or out of this State) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.
- (18) 'Proceeding' includes civil suit and criminal, administrative, and investigatory action.
- (18a) 'Public corporation' means any corporation that has a class of shares registered under Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 781).
- (19) 'Record date' means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders for purposes of this act.
- (20) 'Secretary' means the corporate officer to whom the board of directors has delegated responsibility under G.S. 55-8-40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- (21) 'Shares' means the units into which the proprietary interests in a corporation are divided.
- (22) 'Shareholder' means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (23) 'State', when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.
- (24) 'Subscriber' means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (25) 'United States' includes district, authority, bureau, commission, department, and any other agency of the United States.
- (26) 'Voting group' means all shares of one or more classes or series that under the articles of incorporation or this act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this act to vote generally on the matter are for that purpose a single voting group.

**"§ 55-1-41. Notice.**

(a) Notice under this act shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper in the county wherein the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county wherein it

has its registered office; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report on file in the office of the Secretary of State or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with postage thereon prepaid and correctly addressed;
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when actually communicated to the person entitled thereto.

(g) If this act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this act, those requirements govern.

**"§ 55-1-42. Number of shareholders.**

(a) For purposes of this act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

- (1) All co-owners of the same shares;
- (2) A corporation, partnership, trust, estate, or other entity;
- (3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

"ARTICLE 2.

"Incorporation.

**"§ 55-2-01. Incorporators.**

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

**"§ 55-2-02. Articles of incorporation.**

(a) The articles of incorporation must set forth:

- (1) A corporate name for the corporation that satisfies the requirements of G.S. 55-4-01;
  - (2) The number of shares the corporation is authorized to issue and any other information required by G.S. 55-6-01;
  - (3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address; and
  - (4) The name and address of each incorporator.
- (b) The articles of incorporation may set forth any provision that under this act is required or permitted to be set forth in the bylaws, and may also set forth:
- (1) The names and addresses of the individuals who are to serve as the initial directors;
  - (2) Provisions not inconsistent with law regarding (i) the purpose or purposes for which the corporation is organized; (ii) managing the business and regulating the affairs of the corporation; (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders; (iv) a par value for authorized shares or classes of shares; (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; (vi) any limitation on the duration of the corporation; and
  - (3) A provision limiting or eliminating the personal liability of each director arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of such breach knew or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55-8-33, (iii) any transaction from which the director derived an improper personal benefit, or (iv) acts or omissions occurring prior to the date the provisions became effective. As used herein, the term 'improper personal benefit' does not include a director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation. A provision permitted by this act in the articles of incorporation, bylaws, or a contract or resolution indemnifying or agreeing to indemnify a director against personal liability shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability.
- (c) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

**"§ 55-2-03. Incorporation.**

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

(c) No provision in this act or any prior act shall be construed to require that a corporation have more than one shareholder.

**"§ 55-2-04. Reserved for future codification purposes.**

**"§ 55-2-05. Organization of corporation.**

(a) After incorporation:

- (1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
- (2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators: (i) to elect directors and complete the organization of the corporation; or (ii) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator. If the incorporators act at a meeting, the notice and procedural provisions of G.S. 55-8-22, 55-8-23, and 55-8-24 shall apply.

(c) An organizational meeting may be held in or out of this State.

**"§ 55-2-06. Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

**"§ 55-2-07. Emergency bylaws.**

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation and the fact that the action was taken by special procedures may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

"ARTICLE 3.

"Purposes and powers.

**"§ 55-3-01. Purposes.**

(a) Every corporation incorporated under this act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this State may incorporate under this act only if permitted by, and subject to all limitations of, the other statute.

**"§ 55-3-02. General powers.**

(a) Unless its articles of incorporation or this act provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for managing the business and regulating the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) To conduct its business, locate offices, and exercise the powers granted by this act within or without this State;
- (11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans, and other benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes;
- (14) To transact any lawful business that will aid governmental policy;
- (15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation; and
- (16) To provide insurance for its benefit on the life or physical or mental ability of any of its directors, officers or employees or on the life or physical or mental ability of any security holder for the purpose of acquiring at his death or disability its securities owned by such security holder, and for these purposes the corporation is deemed to have an insurable interest in its directors, officers, employees, or security holders; and to provide insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest.

(b) It shall not be necessary to set forth in the articles of incorporation any of the powers enumerated in this section.

**"§ 55-3-03. Emergency powers.**

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

- (1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in

order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation binds the corporation and the fact that said action is taken by special procedures may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

**"§ 55-3-04. Ultra vires.**

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

- (1) In a proceeding by a shareholder against the corporation to enjoin the act;
- (2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
- (3) In a proceeding by the Attorney General under G.S. 55-14-30.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

**"§ 55-3-05. Exercise of corporate franchises not granted.**

The Attorney General may upon his own information or upon complaint of a private party bring an action in the name of the State to restrain any person from exercising corporate franchises not granted.

"ARTICLE 4.

"Name.

**"§ 55-4-01. Corporate name.**

(a) A corporate name:

- (1) Must contain the word 'corporation', 'incorporated', 'company', or 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.'; and
- (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by G.S. 55-3-01 and its articles of incorporation.

(b) Except as authorized by subsection (c), a corporate name must be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of a corporation incorporated or authorized to transact business in this State;
- (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S. 55-4-03;
- (3) The fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable; and

(4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this State.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) Reserved for future codification purposes.

(e) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this act.

(f) Neither the reservation or registration of a corporate name nor the incorporation of any domestic corporation shall authorize the use in this State of a corporate name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, or be a defense to an action for violation of any such rights.

(g) The name of a corporation dissolved under Article 14 may not be used by another corporation until the expiration of two years after the effective date of the dissolution unless the dissolved corporation consents in writing to the use.

**"§ 55-4-02. Reserved name.**

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by filing an application with the Secretary of State. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by filing with the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) Any person acquiring the goodwill of a domestic corporation or of a foreign corporation authorized to transact business in this State may, on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve the exclusive right to the corporate name of the said corporation for a period of 10 years.

**"§ 55-4-03. Registered name.**

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by G.S. 55-15-06, if the name is distinguishable upon the records of the Secretary of State from the corporate names that are not available under G.S. 55-4-01(b) (3).

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by G.S. 55-15-06, by filing with the Secretary of State an application:

- (1) Setting forth its corporate name, or its corporate name with any addition required by G.S. 55-15-06, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
- (2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which it became effective.

(d) A foreign corporation whose registration is effective may renew it for successive years by filing with the Secretary of State a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year. Any renewal application filed after the expiration of the registration shall be treated as a new application for registration.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this act or by another foreign corporation thereafter authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

**"§ 55-4-04. Reserved and registered names, powers of the Secretary of State.**

The Secretary of State may revoke any reservation or registration of a corporate name if he finds, upon a hearing not less than 20 days after written notice has been sent by registered or certified mail, return receipt requested, to the person or corporation who made the reservation or registration, that the application thereof or any transfer thereof was not made in good faith or that any statement contained in the application for reservation or registration was false when such application was filed or has thereafter become false.

**"§ 55-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to real property in this State is transferred by operation of law upon merger of two or more corporations, a certificate reciting such change or transfer shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. If the corporation involved is not a domestic corporation or a foreign corporation authorized to do business in this State, a

similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the amendment or merger shall appear in the 'Grantor' index, and the amended name of the corporation holding title to the real property by virtue of the amendment or merger shall appear in the 'Grantee' index.

"ARTICLE 5.

"Office and Agent.

**"§ 55-5-01. Registered office and registered agent.**

(a) Each corporation must continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; or (iii) a foreign corporation or nonprofit foreign corporation authorized to transact business in this State whose business office is identical with the registered office.

(b) The sole duty of the registered agent to the corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent.

**"§ 55-5-02. Change of registered office or registered agent.**

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address, and the mailing address if different from the street address, of the corporation's current registered office, and the county in which it is located;
- (3) If the address of the corporation's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the address of his business office, he may change the address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

**"§ 55-5-03. Resignation of registered agent.**

(a) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must be accompanied by a certification from the registered agent that he has mailed or delivered to the corporation at its last known address written notice of this resignation. Such certification shall include the name and title of the officer notified, if any, and the address to which the notice was mailed or delivered.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

**"§ 55-5-04. Service on corporation.**

(a) A corporation's registered agent is an agent of the corporation for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand shall be made by delivering to and leaving with him or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State.

(c) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

"ARTICLE 6.

"Shares and Distribution.

"Part 1. Shares.

**"§ 55-6-01. Authorized shares.**

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class unless the articles of incorporation divide a class into series. If a class is divided into series, all the shares of any one series must have preferences, limitations, and relative rights identical with those of other shares of the same series. The requirement of identical rights within a class shall not be construed to conflict with any special voting rights specified elsewhere in this act.

(b) Each series of a class must be given a distinguishing designation.

(c) The articles of incorporation must authorize

(1) One or more classes of shares that together have unlimited voting rights, and

(2) One or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(d) The articles of incorporation may authorize one or more classes or series within a class of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this act;

(2) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(4) Have preference over any other class or series within a class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(5) Notwithstanding the provisions of (d)(3) and (4) of this section, noncumulative preferred shares of a class or series within a class out of which shares were initially issued after June 30, 1957, and before October 1, 1969, shall be entitled to a dividend credit, as defined in this act, and until such dividend credit is fully discharged no dividend

shall be paid to any shares that are subordinate to such preferred shares as to dividends.

(e) The description of the designations, preferences, limitations, and relative rights in subsection (d) is not exhaustive.

**"§ 55-6-02. Terms of class or series determined by board of directors.**

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in G.S. 55-6-01) of (1) any class of shares before the issuance of any shares of that class or (2) one or more series within a class before the issuance of any shares of that series.

(b) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

- (1) The name of the corporation;
- (2) The text of the amendment determining the terms of the class or series of shares;
- (3) The date it was adopted; and
- (4) A statement that the amendment was duly adopted by the board of directors.

**"§ 55-6-03. Issued and outstanding shares.**

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to G.S. 55-6-40.

(c) At all times that shares of the corporation are outstanding, there must be outstanding one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution.

**"§ 55-6-04. Fractional shares.**

(a) A corporation may:

- (1) Issue fractions of a share or pay in money the value of fractions of a share;
- (2) Arrange for disposition of fractional shares by the shareholders;
- (3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled 'scrip' and must contain the information required by G.S. 55-6-25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

- (1) That the scrip will become void if not exchanged for full shares before a specified date; and
- (2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

"Part 2. Issuance of Shares.

**"§ 55-6-20. Subscription for shares before incorporation.**

(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to G.S. 55-6-21.

**"§ 55-6-21. Issuance of shares.**

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors as to the adequacy of consideration is conclusive as to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or to a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefit received. If the services are not performed, the note is not paid, or the benefits are not received,

the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

**"§ 55-6-22. Liability of shareholders.**

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (G.S. 55-6-21) or specified in the subscription agreement (G.S. 55-6-20).

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

**"§ 55-6-23. Share dividends.**

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

- (1) The articles of incorporation so authorize,
- (2) There are no outstanding shares of the class or series to be issued, or
- (3) A majority of the votes entitled to be cast by the class or series to be issued approve the issuance of not more than a stated number of shares within a period of not more than one year after such authorization.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**"§ 55-6-24. Rights, options, and warrants.**

(a) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

(b) In the case of a public corporation, the terms and conditions of such rights, options or warrants may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights, options or warrants by the holder or holders or beneficial owner or owners of a specified number or percentage of the outstanding voting shares of such public corporation or by any transferee of any such holder or owner, or that invalidate or void such rights, options or warrants held by any such holder or owner or by such transferee. Determinations by the board of directors whether to impose, enforce, waive or otherwise render ineffective any such restrictions or conditions may be judicially reviewed in an appropriate proceeding.

**"§ 55-6-25. Form and content of certificates.**

(a) Shares may but need not be represented by certificates. Unless this act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

- (1) The name of the issuing corporation and that it is organized under the law of North Carolina;
- (2) The name of the person to whom issued; and
- (3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information in writing and without charge.

(d) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed in any capacity (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

**"§ 55-6-26. Shares without certificate.**

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by G.S. 55-6-25(b) and (c), and if applicable, G.S. 55-6-27.

**"§ 55-6-27. Restriction on transfer of shares and other securities.**

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section, it is not unconscionable under the circumstances, and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by G.S. 55-6-26(b). Unless so noted, a restriction is not enforceable except against a person who receives actual written notice of the restrictions.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

- (1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

- (2) To preserve exemptions under federal or state securities law;
  - (3) For any other reasonable purpose.
- (d) A restriction authorized by G.S. 55-6-27(c) may:
- (1) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
  - (2) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;
  - (3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;
  - (4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable;
  - (5) Contain any other provision reasonably related to an authorized purpose.

(e) For purposes of this section, 'shares' includes a security convertible into or carrying a right to subscribe for or acquire shares.

**"§ 55-6-28. Expense of issue.**

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

"Part 3. Subsequent Acquisition of Shares by  
Shareholders and Corporation.

**"§ 55-6-30. Shareholders' preemptive rights.**

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation or subsection (d) of this section so provide.

(b) A statement included in the articles of incorporation that 'the corporation elects to have preemptive rights' (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

- (1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.
- (2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.
- (3) There is no preemptive right with respect to (i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates; (ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates; (iii) shares authorized in articles of

incorporation that are issued within six months from the effective date of incorporation; (iv) shares issued for considerations, other than money, deemed by the board of directors in good faith to be advantageous to the corporation's business.

- (4) Holders of a share of any class have no preemptive rights with respect to shares of any other class.
- (5) Reserved for future codification purposes.
- (6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person during a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, 'shares' includes a security convertible into or carrying a right to subscribe for or acquire shares.

(d) Notwithstanding the foregoing provision of this section, shareholders of a corporation incorporated prior to the effective date of this act shall have a preemptive right to acquire the unissued shares of the corporation, to the extent provided in (and subject to the limitations of) subdivisions (b)(1)-(6) and subsection (c) of this section, except to the extent the articles of incorporation expressly provide otherwise.

**"§ 55-6-31. Corporation's acquisition of its own shares.**

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) Articles of amendment required by subsection (b) may be adopted by the board of directors without shareholder action and shall be delivered to the Secretary of State for filing. The articles must set forth:

- (1) The name of the corporation;
- (2) The reduction in the number of authorized shares, itemized by class and series; and
- (3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

"Part 4. Distributions.

**"§ 55-6-40. Distributions to shareholders.**

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

- (1) The corporation would not be able to pay its debts as they become due in the usual course of business; or
- (2) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, and may determine asset values either on book values or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g), the effect of a distribution under subsection (c) is measured:

- (1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
- (2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;
- (3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If an indebtedness with such terms is issued as a distribution, each payment of principal or interest is treated as a distribution the effect of which is measured on the date the payment is actually made.

(h) Any action by a shareholder pursuant to subsection (i) and (j) of this section may be brought against the directors, or against the corporation with or without joining the directors as parties. The shareholder bringing such action shall be entitled, in the event that the court orders the payment of a dividend, to recover from the corporation all reasonable expenses, including attorney's fees, incurred in maintaining such action. If a court orders the payment of a dividend, the amount ordered to be paid shall be a debt of the corporation.

(i) As used in this subsection, net profits shall mean such net profits as can lawfully be paid in dividends to a particular class of shares after making allowance for the prior claims of shares, if any, entitled to preference in the payment of dividends. If during its immediately preceding fiscal period a corporation having less than 25 shareholders on the final day of said period has not paid to any class of shares dividends in cash or property amounting to at least one-third of the net profits of said period allocable to that class, the holder or holders of twenty percent (20%) or more of the shares of that class may, within four months after the close of said period, make written demand upon the corporation for the payment of additional dividends for that period. After a corporation has received such a demand, the directors shall, during the then current fiscal period or within three months after the close thereof, either (i) cause dividends in cash or property to be paid to the shareholders of that class in an amount equal to the difference between the dividends paid in said preceding fiscal period to shareholders of that class and one-third of the net profits of said period allocable to that class, or in such lesser amount as may be demanded, or (ii) give notice pursuant to subsection (j) of this section to all shareholders making such demand. Such corporation shall not, however, be required to pay dividends pursuant to such demand insofar as (i) such payment would exceed fifty percent (50%) of the net profits of the current fiscal period in which such demand is made, or (ii) the net profits are being retained to eliminate a deficit, or (iii) the payment of dividends would be a breach of a bona fide agreement between the corporation and its creditors restricting the payment of dividends, or (iv) the directors of the corporation can show that its earnings are being retained to meet the reasonably anticipated needs of the business and that such retention of earnings is not inequitable in light of all the circumstances. Upon receipt of such a demand a corporation may elect to treat any dividend previously paid in the current fiscal period as having been paid in the preceding fiscal period, in which event the corporation shall so notify all shareholders. If a dividend is paid in satisfaction of a demand made in accordance with this subsection it shall be deemed to have been paid in the period for which it was demanded, and all shareholders shall be so informed concurrently with such payment.

(j) Upon receipt of a demand from the holders of twenty percent (20%) or more of the shares of any class of shares pursuant to subsection (i) of this section, the corporation receiving such demand may, during the then fiscal period or within three months after the close thereof, give written notice to each shareholder making such written demand that the corporation elects to redeem all shares held by such shareholder in lieu of the payment of dividends as provided in subsection (i) of this section and shall pay to such shareholder the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice. A shareholder receiving such notice shall thereafter be entitled to withdraw his dividend demand by giving written notice of such withdrawal to the corporation within 10 days after receipt of the redemption notice of the corporation or, if no such withdrawal is made, to receive the fair value of his shares, subject only to the surrender by him of the certificate or certificates representing his shares and to the provisions of G.S. 55-6-31, which value shall be determined and paid as follows:

- (1) If within 30 days after the date upon which a shareholder becomes entitled to payment for his shares under this subsection, the value of the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within 60 days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.
- (2) If within the such 30-day period the shareholder and the corporation do not agree as to the value of the shares, the shareholder may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least 10 days prior to the hearing of the petition by the court. The award of appraisers, or a majority of them, if no exceptions be filed thereto within 10 days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within 10 days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40A for the trial of cases under the eminent domain law of this State, and with the same right of appeal as is permitted in said Chapter. The court shall assess the cost of said proceedings as it shall deem equitable. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

"ARTICLE 7.

"Shareholders.

"Part 1. Meetings.

**"§ 55-7-01. Annual meeting.**

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action. Upon such failure, whether from lack of quorum or otherwise, a substitute annual meeting may be called in accordance with the provisions of G.S. 55-7-02 and any meeting so called may be designated as the annual meeting.

(d) Any matter relating to the affairs of a corporation that is appropriate for shareholder action is a proper subject for action at an annual meeting of shareholders, and unless required by some provision of this act, the matter need not be specifically stated in the notice of meeting.

**"§ 55-7-02. Special meeting.**

(a) A corporation shall hold a special meeting of shareholders:

- (1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
- (2) If the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held; except however that, unless otherwise provided in the articles of incorporation or bylaws, the call of a special meeting by shareholders is not available to the shareholders of a public corporation.

(b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by G.S. 55-7-05(c) may be conducted at a special shareholders' meeting.

**"§ 55-7-03. Court-ordered meeting.**

(a) The superior court of the county where a corporation's principal office (or, if none in this State, its registered office) is located may, after notice is given to the corporation, summarily order a meeting to be held:

- (1) On application of any shareholder if an annual meeting of the shareholders was not held within 15 months after the corporation's last annual meeting; or
- (2) On application of a shareholder who signed a demand for a special meeting valid under G.S. 55-7-02, if (i) notice of the special meeting was not given within 30 days after the date the demand was received

by the corporation's secretary; or (ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), enter other orders necessary to accomplish the purpose or purposes of the meeting, and award such reasonable expenses, including attorneys' fees, as it deems appropriate.

**"§ 55-7-04. Action without meeting.**

(a) Action required or permitted by this act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents signed by all the shareholders before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

**"§ 55-7-05. Notice of meeting.**

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under G.S. 55-7-07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

**"§ 55-7-06. Waiver of notice.**

(a) A shareholder may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

- (1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
- (2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter before it is voted upon.

**"§ 55-7-07. Record date.**

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

"Part 2. Voting.

**"§ 55-7-20. Shareholders' list for meeting.**

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was

prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or his agent or attorney, is entitled on written demand to inspect and, subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the superior court of the county where a corporation's principal office (or, if none in this State, its registered office) is located, on application of the shareholder, after notice is given to the corporation, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

**"§ 55-7-21. Voting entitlement of shares.**

(a) Except as provided in subsections (b) and (c) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is given to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

**"§ 55-7-21.1. Rights of holders of debt securities.**

In addition to any rights otherwise lawfully conferred, the articles of incorporation of the corporation may confer upon the holders of any bonds, debentures or other debt obligations issued or to be issued by the corporation any one or more of the following powers and rights upon such terms and conditions as may be prescribed in the articles of incorporation:

- (1) The power to vote on any matter either in conjunction with or to the full or partial exclusion of its shareholders;
- (2) The right to inspect the corporate books and records;
- (3) Any other rights concerning the corporation which its shareholders have or may have. Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or

written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation.

**"§ 55-7-22. Proxies.**

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under G.S. 55-7-31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) shall be revocable when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to G.S. 55-7-24 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

**"§ 55-7-23. Shares held by nominees.**

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as a shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

- (1) The types of nominees to which it applies;
- (2) The rights or privileges that the corporation recognizes in a beneficial owner;
- (3) The manner in which the procedure is selected by the nominee;
- (4) The information that must be provided when the procedure is selected;
- (5) The period for which selection of the procedure is effective; and
- (6) Other aspects of the rights and duties created.

**"§ 55-7-24. Corporation's acceptance of votes.**

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of its status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (4) The name signed purports to be that of a beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (5) Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**"§ 55-7-25. Quorum and voting requirements for voting groups.**

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter, except that, in the absence of a quorum at the opening of any meeting of shareholders, such meeting may be adjourned from time to time by the vote of a majority of the shares voting on the motion to adjourn. Unless the articles of incorporation, a bylaw adopted by the shareholders, or this act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation, a bylaw adopted by the shareholders, or this act requires a greater number of affirmative votes.

(d) An amendment of the articles of incorporation or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by G.S. 55-7-27.

(e) The election of directors is governed by G.S. 55-7-28.

**"§ 55-7-26. Action by single and multiple voting groups.**

(a) If the articles of incorporation, a bylaw adopted by the shareholders, or this act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in G.S. 55-7-25.

(b) If the articles of incorporation, a bylaw adopted by the shareholders, or this act provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in G.S. 55-7-25. Action may be taken by one voting group on a matter even though no action is taken at the same time by another voting group entitled to vote on the matter.

**"§ 55-7-27. Greater quorum or voting requirements.**

(a) The articles of incorporation or a bylaw adopted by the shareholders may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this act. Any such bylaw adopted by the shareholders after the effective date of this section must be approved by a quorum and vote sufficient to amend the articles of incorporation for that purpose.

(b) Any provision in the articles of incorporation or bylaws prescribing the quorum or vote required for any purpose as permitted by this section may not itself be amended by a quorum or vote less than the quorum or vote therein prescribed.

**"§ 55-7-28. Voting for directors; cumulative voting.**

(a) Unless otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Except as provided in subsection (e) of this section, shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that '[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors' (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

- (1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
- (2) A shareholder or proxy who has the right to cumulate his votes announces in open meeting, before voting for directors starts, his intention to vote cumulatively; and if such announcement is made, the chair shall declare that all shares entitled to vote have the right to vote cumulatively and shall announce the number of shares present in person and by proxy, and shall thereupon grant a recess of not less than one hour nor more than four hours, as he shall determine, or of such other period of time as is unanimously then agreed upon.

(e) Shareholders of a corporation incorporated in this State shall have the right to cumulate their votes for directors if (i) the corporation was in existence prior to July 1, 1957, under a charter which does not grant the right of cumulative voting and at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that there is at least one stockholder who owns or controls more than one-fourth of the voting stock of such corporation. (Shares represented at a meeting by revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares 'controlled' within the meaning of this subsection.), or if (ii) the corporation was incorporated on or after July 1, 1957, and before the effective date of this act, unless, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders, shares of any class or series are listed on a national securities exchange or are held of record by more than 2,000 shareholders. This right to vote cumulatively may be denied or limited by amendment to the articles of incorporation, but no such amendment shall be made when the number of shares voting against the amendment would be sufficient to elect a director by cumulative voting if such shares are entitled to be voted cumulatively for the election of directors.

"Part 3. Voting Trusts and Agreements.

**"§ 55-7-30. Voting trusts.**

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for not more than 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

**"§ 55-7-31. Shareholders' agreements.**

(a) An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in the exercise of any voting rights of shares held by the parties, including any vote with respect to directors, such shares shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with any procedure (including arbitration) specified in the agreement. Such agreement shall be valid as between the parties thereto for not more than 10 years from the date of its execution. A voting agreement created under this section may be extended or renewed in like manner as a voting trust may be extended or renewed as provided by G.S. 55-7-30 (c), but is not otherwise subject to the provisions of G.S. 55-7-30.

(b) Except in the case of a public corporation, no written agreement to which all of the shareholders have actually assented, whether embodied in the articles of incorporation or bylaws or in any side agreement in writing and signed by all the parties thereto, and which relates to any phase of the affairs of the corporation, whether to the management of its business or division of its profits or otherwise, shall be invalid as between the parties thereto, on the ground that it is an attempt by the parties thereto to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate between partners. A transferee of shares covered by such agreement who acquires them with knowledge thereof is bound by its provisions.

(c) A written agreement between all or less than all of the shareholders, whether solely between themselves or between one or more of them and a party who is not a shareholder, is not invalid as between the parties thereto on the ground that it so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the shareholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as

the discretion or powers of the board in its management of corporate affairs is controlled by such agreement.

"Part 4. Derivative Proceedings.

**"§ 55-7-40. Shareholders' derivative actions.**

(a) An action may be brought in the Superior Court of this State, which shall have exclusive original jurisdiction over actions brought hereunder, in the right of any domestic or foreign corporation by a shareholder or holder of a beneficial interest in shares of such corporation; provided that the plaintiff or plaintiffs must comply with the provisions of subsection (g) of this section, if applicable, and must allege, and it must appear, that each plaintiff was a shareholder or holder of a beneficial interest in such shares at the time of the transaction of which he complains or that his shares or beneficial interest in such shares devolved upon him by operation of law from a person who was a shareholder or holder of a beneficial interest in such shares at such time.

(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and the reasons for his failure to obtain the action or for not making the effort. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(c) Upon motion of the corporation, the court may appoint a committee composed of two or more disinterested directors or other disinterested persons, acceptable to the corporation, to determine whether it is in the best interests of the corporation to pursue a particular legal right or remedy. The committee shall report its findings to the court. After considering the report and any other relevant evidence, the court shall determine whether the proceeding should be continued or not.

(d) Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the shareholders or any class or classes thereof, or of the creditors of the corporation, will be substantially affected by such discontinuance, dismissal, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such shareholders or creditors whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as costs of the action.

(e) If the action on behalf of the corporation is successful, in whole or part, whether by means of a compromise and settlement or by a judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and shall direct the plaintiff to account to the corporation for the remainder of any proceeds of the action.

(f) In any such action the court, upon final judgement and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of the action.

(g) In addition to all other provisions of this section, any action brought on behalf of a corporation that is a public corporation at the time of such action against one or more of its directors for monetary damages the plaintiff or plaintiffs must (i) allege, and it must appear, that each plaintiff has been a shareholder or holder of a beneficial interest in shares of the corporation for at least one year; (ii) bring the action within two years of the date of the transaction of which he complains; and (iii) execute and deposit with the clerk a written undertaking with sufficient surety, approved by the judge, in an amount to be fixed by the judge to indemnify the corporation against any and all expenses expected to be incurred by the corporation in connection with the proceeding, including those arising by way of indemnity, if the court in its discretion so requires.

(h) In proceedings hereunder, no shareholder shall be entitled to obtain or have access to any communication within the scope of the corporation's attorney-client privilege which could not be obtained by or would not be accessible to a party in an action other than on behalf of the corporation.

"ARTICLE 8.

"Directors and Officers.

"Part 1. Board of Directors.

**"§ 55-8-01. Requirement for and duties of board of directors.**

(a) Except as provided in subsection (c), each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31(b).

(c) A corporation may dispense with or limit the authority of a board of directors by describing in its articles of incorporation or in an agreement valid under G.S. 55-7-31(b) who will perform some or all of the duties of a board of directors; but no such limitation upon the authority which the board of directors would otherwise have shall be effective against other persons without actual knowledge of such limitation.

(d) To the extent the articles of incorporation or an agreement valid under G.S. 55-7-31(b) vests authority of the board of directors in an individual or group other than the board of directors, such individual or group in the exercise of such authority shall be deemed to be acting as the board of directors for all purposes of this act.

**"§ 55-8-02. Qualifications of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

**"§ 55-8-03. Number and election of directors.**

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The shareholders may from time to time increase or decrease the number of directors by amendment to the articles of incorporation or the bylaws, but no such decrease shall be made when the number of shares voting against the proposal for decrease would be sufficient to elect a director by cumulative voting if such shares are

entitled to be voted cumulatively for the election of directors. If a board of directors has power under the articles of incorporation or bylaws to fix or change the number of directors and if the shareholders do not have the right to cumulate their votes for directors, the board may increase or decrease the number of directors by not more than thirty percent (30%) during any 12-month period.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or (unless the articles of incorporation or an agreement valid under G.S. 55-7-31 shall otherwise provide) the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under G.S. 55-8-06.

**"§ 55-8-04. Election of directors by certain classes of shareholders.**

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class (or classes) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

**"§ 55-8-05. Terms of directors generally.**

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under G.S. 55-8-06.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

**"§ 55-8-06. Staggered terms for directors.**

If the number of directors is fixed at nine or more directors, the articles of incorporation or bylaws adopted by the shareholders may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

**"§ 55-8-07. Resignation of directors.**

(a) A director may resign at any time by communicating his resignation to the board of directors, its chairman, or the corporation.

(b) A resignation is effective when it is communicated unless it specifies in writing a later effective date or subsequent event upon which it will become effective.

**"§ 55-8-08. Removal of directors by shareholders.**

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may not be removed by the shareholders at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director.

**"§ 55-8-09. Removal of directors by judicial proceeding.**

(a) The superior court of the county where a corporation's principal office (or, if none in this State, its registered office) is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

**"§ 55-8-10. Vacancy on board.**

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or from the failure by the shareholders to elect the full authorized number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors, or by the sole director, remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the remaining director or directors elected by that voting group or the holders of shares of that voting group are entitled to fill the vacancy.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under G.S. 55-8-07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**"§ 55-8-11. Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

"Part 2. Meetings and Action of the Board.

**"§ 55-8-20. Meetings.**

(a) The board of directors may hold regular or special meetings in or out of this State.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**"§ 55-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

**"§ 55-8-22. Notice of meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Special meetings of the board of directors shall be held upon such notice as is provided in the articles of incorporation or bylaws, or in the absence of any such provision, upon notice sent by any usual means of communication not less than five days before the meeting. The notice need not describe the purpose of the special meeting unless required by this act, the articles of incorporation or bylaws.

**"§ 55-8-23. Waiver of notice.**

(a) A director may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**"§ 55-8-24. Quorum and voting.**

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

- (1) A majority of the fixed number of directors if the corporation has a fixed board size; or
- (2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or a bylaw adopted by the shareholders may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

- (1) He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting;
- (2) His dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (3) He files written notice of his dissent or abstention with the presiding officer of the meeting before its adjournment or with the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**"§ 55-8-25. Committees.**

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

- (1) A majority of all the directors in office when the action is taken; or
- (2) The number of directors required by the articles of incorporation or bylaws to take action under G.S. 55-8-24.

(c) G.S. 55-8-20 through G.S. 55-8-24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under G.S. 55-8-01.

(e) A committee may not, however:

- (1) Authorize distributions;
- (2) Approve or propose to shareholders action that this act requires be approved by shareholders;
- (3) Fill vacancies on the board of directors or on any of its committees;
- (4) Amend articles of incorporation pursuant to G.S. 55-10-02;
- (5) Adopt, amend, or repeal bylaws;
- (6) Approve a plan of merger not requiring shareholder approval;
- (7) Authorize or approve 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 limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in G.S. 55-8-30.

### "Part 3. Standards of Conduct.

#### "§ 55-8-30. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within their professional or expert competence; or
- (3) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not entitled to the benefit of subsection (b) if he has actual knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(e) A director's personal liability for monetary damages for breach of a duty as a director may be limited or eliminated only to the extent permitted in G.S. 55-2-02(b)(3), and a director may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this act.

**"§ 55-8-31. Director conflict of interest.**

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

- (1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;
- (2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or
- (3) The transaction was fair to the corporation.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

- (1) Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or
- (2) Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not

be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this act. A majority of the shares that would if present be entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

**"§ 55-8-32. Loans to directors.**

(a) Except as provided by subsection (c), a corporation may not directly or indirectly lend money to or guarantee the obligation of a director of the corporation unless:

- (1) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or
- (2) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

(d) For purposes of this section, a loan or guarantee is made indirectly to or for a director if such director has an indirect interest in the loan or guarantee as defined in G.S. 55-8-31 (b).

**"§ 55-8-33. Liability for unlawful distributions.**

(a) A director who votes for or assents to a distribution made in violation of G.S. 55-6-40 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating G.S. 55-6-40 or the articles of incorporation if it is established that he did not perform his duties in compliance with G.S. 55-8-30. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

- (1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and
- (2) Reimbursement from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of G.S. 55-6-40 or the articles of incorporation.

(c) A proceeding under subsection (a) is barred unless it is commenced within three years after the date on which the effect of the distribution was measured under G.S. 55-6-40(e) or (g).

"Part 4. Officers.

**"§ 55-8-40. Officers.**

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The secretary or any assistant secretary or any one or more other officers designated by the bylaws or the board of directors shall have the responsibility and authority to maintain and authenticate the records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation, but no individual may act in more than one capacity where action of two or more officers is required.

(e) Whenever a specific office is referred to in this act, it shall be deemed to include any person who, individually or collectively with one or more other persons, holds or occupies such office.

**"§ 55-8-41. Duties of officers.**

Each officer has the authority and duties set forth in the bylaws or, to the extent consistent with the bylaws, the authority and duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the authority and duties of other officers.

**"§ 55-8-42. Standards of conduct for officers.**

(a) An officer with discretionary authority shall discharge his duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within their professional or expert competence.

(c) An officer is not entitled to the benefit of subsection (b) if he has actual knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(e) An officer may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this act.

**"§ 55-8-43. Resignation and removal of officers.**

(a) An officer may resign at any time by communicating his resignation to the corporation. A resignation is effective when it is communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

**"§ 55-8-44. Contract rights of officers.**

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not itself affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

"Part 5. Indemnification.

**"§ 55-8-50. Policy statement and definitions.**

(a) It is the public policy of this State to enable corporations organized under this Chapter to attract and maintain responsible, qualified directors, officers, employees and agents, and, to that end, to permit corporations organized under this Chapter to allocate the risk of personal liability of directors, officers, employees and agents through indemnification and insurance as authorized in this Part.

(b) Definitions in this Part:

- (1) 'Corporation' includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) 'Director' means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. 'Director' includes, unless the context requires otherwise, the estate or personal representative of a director.
- (3) 'Expenses' means expenses of every kind incurred in defending a proceeding, including counsel fees.
- (4) 'Liability' means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.
- (5) 'Official capacity' means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in G.S. 55-8-56,

the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. 'Official capacity' does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

- (6) 'Party' includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (7) 'Proceeding' means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

**"§ 55-8-51. Authority to indemnify.**

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

- (1) He conducted himself in good faith; and
- (2) He reasonably believed (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
- (3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

- (1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation that is concluded without a final adjudication on the issue of liability is limited to reasonable expenses incurred in connection with the proceeding.

(f) The authorization, approval or favorable recommendation by the board of directors of a corporation of indemnification, as permitted by this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such indemnification shall be void or voidable on such ground.

**"§ 55-8-52. Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

**"§ 55-8-53. Advance for expenses.**

Expenses incurred by a director in defending a proceeding may be paid by the corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provision in the articles of incorporation or bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of the director to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation against such expenses.

**"§ 55-8-54. Court-ordered indemnification.**

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

- (1) The director is entitled to mandatory indemnification under G.S. 55-8-52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in G.S. 55-8-51 or was adjudged liable as described in G.S. 55-8-51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

**"§ 55-8-55. Determination and authorization of indemnification.**

(a) A corporation may not indemnify a director under G.S. 55-8-51 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in G.S. 55-8-51.

(b) The determination shall be made:

- (1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
- (2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
- (3) By special legal counsel (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or (ii) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under

subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

- (4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

**"§ 55-8-56. Indemnification of officers, employees, and agents.**

Unless a corporation's articles of incorporation provide otherwise:

- (1) An officer of the corporation is entitled to mandatory indemnification under G.S. 55-8-52, and is entitled to apply for court-ordered indemnification under G.S. 55-8-54, in each case to the same extent as a director;
- (2) The corporation may indemnify and advance expenses under this Part to an officer, employee, or agent of the corporation to the same extent as to a director; and
- (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

**"§ 55-8-57. Additional indemnification and insurance.**

(a) In addition to and separate and apart from the indemnification provided for in G.S. 55-8-51, 55-8-52, 55-8-54, 55-8-55 and 55-8-56, a corporation may in its articles of incorporation or bylaws or by contract or resolution indemnify or agree to indemnify any one or more of its directors, officers, employees, or agents against liability and expenses in any proceeding (including without limitation a proceeding brought by or on behalf of the corporation itself) arising out of their status as such or their activities in any of the foregoing capacities; provided, however, that a corporation may not indemnify or agree to indemnify a person against liability or expenses he may incur on account of his activities which were at the time taken known or believed by him to be clearly in conflict with the best interests of the corporation. A corporation may likewise and to the same extent indemnify or agree to indemnify any person who, at the request of the corporation, is or was serving as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise or as a trustee or administrator under an employee benefit plan. Any provision in any articles of incorporation, bylaw, contract, or resolution permitted under this section may include provisions for recovery from the corporation of reasonable costs, expenses, and attorneys' fees in connection with the enforcement of rights to indemnification granted therein and may further include provisions establishing reasonable procedures for determining and enforcing the rights granted therein.

(b) The authorization, adoption, approval, or favorable recommendation by the board of directors of a public corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation or bylaw provision or contract or resolution shall be void or voidable on such grounds. The authorization, adoption, approval, or favorable recommendation by the board of directors of a nonpublic corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, which occurred on or prior to the effective date of this act, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation, bylaw provision, contract or resolution shall be void or voidable on such grounds. Except as permitted in G.S. 55-8-31, no such bylaw, contract, or resolution not adopted, authorized, approved or ratified by shareholders shall be effective as to claims made or liabilities asserted against any director prior to its adoption, authorization, or approval by the board of directors.

(c) A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under any provision of this act.

**"§ 55-8-58. Application of Part.**

(a) If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This Part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

(c) This Part shall not affect rights or liabilities arising out of acts or omissions occurring before the effective date of this act.

**"ARTICLE 9.**

**"Shareholder Protection Act.**

**"§ 55-9-01. Short title and definitions.**

(a) The provisions of this Article shall be known and may be cited as The North Carolina Shareholder Protection Act.

(b) In this Article:

(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other corporation, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets

having an aggregate fair market value of less than five million dollars (\$5,000,000)) of any other entity.

- (2) 'Common stock' means the shares of capital stock of the corporation that were not entitled to preference over any other shares, either in payment of dividends or in dissolution, at the time that the other entity acquired in excess of ten percent (10%) of the voting shares.
- (3) 'Continuing director' means a person who was a member of the board of directors of the corporation elected by the public shareholders prior to the time that the other entity acquired in excess of ten percent (10%) of the voting shares of the corporation, or a person recommended to succeed a continuing director by a majority of the continuing directors.
- (4) 'Exchange Act' means the Act of Congress known as the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time.
- (5) 'Other consideration to be received' means, for the purposes of G.S. 55-9-03(1) and G.S. 55-9-03(2), the corporation's common stock retained by its existing public shareholders in the event of a business combination with the other entity in which the corporation is the surviving corporation.
- (6) 'Other entity' includes any domestic or foreign corporation, person or other form of entity and any such entity with which it or its 'affiliate' or 'associate' has an agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of capital stock of the corporation, or which is its 'affiliate' or 'associate', as those terms are defined in the General Rules and Regulations under the Exchange Act, together with the successors and assigns of such persons in any transaction or series of transactions not involving a public offering of the corporation's capital stock within the meaning of the Securities Act of 1933, as amended.
- (7) 'Voting shares' means shares of the corporation's capital stock entitled to vote in the election of directors.

**"§ 55-9-02. Voting requirement.**

Notwithstanding any other provisions of the North Carolina Business Corporation Act, the affirmative vote of the holders of ninety-five percent (95%) of the voting shares of a corporation, considered for the purposes of this section as one class, shall be required for the adoption or authorization of a business combination with any other entity if, as of the record date for the determination of shareholders entitled to notice thereof and to vote thereon, the other entity is the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the voting shares of the corporation, considered for the purposes of this section as one class.

**"§ 55-9-03. Exception to voting requirement.**

The voting requirement of G.S. 55-9-02 shall not be applicable to a business combination if each of the following conditions is met:

- (1) The cash, or fair market value of other consideration, to be received per share by the holders of the corporation's common stock in such business combination bears the same or a greater percentage relationship to the market price of the corporation's common stock immediately prior to the announcement of such business combination by the corporation as the highest per share price (including brokerage commissions and/or soliciting dealers' fees) which such other entity has theretofore paid for any of the shares of the corporation's common stock already owned by it bears to the market price of the corporation's common stock immediately prior to the commencement of acquisition of the corporation's common stock by such other entity, directly or indirectly;
- (2) The cash, or fair market value of other consideration, to be received per share by holders of the corporation's common stock in such business combination (i) is not less than the highest per share price (including brokerage commissions and/or soliciting dealers' fees) paid by such other entity in acquiring any of its holdings of the shares of the corporation's common stock and (ii) is not less than the earnings per share of the corporation's common stock for the four full consecutive fiscal quarters immediately preceding the record date for the solicitation of votes on such business combination, multiplied by the then price/earnings multiple, if any, of such other entity as customarily computed and reported in the financial community;
- (3) After the other entity has acquired a twenty percent (20%) interest and prior to the consummation of such business combination: (i) the other entity shall have taken steps to ensure that the corporation's board of directors included at all times representation by continuing directors proportionate to the outstanding shares of the corporation's common stock held by persons not affiliated with the other entity (with a continuing director to occupy any resulting fractional board position); (ii) there shall have been no reduction in the rate of dividends payable on the corporation's common stock, except as may have been approved by a unanimous vote of its directors; (iii) the other entity shall have not acquired any newly issued shares of the corporation's capital stock, directly or indirectly, from the corporation, except upon conversion of any convertible securities acquired by the other entity prior to obtaining a twenty percent (20%) interest or as a result of a pro rata stock dividend or stock split; and (iv) the other entity shall not have acquired any additional shares of the corporation's outstanding common stock, or securities convertible into common stock, except as part of the transaction which resulted in the other entity acquiring its twenty percent (20%) interest;
- (4) The other entity shall not have (i) received the benefit, directly or indirectly, except proportionately with other shareholders, of any

loans, advances, guarantees, pledges, or other financial assistance or tax credits provided by the corporation or (ii) made any major change in the corporation's business or equity capital structure unless by a unanimous vote of the directors, in either case prior to the consummation of the business combination; and

- (5) A proxy statement responsive to the requirements of the Exchange Act shall be mailed to the public shareholders of the corporation for the purpose of soliciting shareholder approval of the business combination and shall contain prominently in the forepart thereof any recommendations as to the advisability or inadvisability of the business combination which the continuing directors, or any of them, may choose to state and, if deemed advisable by a majority of the continuing directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of the business combination to the remaining public shareholders of the corporation, which investment banking firm shall be selected by a majority of the continuing directors and shall be paid by the corporation a reasonable fee for its services upon receipt of such opinion.

**"§ 55-9-04. General.**

(a) The provisions of this Article shall also apply to a business combination with an other entity which at any time has been the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the outstanding voting shares, considered for the purposes of this section as one class, notwithstanding that the other entity has reduced its percentage of shares below twenty percent (20%) if, as of the record date for the determination of shareholders entitled to notice of and to vote on the business combination, the other entity is an 'affiliate' of the corporation.

(b) For the purposes of the Article, an other entity shall be deemed the beneficial owner of any shares of the corporation's capital stock which the other entity has the right to acquire pursuant to any agreement, or upon exercise of any conversion rights, warrants or options, or otherwise (whether the right to acquire shares is exercisable immediately or only after the passage of time); and, further, the outstanding shares of any class of capital stock of the corporation shall include shares deemed beneficially owned through the application of the foregoing, but shall not include any other shares which may be issuable pursuant to any agreement, or upon exercise of any conversion rights, warrants or options, or otherwise.

(c) A majority of the continuing directors shall have the power and duty to determine for the purposes of this Article on the basis of information known to them whether (i) an other entity beneficially owns more than twenty percent (20%) of the voting shares; (ii) an other entity is an 'affiliate' or 'associate' of another; (iii) an other entity has an agreement, arrangement or understanding with another; and (iv) the assets to be acquired by the corporation, or any subsidiary thereof, have an aggregate fair market value of less than five million dollars (\$5,000,000).

(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed

so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another state.

**"§ 55-9-05. Exemptions.**

The provisions of G.S. 55-9-02 shall not be applicable to any corporation that shall be made the subject of a business combination by an other entity if: (i) the corporation was not a public corporation (as defined in G.S. 55-1-40 (18a)) at the time such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which G.S. 55-76 was not applicable on the effective date of this act (other than a corporation described in G.S. 55-9-05 (iii)) adopted a bylaw stating that the provisions of this Article shall not be applicable to the corporation; (iii) in the case of a corporation to which G.S. 55-76 was not applicable on the effective date of this act as the result of adoption by its board of directors under G.S. 55-79(ii) of a bylaw providing that G.S. 55-76 not apply to such corporation, the board of directors of such corporation shall not have rescinded such bylaw on or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors); (iv) in the case of corporation (including its predecessors) which becomes a public corporation for the first time after the effective date of this act, such corporation adopts a bylaw within 90 days of becoming a public corporation stating that the provisions of this Article shall not be applicable to it; (v) in the case of a newly formed corporation after April 23, 1987, the initial articles of incorporation of the corporation shall provide that the provisions of this Article shall not be applicable; or (vi) such business combination was the subject of an existing agreement of the corporation on April 23, 1987. Neither the adoption or failure to adopt a bylaw of the type set forth in G.S. 55-9-05(ii) or (iv) nor the rescission or failure to rescind a bylaw of the type referred to in G.S. 55-9-05(iii) shall constitute grounds for any cause of action, at law or in equity, against the corporation or any of its directors.

"ARTICLE 9A.

"Control Share Acquisitions.

**"§ 55-9A-01. Short title and definitions.**

(a) The provisions of this Article shall be known and may be cited as The North Carolina Control Share Acquisition Act.

(b) In this Article:

(1) 'Beneficial ownership' of shares means the sole or shared ownership of any shares or the sole or shared power to vote any shares or to direct the exercise of voting power of any shares, whether such ownership or power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise, and includes shares beneficially owned by any person acting in concert with such beneficial owner pursuant to any contract, arrangement, understanding,

relationship or otherwise. Notwithstanding the foregoing, beneficial ownership does not include shares acquired in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this Article, unless the acquiror of such shares may exercise or direct the exercise of voting of such shares without instruction from others.

- (2) 'Control shares' means shares of a covered corporation that when added to all other shares of the corporation beneficially owned by a person would entitle (except for this Article) that person to voting power in the election of directors that is equal to or greater than any of the following levels of voting power:
  - a. One-fifth of all voting power.
  - b. One-third of all voting power.
  - c. A majority of all voting power.
- (3) 'Control share acquisition' means the acquisition by any person of beneficial ownership of control shares, except that the acquisition of beneficial ownership of any shares of a covered corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:
  - a. Before April 30, 1987.
  - b. Pursuant to a contract existing before April 30, 1987, with either:
    - (i) The covered corporation; or
    - (ii) A seller of such shares who owned such shares before April 30, 1987.
  - c. Pursuant to the laws of descent and distribution.
  - d. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this Article.
  - e. Pursuant to a merger or share exchange effected in compliance with applicable law, but only if pursuant to an agreement of merger or share exchange to which the covered corporation is a party.
  - f. Pursuant to the sale of such shares by the covered corporation or its parent or subsidiary corporation, provided that in such case a written agreement relating to such sale to which the covered corporation is a party may permit the purchasers of such shares as a group also to purchase in any other manner within 90 days before or after such sale up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation without any such purchases being a 'control share acquisition'.
  - g. Pursuant to a written agreement to which the covered corporation is a party that permits the purchasers of shares from

the covered corporation or its parent or subsidiary corporation also to purchase in any manner within 90 days before or after the purchase from the covered corporation or its parent or subsidiary up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation.

h. By an employee benefit plan established by the covered corporation.

i. Before the corporation became a covered corporation.

For purposes of this definition, shares acquired within any consecutive 90-day period or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(4) 'Interested shares' means the shares of a covered corporation beneficially owned by any of the following persons:

a. Any person who has acquired or proposes to acquire control shares in a control share acquisition.

b. Any officer of the covered corporation.

c. Any employee of the covered corporation who is also a director of the corporation.

(5) 'Covered corporation' means a corporation that:

a. Is incorporated under the laws of North Carolina and has substantial assets within North Carolina;

b. Has a class of shares registered under Section 12 of the Securities Exchange Act of 1934;

c. Has its principal place of business or principal office within North Carolina; and

d. Has either:

(i) More than ten percent (10%) of its shareholders resident in North Carolina; or

(ii) More than ten percent (10%) of its shares owned by North Carolina residents.

(6) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(7) For purposes of calculating the percentages or numbers described in subsection (b) (5) of this section, any shares held in trust or by a nominee shall be deemed to be held by the beneficiaries of such trust or by the beneficiaries of such shares held by such nominee.

**"§ 55-9A-02. Acquiring person statement.**

Any person who has made a control share acquisition or who has made a bona fide written offer to make a control share acquisition may at the person's election deliver an acquiring person statement to the covered corporation at the covered corporation's principal office. The acquiring person statement must set forth all of the following:

- (1) The identity of the acquiring person and each other beneficial owner of shares that are beneficially owned by the acquiring person.
- (2) A statement that the acquiring person statement is given pursuant to this Article.
- (3) The number of shares of the covered corporation beneficially owned by the acquiring person and each other beneficial owner named under subdivision (1) of this section.
- (4) The level of voting power above which the control share acquisition falls or would, if consummated, fall.
- (5) If the control share acquisition has not taken place:
  - a. A description in reasonable detail of the terms of the proposed control share acquisition; and
  - b. Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

**"§ 55-9A-03. Meeting of shareholders.**

(a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the covered corporation's expenses of a special meeting, within 10 days after delivery of such request the directors of the covered corporation shall call a special meeting of shareholders of the covered corporation for the purpose of considering the voting rights to be accorded the control shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after the receipt by the covered corporation of the request.

(c) If no request is made, the voting rights to be accorded the control shares acquired in the control share acquisition shall be considered at the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than 30 days after receipt by the covered corporation of the acquiring person statement.

**"§ 55-9A-04. Notice.**

If a special meeting is requested pursuant to G.S. 55-9A-03, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the covered corporation. Notice of any special or annual meeting at which the voting rights of control shares are to be considered shall be given to all shareholders who are entitled to vote at the meeting and who are shareholders of record as of the record date set for the meeting, and to all holders of interested shares, and such notice must include or be accompanied by each of the following:

- (1) A copy of the acquiring person statement delivered to the covered corporation pursuant to this Article.

- (2) A statement by the board of directors of the covered corporation, authorized by a majority of its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to granting voting rights to the control shares acquired or proposed to be acquired in the control share acquisition.
- (3) If the shareholders would have a right of redemption under G.S. 55-9A-06, a statement, displayed with reasonable prominence, describing such right and advising the shareholders that it will be available only to those who give the written notice required by G.S. 55-9A-06(b).

**"§ 55-9A-05. Voting rights.**

(a) Control shares acquired in a control share acquisition shall not have voting rights unless such rights are granted by resolution adopted by the shareholders of the covered corporation.

(b) To be approved under this section, the resolution must be adopted by the affirmative vote of the holders of at least a majority of all the outstanding shares of the covered corporation (not including interested shares) entitled to vote for the election of directors; provided that if applicable law or an articles of incorporation or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject of the vote prescribes voting by separate classes of shares, the resolution must also be adopted by the affirmative vote of the holders of at least a majority of each such class (but excluding in any such case all interested shares); and provided further that if applicable law or an articles of incorporation or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject of the vote prescribes voting by shares that would not otherwise be entitled to vote, such shares shall be treated solely for purposes of this section as shares entitled to vote for directors (but excluding in any such case all interested shares).

**"§ 55-9A-06. Right of redemption by shareholders.**

(a) Unless otherwise provided in the articles of incorporation or a bylaw of the covered corporation adopted by the shareholders before a control share acquisition has occurred and subject to G.S. 55-6-40, if control shares acquired in a control share acquisition are accorded voting rights and the holders of the control shares have a majority of all voting power for the election of directors, all shareholders of the covered corporation (other than holders of control shares) have rights as prescribed in this section to have their shares redeemed by the corporation at the fair value of those shares as of the day prior to the date on which the vote was taken under G.S. 55-9A-05.

(b) If the notice of meeting at which voting rights are accorded to control shares contains the statement required by G.S. 55-9A-04(3), a shareholder will not have any right of redemption under this section unless he gives to the corporation, prior to or at the meeting of shareholders at which the voting rights to be accorded to control shares are considered, written notice that if voting rights are accorded to such shares he may ask for the redemption of his shares hereunder.

(c) As soon as practicable after control shares held by persons having a majority of all voting power for the election of directors have been accorded voting rights, the

board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that if they gave the notice required by subsection (b) of this section they may have rights to have their shares redeemed at the fair value of those shares pursuant to this section.

(d) Within 30 days after the date on which a shareholder receives such notice, such shareholder may make written demand on the corporation for payment of the fair value of his shares, and after such demand, if such shareholder has complied with the notice requirement in subsection (b) of this section, the corporation shall redeem his shares at their fair value within 30 days after the date on which the corporation receives such shareholder's written demand for payment.

(e) As used in this section, 'fair value' means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

**"§ 55-9A-07. Severability.**

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

**"§ 55-9A-08. Construction.**

The provisions of this Article shall apply notwithstanding any provisions of Article 7 of this Chapter and in the event of any conflict between this Article and Article 7, the provisions of this Article shall control.

**"§ 55-9A-09. Exemptions.**

The provisions of this Article shall not be applicable to any corporation if, on or before September 30, 1990, or such earlier date as may be irrevocably established by resolution of the board of directors, or at any time before the corporation becomes, or after it ceases to be, a covered corporation, the board of directors adopts a bylaw stating that the provisions of this Article shall not be applicable to the corporation; or, in the case of a corporation formed after August 12, 1987, its initial articles of incorporation provide that this Article shall not be applicable to the corporation. Neither adoption nor failure to adopt such a bylaw or provision shall constitute grounds for any cause of action against the corporation, or any officer or director of the corporation.

"Article 10.

"Amendment of Articles of Incorporation and Bylaws.

"Part 1. Amendment of Articles of Incorporation.

**"§ 55-10-01. Authority to amend.**

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

**"§ 55-10-02. Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

- (1) Reserved for future codification purposes;
- (2) To delete the names and addresses of the initial directors;
- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;
- (5) To change the corporate name by substituting the word 'corporation', 'incorporated', 'company', 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.', for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or
- (6) To make any other change expressly permitted by this act to be made without shareholder action.

**"§ 55-10-03. Amendment by board of directors and shareholders.**

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

- (1) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the basis for its lack of a recommendation to the shareholders with the amendment; and
- (2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this act, the articles of incorporation, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

- (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

- (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment.

**"§ 55-10-04. Voting on amendments by voting groups.**

(a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this act) on a proposed amendment if the amendment would:

- (1) Increase or decrease the aggregate number of authorized shares of the class;
- (2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (3) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
- (4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;
- (5) Change the shares of all or part of the class into a different number of shares of the same class;
- (6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (7) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (8) Limit or deny an existing preemptive right of all or part of the shares of the class;
- (9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class; or
- (10) Change the corporation into a nonprofit corporation or a cooperative organization.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**"§ 55-10-05. Amendment before issuance of shares.**

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

**"§ 55-10-06. Articles of amendment.**

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment's adoption;
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;
- (6) If an amendment was approved by the shareholders (i) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting (ii) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

**"§ 55-10-07. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(b) The restated articles of incorporation may include one or more amendments to the articles. If the restated articles of incorporation include an amendment requiring shareholder approval, it must be adopted as provided in G.S. 55-10-03.

(c) If the board of directors submits restated articles of incorporation for shareholder action, the corporation shall notify each shareholder entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also (i) state that the purpose, or one of the purposes, of the meeting is to consider the proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of the proposed restated articles of incorporation, and (iii) identify any amendment or other change they would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement which shall:

- (1) Set forth the name of the corporation;
- (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- (3) State whether the restated articles of incorporation contain an amendment to the articles requiring shareholder approval and, if they do not, that the board of directors adopted the restated articles of incorporation; and

(4) If the restated articles of incorporation contain an amendment to the articles requiring shareholder approval, set forth the information required by G.S. 55-10-06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the other information required by subsection (d).

**"§ 55-10-08. Reserved for future codification purposes.**

**"§ 55-10-09. Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

"Part 2. Amendment of Bylaws.

**"§ 55-10-20. Amendment by board of directors or shareholders.**

(a) A corporation's board of directors may amend or repeal the corporation's bylaws, except to the extent otherwise provided in the articles of incorporation or a bylaw adopted by the shareholders or this act, and except that a bylaw adopted, amended or repealed by the shareholders may not be readopted, amended or repealed by the board of directors if neither the articles of incorporation nor a bylaw adopted by the shareholders authorizes the board of directors to adopt, amend or repeal that particular bylaw or the bylaws generally.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

**"§ 55-10-21. Reserved for future codification purposes.**

**"§ 55-10-22. Bylaw increasing quorum or voting requirement for directors.**

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- (1) If originally adopted by the shareholders, only by the shareholders, unless amendment or repeal by the board of directors is permitted pursuant to subsection (b);
- (2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) A bylaw referred to in subsection (a):

- (1) May not be adopted by the board of directors by a vote less than a majority of the directors then in office, and
- (2) May not itself be amended by a quorum or vote of the directors less than the quorum or vote therein prescribed or prescribed by the shareholders pursuant to subsection (b).

"ARTICLE 11.

"Merger and Share Exchange.

**"§ 55-11-01. Merger.**

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve a plan of merger.

(b) The plan of merger must set forth:

- (1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;
- (2) The terms and conditions of the merger; and
- (3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

- (1) Amendments to the articles of incorporation of the surviving corporation; and
- (2) Other provisions relating to the merger.

**"§ 55-11-02. Share Exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

(b) The plan of exchange must set forth:

- (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (2) The terms and conditions of the exchange;
- (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

**"§ 55-11-03. Action on plan.**

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

- (1) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors

must communicate the basis for its lack of a recommendation to the shareholders with the plan; and

(2) The shareholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this act, the articles of incorporation, a bylaw adopted by the shareholders or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to the effective date of this act, a merger shall be deemed to include a share exchange.

(f) Separate voting by voting groups is required:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of cash;

(2) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in G.S. 55-10-02) from its articles before the merger;

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the effective date of the merger;

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than 20 percent (20%) the total

number of voting shares of the surviving corporation outstanding immediately before the merger; and

- (4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than 20 percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

- (1) 'Participating shares' means shares that entitle their holders to participate without limitation in distributions.
- (2) 'Voting shares' means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

**"§ 55-11-04. Merger of subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

- (1) The names of the parent and subsidiary; and
- (2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in G.S. 55-10-02).

**"§ 55-11-05. Articles of merger or share exchange.**

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange setting forth:

- (1) The plan of merger or share exchange;

- (2) If shareholder approval was not required, a statement to that effect;
- (3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required (i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and (ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

**"§ 55-11-06. Effect of merger or share exchange.**

(a) When a merger takes effect:

- (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
- (3) The surviving corporation has all liabilities of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
- (5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
- (6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into the right to receive cash or other property are thereupon converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under Article 13.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under Article 13.

**"§ 55-11-07. Merger or share exchange with foreign corporation.**

(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

- (1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
- (3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and
- (4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with G.S. 55-11-05.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

- (1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and
- (2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

**"§ 55-11-08. Article 9 to control.**

Nothing in this Article shall be construed to modify in any manner the provisions or applicability of Article 9.

**"ARTICLE 12.**

**"Transfer of Assets.**

**"§ 55-12-01. Sale of assets in regular course of business and mortgage of assets.**

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the shareholders:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

- (2) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

**"§ 55-12-02. Sale of assets other than in regular course of business.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

- (1) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the basis for its lack of a recommendation to the shareholders with the submission of the proposed transaction; and
- (2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation, a bylaw adopted by the shareholders, Article 9 or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(g) A transaction that constitutes a distribution is governed by G.S. 55-6-40 and not by this section.

**"§ 55-12-03. Article 9 to control.**

Nothing in this Article shall be construed to modify in any manner the provisions or applicability of Article 9.

"ARTICLE 13.

"Dissenters' Rights.

"Part 1. Right to Dissent and Obtain Payment for Shares.

**"§ 55-13-01. Definitions.**

In this Article:

- (1) 'Corporation' means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

- (2) 'Dissenter' means a shareholder who is entitled to dissent from corporate action under G.S. 55-13-02 and who exercises that right when and in the manner required by G.S. 55-13-20 through 55-13-28.
- (3) 'Fair value', with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.
- (4) 'Interest' means interest from the effective date of the corporate action until the date of payment, at a rate that is fair and equitable under all the circumstances, giving due consideration to the rate currently paid by the corporation on its principal bank loans, if any, but not less than the rate provided in G.S. 24-1.
- (5) 'Record shareholder' means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (6) 'Beneficial shareholder' means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.
- (7) 'Shareholder' means the record shareholder or the beneficial shareholder.

**"§ 55-13-02. Right to dissent.**

(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

- (1) Consummation of a plan of merger to which the corporation is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;
- (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;
- (3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;
- (4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a right in respect of redemption, including a provision

respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization;

- (5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this Article may not challenge the corporate action creating his entitlement, including without limitation a merger solely or partly in exchange for cash or other property, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

**"§ 55-13-03. Dissent by nominees and beneficial owners.**

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

- (1) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and
- (2) He does so with respect to all shares of which he is the beneficial shareholder.

"Part 2. Procedure for Exercise of Dissenters' Rights.

**"§ 55-13-20. Notice of dissenters' rights.**

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this Article and be accompanied by a copy of this Article.

(b) If corporate action creating dissenters' rights under G.S. 55-13-02 is taken without a vote of shareholders, the corporation shall no later than 10 days thereafter notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in G.S. 55-13-22.

(c) If a corporation fails to comply with the requirements of this section, such failure shall not invalidate any corporate action taken; but any shareholder may recover from the corporation any damage which he suffered from such failure in a civil action

brought in his own name within three years after the taking of the corporate action creating dissenters' rights under G.S. 55-13-02 unless he voted for such corporate action.

**"§ 55-13-21. Notice of intent to demand payment.**

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

- (1) Must give to the corporation, and the corporation must actually receive, before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and
- (2) Must not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this Article.

**"§ 55-13-22. Dissenters' notice.**

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is authorized at a shareholders' meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21.

(b) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must:

- (1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
- (2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
- (3) Supply a form for demanding payment;
- (4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and
- (5) Be accompanied by a copy of this Article.

**"§ 55-13-23. Duty to demand payment.**

(a) A shareholder sent a dissenters' notice described in G.S. 55-13-22 must demand payment and deposit his share certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this Article.

**"§ 55-13-24. Share restrictions.**

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under G.S. 55-13-26.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

**"§ 55-13-25. Offer of payment.**

(a) As soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall offer to pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of payment, and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.

(b) The offer of payment must be accompanied by:

- (1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of offer of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;
- (2) A statement of the corporation's estimate of the fair value of the shares;
- (3) An explanation of how the interest was calculated;
- (4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and
- (5) A copy of this Article.

**"§ 55-13-26. Failure to take action.**

(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under G.S. 55-13-22 and repeat the payment demand procedure.

**"§ 55-13-27. Reserved for future codification purposes.**

**"§ 55-13-28. Procedure if shareholder dissatisfied with corporation's offer or failure to perform.**

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate or reject the corporation's offer under G.S. 55-13-25 and demand payment of the fair value of his shares and interest due, if:

- (1) The dissenter believes that the amount offered under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;
- (2) The corporation fails to make payment to a dissenter who accepts the corporation's offer under G.S. 55-13-25 within 30 days after the dissenter's acceptance; or
- (3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions

imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation offered payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

"Part 3. Judicial Appraisal of Shares.

**"§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation.

**"§ 55-13-31. Court costs and counsel fees.**

(a) The court in an appraisal proceeding commenced under G.S. 55-13-30 shall determine all costs of the proceeding, including the reasonable compensation and

expenses of appraisers appointed by the court, and shall assess the costs as it finds equitable.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

- (1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of G.S. 55-13-20 through 55-13-28; or
- (2) Against either the corporation or a dissenter, in favor of either or any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Article.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

## "ARTICLE 14.

### "Dissolution.

#### "Part 1. Voluntary Dissolution.

#### **"§ 55-14-01. Dissolution by incorporators or initial directors.**

(a) The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
  - (1a) The names and addresses of its officers, if any;
  - (1b) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;
- (2) The date of its incorporation;
- (3) That none of the corporation's shares has been issued;
- (4) That no debt of the corporation remains unpaid;
- (5) Reserved for future codification purposes; and
- (6) That a majority of the incorporators or initial directors authorized the dissolution.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

#### **"§ 55-14-02. Dissolution by board of directors and shareholders.**

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

- (1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must

communicate the proposal and the basis for its lack of a recommendation to the shareholders; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

**"§ 55-14-03. Articles of dissolution.**

(a) At any time after dissolution is authorized pursuant to G.S. 55-14-02, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (1a) The names and addresses of its officers;
- (1b) The names and addresses of its directors;
- (2) The date dissolution was authorized;
- (3) With respect to the shareholders (i) the number of votes entitled to be cast on the proposal to dissolve; and (ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.
- (4) If voting by voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

**"§ 55-14-04. Revocation of dissolution.**

(a) A corporation may revoke its dissolution within 120 days after its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless an authorization under G.S. 55-14-02 permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;

- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If shareholder action was required to revoke the dissolution, the information required by G.S. 55-14-03(a)(3) or (4) with respect to the revocation.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the filing of the articles of dissolution.

**"§ 55-14-05. Effect of dissolution.**

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its directors or officers to standards of conduct different from those prescribed in Article 8;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.

(c) After the end of the tax year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless it engages in business activities not appropriate to winding up and liquidating its business and affairs as permitted by subsection (a).

**"§ 55-14-06. Known claims against dissolved corporation.**

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) If the corporation does not receive the claim by the deadline from a claimant who received written notice under subsection (b); or
- (2) If a claimant whose claim was rejected by written notice from the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the date of receipt of the rejection notice.

(d) For purposes of this section, 'claim' does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**"§ 55-14-07. Unknown and certain other claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this State, its registered office) is or was last located;
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under G.S. 55-14-06;
- (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

**"§ 55-14-08. Enforcement of claims.**

- (a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:
  - (1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or
  - (2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

(b) Nothing in G.S. 55-14-06 or G.S. 55-14-07 shall extend any applicable period of limitation.

"Part 2. Administrative Dissolution.

**"§ 55-14-20. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under G.S. 55-14-21 to dissolve administratively a corporation if:

- (1) The corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this act;
- (2) The corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;
- (3) The corporation is without a registered agent or registered office in this State for 60 days or more;
- (4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (5) The corporation's period of duration stated in its articles of incorporation expires.

**"§ 55-14-21. Procedure for and effect of administrative dissolution.**

(a) If the Secretary of State determines that one or more grounds exist under G.S. 55-14-20 for dissolving a corporation, he shall mail the corporation written notice of his determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the corporation.

(c) The provisions of G.S. 55-14-05, 55-14-06, and 55-14-07 apply to a corporation administratively dissolved.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**"§ 55-14-22. Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) Reserved for future codification purposes; and
- (4) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the certificate of dissolution.

**"§ 55-14-23. Appeal from denial of reinstatement.**

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under G.S. 55-5-04 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Superior Court of Wake County within 30 days after service of the notice of denial is perfected. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the dissolution. The petition shall have attached to it copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial. The appeal to the superior court shall be determined upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The corporation shall have the burden of establishing that it is entitled to reinstatement.

(c) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

**"§ 55-14-24. Inapplicability of Administrative Procedure Act.**

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55-14-20 through 55-14-23.

"Part 3. Judicial Dissolution.

**"§ 55-14-30. Grounds for judicial dissolution.**

The superior court may dissolve a corporation:

- (1) In a proceeding by the Attorney General if it is established that (i) the corporation obtained its articles of incorporation through fraud; or (ii) the corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;
- (2) In a proceeding by a shareholder if it is established that (i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder; (iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; (iv) the corporate assets are being misapplied or wasted; or (v) a written agreement, whether embodied in the articles of incorporation or separate therefrom, entitles the complaining shareholder to liquidation or dissolution of the corporation at will or upon the occurrence of some event which has subsequently occurred, and all present shareholders, and all subscribers and transferees of shares, either are parties to such agreement or became a shareholder, subscriber or transferee with actual notice thereof;
- (3) In a proceeding by a creditor if it is established that (i) the creditor's claim has been reduced to judgment and the execution on the judgment returned unsatisfied; or (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

**"§ 55-14-31. Procedure for judicial dissolution.**

(a) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other

action required to preserve the corporate assets wherever located, and carry on the business of the corporation.

(d) In any proceeding brought by a shareholder under G.S. 55-14-30(2)(ii) in which the court determines that dissolution would be appropriate, the court shall not order dissolution if, after such determination, the corporation elects to purchase the shares of the complaining shareholder at their fair value, as determined in accordance with such procedures as the court may provide.

**"§ 55-14-32. Receivership.**

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this State) as a receiver. The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Such powers may include without limitation the power:

- (1) To dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;
- (1a) To sue and defend in his own name as receiver of the corporation in all courts of this State; and
- (2) To exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) Reserved for future codification purposes.

(e) The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets.

**"§ 55-14-33. Decree of dissolution.**

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in G.S. 55-14-30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with G.S. 55-14-05 and the notification of claimants in accordance with G.S. 55-14-06 and G.S. 55-14-07.

"Part 4. Miscellaneous.

**"§ 55-14-40. Disposition of amounts due to unavailable shareholders and creditors.**

Upon liquidation of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found shall be disposed of in accordance with Chapter 116B.

"ARTICLE 14A.

"Reorganization.

**"§ 55-14A-01. Fundamental changes in reorganization proceedings.**

(a) Whenever a plan of reorganization of a corporation is confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the corporation may put into effect and carry out such plan and the decrees and orders of the court relative thereto and may take any action provided in such plan or directed by such decrees and orders without further action by its directors or shareholders. Such action may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the reorganization proceedings, or by designated officers of the corporation, or by a master or other representative appointed by the court, with like effect as if taken by unanimous action of the directors and shareholders of the corporation. In particular and without limiting the generality or effect of the foregoing, such corporation may:

- (1) Amend its articles of incorporation or bylaws, or both, so long as the articles of incorporation and bylaws as amended contain only such provisions as might be lawfully contained therein at the time of making such amendment;
- (2) Constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or any of the directors or officers then in office;
- (3) Make any change in its capital accounts or in any or all of its outstanding shares or other securities, or cancel any or all of such outstanding shares or other securities;
- (4) Dissolve and liquidate;
- (5) Effect a merger or share exchange;
- (6) Transfer all or part of its assets;
- (7) Change its registered office or registered agent, or both;
- (8) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

(b) Any articles of amendment, statement of change of registered office or registered agent, certificate of reduction of capital, restated articles of incorporation, articles of merger or share exchange, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in accordance with the provisions of this act on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection (a).

(c) No action taken under this section shall give rise to any dissenters' rights, except as provided in the plan of reorganization.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

"ARTICLE 15.

"Foreign Corporations.

"Part 1. Certificate of Authority.

**"§ 55-15-01. Authority to transact business required.**

(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State solely for the purposes of this act, by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Transacting business in interstate commerce;
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
- (10) Selling through independent contractors;
- (11) Owning, without more, real or personal property.

(c) Reserved for future codification purposes.

(d) Foreign insurance companies that are licensed by the Commissioner of Insurance are not required to obtain a certificate of authority from the Secretary of State.

**"§ 55-15-02. Consequences of transacting business without authority.**

(a) No foreign corporation transacting business in this State without permission obtained through a certificate of authority under this act or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless such corporation shall have obtained a certificate of authority prior to trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the transaction of business by such corporation in this State until:

(1) A certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired substantially all of its assets, or

(2) Substantially all of its assets have been acquired by a domestic corporation or one or more individuals.

An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) Reserved for future codification purposes.

(c) Reserved for future codification purposes.

(d) A foreign corporation failing to obtain a certificate of authority as required by this act or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

(e) Notwithstanding subsection (a), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

(f) The Secretary of State is hereby directed to require that every foreign corporation transacting business in this State comply with the provisions of this act. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign corporations now transacting business in this State which may have failed to comply with the provisions of this act.

**"§ 55-15-03. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of G.S. 55-15-06;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The street address, and the mailing address if different from the street address, of its principal office;
- (5) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office; and
- (6) The names and usual business addresses of its current officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) If the Secretary of State finds that the application conforms to law he shall, when all taxes and fees have been tendered as prescribed in this act:

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;
- (2) File in his office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);
- (3) Issue a certificate of authority to transact business in this State to which he shall affix the exact or conformed copy of the application; and
- (4) Send to the foreign corporation or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

**"§ 55-15-04. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of G.S. 55-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**"§ 55-15-05. Effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject, however, to the right of the State to revoke the certificate as provided in this act. A foreign corporation, however, is not eligible or entitled to qualify in this State as executor, administrator, or guardian, or as

trustee under the will of any person domiciled in this State at the time of his death, except that a foreign corporation chartered under the banking laws of Georgia, South Carolina, Tennessee or Virginia or as a national banking association in any said states may act as testamentary trustee, or executor in this State if:

- (1) It has a bona fide capital of at least two hundred and fifty thousand dollars (\$250,000) actually paid in;
- (2) It is authorized to act in such fiduciary capacity in the state in which it is incorporated or if such foreign corporation be a national banking association in the state in which it has its principal place of business; and
- (3) Any bank or other corporation organized under the laws of this State or a national banking association having its principal place of business in this State is permitted by law to act in such fiduciary capacity in the state in which such foreign corporation seeking to act in this State is organized or in which it has its principal place of business if it is a national banking association without further showing or qualification other than that it is authorized to act in such fiduciary capacity in this State and upon compliance with the laws of such other state, if any, concerning service of process on nonresident fiduciaries.

Unless assets of the estate are to be removed from within the State of North Carolina, such foreign corporations seeking to act as testamentary trustee, or executor in this State, upon qualifying to act in such fiduciary capacity, shall not be required by law to give bond except as required of a resident corporate fiduciary in like circumstances. No officer, employee or agent of any such foreign corporation shall be eligible or entitled to serve as testamentary trustee, or executor in this State whether such officer, employee, or agent is a resident or nonresident of this State if such officer, employee or agent is acting as testamentary trustee or executor on behalf of any such foreign corporation except when such foreign corporation itself shall be eligible to so serve.

A foreign corporation qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2 (4).

(b) Except as otherwise provided by this act, a foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) Reserved for future codification purposes.

**"§ 55-15-06. Corporate name of foreign corporation.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of G.S. 55-4-01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this State:

- (1) May add the word 'corporation,' 'incorporated,' 'company,' or 'limited,' or the abbreviation 'corp.,' 'inc.,' 'co.,' or 'ltd.,' to its corporate name for use in this State; or

- (2) May use a fictitious name, which includes one or more of the words or abbreviations in subdivision (1) of this subsection, to transact business in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsection (c), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of a corporation incorporated or authorized to transact business in this State;
- (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S. 55-4-03;
- (3) The fictitious name of another foreign corporation authorized to transact business in this State; and
- (4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this State.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this State a name that is not distinguishable upon his records from the name of another corporation (incorporated or authorized to transact business in this State.) The Secretary of State shall authorize use of the name applied for if:

- (1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
- (2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) Reserved for future codification purposes.

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of G.S. 55-4-01, it may not transact business in this State under the changed name until it adopts a name satisfying the requirements of G.S. 55-4-01 and obtains an amended certificate of authority under G.S. 55-15-04.

(f) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this act.

(g) Neither the reservation or registration of a corporate name nor the issuance of a certificate of authority to a foreign corporation shall authorize the use in this State of a corporate name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, or be a defense to an action for violation of any such rights.

**"§ 55-15-07. Registered office and registered agent of foreign corporation.**

(a) Each foreign corporation authorized to transact business in this State must continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; or (iii) a foreign corporation or foreign nonprofit corporation authorized to transact business in this State whose business office is identical with the registered office.

(b) The sole duty of the registered agent to the foreign corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent.

**"§ 55-15-08. Change of registered office or registered agent of foreign corporation.**

(a) A foreign corporation authorized to transact business in this State may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) Its name;
- (2) The street address, and the mailing address if different from the street address, of the corporation's current registered office, and the county in which it is located;
- (3) If the address of the corporation's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the address of his business office, he may change the address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

**"§ 55-15-09. Resignation of registered agent of foreign corporation.**

(a) The registered agent of a foreign corporation may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation, which may include a statement that the registered office is also discontinued. The statement must be accompanied by a certification from the registered agent that he has mailed or delivered to the corporation at its last known address written notice of this resignation. Such

certification shall include the name and title of the officer notified, if any, and the address to which the notice was mailed or delivered.

(b) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the foreign corporation at its principal office shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

**"§ 55-15-10. Service on foreign corporation.**

(a) The registered agent of a foreign corporation authorized to transact business in this State is an agent of the corporation for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) Whenever a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, or whenever its certificate of authority shall have been revoked under G.S. 55-15-31, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand shall be made by delivering to and leaving with him or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a foreign corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State.

(c) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

**"Part 2. Withdrawal.**

**"§ 55-15-20. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
  - (3) That the corporation revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State;
  - (4) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (3); and
  - (5) A commitment to notify the Secretary of State in the future of any change in its mailing address.
- (bl) If the Secretary of State finds that such application conforms to law, he shall:
- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed', and the hour, day, month and year of the filing thereof;
  - (2) File the application in his office; and
  - (3) Issue a certificate of withdrawal to which he shall affix the exact or conformed copy of the application.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State in accordance with subsection (b)(3) of this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

"Part 3. Revocation of Certificate of Authority.

**"§ 55-15-30. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under G.S. 55-15-31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The foreign corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;
- (2) The foreign corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this act;
- (3) The foreign corporation is without a registered agent or registered office in this State for 60 days or more;
- (4) The foreign corporation does not inform the Secretary of State under G.S. 55-15-08 or G.S. 55-15-09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;
- (5) An incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

- (6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;
- (7) The corporation is exceeding the authority conferred upon it by this act.

(b) Nothing herein shall be deemed to repeal or modify any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof.

**"§ 55-15-31. Procedure for and effect of revocation.**

(a) If the Secretary of State determines that one or more grounds exist under G.S. 55-15-30 for revocation of a certificate of authority, he shall mail to the foreign corporation written notice of his determination.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign corporation.

(c) The authority of a foreign corporation to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign corporation was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55-15-10.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**"§ 55-15-32. Appeal from revocation.**

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the superior court of Wake County within 30 days after service of the certificate of revocation is mailed. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. The appeal to the superior court shall be determined upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to set aside the revocation or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**"§ 55-15-33. Inapplicability of Administrative Procedure Act.**

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55-15-30 through 55-15-32.

"ARTICLE 16.

"Records and Reports.

"Part 1. Records.

**"§ 55-16-01. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its incorporators, shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) All written communications to shareholders generally within the past three years and the financial statements required to be made available to the shareholders for the past three years under G.S. 55-16-20;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the Secretary of State under G.S. 55-16-22.

**"§ 55-16-02. Inspection of records by shareholders.**

(a) A qualified shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in G.S. 55-16-01(e) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

(b) A qualified shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

- (1) Records of any final action taken by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under G.S. 55-16-02 (a);
- (2) Accounting records of the corporation; and
- (3) The record of shareholders;

provided that a shareholder of a public corporation shall not be entitled to inspect or copy any accounting records of the corporation or any records of the corporation with respect to any matter which the corporation determines in good faith may, if disclosed, adversely affect the corporation in the conduct of its business or may constitute material nonpublic information at the time the shareholder's notice of demand to inspect and copy is received by the corporation.

(c) A qualified shareholder may inspect and copy the records described in subsection (b) only if:

- (1) His demand is made in good faith and for a proper purpose;
- (2) He describes with reasonable particularity his purpose and the records he desires to inspect; and
- (3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

- (1) The right of a shareholder to inspect records under G.S. 55-7-20 or, if the shareholder is in litigation with the corporation, to inspect the records to the same extent as any other litigant;
- (2) The power of a court, independently of this act, to compel the production of corporate records for examination.

(f) For purposes of this section, 'shareholder' includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf and whose beneficial ownership is certified to the corporation by that voting trust or nominee.

(g) For purposes of this section a 'qualified shareholder' of a corporation is a person who shall have been a shareholder in the corporation for at least six months

immediately preceding his demand or who shall be the holder of at least five percent (5%) of the corporation's outstanding shares of any class.

**"§ 55-16-03. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under G.S. 55-16-02(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

**"§ 55-16-04. Court-ordered inspection.**

(a) If a corporation does not allow a shareholder who complies with G.S. 55-16-02(a) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office (or, if none in this State, its registered office) is located may, upon application of the shareholder, summarily order inspection and copying of the records demanded at the corporation's expense.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with G.S. 55-16-02(b) and (c) may apply to the superior court in the county where the corporation's principal office (or, if none in this State, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

**"Part 2. Reports.**

**"§ 55-16-20. Financial statements for shareholders.**

(a) A corporation shall make available to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of cash flows for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted

accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

- (1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements, or a written notice of their availability, to each shareholder within 120 days after the close of each fiscal year; provided that the failure of the corporation to comply with this requirement shall not constitute the basis for any claim of damages by any shareholder unless such failure was in bad faith. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the latest financial statements.

**"§ 55-16-21. Other reports to shareholders.**

(a) If a corporation other than a public corporation indemnifies or advances expenses to a director under G.S. 55-8-51, 55-8-52, 55-8-53, 55-8-54, or 55-8-57 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation other than a public corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, other than in a transaction or pursuant to a plan previously approved by a majority of the shares entitled to vote thereon, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

**"§ 55-16-22. Annual report for Secretary of State.**

(a) Each domestic corporation except those governed by Chapter 55B, and each foreign corporation authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both;
- (3) The address of its principal office;
- (4) The names, titles, and business addresses of its principal officers;
- (4a) The names and business addresses of its directors; and

(5) A brief description of the nature of its business.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed at any time for the purpose of correcting, updating, or augmenting the information contained in such annual report.

#### "ARTICLE 17.

##### "Transition and Curative Provisions.

##### **"§ 55-17-01. Applicability of act.**

(a) The provisions of this act shall apply to every corporation for profit, and, so far as appropriate, to every corporation not for profit having a capital stock, now existing or hereafter formed, and to the outstanding and future securities thereof, except to the extent the corporation is expressly excepted by this act from its operation or except to the extent that there is other specific statutory provision particularly applicable to the corporation or inconsistent with some provisions of this act, in which case that other provision prevails.

(b) Notwithstanding the provisions of subsection (a) of this section, no corporation not for profit having a capital stock and formed for religious, charitable, nonprofit, social, or literary purposes shall hereafter be formed under this act.

##### **"§ 55-17-02. Application to qualified foreign corporations.**

A foreign corporation authorized to transact business in this State on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

##### **"§ 55-17-03. Saving provisions.**

(a) The existence of corporations formed before the effective date of this act shall not be impaired by the enactment of this act nor by any change made by this act in the requirements for the formation of corporations nor by any amendment or repeal by this act of the laws under which they were formed or created, and, except as otherwise expressly provided in this act, the repeal of a prior act by this act shall not affect any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

(b) Any proceeding or corporate action commenced prior to the effective date of this act may be completed in accordance with the law then in effect.

##### **"§ 55-17-04. Severability.**

If any provision of this act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

**"§ 55-17-05. Curative statute.**

All deeds, conveyances and other instruments executed prior to the effective date of this act and validated by the curative provisions of former G.S. 55-36.1 and former Article 12 of Chapter 55 as they were immediately prior to such effective date shall be valid and effective to the same extent as if those provisions had not been amended or repealed."

Sec. 2. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Comments to the 1984 Revised Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 3. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 8th day of June, 1989.