

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 624*

Short Title: Nonprofit Corporation Act.

(Public)

Sponsors: Representative Kennedy.

Referred to: Courts and Justice.

March 29, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE CHAPTER 55A OF THE GENERAL STATUTES
3 RELATING TO NONPROFIT CORPORATIONS AS RECOMMENDED BY THE
4 GENERAL STATUTES COMMISSION.

5 The General Assembly of North Carolina enacts:

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

7 **"CHAPTER 55A.**

8 **"NORTH CAROLINA NONPROFIT CORPORATION ACT.**

9 **"ARTICLE 1.**

10 **"GENERAL PROVISIONS.**

11 **"PART 1. SHORT TITLE AND RESERVATION OF POWER.**

12 **"§ 55A-1-01. Short title.**

13 This Chapter shall be known and may be cited as the 'North Carolina Nonprofit
14 Corporation Act'.

15 **"§ 55A-1-02. Reservation of power to amend or repeal.**

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

19 **"PART 2. FILING DOCUMENTS.**

20 **"§ 55A-1-20. Filing requirements.**

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

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

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

5 (d) The document must be typewritten or printed.

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

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

10 (f) The document must be executed:

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

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

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

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

20 (1) The corporate seal;

21 (2) An attestation by the secretary or an assistant secretary; and

22 (3) An acknowledgment, verification, or proof.

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

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

28 (j) Any signature on any document authorized to be filed with the Secretary of
29 State under any provision of this Chapter may be a facsimile.

30 **"§ 55A-1-21. Forms.**

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

32 (1) An application for a certificate of existence;

33 (2) A foreign corporation's application for a certificate of authority to
34 conduct affairs in this State;

35 (3) A foreign corporation's application for a certificate of withdrawal; and

36 (4) The annual report.

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

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

41 **"§ 55A-1-22. Reserved for future codification purposes.**

42 **"§ 55A-1-23. Effective time and date of document.**

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

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

4 (2) At a later time specified in the document as its effective time on the
5 date it is filed.

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

11 (c) Except as provided in G.S. 55A-2-03(b), the fact that a document has become
12 effective under this section does not determine its validity or invalidity or the
13 correctness or incorrectness of the information contained in the document.

14 **"§ 55A-1-24. Correcting filed document.**

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

18 (b) A document is corrected:

19 (1) By preparing articles of correction that (i) describe the document
20 (including its filing date) or have attached to them a copy of the
21 document, (ii) specify the incorrect statement and the reason it is
22 incorrect or the manner in which the execution was defective, and (iii)
23 correct the incorrect statement or defective execution; and

24 (2) By delivering the articles to the Secretary of State for filing.

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

29 **"§ 55A-1-25. Filing duty of Secretary of State.**

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

32 (b) The Secretary of State files a document by stamping or otherwise endorsing
33 'Filed', together with the Secretary of State's name and official title and the date and
34 time of filing, on both the original and the exact or conformed copy. After filing a
35 document, except as provided in G.S. 55A-5-03 and G.S. 55A-15-09, the Secretary of
36 State shall deliver the exact or conformed copy to the domestic or foreign corporation or
37 its representative.

38 (c) If the Secretary of State refuses to file a document, the Secretary of State
39 shall return it, by personal delivery or by first-class mail postage prepaid, to the
40 domestic or foreign corporation or its representative within five days after the document
41 was received, together with a brief written statement of the date of and the reason for
42 refusal.

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

4 (1) Except as provided in G.S. 55A-2-03(b), affect the validity or
5 invalidity of the document in whole or part;

6 (2) Determine the correctness or incorrectness of information contained in
7 the document;

8 (3) Create a presumption that the document is valid or invalid or that
9 information contained in the document is correct or incorrect.

10 **"§ 55A-1-26. Appeal from Secretary of State's refusal to file document.**

11 (a) If the Secretary of State refuses to file a document delivered to the Secretary
12 of State's office for filing, the person tendering the document for filing may, with 30
13 days after such refusal, appeal the refusal to the Superior Court of Wake County. The
14 appeal is commenced by filing a petition with the court and with the Secretary of State
15 requesting the court to compel the Secretary of State to file the document. The petition
16 shall have attached to it the document to be filed and the Secretary of State's explanation
17 for his refusal to file. The appeal to the superior court is not governed by the
18 Administrative Procedure Act and shall be determined upon such further notice and
19 opportunity to be heard, if any, as the court may deem appropriate under the
20 circumstances.

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

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

25 **"§ 55A-1-27. Evidentiary effect of certificate of filing.**

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

30 **"§ 55A-1-28. Certificate of existence.**

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

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

35 (1) The domestic corporation's corporate name or the foreign corporation's
36 name used in this State;

37 (2) That the domestic corporation is duly incorporated under the law of
38 this State, the date of its incorporation, and the period of its duration if
39 less than perpetual; or that the foreign corporation is authorized to
40 conduct affairs in this State;

41 (3) That the articles of incorporation of a domestic corporation or the
42 certificate of authority of a foreign corporation has not been suspended
43 for failure to comply with the Revenue Act of this State and that the

1 corporation has not been administratively dissolved for failure to
2 comply with the provisions of this Chapter;

3 (4) That its most recent annual report required by G.S. 55A-16-22 has
4 been delivered to the Secretary of State;

5 (5) That articles of dissolution have not been filed; and

6 (6) Other facts of record in the office of the Secretary of State that may be
7 requested by the applicant.

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

12 **"§ 55A-1-29. Penalty for signing false document.**

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

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

17 **"PART 3. SECRETARY OF STATE.**

18 **"§ 55A-1-30. Powers.**

19 The Secretary of State has the power reasonably necessary to perform the duties
20 required of the Secretary of State by this Chapter.

21 **"§ 55A-1-31. Interrogatories by Secretary of State.**

22 The Secretary of State may propound to any domestic or foreign corporation which
23 the Secretary of State has reason to believe is subject to the provisions of this Chapter,
24 and to any officer or director thereof, any written interrogatories as may be reasonably
25 necessary and proper to enable the Secretary of State to ascertain whether the
26 corporation is subject to the provisions of this Chapter or has complied with all the
27 provisions of this Chapter applicable to it. The interrogatories shall be answered within
28 30 days after the mailing thereof, or within such additional time as shall be fixed by the
29 Secretary of State, and the answers thereto shall be full and complete and shall be made
30 in writing and under oath. If the interrogatories are directed to an individual, they shall
31 be answered by the individual, and if directed to a corporation, they shall be answered
32 by the presiding officer of the board of directors, the president, or by another officer of
33 the corporation. The Secretary of State shall certify to the Attorney General, for such
34 action as the Attorney General may deem appropriate, all interrogatories and answers
35 thereto which disclose a violation of any of the provisions of this Chapter, requiring or
36 permitting action by the Attorney General.

37 **"§ 55A-1-32. Penalties imposed upon corporations, officers, and directors for**
38 **failure to answer interrogatories.**

39 (a) The knowing failure or refusal of a domestic or foreign corporation to answer
40 truthfully and fully, within the time prescribed in this Chapter, interrogatories
41 propounded by the Secretary of State in accordance with the provisions of this Chapter
42 is a misdemeanor.

43 (b) Each officer and director of a domestic or foreign corporation who knowingly
44 fails or refuses, within the time prescribed by this Chapter, to answer truthfully and fully

1 interrogatories propounded to him by the Secretary of State in accordance with the
2 provisions of this Chapter shall be guilty of a misdemeanor.

3 **"§ 55A-1-33. Information disclosed by interrogatories.**

4 Interrogatories propounded by the Secretary of State and the answers thereto shall
5 not be open to public inspection nor shall the Secretary of State disclose any facts or
6 information obtained therefrom except when official duty requires disclosure to be
7 made public or when the interrogatories or the answers thereto are required for evidence
8 in any criminal proceeding or in any other action or proceeding by this State.

9 **"PART 4. DEFINITIONS.**

10 **"§ 55A-1-40. Chapter definitions.**

11 In this Chapter unless otherwise specifically provided:

- 12 (1) 'Articles of incorporation' include amended and restated articles of
13 incorporation and articles of merger.
- 14 (2) 'Board' or 'board of directors' means the group of natural persons
15 vested by the corporation with the management of its affairs whether
16 or not the group is designated as directors in the articles of
17 incorporation or bylaws.
- 18 (3) 'Bylaws' means the rules (other than the articles) adopted pursuant to
19 this Chapter for the regulation or management of the affairs of the
20 corporation irrespective of the name or names by which the rules are
21 designated.
- 22 (4) 'Charitable or religious corporation' means any corporation that is
23 exempt under section 501(c)(3) of the Internal Revenue Code of 1986
24 or any successor section, or that is organized exclusively for one or
25 more of the purposes specified in section 501(c)(3) of the Internal
26 Revenue Code of 1986 or any successor section and that upon
27 dissolution must distribute its assets to a charitable or religious
28 corporation, the United States, a state or an entity that is exempt under
29 section 501(c)(3) of the Internal Revenue Code of 1986 or any
30 successor section.
- 31 (5) 'Corporation' or 'domestic corporation' means a nonprofit corporation
32 subject to the provisions of this Chapter, except a foreign corporation.
- 33 (6) 'Delegates' means those persons elected or appointed to vote in a
34 representative assembly for the election of a director or directors or on
35 other matters.
- 36 (7) 'Deliver' includes mail.
- 37 (8) 'Distribution' means a direct or indirect transfer of money or other
38 property or incurrence of indebtedness by a corporation to or for the
39 benefit of its members, directors, or officers, or to or for the benefit of
40 transferees in liquidation under Article 14 of this Chapter (other than
41 creditors).
- 42 (9) 'Effective date of notice' is defined in G.S. 55A-1-41.
- 43 (10) 'Entity' includes corporation and foreign corporation; domestic or
44 foreign business corporation; professional corporation; limited liability

1 company; profit and nonprofit unincorporated association, chapter or
2 other organizational unit; business trust, estate, partnership, trust, and
3 two or more persons having a joint or common economic interest; and
4 state, United States, and foreign government.

5 (11) 'Foreign corporation' means a corporation (with or without capital
6 stock) organized under a law other than the law of this State for
7 purposes for which a corporation might be organized under this
8 Chapter.

9 (12) 'Governmental subdivision' includes authority, county, district, and
10 municipality.

11 (13) 'Includes' denotes a partial definition.

12 (14) 'Individual' denotes a natural person legally competent to act and also
13 includes the estate of an incompetent or deceased individual.

14 (15) 'Means' denotes an exhaustive definition.

15 (16) 'Member' means a person who is, by the articles of incorporation or
16 bylaws of the corporation, either (i) specifically designated as a
17 member or (ii) included in a category of persons specifically
18 designated as members. A person is not a member solely by reason of
19 having voting rights or other rights associated with membership.

20 (17) 'Nonprofit corporation' means a corporation intended to have no
21 income or intended to have income none of which is distributable to its
22 members, directors, or officers, except as permitted by Article 13 of
23 this Chapter, and includes all associations without capital stock formed
24 under Subchapter V of Chapter 54 of the General Statutes or under any
25 act or acts replaced thereby.

26 (18) 'Notice' includes demand and is defined in G.S. 55A-1-41.

27 (19) 'Person' includes individual and entity.

28 (20) 'Principal office' means the office (in or out of this State) so designated
29 in the annual report filed pursuant to G.S. 55A-16-22 where the
30 principal offices of a domestic or foreign corporation are located.

31 (21) 'Proceeding' includes civil suit and criminal, administrative, and
32 investigatory action.

33 (22) 'Record date' means the date established under Article 7 of this
34 Chapter on which a corporation determines the identity of its members
35 for the purposes of this Chapter.

36 (23) 'Secretary' means the corporate officer to whom the board of directors
37 has delegated responsibility under G.S. 55A-8-40(c) for custody of the
38 minutes of the meetings of the board of directors and of the members
39 and for authenticating records of the corporation.

40 (24) 'State,' when referring to a part of the United States, includes a state
41 and commonwealth (and their agencies and governmental
42 subdivisions) and a territory, and insular possession (and their agencies
43 and governmental subdivisions) of the United States.

1 (25) 'United States' includes district, authority, bureau, commission,
2 department, and any other agency of the United States.

3 (26) 'Vote' includes authorization by written ballot and written consent.

4 **"§ 55A-1-41. Notice.**

5 (a) Notice under this Chapter shall be in writing unless oral notice is authorized
6 in the corporation's articles of incorporation or bylaws and written notice is not
7 specifically required by this Chapter.

8 (b) Notice may be communicated in person; by telephone, telegraph, teletype, or
9 other form of wire or wireless communication, or by facsimile transmission; or by mail
10 or private carrier. If these forms of personal notice are impracticable as to one or more
11 persons, notice may be communicated to such persons by publishing notice in a
12 newspaper, or by radio, television, or other form of public broadcast communication, in
13 the county where the corporation has its principal place of business in the State, or if it
14 has no principal place of business in the State, the county where it has its registered
15 office.

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

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

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

28 (1) When received;

29 (2) Five days after its deposit in the United States mail, as evidenced by
30 the postmark or otherwise, if mailed with at least first-class postage
31 thereon prepaid and correctly addressed;

32 (3) On the date shown on the return receipt, if sent by registered or
33 certified mail, return receipt requested, and the receipt is signed by or
34 on behalf of the addressee;

35 (4) If mailed with less than first-class postage, 30 days after its deposit in
36 the United States mail, as evidenced by the postmark or otherwise, if
37 mailed with postage thereon prepaid and correctly addressed;

38 (5) When delivered to the member's address shown in the corporation's
39 current list of members.

40 (f) Written notice is correctly addressed to a member of a domestic or foreign
41 corporation if addressed to the member's address shown in the corporation's current list
42 of members. In the case of members who are residents of the same household and who
43 have the same address, the corporation's bylaws may provide that a single notice may be
44 given to such members jointly.

1 (g) Oral notice is effective when actually communicated to the person entitled to
2 notice.

3 (h) If this Chapter prescribes notice requirements for particular circumstances,
4 those requirements govern. If articles of incorporation or bylaws prescribe notice
5 requirements not inconsistent with this section or other provisions of this Chapter, those
6 requirements govern.

7 (i) Written notice need not be provided in a separate document and may be
8 included as part of a newsletter, magazine, or other publication regularly sent to
9 members if conspicuously identified as a notice.

10 **"PART 5. PRIVATE FOUNDATIONS.**

11 **"§ 55A-1-50. Private Foundations.**

12 Except where otherwise determined by a court of competent jurisdiction, a
13 corporation that is a private foundation as defined in section 509(a) of the Internal
14 Revenue Code of 1986:

15 (1) Shall distribute such amounts for each taxable year at such time and in
16 such manner as not to subject the corporation to tax under section 4942
17 of the Code.

18 (2) Shall not engage in any act of self-dealing as defined in section
19 4941(d) of the Code.

20 (3) Shall not retain any excess business holdings as defined in section
21 4943(c) of the Code.

22 (4) Shall not make any investments in such manner as to subject the
23 corporation to tax under section 4944 of the Code.

24 (5) Shall not make any taxable expenditures as defined in section 4945(d)
25 of the Code.

26 All references in this section to sections of the Code shall be to sections of the
27 Internal Revenue Code of 1986 as amended from time to time, or to corresponding
28 provisions of subsequent internal revenue laws of the United States.

29 **"PART 6. JUDICIAL RELIEF.**

30 **"§ 55A-1-60. Judicial relief.**

31 (a) If for any reason it is impracticable for any corporation to call or conduct a
32 meeting of its members, delegates, or directors, or otherwise obtain their consent, in the
33 manner prescribed by its articles of incorporation, bylaws, or this Chapter, then upon
34 petition of a director, officer, delegate, member, or the Attorney General, the superior
35 court may order that such a meeting be held or that a written ballot or other method be
36 used for obtaining the vote of members, delegates, or directors, in such a manner as the
37 court finds fair and equitable under the circumstances.

38 (b) The court shall, in an order issued pursuant to this section, provide for a
39 method of notice reasonably designed to give actual notice to all persons who would be
40 entitled to notice of a meeting held pursuant to the articles of incorporation, bylaws, and
41 this Chapter, and notice given in this manner shall be effective whether or not it results
42 in actual notice to all persons or conforms to the notice requirements that would
43 otherwise apply. Notice shall be given in this manner to all persons determined by the
44 court to be members or directors.

1 (c) The order issued pursuant to this section may, to the extent the court finds it
2 reasonably required under the circumstances, dispense with any requirement relating to
3 the holding of or voting at meetings or obtaining votes, including any requirement as to
4 quorums or as to the number or percentage of votes needed for approval, that would
5 otherwise be imposed by the articles of incorporation, bylaws, or this Chapter.

6 (d) Whenever practical any order issued pursuant to this section shall limit the
7 subject matter of meetings or other forms of consent authorized to items, including
8 amendments to the articles of incorporation or bylaws, the resolution of which will or
9 may enable the corporation to continue managing its affairs without further resort to this
10 section; provided, however, that an order under this section may also authorize the
11 obtaining of whatever votes and approvals are necessary for the dissolution, merger, or
12 sale of assets.

13 (e) Any meeting or other method of obtaining the vote of members, delegates, or
14 directors conducted pursuant to an order issued under this section, and that complies
15 with all the provisions of the order, is for all purposes a valid meeting or vote, as the
16 case may be, and shall have the same force and effect as if it complied with every
17 requirement imposed by the articles of incorporation, bylaws, and this Chapter.

18 **"ARTICLE 2.**
19 **"ORGANIZATION.**

20 **"§ 55A-2-01. Incorporators.**

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

23 **"§ 55A-2-02. Articles of incorporation.**

24 (a) The articles of incorporation must set forth:

- 25 (1) A corporate name for the corporation that satisfies the requirements of
26 G.S. 55A-4-01;
27 (2) If the corporation is a charitable or religious corporation, a statement
28 to that effect if it was incorporated on or after the effective date of this
29 Chapter;
30 (3) The street address, and the mailing address if different from the street
31 address, of the corporation's initial registered office, the county in
32 which the initial registered office is located, and the name of the
33 corporation's initial registered agent at that address;
34 (4) The name and address of each incorporator;
35 (5) Whether or not the corporation will have members; and
36 (6) Provisions not inconsistent with law regarding the distribution of
37 assets on dissolution.

38 (b) The articles of incorporation may set forth any provision that under this
39 Chapter is required or permitted to be set forth in the bylaws, and may also set forth:

- 40 (1) The purpose or purposes for which the corporation is organized, which
41 may be, either alone or in combination with other purposes, the
42 transaction of any lawful activity;
43 (2) The names and addresses of the individuals who are to serve as the
44 initial directors;

- 1 (3) Provisions not inconsistent with law regarding:
2 a. Managing and regulating the affairs of the corporation;
3 b. Defining, limiting, and regulating the powers of the corporation,
4 its board of directors, and members (or any class of members);
5 and
6 c. The characteristics, qualifications, rights, limitations, and
7 obligations attaching to each or any class of members;

- 8 (4) A provision limiting or eliminating the personal liability of any
9 director for monetary damages arising out of an action whether by or
10 in the right of the corporation or otherwise for breach of any duty as a
11 director. No such provision shall be effective with respect to (i) acts or
12 omissions that the director at the time of the breach knew or believed
13 were clearly in conflict with the best interests of the corporation, (ii)
14 any liability under G.S. 55A-8-32 or G.S. 55A-8-33, (iii) any
15 transaction from which the director derived an improper personal
16 financial benefit, or (iv) acts or omissions occurring prior to the date
17 the provision became effective. As used herein, the term 'improper
18 personal financial benefit' does not include a director's reasonable
19 compensation or other reasonable incidental benefit for or on account
20 of his service as a director, trustee, officer, employee, independent
21 contractor, attorney, or consultant of the corporation. A provision
22 permitted by this Chapter in the articles of incorporation, bylaws, or a
23 contract or resolution indemnifying or agreeing to indemnify a director
24 against personal liability shall be fully effective whether or not there is
25 a provision in the articles of incorporation limiting or eliminating
26 personal liability.

27 (c) The articles of incorporation need not set forth any of the corporate powers
28 enumerated in this Chapter.

29 "**§ 55A-2-03. Incorporation.**

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

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

36 "**§ 55A-2-04. Reserved for future codification purposes.**

37 "**§ 55A-2-05. Organization of corporation.**

38 (a) After incorporation:

- 39 (1) If initial directors are named in the articles of incorporation, the initial
40 directors shall hold an organizational meeting at the call of a majority
41 of the directors to complete the organization of the corporation by
42 appointing officers, adopting bylaws, and conducting any other
43 business brought before the meeting.

1 (2) If initial directors are not named in the articles of incorporation, the
2 incorporator or incorporators shall hold an organizational meeting at
3 the call of a majority of the incorporators (i) to elect directors and
4 complete the organization of the corporation, or (ii) to elect a board of
5 directors who shall complete the organization of the corporation.

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

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

12 **"§ 55A-2-06. Bylaws.**

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

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

18 **"§ 55A-2-07. Emergency bylaws.**

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

24 (1) Procedures for calling a meeting of the board of directors;

25 (2) Quorum requirements for the meeting; and

26 (3) Designation of additional or substitute directors.

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

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

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

36 **"ARTICLE 3.**

37 **"PURPOSES AND POWERS.**

38 **"§ 55A-3-01. Purposes.**

39 (a) Every corporation incorporated under this Chapter has the purpose of
40 engaging in any lawful activity unless a more limited purpose is set forth in its articles
41 of incorporation.

42 (b) A corporation engaging in an activity that is subject to regulation under
43 another statute of this State may incorporate under this Chapter only if permitted by,
44 and subject to all limitations of, the other statute.

1 "§ 55A-3-02. General powers.

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

- 6 (1) To sue and be sued, complain and defend in its corporate name;
7 (2) To have a corporate seal, which may be altered at will, and to use it, or
8 a facsimile of it, by impressing or affixing it or in any other manner
9 reproducing it;
10 (3) To make and amend bylaws not inconsistent with its articles of
11 incorporation or with the laws of this State, for regulating and
12 managing the affairs of the corporation;
13 (4) To purchase, receive, lease, or otherwise acquire, and own, hold,
14 improve, use, and otherwise deal with, real or personal property, or
15 any legal or equitable interest in property, wherever located;
16 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
17 dispose of all or any part of its property;
18 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold,
19 vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and
20 deal in and with shares or other interests in, or obligations of, any other
21 entity;
22 (7) To make contracts and guarantees, incur liabilities, borrow money,
23 issue its notes, bonds, and other obligations, and secure any of its
24 obligations by mortgage or pledge of any of its property, franchises, or
25 income;
26 (8) To lend money, invest and reinvest its funds, and receive and hold real
27 and personal property as security for repayment, except as limited by
28 G.S. 55A-8-32;
29 (9) To be a promoter, partner, member, associate or manager of any
30 partnership, joint venture, trust, or other entity;
31 (10) To conduct its affairs, locate offices, and exercise the powers granted
32 by this Chapter within or without this State;
33 (11) To elect or appoint directors, officers, employees, and agents of the
34 corporation, define their duties, and fix their compensation;
35 (12) To pay pensions and establish pension plans, pension trusts, and other
36 benefit and incentive plans for any or all of its current or former
37 directors, officers, employees, and agents;
38 (13) To make donations for the public welfare or for charitable, religious,
39 cultural, scientific, or educational purposes, and to make payments or
40 donations not inconsistent with law for other purposes that further the
41 corporate interest;
42 (14) To impose dues, assessments, admission and transfer fees upon its
43 members;

- 1 (15) To establish conditions for admission of members, admit members and
2 issue memberships;
3 (16) To carry on a business;
4 (17) To procure insurance for its benefit on the life or physical or mental
5 ability of any director, officer or employee and, in the case of a
6 charitable or religious corporation, any sponsor, contributor, pledgor,
7 student or former student whose death or disability might cause
8 financial loss to the corporation, and for these purposes the corporation
9 is deemed to have an insurable interest in each such person; and to
10 procure insurance for its benefit on the life or physical or mental
11 ability of any other person in whom it has an insurable interest;
12 (18) To engage in any lawful activity that will aid governmental policy;
13 (19) To do all things necessary or convenient, not inconsistent with law, to
14 further the activities and affairs of the corporation.

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

17 **"§ 55A-3-03. Emergency powers.**

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

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

24 (b) During an emergency defined in subsection (d) of this section, unless
25 emergency bylaws provide otherwise:

- 26 (1) Notice of a meeting of the board of directors need be given only to
27 those directors it is practicable to reach and may be given in any
28 practicable manner, including by publication and radio; and
29 (2) One or more officers of the corporation present at a meeting of the
30 board of directors may be deemed to be directors for the meeting, in
31 order of rank and within the same rank in order of seniority, as
32 necessary to achieve a quorum.

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

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

39 **"§ 55A-3-04. Ultra vires.**

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

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

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

- 3 **(1)** The corporate name of a domestic nonprofit corporation or a foreign
4 nonprofit corporation authorized to conduct affairs in this State;
5 **(2)** The corporate name of a business corporation incorporated or
6 authorized to transact business in this State;
7 **(3)** A corporate name reserved or registered under G.S. 55A-4-02, 55A-4-
8 03, 55-4-02, or 55-4-03; or
9 **(4)** The fictitious name adopted by a foreign business or nonprofit
10 corporation authorized to transact business or conduct affairs in this
11 State because its real name is unavailable.

12 **(c)** A person may apply to the Secretary of State for authorization to use a name
13 that is not distinguishable upon the Secretary of State's records from one or more of the
14 names described in subsection (b) of this section. The Secretary of State shall authorize
15 use of the name applied for if:

- 16 **(1)** The other corporation consents to the use in writing and submits an
17 undertaking in form satisfactory to the Secretary of State to change its
18 name to a name that is distinguishable upon the records of the
19 Secretary of State from the name of the applicant; or
20 **(2)** The applicant delivers to the Secretary of State a certified copy of a
21 final judgment of a court of competent jurisdiction establishing the
22 applicant's right to use the name applied for in this State.

23 **(d)** The use of assumed names or fictitious names as provided for in Chapter 66
24 of the General Statutes, is not affected by this Chapter.

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

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

33 **"§ 55A-4-02. Reserved name.**

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

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

1 (c) Any person acquiring the goodwill of a domestic corporation or of a foreign
2 corporation authorized to conduct affairs in this State may, on furnishing the Secretary
3 of State satisfactory evidence of such acquisition, reserve the exclusive right to that
4 corporate name for a period of 10 years.

5 **"§ 55A-4-03. Registered name.**

6 (a) A foreign corporation may register its corporate name, or its corporate name
7 with any addition required by G.S. 55A-15-06, if the name is distinguishable upon the
8 records of the Secretary of State from the corporate names described in G.S. 55-4-
9 01(b)(4).

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

13 (1) Setting forth its corporate name, or its corporate name with any
14 addition required by G.S. 55A-15-06, the state or country and date of
15 its incorporation, and a brief description of the nature of the activities
16 in which it is engaged; and

17 (2) Accompanied by a certificate of existence (or a document of similar
18 import) from the state or country of incorporation.

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

22 (d) A foreign corporation whose registration is effective may renew it for
23 successive years by filing with the Secretary of State between October 1 and December
24 31 of the preceding year a renewal application which complies with the requirements of
25 subsection (b) of this section. The renewal application renews the registration for the
26 following calendar year. Any renewal application filed after the expiration of the
27 registration shall be treated as a new application for registration.

28 (e) A foreign corporation whose registration is effective may thereafter qualify as
29 a foreign corporation under that name or consent in writing to the use of that name by a
30 corporation thereafter incorporated under this Chapter or by another foreign corporation
31 thereafter authorized to conduct affairs in this State. The registration terminates when
32 the domestic corporation is incorporated or the foreign corporation qualifies or consents
33 to the qualification of another foreign corporation under the registered name.

34 **"§ 55A-4-04. Reserved and registered names, powers of the Secretary of State.**

35 The Secretary of State may revoke any reservation or registration of a corporate
36 name if the Secretary of State finds, upon a hearing not less than 15 days after the
37 effective date of written notice given by registered or certified mail, return receipt
38 requested, to the person or corporation who made the reservation or registration, that the
39 application therefor or any transfer thereof was not made in good faith or that any
40 statement contained in the application for reservation or registration was false when the
41 application was filed or has thereafter become false.

42 **"§ 55-4-05. Real property records.**

43 (a) Whenever the name of any domestic or foreign corporation holding title to
44 real property in this State is changed upon amendment to the articles of incorporation or

1 whenever title to real property in this State is transferred by operation of law upon
2 merger of two or more corporations, a certificate reciting the change or transfer shall be
3 recorded by the corporation or its successor in the office of the register of deeds of the
4 county where the property lies, or if the property is located in more than one county,
5 then in each county where any portion of the property lies.

6 (b) The Secretary of State shall adopt uniform certificates to be furnished for
7 recording in accordance with this section. In the case of a foreign corporation, a similar
8 certificate by any competent authority of the jurisdiction of incorporation may be
9 recorded in accordance with this section.

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

17 "ARTICLE 5.

18 "OFFICE AND AGENT.

19 "§ 55A-5-01. Registered office and registered agent.

20 Each corporation must continuously maintain in this State:

- 21 (1) A registered office that may be the same as any place where it
22 conducts affairs; and
- 23 (2) A registered agent, who shall be:
 - 24 a. An individual who resides in this State and whose office is
25 identical with the registered office;
 - 26 b. A domestic business or nonprofit corporation whose office is
27 identical with the registered office; or
 - 28 c. A foreign business or nonprofit corporation authorized to
29 transact business or conduct affairs in this State whose office is
30 identical with the registered office.

31 "§ 55A-5-02. Change of registered office or registered agent.

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

- 34 (1) The name of the corporation;
- 35 (2) The street address, and the mailing address if different from the street
36 address, of the corporation's current registered office, and the county in
37 which it is located;
- 38 (3) If the address of the corporation's registered office is to be changed,
39 the street address, and the mailing address if different from the street
40 address, of the new registered office, and the county in which it is
41 located;
- 42 (4) The name of its current registered agent;

1 (5) If the current registered agent is to be changed, the name of the new
2 registered agent and the new agent's written consent (either on the
3 statement or attached to it) to the appointment; and

4 (6) That after the change or changes are made, the addresses of its
5 registered office and the office of its registered agent will be identical.

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

12 (c) A corporation may change its registered office or registered agent by
13 including in its annual report required by G.S. 55A-16-22 the information and any
14 written consent required by subsection (a) of this section.

15 **"§ 55A-5-03. Resignation of registered agent.**

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

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

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

29 **"§ 55A-5-04. Service on corporation.**

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

32 (b) When a corporation fails to appoint or maintain a registered agent in this
33 State, or when its registered agent cannot with due diligence be found at the registered
34 office, the Secretary of State shall be an agent of the corporation upon whom any
35 process, notice, or demand may be served. Service on the Secretary of State of any
36 process, notice, or demand shall be made by delivering to and leaving with the Secretary
37 of State or with any clerk having charge of the corporation department of his office,
38 duplicate copies of such process, notice, or demand. In the event any process, notice, or
39 demand is served on the Secretary of State, he shall immediately mail one of the copies
40 thereof, by registered or certified mail, return receipt requested, to the corporation at its
41 principal office shown in its most recent annual report or in any subsequent
42 communication received from the corporation stating the current mailing address of its
43 principal office or, if there is no mailing address for the principal office on file, to the
44 corporation at its registered office. Service on a corporation under this subsection shall

1 be effective for all purposes from and after the date of such service on the Secretary of
2 State.

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

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

9 **"ARTICLE 6.**

10 **"MEMBERS AND MEMBERSHIPS.**

11 **"PART 1. ADMISSION OF MEMBERS.**

12 **"§ 55A-6-01. Members.**

13 (a) A corporation may have one or more classes of members or may have no
14 members.

15 (b) No person shall be admitted as a member without the person's consent.

16 **"PART 2. MEMBERS' RIGHTS AND OBLIGATIONS.**

17 **"§ 55A-6-10. Designations, qualifications, rights, and obligations of members.**

18 If a corporation has members, the designations, qualifications, rights, and obligations
19 of members shall be set forth in or authorized by the articles of incorporation or bylaws,
20 and may include any provisions not inconsistent with law or the articles of incorporation
21 with respect to:

22 (1) Conditions of admission and membership;

23 (2) Voting rights and the manner of exercising voting rights;

24 (3) The relative rights and obligations of members among themselves, to
25 the corporation, and with respect to the property of the corporation;

26 (4) The manner of terminating membership in the corporation;

27 (5) The rights and obligations of the members and the corporation upon
28 such termination;

29 (6) The transferability or nontransferability of memberships; and

30 (7) Any other matters.

31 Except as otherwise provided in or authorized by the articles of incorporation or bylaws,
32 all members shall have the same designations, qualifications, rights, and obligations.

33 **"§ 55A-6-11. Prohibition of stock.**

34 A corporation shall neither authorize nor issue shares of stock.

35 **"§ 55A-6-12. Member's liability to third parties.**

36 A member of a corporation is not, as such, personally liable for the acts, debts,
37 liabilities, or obligations of the corporation.

38 **"§ 55A-6-13. Member's liability for dues, assessments, and fees.**

39 A member may become liable to the corporation for dues, assessments, or fees;
40 provided, however, that a provision in the articles of incorporation or bylaws or a
41 resolution adopted by the board of directors authorizing or imposing dues, assessments,
42 or fees does not, of itself, create liability.

43 **"§ 55A-6-14. Creditor's action against member.**

1 (a) A creditor of a corporation may not bring a proceeding to enforce any
2 liability of a member to the corporation unless final judgment has been rendered in
3 favor of the creditor against the corporation and execution has been returned unsatisfied
4 in whole or in part or unless a proceeding against the corporation would be futile.

5 (b) All creditors of the corporation, with or without reducing their claims to
6 judgment, may intervene in any creditor's proceeding brought under subsection (a) of
7 this section to collect and apply the proceeds of obligations owed to the corporation.
8 Any or all members who are indebted to the corporation may be joined in such
9 proceeding.

10 **"PART 3. RESIGNATION AND TERMINATION.**

11 **"§ 55A-6-20. Resignation.**

12 (a) Any member may resign at any time.

13 (b) The resignation of a member does not relieve the member from any
14 obligations incurred or commitments made to the corporation prior to resignation.

15 **"§ 55A-6-21. Termination, expulsion, and suspension.**

16 (a) No member of a corporation may be expelled or suspended, and no
17 membership may be terminated or suspended, except in a manner that is fair and
18 reasonable and is carried out in good faith.

19 (b) Any proceeding challenging an expulsion, suspension, or termination must be
20 commenced within one year after the member receives notice of the expulsion,
21 suspension, or termination.

22 (c) A member who has been expelled or suspended may be liable to the
23 corporation for dues, assessments, or fees as a result of obligations incurred or
24 commitments made by the member prior to expulsion or suspension.

25 **"PART 4. DELEGATES.**

26 **"§ 55A-6-40. Delegates.**

27 (a) A corporation may provide in its articles of incorporation or bylaws for
28 delegates having some or all of the authority of members.

29 (b) The articles of incorporation or bylaws may set forth provisions relating to:

30 (1) The characteristics, qualifications, rights, limitations, and obligations
31 of delegates, including their selection and removal;

32 (2) Calling, noticing, holding, and conducting meetings of delegates; and

33 (3) Carrying on corporate activities during and between meetings of
34 delegates.

35 **"ARTICLE 7.**

36 **"MEMBERS' MEETINGS AND VOTING; DERIVATIVE PROCEEDINGS.**

37 **"PART 1. MEETINGS AND ACTION WITHOUT MEETINGS.**

38 **"§ 55A-7-01. Annual and regular meetings.**

39 (a) A corporation having members with the right to vote for directors shall hold a
40 meeting of such members annually.

41 (b) A corporation with members may hold regular membership meetings at the
42 times stated in or fixed in accordance with the bylaws.

43 (c) Annual and regular membership meetings may be held in or out of this State
44 at the place stated in or fixed in accordance with the bylaws. If no place is stated in or

1 fixed in accordance with the bylaws, annual and regular meetings shall be held at the
2 corporation's principal office.

3 (d) At annual and regular meetings, the members shall consider and act upon
4 such matters as may be raised consistent with the notice requirements of G.S. 55A-7-05
5 and G.S. 55A-7-22(d).

6 (e) The failure to hold an annual or regular meeting at a time stated in or fixed in
7 accordance with the corporation's bylaws does not affect the validity of any corporate
8 action.

9 **"§ 55A-7-02. Special meeting.**

10 (a) A corporation with members shall hold a special meeting of members:

11 (1) On call of its board of directors or the person or persons authorized to
12 do so by the articles of incorporation or bylaws; or

13 (2) Within 30 days after the holders of at least ten percent (10%) of all the
14 votes entitled to be cast on any issue proposed to be considered at the
15 proposed special meeting sign, date, and deliver to the corporation's
16 secretary one or more written demands for the meeting describing the
17 purpose or purposes for which it is to be held.

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

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

25 (d) Only those matters that are within the purpose or purposes described in the
26 meeting notice required by G.S. 55A-7-05 may be acted upon at a special meeting of
27 members.

28 **"§ 55A-7-03. Court-ordered meeting.**

29 (a) The superior court of the county where a corporation's principal office, or, if
30 there is none in this State, its registered office, is located may, after notice is given to
31 the corporation and upon such further notice and opportunity to be heard, if any, as the
32 court may deem appropriate under the circumstances, summarily order a meeting to be
33 held:

34 (1) On application of any member if an annual meeting was not held
35 within 15 months after the corporation's last annual meeting; or

36 (2) On application of a member who signed a demand for a special
37 meeting valid under G.S. 55A-7-02, if the corporation has not held the
38 meeting as required by that section.

39 (b) The court may fix the time and place of the meeting, specify a record date for
40 determining those persons entitled to notice of and to vote at the meeting, prescribe the
41 form and content of the meeting notice, fix the quorum required for specific matters to
42 be considered at the meeting (or direct that the votes represented at the meeting
43 constitute a quorum for action on those matters), and enter other orders necessary to
44 accomplish the purpose or purposes of the meeting.

1 (c) If the court orders a meeting, it may also order the corporation to pay all or
2 part of the member's costs (including reasonable attorneys' fees) incurred to obtain the
3 order.

4 **"§ 55A-7-04. Action by written consent.**

5 (a) Action required or permitted by this Chapter to be taken at a meeting of
6 members may be taken without a meeting if the action is taken by all members entitled
7 to vote on the action. The action must be evidenced by one or more written consents
8 describing the action taken, signed before or after such action by all members entitled to
9 vote thereon, and delivered to the corporation for inclusion in the minutes or filing with
10 the corporate records.

11 (b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the
12 record date for determining members entitled to take action without a meeting is the
13 date the first member signs the consent under subsection (a) of this section.

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

16 **"§ 55A-7-05. Notice of meeting.**

17 (a) A corporation shall give notice of meetings of members by any means that is
18 fair and reasonable and consistent with its bylaws.

19 (b) Any notice that conforms to the requirements of subsection (c) is fair and
20 reasonable, but other means of giving notice may also be fair and reasonable when all
21 the circumstances are considered; provided, however, that notice of matters referred to
22 in subdivision (c)(2) of this section must be given as provided in subsection (c) of this
23 section.

24 (c) Notice is fair and reasonable if:

25 (1) The corporation gives notice to all members entitled to vote at the
26 meeting of the place, date, and time of each annual, regular, and
27 special meeting of members no fewer than 10, or, if notice is mailed by
28 other than first class, registered or certified mail, no fewer than 30, nor
29 more than 60 days before the meeting date;

30 (2) Notice of an annual or regular meeting includes a description of any
31 matter or matters that must be approved by the members under G.S.
32 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02,
33 or 55A-14-02; and

34 (3) Notice of special meeting includes a description of the matter or
35 matters for which the meeting is called.

36 (d) Unless the bylaws require otherwise, if an annual, regular, or special meeting
37 of members is adjourned to a different date, time, or place, notice need not be given of
38 the new date, time, or place, if the new date, time, or place is announced at the meeting
39 before adjournment. If a new record date for the adjourned meeting is or must be fixed
40 under G.S. 55A-7-07, however, notice of the adjourned meeting must be given under
41 this section to the members of record entitled to vote at the meeting as of the new record
42 date.

43 (e) When giving notice of an annual, regular, or special meeting of members, a
44 corporation shall give notice of a matter a member intends to raise at the meeting if:

- 1 (1) Requested in writing to do so by a person or persons entitled to call a
2 special meeting pursuant to G.S. 55A-7-02; and
3 (2) The request is received by the secretary or president of the corporation
4 at least 10 days before the corporation gives notice of the meeting.

5 **"§ 55A-7-06. Waiver of notice.**

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

11 (b) A member's attendance at a meeting:

- 12 (1) Waives objection to lack of notice or defective notice of the meeting,
13 unless the member at the beginning of the meeting objects to holding
14 the meeting or conducting business at the meeting; and
15 (2) Waives objection to consideration of a particular matter at the meeting
16 that is not within the purpose or purposes described in the meeting
17 notice, unless the member objects to considering the matter before it is
18 voted upon.

19 **"§ 55A-7-07. Record date.**

20 (a) The bylaws of a corporation may fix or provide the manner of fixing a date as
21 the record date for determining the members entitled to notice of a members' meeting.
22 If the bylaws do not fix or provide for fixing a record date, the board of directors may
23 fix a future date as the record date. If no record date is fixed, members at the close of
24 business on the business day preceding the day on which notice is given are entitled to
25 notice of the meeting.

26 (b) The bylaws of a corporation may fix or provide the manner of fixing a date as
27 the record date for determining the members entitled to vote at a members' meeting. If
28 the bylaws do not fix or provide for fixing a record date, the board of directors may fix a
29 future date as the record date. If no record date is fixed, members on the date of the
30 meeting who are otherwise eligible to vote are entitled to vote at the meeting.

31 (c) The bylaws may fix or provide the manner for determining a date as the
32 record date for the purpose of determining the members entitled to any rights in respect
33 of any other lawful action. If the bylaws do not fix or provide for fixing a record date,
34 the board may fix in advance the record date. If no record date is fixed, members at the
35 close of business on the day on which the board adopts the resolution relating to such
36 action, or the 60th prior to the date of such action, whichever is later, are entitled to such
37 rights.

38 (d) A record date fixed under this section may not be more than 70 days before
39 the meeting or action for which a determination of members is required.

40 (e) A determination of members entitled to notice of or to vote at a membership
41 meeting is effective for any adjournment of the meeting unless the board fixes a new
42 date for determining the right to notice or the right to vote, which it must do if the
43 meeting is adjourned to a date more than 120 days after the date fixed for the original
44 meeting.

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

4 **"§ 55A-7-08. Action by written ballot.**

5 (a) Unless prohibited or limited by the articles of incorporation or bylaws and
6 without regard to the requirements of G.S. 55A-7-04, any action that may be taken at
7 any annual, regular, or special meeting of members may be taken without a meeting if
8 the corporation delivers a written ballot to every member entitled to vote on the matter.

9 (b) A written ballot shall:

10 (1) Set forth each proposed action; and

11 (2) Provide an opportunity to vote for or against each proposed action.

12 (c) Approval by written ballot pursuant to this section shall be valid only when
13 the number of votes cast by ballot equals or exceeds the quorum required to be present
14 at a meeting authorizing the action, and the number of approvals equals or exceeds the
15 number of votes that would be required to approve the matter at a meeting at which the
16 same total number of votes were cast.

17 (d) All solicitations for votes by written ballot shall indicate the time by which a
18 ballot must be received by the corporation in order to be counted.

19 (e) Except as otherwise provided in the articles of incorporation or bylaws, a
20 written ballot may not be revoked.

21 **"PART 2. VOTING.**

22 **"§ 55A-7-20. Members' list for meeting.**

23 (a) After fixing a record date for a notice of a meeting, a corporation shall
24 prepare an alphabetical list of the names of all its members who are entitled to notice of
25 the meeting. The list must show the address and number of votes each member is
26 entitled to cast at the meeting. The corporation shall prepare on a current basis through
27 the time of the membership meeting a list of members, if any, who are entitled to vote at
28 the meeting, but not entitled to notice of the meeting. This list shall be prepared on the
29 same basis as and be part of the list of members.

30 (b) Beginning two business days after notice is given of the meeting for which
31 the list was prepared and continuing through the meeting, the list of members must be
32 available at the corporation's principal office or at a reasonable place identified in the
33 meeting notice in the city where the meeting will be held for inspection by any member
34 for the purpose of communication with other members concerning the meeting. A
35 member, personally or by or with his representatives, is entitled on written demand to
36 inspect and, subject to the limitations of G.S. 55A-16-02(c) and G.S. 55A-16-05 and at
37 his expense, to copy the list at a reasonable time during the period it is available for
38 inspection.

39 (c) The corporation shall make the list of members available at the meeting, and
40 any member, personally or by or with his representatives, is entitled to inspect the list at
41 any time during the meeting or any adjournment.

42 (d) If the corporation refuses to allow a member or his representative to inspect
43 or copy the list of members as permitted in subsections (b) and (c) of this section, the
44 superior court of the county where a corporation's principal office (or, if there is none in

1 this State, its registered office) is located, on application of the member, after notice is
2 given to the corporation and upon such further evidence, notice and opportunity to be
3 heard, if any, as the court may deem appropriate under the circumstances, may
4 summarily order the inspection or copying at the corporation's expense. The court may
5 postpone the meeting for which the list was prepared until the inspection or copying is
6 complete and may order the corporation to pay the member's costs, including reasonable
7 attorneys' fees, incurred to obtain the order.

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

10 **"§ 55A-7-21. Voting entitlement generally.**

11 (a) Unless the articles of incorporation or bylaws provide otherwise, each
12 member is entitled to one vote on each matter voted on by the members.

13 (b) Unless the articles of incorporation or bylaws provide otherwise, if a
14 membership stands of record in the names of two or more persons, their acts with
15 respect to voting shall have the following effect:

16 (1) If only one votes, such act binds all; and

17 (2) If more than one votes, the vote shall be divided on a pro rata basis.

18 (c) A bylaw amendment to increase or decrease the number of votes any member
19 is entitled to cast on any member action must be approved by the members entitled to
20 vote on that action.

21 **"§ 55A-7-22. Quorum requirements.**

22 (a) Unless this Chapter, the articles of incorporation, or bylaws provide for a
23 higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter
24 must be represented at a meeting of members to constitute a quorum on that matter.
25 Once a member is represented for any purpose at a meeting, the member is deemed
26 present for quorum purposes for the remainder of the meeting and for any adjournment
27 of that meeting unless a new record date is or must be set for that adjourned meeting.

28 (b) A bylaw amendment to decrease the quorum for any member action may be
29 approved by the members entitled to vote on that action or, unless prohibited by the
30 bylaws, by the board of directors.

31 (c) A bylaw amendment to increase the quorum required for any member action
32 must be approved by the members entitled to vote on that action.

33 (d) Unless one-third or more of the votes entitled to be cast in the election of
34 directors represented is in person or by proxy, the only matters that may be voted upon
35 at an annual or regular meeting of members are those matters that are described in the
36 meeting notice.

37 **"§ 55A-7-23. Voting requirements.**

38 (a) Unless this Chapter, the articles of incorporation, or the bylaws require a
39 greater vote or voting by class, if a quorum is present, the affirmative vote of a majority
40 of the votes cast is the act of the members.

41 (b) A bylaw amendment to increase or decrease the vote required for any
42 member action must be approved by the members entitled to vote on that action.

43 **"§ 55A-7-24. Proxies.**

1 (a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a
2 member may vote in person or by proxy. A member may appoint a proxy to vote or
3 otherwise act for him by signing an appointment form, either personally or by his
4 attorney-in-fact. A telegram, telex, facsimile, or other form of wire or wireless
5 communication appearing to have been transmitted by a member, or a photocopy or
6 equivalent reproduction of a writing appointing one or more proxies, shall be deemed a
7 valid appointment form within the meaning of this section.

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

11 (c) An appointment of a proxy is revocable by the member unless the
12 appointment form conspicuously states that it is irrevocable and the appointment is
13 coupled with an interest. An appointment made irrevocable under this subsection shall
14 be revocable when the interest with which it is coupled is extinguished. A transferee for
15 value of an interest subject to an irrevocable appointment may revoke the appointment
16 if he did not have actual knowledge of its irrevocability.

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

21 (e) A revocable appointment of a proxy is revoked by the person appointing the
22 proxy:

23 (1) Attending any meeting and voting in person; or

24 (2) Signing and delivering to the secretary or other officer or agent
25 authorized to tabulate proxy votes either a writing stating that the
26 appointment of the proxy is revoked or a subsequent appointment
27 form.

28 (f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's
29 authority appearing on the face of the appointment form, a corporation is entitled to
30 accept the proxy's vote or other action as that of the member making the appointment.

31 **"§ 55A-7-25. Voting for directors; cumulative voting.**

32 (a) Unless otherwise provided in the articles of incorporation, the bylaws, or an
33 agreement valid under G.S. 55A-7-30, directors are elected by a plurality of the votes
34 cast by the members entitled to vote in the election at a meeting at which a quorum is
35 present. If the articles of incorporation, bylaws, or an agreement valid under G.S. 55A-
36 7-30 provides for cumulative voting by members, members may so vote, by multiplying
37 the number of votes the members are entitled to cast by the number of directors for
38 whom they are entitled to vote, and casting the product for a single candidate or
39 distributing the product among two or more candidates.

40 (b) Members otherwise entitled to vote cumulatively may not vote cumulatively
41 at a particular meeting unless:

42 (1) The meeting notice or statement accompanying the notice states that
43 cumulative voting will take place; or

1 (2) A member or proxy who has the right to cumulate his votes announces
2 in open meeting, before voting for directors starts, his intention to vote
3 cumulatively; and if such announcement is made, the chair shall
4 declare that all persons entitled to vote have the right to vote
5 cumulatively, shall announce the number of votes entitled to be cast,
6 and shall grant a recess of not less than one hour nor more than four
7 hours, as the chair shall determine, or of such other period of time as is
8 unanimously then agreed upon.

9 (c) A director elected by cumulative voting may be removed by the members
10 without cause if the requirements of G.S. 55A-8-08 are met unless the votes cast against
11 removal would be sufficient to elect such director if voted cumulatively at an election at
12 which the same total number of votes were cast and the entire number of directors
13 elected at the time of the director's most recent election were then being elected.

14 **"§ 55A-7-26. Other methods of electing directors.**

15 A corporation may provide in its articles of incorporation or bylaws for election of
16 directors by members or delegates:

- 17 (1) On the basis of chapter or other organizational unit;
18 (2) By region or other geographic unit;
19 (3) By preferential voting; or
20 (4) By any other reasonable method.

21 **"§ 55A-7-27. Corporation's acceptance of votes.**

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

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

- 30 (1) The member is an entity and the name signed purports to be that of an
31 officer or agent of the entity;
32 (2) The name signed purports to be that of an attorney-in-fact of the
33 member and, if the corporation requests it, evidence acceptable to the
34 corporation of the signatory's authority to sign for the member is
35 presented with respect to the vote, consent, waiver, or proxy
36 appointment;
37 (3) Two or more persons hold the membership as cotenants or fiduciaries
38 and the name signed purports to be the name of at least one of the
39 coholders and the person signing appears to be acting on behalf of all
40 the coholders; and
41 (4) In the case of a corporation other than a charitable or religious
42 corporation:
43 a. The name signed purports to be that of an administrator,
44 executor, guardian, or conservator representing the member

1 and, if the corporation requests it, evidence of fiduciary status
2 acceptable to the corporation is presented with respect to the
3 vote, consent, waiver, or proxy appointment;

4 b. The name signed purports to be that of a receiver or trustee in
5 bankruptcy of the member, and, if the corporation requests it,
6 evidence of this status acceptable to the corporation is presented
7 with respect to the vote, consent, waiver, or proxy appointment.

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

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

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

19 **"PART 3. VOTING AGREEMENTS.**

20 **"§ 55A-7-30. Voting agreements.**

21 (a) Two or more members may provide for the manner in which their voting
22 rights will be exercised by signing an agreement for that purpose. The agreement may
23 be valid for a period of up to 10 years. All or some of the parties to the agreement may
24 extend it for more than 10 years from the date the first party signs the extension
25 agreement, but the extension agreement binds only those parties signing it. For
26 charitable or religious corporations, such agreements must have a reasonable purpose
27 not inconsistent with the corporation's charitable or religious purposes.

28 (b) Subject to subsection (a) of this section, a voting agreement created under this
29 section may be specifically enforceable.

30 (c) The provisions of a voting agreement created under this section will bind a
31 transferee of a membership covered by the agreement only if the transferee acquires the
32 membership with knowledge of the provisions.

33 **"PART. 4. DERIVATIVE PROCEEDINGS.**

34 **"§ 55A-7-40. Derivative proceedings.**

35 (a) An action may be brought in a superior court of this State, which shall have
36 exclusive original jurisdiction over actions brought hereunder, in the right of any
37 domestic or foreign corporation by any member or director, provided that, in the case of
38 an action by a member, the plaintiff or plaintiffs must allege, and it must appear, that
39 each plaintiff-member was a member at the time of the transaction of which he
40 complains.

41 (b) The complaint shall allege with particularity the efforts, if any, made by the
42 plaintiff to obtain the action the plaintiff desires from the directors or comparable
43 authority and the reasons for the plaintiff's failure to obtain the action or for not making
44 the effort. Whether or not a demand for action was made, if the corporation commences

1 an investigation of the charges made in the demand or complaint, the court may stay any
2 proceedings until the investigation is completed.

3 (c) Upon motion of the corporation, the court may appoint a committee
4 composed of two or more disinterested directors or other disinterested persons,
5 acceptable to the corporation, to determine whether it is in the best interest of the
6 corporation to pursue a particular legal right or remedy. The committee shall report its
7 findings to the court. After considering the report and any other relevant evidence, the
8 court shall determine whether the proceeding should be continued.

9 (d) Such action shall not be discontinued, dismissed, compromised, or settled
10 without the approval of the court. The court, in its discretion, may direct that notice, by
11 publication or otherwise, shall be given to any directors, members, creditors, and other
12 persons whose interests it determines will be substantially affected by the
13 discontinuance, dismissal, compromise, or settlement. If notice is so directed to be
14 given, the court may determine which one or more of the parties to the action shall bear
15 the expense of giving the same, in such amount as the court shall determine and find to
16 be reasonable in the circumstances, and the amount of the expense shall be awarded as
17 costs of the action.

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

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

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

31 "ARTICLE 8.

32 "DIRECTORS AND OFFICERS.

33 "PART 1. BOARD OF DIRECTORS.

34 "§ 55A-8-01. Requirement for and duties of board.

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

37 (b) All corporate powers shall be exercised by or under the authority of, and the
38 affairs of the corporation managed under the direction of, its board of directors, except
39 as otherwise provided in the articles of incorporation.

40 (c) A corporation may dispense with or limit the authority of a board of directors
41 by describing in its articles of incorporation who will perform some or all of the duties
42 of a board of directors; but no such limitation upon the authority which the board of
43 directors would otherwise have shall be effective against other persons without actual
44 knowledge of such limitation.

1 (d) To the extent the articles of incorporation vests authority of the board of
2 directors in an individual or group other than the board of directors, the individual or
3 group in the exercise of such authority shall be deemed to be acting as the board of
4 directors for all purposes of this Chapter.

5 **"§ 55A-8-02. Qualifications of directors.**

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

9 **"§ 55A-8-03. Number of directors.**

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

12 (b) The number of directors may be increased or decreased from time to time by
13 amendment to or in the manner prescribed in the articles of incorporation or bylaws.

14 (c) The articles of incorporation or bylaws may establish a variable range for the
15 size of the board of directors by fixing a minimum and maximum number of directors.
16 If a variable range is established, the number of directors may be fixed or changed from
17 time to time, within the minimum and maximum, by the members entitled to vote for
18 directors or (unless the articles of incorporation or an agreement valid under G.S. 55A-
19 7-30 shall otherwise provide) the board of directors. If the corporation has members
20 entitled to vote for directors, only such members may change the range for the size of
21 the board or change from a fixed to a variable-range size board or vice versa.

22 **"§ 55A-8-04. Election, designation, and appointment of directors.**

23 (a) If the corporation has members entitled to vote for directors, all the directors
24 (except the initial directors) shall be elected at the first annual meeting of such
25 members, and at each annual meeting thereafter, unless the articles of incorporation or
26 bylaws provide some other time or method of election, or provide that some of the
27 directors are appointed by some other person or are designated. If the articles of
28 incorporation authorize dividing the members into classes, the articles of incorporation
29 may also authorize the election of all or a specified number of directors by the members
30 of one or more authorized classes.

31 (b) If the corporation does not have members entitled to vote for directors, all the
32 directors (except the initial directors) shall be elected, appointed, or designated as
33 provided in the articles of incorporation or bylaws. If no method of designation or
34 appointment is set forth in the articles of incorporation or bylaws, the directors (other
35 than the initial directors) shall be elected by the board of directors.

36 (c) If any member entitled to vote for directors so demands, election of directors
37 by the members shall be by ballot, unless the articles of incorporation or bylaws
38 otherwise provide.

39 **"§ 55A-8-05. Terms of directors generally.**

40 (a) The articles of incorporation or bylaws may specify the terms of directors. In
41 the absence of a contrary provision in the articles or incorporation or bylaws, the term of
42 each director shall be one year, and directors may serve successive terms.

43 (b) A decrease in the number of directors or term of office does not shorten an
44 incumbent director's term.

1 (c) Except as provided in the articles of incorporation or bylaws:

2 (1) The term of a director filling a vacancy in the office of a director
3 elected by members expires at the next election of directors by
4 members; and

5 (2) The term of a director filling any other vacancy expires at the end of
6 the unexpired term that such director is filling.

7 (d) Despite the expiration of a director's term, the director continues to serve until
8 the director's successor is elected, designated, or appointed and qualifies, or until there
9 is a decrease in the number of directors.

10 **"§ 55A-8-06. Staggered terms for directors.**

11 The articles of incorporation or bylaws may provide for staggering the terms of
12 directors by dividing the total number of directors into groups. The terms of office of
13 the several groups need not be uniform.

14 **"§ 55A-8-07. Resignation of directors.**

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

17 (b) A resignation is effective when it is communicated unless the notice specifies
18 a later effective date or subsequent event upon which it will become effective.

19 **"§ 55A-8-08. Removal of directors elected by members or directors.**

20 (a) The members may remove one or more directors elected by them with or
21 without cause unless the articles of incorporation provide that directors may be removed
22 only for cause.

23 (b) If a director is elected by a class, chapter or other organizational unit, or by
24 region or other geographic grouping, the director may be removed only by that class,
25 chapter, unit, or grouping.

26 (c) Except as provided in subsection (i) of this section, a director may be
27 removed under subsection (a) or (b) of this section, only if the number of votes cast to
28 remove the director would be sufficient to elect the director at a meeting to elect
29 directors.

30 (d) If cumulative voting is authorized, a director may not be removed:

31 (1) If the number of votes; or

32 (2) If the director was elected by a class, chapter, unit, or grouping of
33 members, the number of votes of that class, chapter, unit, or grouping;

34 sufficient to elect the director under cumulative voting, if an election were then being
35 held, is voted against the director's removal.

36 (e) A director elected by members may be removed by the members only at a
37 meeting called for the purpose of removing the director and the meeting notice must
38 state that the purpose, or one of the purposes, of the meeting is removal of the director.

39 (f) In computing whether a director is protected from removal under subsections
40 (b) through (d) of this section, it should be assumed that the votes against removal are
41 cast in an election for the number of directors of the class to which the director to be
42 removed belonged on the date of that director's election.

43 (g) An entire board of directors may be removed under subsections (a) through
44 (e) of this section.

1 (h) A majority of the directors then in office or such greater number as is set
2 forth in the articles of incorporation or bylaws may, subject to any limitation in the
3 articles of incorporation or bylaws, remove any director elected by the board of
4 directors; provided, however, that a director elected by the board to fill the vacancy of a
5 director elected by the members may be removed by the members, but not the board.

6 (i) Notwithstanding any other provision of this section, if, at the beginning of a
7 director's term on the board of directors, the articles of incorporation or bylaws provide
8 that the director may be removed by the board for missing a specified number of board
9 meetings, the board may remove the director for failing to attend the specified number
10 of meetings. The director may be removed only if a majority of the directors then in
11 office vote for the removal.

12 (j) Notwithstanding any other provision of this section, the articles of
13 incorporation or bylaws may provide that directors elected after the effective date of
14 such provision shall be removed automatically for missing a specified number of board
15 meetings.

16 (k) The articles of incorporation may:

- 17 (1) Limit the application of this section in the case of a charitable or
18 religious corporation; and
- 19 (2) Set forth the vote and procedures by which the board of directors or
20 any person may remove with or without cause a director elected by the
21 members or the board.

22 **"§ 55A-8-09. Removal of designated or appointed directors.**

23 (a) A designated director may be removed by an amendment to the articles of
24 incorporation or bylaws deleting or changing the provision containing the designation.

25 (b) Except as otherwise provided in the articles of incorporation or bylaws:

- 26 (1) An appointed director may be removed with or without cause by the
27 person appointing the director;
- 28 (2) The person removing the director shall do so by giving written notice
29 of the removal to the director and to the corporation; and
- 30 (3) A removal is effective when the notice is effective unless the notice
31 specifies a future effective date.

32 (c) Notwithstanding any other provision of this section, the articles of
33 incorporation or bylaws may provide that directors appointed after the effective date of
34 such provision shall be removed automatically for missing a specified number of board
35 meetings.

36 **"§ 55A-8-10. Removal of directors by judicial proceeding.**

37 (a) The superior court of the county where a corporation's principal office (or, if
38 there is none in this State, its registered office) is located may remove any director of
39 the corporation from office in a proceeding commenced either by the corporation or by
40 its members holding at least ten percent (10%) of the votes entitled to be cast of any
41 class of members, if the court finds that:

- 42 (1) The director engaged in fraudulent or dishonest conduct, or gross
43 abuse of authority or discretion, with respect to the corporation, or a

1 final judgment has been entered finding that the director has violated a
2 duty set forth in G.S. 55A-8-30 through G.S. 55A-8-33, and

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

4 (b) The court that removes a director may bar the director from serving on the
5 board of directors for a period prescribed by the court.

6 (c) If members commence a proceeding under subsection (a) of this section, the
7 corporation shall be made a party defendant.

8 **"§ 55A-8-11. Vacancy on board.**

9 (a) Unless the articles of incorporation or bylaws provide otherwise, and except
10 as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of
11 directors, including, without limitation, a vacancy resulting from an increase in the
12 number of directors or from the failure by the members to elect the full authorized
13 number of directors, the vacancy may be filled:

14 (1) By the members entitled to vote for directors, if any, or if the vacant
15 office was held by a director elected by a class, chapter or other
16 organizational unit, or by region or other geographic grouping, by the
17 members of that class, chapter, unit, or grouping;

18 (2) By the board of directors; or

19 (3) If the directors remaining in the office constitute fewer than a quorum
20 of the board, by the affirmative vote of a majority of all the directors,
21 or by the sole director, remaining in office.

22 (b) Unless the articles of incorporation or bylaws provide otherwise, if a vacant
23 office was held by an appointed director, only the person who appointed the director
24 may fill the vacancy.

25 (c) If a vacant office was held by a designated director, the vacancy shall be
26 filled only as provided in the articles of incorporation or bylaws.

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

30 **"§ 55A-8-12. Compensation of directors.**

31 Unless the articles of incorporation provide otherwise, a board of directors may fix
32 the compensation of directors.

33 **"PART 2. MEETINGS AND ACTION OF THE BOARD.**

34 **"§ 55A-8-20. Regular and special meetings.**

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

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

43 **"§ 55A-8-21. Action without meeting.**

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

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

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

11 **"§ 55A-8-22. Notice of meetings.**

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

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

21 (c) Unless the articles of incorporation or bylaws provide otherwise, the
22 presiding officer of the board, the president or twenty percent (20%) of the directors
23 then in office may call and give notice of a meeting of the board.

24 **"§ 55A-8-23. Waiver of notice.**

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

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

33 **"§ 55A-8-24. Quorum and voting.**

34 (a) Except as otherwise provided in: (i) this Chapter, (ii) the articles of
35 incorporation, or (iii) the bylaws, a quorum of a board of directors consists of a majority
36 of the directors in office immediately before a meeting begins. In no event may the
37 articles of incorporation or bylaws authorize a quorum of fewer than one-third of the
38 number of directors in office.

39 (b) If a quorum is present when a vote is taken, the affirmative vote of a majority
40 of directors present is the act of the board unless: (i) this Chapter, (ii) the articles of
41 incorporation, or (iii) the bylaws require the vote of a greater number of directors.

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

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

10 **"§ 55A-8-25. Committees of the board.**

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

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

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

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

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

26 (e) A committee of the board may not, however:

- 27 (1) Authorize distributions;
28 (2) Recommend to members or approve dissolution, merger or the sale,
29 pledge, or transfer of all or substantially all of the corporation's assets;
30 (3) Elect, appoint or remove directors, or fill vacancies on the board of
31 directors or on any of its committees; or
32 (4) Adopt, amend, or repeal the articles of incorporation or bylaws.

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

36 **"PART 3. STANDARDS OF CONDUCT.**

37 **"§ 55A-8-30. General standards for directors.**

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

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

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

4 **(1)** One or more officers or employees of the corporation whom the
5 director reasonably believes to be reliable and competent in the matters
6 presented;

7 **(2)** Legal counsel, public accountants, or other persons as to matters the
8 director reasonably believes are within their professional or expert
9 competence; or

10 **(3)** A committee of the board of which he is not a member if the director
11 reasonably believes the committee merits confidence.

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

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

17 **(e)** A director's personal liability for monetary damages for breach of a duty as a
18 director may be limited or eliminated only to the extent provided in G.S. 55A-8-60 or
19 permitted in G.S. 55A-2-02(b)(4), and a director may be entitled to indemnification
20 against liability and expenses pursuant to Part 5 of Article 8 of this Chapter.

21 **(f)** A director shall not be deemed to be a trustee with respect to the corporation
22 or with respect to any property held or administered by the corporation, including
23 without limit, property that may be subject to restrictions imposed by the donor or
24 transferor of such property.

25 **"§ 55A-8-31. Director conflict of interest.**

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

30 **(1)** The material facts of the transaction and the director's interest were
31 disclosed or known to the board of directors or a committee of the
32 board and the board or committee authorized, approved, or ratified the
33 transaction;

34 **(2)** The material facts of the transaction and the director's interest were
35 disclosed or known to the members entitled to vote and they
36 authorized, approved, or ratified the transaction; or

37 **(3)** The transaction was fair to the corporation.

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

40 **(1)** Another entity in which he has a material financial interest or in which
41 he is a general partner is a party to the transaction; or

42 **(2)** Another entity of which he is a director, officer, or trustee is a party to
43 the transaction and the transaction is or should be considered by the
44 board of directors of the corporation.

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

12 (d) For purposes of subdivision (a)(2) of this section, a conflict of interest
13 transaction is authorized, approved, or ratified by the members if it receives a majority
14 of the votes entitled to be counted under this subsection. Votes cast by or voted under
15 the control of a director who has a direct or indirect interest in the transaction, and votes
16 cast by or voted under the control of an entity described in subdivision (b)(1) of this
17 section, may not be counted in a vote of members to determine whether to authorize,
18 approve, or ratify a conflict of interest transaction under subdivision (a)(2) of this
19 section. The vote of these members, however, is counted in determining whether the
20 transaction is approved under other sections of this Chapter. A majority of the votes,
21 whether or not present, that are entitled to be cast in a vote on the transaction under this
22 subsection constitutes a quorum for the purpose of taking action under this section.

23 (e) The articles of incorporation, bylaws, or a resolution of the board may impose
24 additional requirements on conflict of interest transactions.

25 **"§ 55A-8-32. Loans to or guaranties for directors and officers.**

26 No loan, guaranty, or other form of security shall be made or provided by a
27 corporation to or for the benefit of its directors or officers, except that loans, guaranties,
28 or other forms of security may be made to full-time employees of the corporation who
29 are also directors or officers by action of its board of directors in accordance with G.S.
30 55A-8-31(a)(1).

31 **"§ 55A-8-33. Liability for unlawful loans or distributions.**

32 (a) The liabilities imposed by this section are in addition to any other liabilities
33 imposed by law upon directors of a corporation.

34 (b) A director who votes for or assents to the making of a loan or guaranty or
35 other form of security is personally liable to the corporation for the repayment or return
36 of the money or value loaned, with interest thereon at the legal rate until paid, or for any
37 liability of the corporation upon the guaranty, if it is established that he did not perform
38 his duties in compliance with G.S. 55A-8-30 or that the loan or guaranty was made in
39 violation of G.S. 55A-8-32.

40 (c) A director who votes for or assents to a distribution made in violation of
41 Article 13 of this Chapter, Article 14 of this Chapter, or the articles of incorporation is
42 personally liable to the corporation for the amount of the distribution that exceeds what
43 could have been distributed without violating Article 13 of this Chapter, Article 14 of
44 this Chapter, or the articles of incorporation if it is established that he did not perform

1 his duties in compliance with G.S. 55A-8-30. In any proceeding commenced under this
2 section, a director has all of the defenses ordinarily available to a director.

3 (d) A director held liable under subsection (b) or (c) of this section is entitled to:

4 (1) Contribution from every other director who could be held liable under
5 subsection (b) or (c) of this section for the unlawful loan or
6 distribution; and

7 (2) Reimbursement from each person for the amount he accepted knowing
8 the unlawful loan or distribution was made in violation of G.S. 55A-8-
9 32, Article 13 of this Chapter, or Article 14 of this Chapter, or the
10 articles of incorporation.

11 (e) No action shall be brought against the directors for liability under this section
12 after three years from the time when the cause of action was discovered or ought to have
13 been discovered.

14 **"PART 4. OFFICERS.**

15 **"§ 55A-8-40. Officers.**

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

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

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

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

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

29 **"§ 55A-8-41. Duties of officers.**

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

34 **"§ 55A-8-42. Standards of conduct for officers.**

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

37 (1) In good faith;

38 (2) With the care an ordinarily prudent person in a like position would
39 exercise under similar circumstances; and

40 (3) In a manner the officer reasonably believes to be in the best interests of
41 the corporation.

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

1 (1) One or more officers or employees of the corporation whom the officer
2 reasonably believes to be reliable and competent in the matters
3 presented; or

4 (2) Legal counsel, public accountants, or other persons as to matters the
5 officer reasonably believes are within the person's professional or
6 expert competence.

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

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

13 (e) An officer may be entitled to immunity under Part 6 of Article 8 of this
14 Chapter or to indemnification against liability and expenses pursuant to Part 5 of Article
15 8 of this Chapter.

16 **"§ 55A-8-43. Resignation and removal of officers.**

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

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

25 **"§ 55A-8-44. Contract rights of officers.**

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

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

30 **"PART 5. INDEMNIFICATION.**

31 **"§ 55A-8-50. Part definitions.**

32 In this Part:

33 (1) 'Corporation' includes any domestic or foreign corporation absorbed in
34 a merger which, if its separate existence had continued, would have
35 had the obligation or power to indemnify its directors, officers,
36 employees, or agents, so that a person who would have been entitled to
37 receive or request indemnification from such corporation if its separate
38 existence had continued shall stand in the same position under this Part
39 with respect to the surviving corporation.

40 (2) 'Director' means an individual who is or was a director of a corporation
41 or an individual who, while a director of a corporation, is or was
42 serving at the corporation's request as a director, officer, partner,
43 trustee, employee, or agent of another foreign or domestic business or
44 nonprofit corporation, partnership, joint venture, trust, employee

1 benefit plan, or other enterprise. A director is considered to be serving
2 an employee benefit plan at the corporation's request if the director's
3 duties to the corporation also impose duties on, or otherwise involve
4 services by, the director to the plan or to participants in or beneficiaries
5 of the plan. 'Director' includes, unless the context requires otherwise,
6 the estate or personal representative of a director.

7 (3) 'Expenses' means expenses of every kind incurred in defending a
8 proceeding, including counsel fees.

9 (4) 'Liability' means the obligation to pay a judgment, settlement, penalty,
10 fine (including an excise tax assessed with respect to an employee
11 benefit plan), or reasonable expenses actually incurred with respect to
12 a proceeding.

13 (5) 'Officer,' 'employee,' or 'agent' includes, unless the context requires
14 otherwise, the estate or personal representative of a person who acted
15 in that capacity.

16 (6) 'Official capacity' means: (i) when used with respect to a director, the
17 office of director in a corporation; and (ii) when used with respect to
18 an individual other than a director, as contemplated in G.S. 55A-8-56,
19 the office in a corporation held by the officer or the employment or
20 agency relationship undertaken by the employee or agent on behalf of
21 the corporation. 'Official capacity' does not include service for any
22 other foreign or domestic business or nonprofit corporation or any
23 partnership, joint venture, trust, employee benefit plan, or other
24 enterprise.

25 (7) 'Party' includes an individual who was, is, or is threatened to be made a
26 named defendant or respondent in a proceeding.

27 (8) 'Proceeding' means any threatened, pending, or completed action, suit,
28 or proceeding whether civil, criminal, administrative, or investigative
29 and whether formal or informal.

30 **"§ 55A-8-51. Authority to indemnify.**

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

34 (1) Conducted himself in good faith;

35 (2) Reasonably believed (i) in the case of conduct in his official capacity
36 with the corporation, that his conduct was in its best interests; and (ii)
37 in all other cases, that his conduct was at least not opposed to its best
38 interests; and

39 (3) In the case of any criminal proceeding, had no reasonable cause to
40 believe his conduct was unlawful.

41 (b) A director's conduct with respect to an employee benefit plan for a purpose
42 the director reasonably believed to be in the interests of the participants in and
43 beneficiaries of the plan is conduct that satisfies the requirement of clause (ii) of
44 subdivision (a)(2) of this section.

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

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

5 (1) In connection with a proceeding by or in the right of the corporation in
6 which the director was adjudged liable to the corporation; or

7 (2) In connection with any other proceeding charging improper personal
8 benefit to the director, whether or not involving action in his official
9 capacity, in which the director was adjudged liable on the basis that
10 personal benefit was improperly received by the director.

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

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

19 **"§ 55A-8-52. Mandatory indemnification.**

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

25 **"§ 55A-8-53. Advance for expenses.**

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

33 **"§ 55A-8-54. Court-ordered indemnification.**

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

39 (1) The director is entitled to mandatory indemnification under G.S. 55A-
40 8-52, in which case the court shall also order the corporation to pay the
41 director's reasonable expenses incurred to obtain court-ordered
42 indemnification; or

43 (2) The director is fairly and reasonably entitled to indemnification, in
44 whole or in part, in view of all the relevant circumstances, whether or

1 not the director met the standard of conduct set forth in G.S. 55A-8-51
2 or was adjudged liable as described in G.S. 55A-8-51(d), but if the
3 director was adjudged so liable, such indemnification is limited to
4 reasonable expenses incurred.

5 **"§ 55A-8-55. Determination and authorization of indemnification.**

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

10 (b) The determination shall be made:

11 (1) By the board of directors by majority vote of a quorum consisting of
12 directors not at the time parties to the proceeding;

13 (2) If a quorum cannot be obtained under subdivision (1) of this
14 subsection, by a majority vote of a committee duly designated by the
15 board of directors (in which designation directors who are parties may
16 participate), consisting solely of two or more directors not at the time
17 parties to the proceeding;

18 (3) By special legal counsel (i) selected by the board of directors or its
19 committee in the manner prescribed in subdivision (1) or (2) of this
20 subsection; or (ii) if a quorum of the board cannot be obtained under
21 subdivision (1) of this subsection and a committee cannot be
22 designated under subdivision (2) of this subsection, selected by
23 majority vote of the full board (in which selection directors who are
24 parties may participate); or

25 (4) By the members, but directors who are at the time parties to the
26 proceeding may not vote on the determination.

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

32 **"§ 55A-8-56. Indemnification of officers, employees, and agents.**

33 Unless a corporation's articles of incorporation provide otherwise:

34 (1) An officer of the corporation is entitled to mandatory indemnification
35 under G.S. 55A-8-52, and is entitled to apply for court-ordered
36 indemnification under G.S. 55A-8-54, in each case to the same extent
37 as a director;

38 (2) The corporation may indemnify and advance expenses under this Part
39 to an officer, employee, or agent of the corporation to the same extent
40 as to a director; and

41 (3) A corporation may also indemnify and advance expenses to an officer,
42 employee, or agent to the extent consistent with public policy, that
43 may be provided by its articles of incorporation, bylaws, general or
44 specific action of its board of directors, or contract.

1 **"§ 55A-8-57. Additional indemnification and insurance.**

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

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

31 **"§ 55A-8-58. Application of Part.**

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

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

39 **"PART 6. IMMUNITY.**

40 **"§ 55A-8-60. Immunity.**

41 (a) In addition to the immunity that is authorized in G.S. 55A-2-02(b)(4), a
42 person serving as a director or officer of a nonprofit corporation shall be immune
43 individually from civil liability for monetary damages, except to the extent covered by

1 insurance, for any act or failure to act arising out of this service, except where the
2 person:

- 3 (1) Is compensated for his services beyond reimbursement for expenses;
- 4 (2) Was not acting within the scope of his official duties;
- 5 (3) Was not acting in good faith;
- 6 (4) Committed gross negligence or willful or wanton misconduct that
7 resulted in the damage or injury;
- 8 (5) Derived an improper personal financial benefit from the transaction;
- 9 (6) Incurred the liability from the operation of a motor vehicle; or
- 10 (7) Is a defendant in an action brought under G.S. 55A-8-33.

11 The immunity in this subsection may be limited or eliminated by a provision in the
12 articles of incorporation, but only with respect to acts or omissions occurring on or after
13 the effective date of such provision.

14 (b) The immunity in subsection (a) of this section is personal to the directors and
15 officers, and does not immunize the corporation against liability for the acts or
16 omissions of the directors or officers.

17 (c) Without diminishing the applicability of any other provisions of this Chapter,
18 'nonprofit corporation' as referred to in this section shall include any credit union
19 chartered under the laws of this State, the laws of any other state, or under the laws of
20 the United States.

21 **"ARTICLE 9. [RESERVED]"**

22 **"ARTICLE 10.**

23 **"AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.**

24 **"PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.**

25 **"§ 55A-10-01. Authority to amend.**

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

31 (b) A member of the corporation does not have a vested property right resulting
32 from any provision in the articles of incorporation, including provisions relating to
33 management, control, distribution entitlement, or purpose or duration of the corporation.

34 **"§ 55A-10-02. Amendment by board of directors.**

35 (a) Unless the articles of incorporation provide otherwise, a corporation's board
36 of directors may adopt one or more amendments to the corporation's articles of
37 incorporation without member approval:

- 38 (1) To delete the names and addresses of the initial directors;
- 39 (2) To delete the name and address of the initial registered agent or
40 registered office, if a statement of change is on file with the Secretary
41 of State;
- 42 (3) To change the corporate name by substituting the word 'corporation',
43 'incorporated', 'company', 'limited', or the abbreviation 'corp.', 'inc.'

1 'co.', or 'ltd.', for a similar word or abbreviation in the name, or by
2 adding, deleting or changing a geographical attribution to the name; or
3 (4) To make any other change expressly permitted by this Chapter to be
4 made by director action.

5 (b) If a corporation has no members entitled to vote thereon, its incorporators,
6 until directors have been chosen, and thereafter its board of directors, may adopt one or
7 more amendments to the corporation's articles of incorporation subject to any approval
8 required pursuant to G.S. 55A-10-30. The corporation shall provide at least five days'
9 written notice of any meeting at which an amendment is to be voted upon. The notice
10 must state that the purpose, or one of the purposes, of the meeting is to consider a
11 proposed amendment to the articles of incorporation and contain or be accompanied by
12 a copy or summary of the amendment or state the general nature of the amendment.
13 The amendment must be approved by a majority of the directors in office at the time the
14 amendment is adopted.

15 **"§ 55A-10-03. Amendment by directors and members.**

16 (a) If the corporation has members entitled to vote thereon, then, unless this
17 Chapter, the articles of incorporation, bylaws, the members (acting pursuant to
18 subsection (b) of this section), or the board of directors (acting pursuant to subsection
19 (c) of this section) require a greater vote or voting by class, an amendment to a
20 corporation's articles of incorporation to be adopted must be approved:

21 (1) By the board or in lieu thereof in writing by the number or proportion
22 of members entitled under G.S. 55A-7-02(a)(2) to call a special
23 meeting to consider such amendment;

24 (2) By the members by a majority of the votes entitled to be cast on the
25 amendment; and

26 (3) In writing by any person or persons whose approval is required by a
27 provision of the articles of incorporation authorized by G.S. 55A-10-
28 30.

29 (b) The members entitled to vote thereon may condition the amendment's
30 adoption on receipt of a higher percentage of affirmative votes or on any other basis.

31 (c) If the board initiates an amendment to the articles of incorporation or board
32 approval is required by subsection (a) of this section to adopt an amendment to the
33 articles of incorporation, the board may condition the amendment's adoption on receipt
34 of a higher percentage of affirmative votes or any other basis.

35 (d) If the board or the members seek to have the amendment approved by the
36 members entitled to vote thereon at a membership meeting, the corporation shall give
37 notice of the membership meeting to those members in accordance with G.S. 55A-7-05.
38 The notice must state that the purpose or one of the purposes, of the meeting is to
39 consider the proposed amendment and contain or be accompanied by a copy or
40 summary of the amendment.

41 (e) If the board or the members seek to have the amendment approved by the
42 members entitled to vote thereon by written consent or written ballot, the material
43 soliciting the approval shall contain or be accompanied by a copy or summary of the
44 amendment.

1 **"§ 55A-10-04. Class voting by members on amendments.**

2 (a) The members of a class in a charitable or religious corporation are entitled to
3 vote as a class on a proposed amendment to the articles of incorporation if the
4 amendment would affect the rights of that class as to voting in a manner that is different
5 from the manner in which the amendment would affect another class.

6 (b) The members of a class in a corporation other than a charitable or religious
7 corporation are entitled to vote as a class on a proposed amendment to the articles of
8 incorporation if the amendment would:

9 (1) Affect the rights, privileges, preferences, restrictions, or conditions of
10 that class as to voting, dissolution, redemption, or transfer of
11 memberships in a manner that is different from the manner in which
12 the amendment would affect another class;

13 (2) Affect the rights, privileges, preferences, restrictions, or conditions of
14 that class as to voting, dissolution, redemption, or transfer of
15 memberships by changing the rights, privileges, preferences,
16 restrictions, or conditions of another class;

17 (3) Increase or decrease the number of memberships authorized for that
18 class;

19 (4) Increase the number of memberships authorized for another class;

20 (5) Effect an exchange, reclassification, or termination of the
21 memberships of that class; or

22 (6) Authorize a new class of memberships.

23 (c) If a class is to be divided into two or more classes as a result of an
24 amendment to the articles of incorporation, the amendment must be approved by the
25 members of each class that would be created by the amendment.

26 (d) If a class vote is required to approve an amendment to the articles of
27 incorporation of a corporation, the amendment must be approved by the members of the
28 class by two-thirds of the votes cast by the class or a majority of the votes entitled to be
29 cast by the class on the amendment, whichever is less.

30 (e) A class of members is entitled to the voting rights granted by this section
31 although the articles of incorporation and bylaws provide that the class may not vote on
32 the proposed amendment.

33 **"§ 55A-10-05. Articles of amendment.**

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

36 (1) The name of the corporation;

37 (2) The text of each amendment adopted;

38 (3) The date of each amendment's adoption;

39 (4) If approval of members was not required, a statement to that effect and
40 a brief explanation of why member action was not required, and a
41 statement that the amendment was approved by a sufficient vote of the
42 board of directors or incorporators;

43 (5) If approval by members was required, a statement that member
44 approval was obtained as required by this Chapter;

1 (6) If approval of the amendment by some person or persons other than
2 the members, the board, or the incorporators is required pursuant to
3 G.S. 55A-10-30, a statement that the approval was obtained.

4 **"§ 55A-10-06. Restated articles of incorporation.**

5 (a) A corporation's board of directors may restate its articles of incorporation at
6 any time with or without approval by members or any other person.

7 (b) The restated articles of incorporation may include one or more amendments
8 to the articles of incorporation. If the restated articles of incorporation include an
9 amendment requiring approval by the members or any other person, it must be adopted
10 as provided in G.S. 55A-10-03.

11 (c) If the board of directors submits restated articles of incorporation for member
12 action, the corporation shall notify in writing each member entitled to vote on the
13 proposed amendment of the membership meeting in accordance with G.S. 55A-7-05.
14 The notice must (i) state that the purpose, or one of the purposes, of the meeting is to
15 consider the proposed restated articles of incorporation, (ii) contain or be accompanied
16 by a copy of the proposed restated articles of incorporation, and (iii) identify any
17 amendment or other change they would make in the articles of incorporation.

18 (d) If the restated articles of incorporation include an amendment requiring
19 approval pursuant to G.S. 55A-10-30, the board of directors must submit the restated
20 articles of incorporation for such approval.

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

23 (1) Set forth the name of the corporation;

24 (2) Attach as an exhibit thereto the text of the restated articles of
25 incorporation;

26 (3) State whether the restated articles of incorporation contain an
27 amendment to the articles of incorporation requiring member approval
28 and, if they do not, that the board of directors adopted the restated
29 articles of incorporation;

30 (4) If the restated articles of incorporation contain an amendment to the
31 articles of incorporation requiring member approval, state that member
32 approval was obtained as required by this Chapter; and

33 (5) If the restated articles of incorporation contain an amendment to the
34 articles of incorporation requiring approval by a person whose
35 approval is required pursuant to G.S. 55A-10-30, state that such
36 approval was obtained.

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

39 (g) The Secretary of State may certify restated articles of incorporation, as the
40 articles of incorporation currently in effect, without including the other information
41 required by subsection (e) of this section.

42 **"§ 55A-10-07. Effect of amendment.**

43 An amendment to articles of incorporation does not affect a cause of action existing
44 against or in favor of the corporation, a proceeding to which the corporation is a party,

1 any requirement or limitation imposed upon the corporation or any property held by it
2 by virtue of any restriction or condition upon which such property is held by the
3 corporation or the existing rights of persons other than members of the corporation. An
4 amendment changing a corporation's name does not abate a proceeding brought by or
5 against the corporation in its former name.

6 **"PART 2. BYLAWS.**

7 **"§ 55A-10-20. Amendment by directors.**

8 If a corporation has no members entitled to vote thereon, its incorporators, until
9 directors have been chosen, and thereafter its board of directors, may adopt one or more
10 amendments to the corporation's bylaws subject to any approval required pursuant to
11 G.S. 55A-10-30. The corporation shall provide at least five days' written notice of any
12 meeting of directors at which an amendment is to be voted upon. The notice must state
13 that the purpose, or one of the purposes, of the meeting is to consider a proposed
14 amendment to the bylaws and contain or be accompanied by a copy or summary of the
15 amendment or state the general nature of the amendment. The amendment must be
16 approved by a majority of the directors in office at the time the amendment is adopted.

17 **"§ 55A-10-21. Amendment by directors and members.**

18 (a) If the corporation has members entitled to vote thereon, then, unless this
19 Chapter, the articles of incorporation, bylaws, the members (acting pursuant to
20 subsection (b) of this section), or the board of directors (acting pursuant to subsection
21 (c) of this section) require a greater vote or voting by class, an amendment to a
22 corporation's bylaws to be adopted must be approved:

- 23 (1) By the board or in lieu thereof in writing by the number or proportion
24 of members entitled under G.S. 55A-7-02(a)(2) to call a special
25 meeting to consider such amendment;
26 (2) By the members by a majority of the votes entitled to be cast on the
27 amendment; and
28 (3) In writing by any person or persons whose approval is required by a
29 provision of the articles of incorporation authorized by G.S. 55A-10-
30 30.

31 (b) The members entitled to vote thereon may condition the amendment's
32 adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

33 (c) If the board initiates an amendment to the bylaws or board approval is
34 required by subsection (a) of this section to adopt an amendment to the bylaws, the
35 board may condition the amendment's adoption on receipt of a higher percentage of
36 affirmative votes or on any other basis.

37 (d) If the board or the members seek to have the amendment approved by the
38 members entitled to vote thereon at a membership meeting, the corporation shall give
39 notice of the membership meeting to those members in accordance with G.S. 55A-7-05.
40 The notice must state that the purpose, or one of the purposes, of the meeting is to
41 consider the proposed amendment and contain or be accompanied by a copy or
42 summary of the amendment.

43 (e) If the board or the members seek to have the amendment approved by the
44 members entitled to vote thereon by written consent or written ballot, the material

1 soliciting the approval shall contain or be accompanied by a copy or summary of the
2 amendment.

3 **"§ 55A-10-22. Class voting by members on amendments.**

4 (a) The members of a class in a charitable or religious corporation are entitled to
5 vote as a class on a proposed amendment to the bylaws if the amendment would affect
6 the rights of that class as to voting in a manner that is different from the manner in
7 which such amendment would affect another class.

8 (b) The members of a class in a corporation other than a charitable or religious
9 corporation are entitled to vote as a class on a proposed amendment to the bylaws if the
10 amendment would:

11 (1) Affect the rights, privileges, preferences, restrictions, or conditions of
12 that class as to voting, dissolution, redemption, or transfer of
13 memberships in a manner that is different from the manner in which
14 such amendment would affect another class;

15 (2) Affect the rights, privileges, preferences, restrictions, or conditions of
16 that class as to voting, dissolution, redemption, or transfer of
17 memberships by changing the rights, privileges, preferences,
18 restrictions, or conditions of another class;

19 (3) Increase or decrease the number of memberships authorized for that
20 class;

21 (4) Increase the number of memberships authorized for another class;

22 (5) Effect an exchange, reclassification, or termination of all or part of the
23 memberships of that class; or

24 (6) Authorize a new class of memberships.

25 (c) If a class is to be divided into two or more classes as a result of an
26 amendment to the bylaws, the amendment must be approved by the members of each
27 class that would be created by the amendment.

28 (d) If a class vote is required to approve an amendment to the bylaws, the
29 amendment must be approved by the members of the class by two-thirds of the votes
30 cast by the class or a majority of the votes entitled to be cast by the class on the
31 amendment, whichever is less.

32 (e) A class of members is entitled to the voting rights granted by this section
33 although the articles of incorporation and bylaws provide that the class may not vote on
34 the proposed amendment.

35 **"PART 3. ARTICLES OF INCORPORATION AND BYLAWS.**

36 **"§ 55A-10-30. Approval by third persons.**

37 The articles of incorporation or bylaws may require an amendment to the articles or
38 incorporation or bylaws to be approved in writing by a specified person or persons other
39 than the board of directors. Such a provision in the articles of incorporation or bylaws
40 may only be amended with the approval in writing of such person or persons.

41 **"ARTICLE 11.**

42 **"MERGER.**

43 **"§ 55A-11-01. Approval of plan of merger.**

1 (a) Subject to the limitations set forth in G.S. 55A-11-02, one or more nonprofit
2 corporations may merge into a business or nonprofit corporation, if the plan of merger is
3 approved as provided in G.S. 55A-11-03.

4 (b) The plan of merger must set forth:

5 (1) The name of each corporation planning to merge and the name of the
6 surviving corporation into which each other corporation plans to
7 merge;

8 (2) The terms and conditions of the merger; and

9 (3) The manner and basis, if any, of converting memberships of each
10 merging corporation into memberships, obligations, or securities of the
11 surviving or any other corporation or into cash or other property in
12 whole or part.

13 (c) The plan of merger may set forth:

14 (1) Any amendments to the articles of incorporation or bylaws of the
15 surviving corporation to be effected by the merger; and

16 (2) Other provisions relating to the merger.

17 **§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

18 (a) Without the prior approval of the superior court in a proceeding in which the
19 Attorney General has been given written notice, a charitable or religious corporation
20 may merge only with:

21 (1) A charitable or religious corporation;

22 (2) A foreign corporation that would qualify under this Chapter as a
23 charitable or religious corporation;

24 (3) A wholly-owned foreign or domestic corporation (business or
25 nonprofit) which is not a charitable or religious corporation, provided
26 the charitable or religious corporation is the surviving corporation and
27 continues to be a charitable or religious corporation after the merger;
28 or

29 (4) A business or nonprofit corporation other than a charitable or religious
30 corporation, provided that: (i) on or prior to the effective date of the
31 merger, assets with a value equal to the greater of the fair market value
32 of the net tangible and intangible assets (including goodwill) of the
33 charitable or religious corporation or the fair market value of the
34 charitable or religious corporation if it were to be operated as a
35 business concern are transferred or conveyed to one or more persons
36 who would have received its assets under G.S. 55A-14-06(a)(5) and
37 (6) had it dissolved; (ii) it shall return, transfer or convey any assets
38 held by it upon condition requiring return, transfer or conveyance,
39 which condition occurs by reason of the merger, in accordance with
40 such condition; and (iii) the merger is approved by a majority of
41 directors of the charitable or religious corporation who are not and will
42 not become members or shareholders in or directors, officers,
43 employees, agents, or consultants of the surviving corporation.

1 **(b)** At least 20 days before consummation of any merger of a charitable or
2 religious corporation pursuant to subdivision (a)(4) of this section, notice, including a
3 copy of the proposed plan of merger, must be delivered to the Attorney General.

4 **(c)** Without the prior written consent of the Attorney General, or approval of the
5 superior court in a proceeding in which the Attorney General has been given notice, no
6 member of a charitable or religious corporation may receive or retain any property as a
7 result of a merger other than a membership in the surviving corporation. The Attorney
8 General may consent to the transaction, or the court shall approve the transaction, if it is
9 fair and not contrary to the public interest.

10 **"§ 55A-11-03. Action on plan.**

11 **(a)** Unless this Chapter, the articles of incorporation, bylaws, or the board of
12 directors or members (acting pursuant to subsection (c) of this section) require a greater
13 vote or voting by class, a plan of merger to be adopted must be approved for each
14 constituent corporation:

15 **(1)** By the board;

16 **(2)** By the members entitled to vote thereon, if any, by two-thirds of the
17 votes cast or a majority of the votes entitled to be cast on the plan of
18 merger, whichever is less; and

19 **(3)** In writing by any person or persons whose approval is required by a
20 provision of the articles of incorporation authorized by G.S. 55A-10-
21 30 for an amendment to the articles of incorporation or bylaws.

22 **(b)** If the corporation does not have members entitled to vote thereon, the merger
23 must be approved by a majority of the directors then in office. The corporation shall
24 provide at least five days' written notice of any directors' meeting at which the approval
25 will be considered. The notice must state that the purpose, or one of the purposes, of the
26 meeting is to consider the proposed merger.

27 **(c)** The board may condition its approval of the proposed merger, and the
28 members entitled to vote thereon may condition their approval of the merger, on receipt
29 of a higher percentage of affirmative votes or on any other basis.

30 **(d)** If the board seeks to have the plan approved by the members entitled to vote
31 thereon at a membership meeting, the corporation shall give notice of the membership
32 meeting to those members in accordance with G.S. 55A-7-05. The notice must state
33 that the purpose, or one of the purposes, of the meeting is to consider the plan of merger
34 and contain or be accompanied by a copy or summary of the plan. The copy or
35 summary of the plan for members of the surviving corporation shall include any
36 provision that, if contained in a proposed amendment to the articles of incorporation or
37 bylaws, would entitle members to vote on the provision. The copy or summary of the
38 plan for members of the disappearing corporation shall include a copy or summary of
39 the articles of incorporation and bylaws that will be in effect immediately after the
40 merger takes effect.

41 **(e)** If the board seeks to have the plan approved by the members entitled to vote
42 thereon by written consent or written ballot, the material soliciting the approval shall
43 contain or be accompanied by a copy or summary of the plan. The copy or summary of
44 the plan for members of the surviving corporation shall include any provision that, if

1 contained in a proposed amendment to the articles of incorporation or bylaws, would
2 entitle members to vote on the provision. The copy or summary of the plan for
3 members of the disappearing corporation shall include a copy or summary of the articles
4 of incorporation and bylaws that will be in effect immediately after the merger takes
5 effect.

6 (f) Voting by a class of members is required on a plan of merger if the plan
7 contains a provision that, if contained in a proposed amendment to articles of
8 incorporation or bylaws, would entitle the class of members to vote as a class on the
9 proposed amendment under G.S. 55A-10-04 or G.S. 55A-10-22. The plan is approved
10 by a class of members by two-thirds of the votes cast by the class or a majority of the
11 votes entitled to be cast by the class, whichever is less.

12 (g) After a merger is adopted, and at any time before articles of merger are filed,
13 the merger may be abandoned (subject to any contractual rights), without further action
14 by members or other persons who approved the plan, in accordance with the procedure
15 set forth in the plan of merger or, if none is set forth, in the manner determined by the
16 board of directors.

17 **"§ 55A-11-04. Articles of merger.**

18 (a) After a plan of merger is approved by the board of directors, and if required
19 by G.S. 55A-11-03, by the members and any other persons, the surviving corporation
20 shall deliver to the Secretary of State for filing articles of merger setting forth:

21 (1) The plan of merger;

22 (2) If approval by members was not required, a statement to that effect and
23 a statement that the plan was approved by a sufficient vote of the board
24 of directors;

25 (3) If approval by members was required, a statement that the merger was
26 approved by the members as required by this Chapter;

27 (4) If approval by some person or persons other than the members or the
28 board was required pursuant to G.S. 55A-11-03(a)(3), a statement that
29 the approval was obtained.

30 (b) A merger takes effect upon the effective date of the articles of merger.

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

32 **"§ 55A-11-05. Effect of merger.**

33 When a merger takes effect:

34 (1) Every other corporation party to the merger merges into the surviving
35 corporation and the separate existence of every corporation except the
36 surviving corporation ceases;

37 (2) The title to all real estate and other property owned by each
38 corporation party to the merger is vested in the surviving corporation
39 without reversion or impairment subject to any and all conditions to
40 which the property was subject prior to the merger;

41 (3) The surviving corporation has all liabilities and obligations of each
42 corporation party to the merger;

43 (4) A proceeding pending against any corporation party to the merger may
44 be continued as if the merger did not occur or the surviving

1 corporation may be substituted in the proceeding for the corporation
2 whose existence ceased; and

3 (5) The articles of incorporation and bylaws of the surviving corporation
4 are amended to the extent provided in the plan of merger.

5 **"§ 55A-11-06. Merger with foreign corporation.**

6 (a) Except as provided in G.S. 55A-11-02, one or more foreign business or
7 nonprofit corporations may merge with one or more domestic nonprofit corporations if:

8 (1) The merger is permitted by the law of the state or county under whose
9 law each foreign corporation is incorporated and each foreign
10 corporation complies with that law in effecting the merger;

11 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the
12 surviving corporation of the merger; and

13 (3) Each domestic nonprofit corporation complies with the applicable
14 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the
15 surviving corporation of the merger, with G.S. 55A-11-04.

16 (b) Upon the merger taking effect, the surviving corporation, if it does not have a
17 registered agent in this State, shall be deemed to have appointed the Secretary of State
18 as its registered agent for service of process in a proceeding to enforce any obligation of
19 a domestic corporation party to the merger, until such time as it appoints a registered
20 agent in this State.

21 **"§ 55A-11-07. Bequests, devises, and gifts.**

22 Any bequest, devise, gift, grant, or promise contained in a will or other instrument of
23 donation, subscription, or conveyance, that is made to a constituent corporation and that
24 takes effect or remains payable after the merger, inures to the surviving corporation
25 unless the will or other instrument otherwise specifically provides.

26 **"ARTICLE 12.**

27 **"TRANSFER OF ASSETS.**

28 **"§ 55A-12-01. Sale of assets in regular course of activities and mortgage of assets.**

29 (a) A corporation may on the terms and conditions and for the consideration
30 determined by the board of directors:

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

33 (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether
34 with or without recourse), or otherwise encumber any or all of its
35 property whether or not in the usual and regular course of its activities.

36 (b) Unless the articles of incorporation require it, approval of the members or any
37 other person of a transaction described in subsection (a) of this section is not required.

38 **"§ 55A-12-02. Sale of assets other than in regular course of activities.**

39 (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or
40 substantially all, of its property other than in the usual and regular course of its activities
41 on the terms and conditions and for the consideration determined by the corporation's
42 board of directors if the proposed transaction is authorized by subsection (b) of this
43 section.

1 (b) Unless this Chapter, the articles of incorporation, bylaws, or the board of
2 directors or members (acting pursuant to subsection (d) of this section) require a greater
3 vote or voting by class, the proposed transaction to be authorized must be approved:

4 (1) By the board;

5 (2) By the members entitled to vote thereon by two-thirds of the votes cast
6 or a majority of the votes entitled to be cast on the proposed
7 transaction, whichever is less; and

8 (3) In writing by any person or persons whose approval is required by a
9 provision of the articles of incorporation authorized by G.S. 55A-10-
10 30 for an amendment to the articles of incorporation or bylaws.

11 (c) If the corporation does not have members entitled to vote thereon, the
12 transaction must be approved by a vote of a majority of the directors then in office. The
13 corporation shall provide at least five days' written notice of any directors' meeting at
14 which such approval will be considered. The notice must state that the purpose, or one
15 of the purposes, of the meeting is to consider the sale, lease, exchange, or other
16 disposition of all, or substantially all, of the property or assets of the corporation and
17 contain or be accompanied by a description of the transaction.

18 (d) The board may condition its approval of the proposed transaction, and the
19 members entitled to vote thereon may condition their approval of the transaction, on
20 receipt of a higher percentage of affirmative votes or on any other basis.

21 (e) If the corporation seeks to have the transaction approved by the members
22 entitled to vote thereon at a membership meeting, the corporation shall give notice of
23 the membership meeting to those members in accordance with G.S. 55A-7-05. The
24 notice must state that the purpose, or one of the purposes, of the meeting is to consider
25 the sale, lease, exchange, or other disposition of all, or substantially all, of the property
26 or assets of the corporation and contain or be accompanied by a description of the
27 transaction.

28 (f) If the board seeks to have the transaction approved by the members entitled to
29 vote thereon by written consent or written ballot, the material soliciting the approval
30 shall contain or be accompanied by a description of the transaction.

31 (g) A charitable or religious corporation must give written notice to the Attorney
32 General 20 days before it sells, leases, exchanges, or otherwise disposes of all, or
33 substantially all, of its property if the transaction is not in the usual and regular course
34 of its activities unless the Attorney General has given the corporation a written waiver
35 of this subsection.

36 (h) After a sale, lease, exchange, or other disposition of property is authorized,
37 the transaction may be abandoned (subject to any contractual rights), without further
38 action by the members or any other person who approved the transaction, in accordance
39 with the procedure set forth in the resolution proposing the transaction or, if none is set
40 forth, in the manner determined by the board of directors.

41 **"ARTICLE 13.**

42 **"DISTRIBUTIONS.**

43 **"§ 55A-13-01. Prohibited distributions.**

1 Except as authorized by G.S. 55A-13-02 or Article 14 of this Chapter, a corporation
2 shall not make any distributions.

3 **"§ 55A-13-02. Authorized distributions.**

4 (a) A corporation may pay reasonable amounts to its members, directors, or
5 officers for services rendered or other value received and may confer benefits upon its
6 members in conformity with its purposes.

7 (b) Subject to the provisions of subsection (d) of this section, (i) a corporation
8 may make distributions to any entity that is exempt under section 501(c)(3) of the
9 Internal Revenue Code of 1986 or any successor section, or that is organized
10 exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal
11 Revenue Code of 1986 or any successor section and that upon dissolution must
12 distribute its assets to a charitable or religious corporation, the United States, a state or
13 an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or
14 any successor section, and (ii) any corporation other than a charitable or religious
15 corporation may make distributions to any domestic or foreign corporation.

16 (c) Subject to the provisions of subsection (d) of this section, a corporation other
17 than a charitable or religious corporation may make distributions to purchase its
18 memberships.

19 (d) A corporation shall not make any distribution under subsection (b) or (c) of
20 this section if at the time of or as a result of such distribution:

21 (1) The corporation would not be able to pay its debts as they become due
22 in the usual course of business; or

23 (2) The corporation's total assets would be less than the sum of its total
24 liabilities.

25 **"ARTICLE 14.**

26 **"DISSOLUTION.**

27 **"PART 1. VOLUNTARY DISSOLUTION.**

28 **"§ 55A-14-01. Dissolution by incorporators or directors prior to commencement of**
29 **activities.**

30 (a) A corporation that has not admitted members entitled to vote on dissolution,
31 has not commenced activities, and has no assets may be dissolved by action of its board
32 of directors or a majority of its incorporators, if there are no directors, by delivering to
33 the Secretary of State for filing articles of dissolution that set forth:

34 (1) The name of the corporation;

35 (2) The names and addresses of its officers, if any;

36 (3) The names and addresses of its directors, if any, or if none, the names
37 and addresses of its incorporators;

38 (4) The date of its incorporation;

39 (5) That the corporation has not admitted members entitled to vote on
40 dissolution, has not commenced activities, and has no assets;

41 (6) That no debt of the corporation remains unpaid; and

42 (7) That a majority of the incorporators or directors authorized the
43 dissolution.

1 (b) Upon the filing of articles of dissolution under this section, the corporation
2 becomes nonexistent and is cancelled as if such corporation had never been created.

3 **"§ 55A-14-02. Dissolution by directors, members, and third persons.**

4 (a) Unless this Chapter, the articles of incorporation, bylaws, or the board of
5 directors or members (acting pursuant to subsection (c) of this section) require a greater
6 vote or voting by class, dissolution is authorized if a plan of dissolution meeting the
7 requirements of G.S. 55A-14-03 is approved:

8 (1) By the board;

9 (2) By the members entitled to vote thereon, if any, by two-thirds of the
10 votes cast or a majority of the votes entitled to be cast on the plan of
11 dissolution, whichever is less; and

12 (3) In writing by any person or persons whose approval is required by a
13 provision of the articles of incorporation authorized by G.S. 55A-10-
14 30 for an amendment to the articles of incorporation or bylaws.

15 (b) If the corporation does not have members entitled to vote thereon, dissolution
16 must be approved by a vote of a majority of the directors then in office. The
17 corporation shall provide at least five days' written notice of any directors' meeting at
18 which such approval will be considered. The notice must state that the purpose, or one
19 of the purposes, of the meeting is to consider dissolution of the corporation and contain
20 or be accompanied by a copy or summary of the plan of dissolution.

21 (c) The board of directors may condition its approval of the proposed dissolution,
22 and the members entitled to vote thereon may condition their approval of the dissolution
23 on receipt of a higher percentage of affirmative votes or on any other basis.

24 (d) If the board of directors seeks to have dissolution approved by the members
25 entitled to vote thereon at a membership meeting, the corporation shall give notice of
26 the membership meeting to those members in accordance with G.S. 55A-7-05. The
27 notice must state that the purpose, or one of the purposes, of the meeting is to consider
28 dissolving the corporation and contain or be accompanied by a copy or summary of the
29 plan of dissolution.

30 (e) If the board seeks to have dissolution approved by the members entitled to
31 vote thereon by written consent or written ballot, the material soliciting the approval
32 shall contain or be accompanied by a copy or summary of the plan of dissolution.

33 **"§ 55A-14-03. Plan of dissolution.**

34 (a) The plan of dissolution approved pursuant to G.S. 55A-14-02 shall provide
35 for distribution of assets as follows:

36 (1) All liabilities and obligations of the corporation shall be paid and
37 discharged, or adequate provisions shall be made therefor;

38 (2) Assets held by the corporation upon condition requiring return,
39 transfer, or conveyance, which condition occurs by reason of the
40 dissolution, shall be returned, transferred, or conveyed in accordance
41 with such requirements;

42 (3) Other assets, if any, of a charitable or religious corporation shall,
43 subject to the articles of incorporation or bylaws, be transferred or
44 conveyed to one or more of the following: the United States, a state, a

1 charitable or religious corporation, or a person that is exempt under
2 section 501(c)(3) of the Internal Revenue Code of 1986 or any
3 successor section;

4 (4) Other assets, if any, of a corporation that is not a charitable or religious
5 corporation shall, subject to the articles of incorporation and bylaws,
6 be distributed as provided in the plan of dissolution.

7 (b) The plan of dissolution may set forth other provisions relating to the
8 dissolution.

9 **"§ 55A-14-04. Articles of dissolution.**

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

13 (1) The name of the corporation;

14 (2) The names and addresses of its officers;

15 (3) The names and addresses of its directors;

16 (4) The plan of dissolution as required by G.S. 55A-14-03;

17 (5) The date dissolution was authorized;

18 (6) If approval by members was not required, a statement to that effect and
19 a statement that the plan of dissolution was approved by a sufficient
20 vote of the board of directors;

21 (7) If approval by members was required, a statement that the plan of
22 dissolution was approved as required by this Chapter; and

23 (8) If approval of dissolution by some person or persons other than the
24 members or the board of directors is required pursuant to G.S. 55A-14-
25 02(a)(3), a statement that the approval was obtained.

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

28 **"§ 55A-14-05. Revocation of dissolution.**

29 (a) A corporation may revoke its dissolution authorized under G.S. 55A-14-02
30 within 120 days of its effective date.

31 (b) Revocation of dissolution must be authorized in the same manner as the
32 dissolution was authorized unless an authorization under G.S. 55A-14-02 permitted
33 revocation by action of the board of directors alone, in which event the board of
34 directors may revoke the dissolution without action by the members or any other person.

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

38 (1) The name of the corporation;

39 (2) The effective date of the dissolution that was revoked;

40 (3) The date that the revocation of dissolution was authorized;

41 (4) If the corporation's board of directors revoked the dissolution, a
42 statement to that effect;

43 (5) If the corporation's board of directors revoked a dissolution authorized
44 by the members alone or in conjunction with another person or

1 persons, a statement that revocation was permitted by action by the
2 board of directors alone pursuant to that authorization; and

3 (6) If member or third person action was required to revoke the
4 dissolution, a statement that the action was taken as required.

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

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

11 **"§ 55A-14-06. Effect of dissolution.**

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

14 (1) Preserving and protecting its assets;

15 (2) Discharging or making provision for discharging its liabilities and
16 obligations;

17 (3) Disposing of its remaining assets in accordance with its plan of
18 dissolution; and

19 (4) Doing every other act necessary to wind up and liquidate its assets and
20 affairs.

21 (b) Dissolution of a corporation does not:

22 (1) Transfer title to the corporation's property;

23 (2) Subject its directors or officers to standards of conduct different from
24 those prescribed in Article 8 of this Chapter;

25 (3) Change quorum or voting requirements for its board of directors or
26 members; change provisions for selection, resignation, or removal of
27 its directors or officers or both; or change provisions for amending its
28 bylaws;

29 (4) Prevent commencement of a proceeding by or against the corporation
30 in its corporate name;

31 (5) Abate or suspend a proceeding pending by or against the corporation
32 on the effective date of dissolution; or

33 (6) Terminate the authority of the registered agent of the corporation.

34 **"§ 55A-14-07. Known claims against dissolved corporation.**

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

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

39 (1) Describe information that must be included in a claim;

40 (2) Provide a mailing address where a claim may be sent;

41 (3) State the deadline, which may not be fewer than 120 days from the
42 effective date of the written notice, by which the dissolved corporation
43 must receive the claim; and

44 (4) State that the claim will be barred if not received by the deadline.

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

2 (1) If the corporation does not receive the claim by the deadline from a
3 claimant who received written notice under subsection (b) of this
4 section; or

5 (2) If a claimant whose claim was rejected by written notice from the
6 dissolved corporation does not commence a proceeding to enforce the
7 claim within 90 days from the date of receipt of the rejection notice.

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

10 **"§ 55A-14-08. Unknown and certain other claims against dissolved corporation.**

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

14 (b) The notice must:

15 (1) Be published one time in a newspaper of general circulation in the
16 county where the dissolved corporation's principal office (or, if there is
17 none in this State, its registered office) is or was last located;

18 (2) Describe the information that must be included in a claim and provide
19 a mailing address where the claim may be sent; and

20 (3) State that a claim against the corporation will be barred unless a
21 proceeding to enforce the claim is commenced within five years after
22 the publication of the notice.

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

27 (1) A claimant who did not receive written notice under G.S. 55A-14-07;

28 (2) A claimant whose claim was timely sent to the dissolved corporation
29 but not acted on;

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

32 (d) Nothing in this section shall bar:

33 (1) Any claim alleging the liability of the corporation; or

34 (2) Any proceeding or action to establish the liability of the corporation;
35 or

36 (3) The recovery on any judgment against the corporation

37 to the extent that the corporation is protected by insurance coverage with respect to such
38 claim, proceeding, or judgment.

39 **"§ 55A-14-09. Enforcement of claims.**

40 (a) A claim under G.S. 55A-14-07 or G.S. 55A-14-08 may be enforced:

41 (1) Against the dissolved corporation, to the extent of its undistributed
42 assets, including coverage under any applicable insurance policy, or

43 (2) If the assets have been distributed in liquidation, against any person,
44 other than a creditor of the corporation, to whom the corporation

1 distributed its property to the extent of the distributee's pro rata share
2 of the claim or the corporate assets distributed to such person in
3 liquidation, whichever is less, but the distributee's total liability for all
4 claims under this section may not exceed the total amount of assets
5 distributed to the distributee.

6 (b) Nothing in G.S. 55A-14-07 or G.S. 55A-14-08 shall extend any applicable
7 period of limitation.

8 **"PART 2. ADMINISTRATIVE DISSOLUTION.**

9 **"§ 55A-14-20. Grounds for administrative dissolution.**

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

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

24 **"§ 55A-14-21. Procedure for and effect of administrative dissolution.**

25 (a) If the Secretary of State determines that one or more grounds exist under G.S.
26 55A-14-20 for dissolving a corporation, the Secretary of State shall mail the corporation
27 written notice of the Secretary of State's determination.

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

35 (c) The provisions of G.S. 55A-14-06, 55A-14-07, and 55A-14-08 apply to a
36 corporation administratively dissolved.

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

39 **"§ 55A-14-22. Reinstatement following administrative dissolution.**

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

- 43 (1) Recite the name of the corporation and the effective date of its
44 administrative dissolution; and

1 (2) State that the ground or grounds for dissolution either did not exist or
2 have been eliminated.

3 (b) If the Secretary of State determines that the application contains the
4 information required by subsection (a) of this section, and that the information is
5 correct, the Secretary of State shall cancel the certificate of dissolution and prepare a
6 certificate of reinstatement that recites the Secretary of State's determination and the
7 effective date of reinstatement, file the original of the certificate, and mail a copy to the
8 corporation.

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

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

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

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

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

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

32 **"§ 55A-14-24. Inapplicability of Administrative Procedure Act.**

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

35 **"PART 3. JUDICIAL DISSOLUTION.**

36 **"§ 55A-14-30. Grounds for judicial dissolution.**

37 (a) The superior court may dissolve a corporation:

38 (1) In a proceeding by the Attorney General if it is established that:

39 a. The corporation obtained its articles of incorporation through
40 fraud; or

41 b. The corporation has, after written notice by the Attorney
42 General given at least 20 days prior thereto, continued to exceed
43 or abuse the authority conferred upon it by law;

44 (2) In a proceeding by a member or director, if it is established that:

- 1 a. The directors are deadlocked in the management of the
2 corporate affairs, and the members, if any, are unable to break
3 the deadlock;
4 b. The directors or those in control of the corporation have acted,
5 are acting, or will act in a manner that is illegal, oppressive, or
6 fraudulent;
7 c. The members are deadlocked in voting power and have failed,
8 for a period that includes at least two consecutive annual
9 meeting dates, to elect successors to directors whose terms
10 have, or would otherwise have, expired;
11 d. The corporate assets are being misapplied or wasted; or
12 e. The corporation is no longer able to carry out its purposes.
13 (3) In a proceeding by a creditor if it is established that:
14 a. The creditor's claim has been reduced to judgment and
15 execution on the judgment has been returned unsatisfied; or
16 b. The corporation has admitted in writing that the creditor's claim
17 is due and owing and the corporation is insolvent.
18 (4) In a proceeding by the corporation to have its voluntary dissolution
19 continued under court supervision.
20 (b) Prior to dissolving a corporation, the court shall consider whether:
21 (1) There are reasonable alternatives to dissolution;
22 (2) Dissolution is in the public interest, if the corporation is a charitable or
23 religious corporation; and
24 (3) Dissolution is reasonably necessary for the protection of the rights or
25 interests of the members, if any.

26 **"§ 55A-14-31. Procedure for judicial dissolution.**

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

30 (b) It is not necessary to make directors or members parties to a proceeding to
31 dissolve a corporation unless relief is sought against them individually.

32 (c) A court in a proceeding brought to dissolve a corporation may issue
33 injunctions, appoint a receiver with all powers and duties the court directs, take other
34 action required to preserve the corporate assets wherever located, and carry on the
35 activities of the corporation.

36 **"§ 55A-14-32. Receivership.**

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

43 (b) The court may appoint an individual or a domestic or foreign business or
44 nonprofit corporation (authorized to transact business in this State) as a receiver. The

1 court may require the receiver to post bond, with or without sureties, in an amount the
2 court directs.

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

6 (1) To dispose of all or any part of the assets of the corporation wherever
7 located, at a public or private sale, if authorized by the court;

8 (2) To sue and defend in his own name as receiver of the corporation in all
9 courts of this State; and

10 (3) To exercise all of the powers of the corporation, through or in place of
11 its board of directors or officers, to the extent necessary to manage the
12 affairs of the corporation in the best interests of its members and
13 creditors.

14 (d) The court from time to time during the receivership may order compensation
15 paid and expense disbursements or reimbursements made to the receiver and his counsel
16 from the assets of the corporation or proceeds from the sale of the assets.

17 **"§ 55A-14-33. Decree of dissolution.**

18 (a) If, after a hearing, the court determines that one or more grounds for judicial
19 dissolution described in G.S. 55A-14-30 exist, it may enter a decree dissolving the
20 corporation and specifying the effective date of the dissolution, and the clerk of the
21 court shall deliver a certified copy of the decree to the Secretary of State, who shall file
22 it.

23 (b) After entering the decree of dissolution, the court shall direct the winding up
24 and liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the
25 notification of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08.

26 **"PART 4. MISCELLANEOUS.**

27 **"§ 55A-14-40. Disposition of amounts due to unavailable members and creditors.**

28 Upon liquidation of a corporation, the portion of the assets distributable to a creditor
29 or member who is unknown or cannot be found shall be disposed of in accordance with
30 Chapter 116B of the General Statutes.

31 **"ARTICLE 14A.**

32 **"REORGANIZATION.**

33 **"§ 55A-14A-01. Fundamental changes in reorganization proceedings.**

34 (a) Whenever a plan of reorganization of a corporation is confirmed by decree or
35 order of a court of competent jurisdiction in proceedings for the reorganization of the
36 corporation pursuant to the provisions of any applicable statute of the United States
37 relating to reorganization of corporations, the corporation may put into effect and carry
38 out the plan and the decrees and orders of the court relative thereto and may take any
39 action provided in the plan or directed by the decrees and orders without further action
40 by its directors or members. Such action may be taken, as may be directed by the
41 decrees or orders, by the trustee or trustees of the corporation appointed in the
42 reorganization proceedings, or by designated officers of the corporation, or by a master
43 or other representative appointed by the court, with like effect as if taken by unanimous

1 action of the directors and members of the corporation. In particular and without
2 limiting the generality or effect of the foregoing, the corporation may:

- 3 (1) Amend its articles of incorporation or bylaws, or both, so long as the
4 articles of incorporation and bylaws as amended contain only such
5 provisions as might be lawfully contained therein at the time of
6 making such amendment;
- 7 (2) Constitute or reconstitute and classify or reclassify its board of
8 directors, and name, constitute or appoint directors and officers in
9 place of or in addition to all or any of the directors or officers then in
10 office;
- 11 (3) Make any change in its memberships or securities or cancel any or all
12 of its outstanding memberships or securities;
- 13 (4) Dissolve and liquidate;
- 14 (5) Effect a merger;
- 15 (6) Transfer all or part of its assets;
- 16 (7) Change its registered office or registered agent, or both; and
- 17 (8) Authorize the issuance of bonds, debentures, or other obligations of
18 the corporation and fix the terms and conditions thereof.

19 (b) Any articles of amendment, statement of change of registered office or
20 registered agent, restated articles of incorporation, articles of merger, articles of
21 dissolution, or any other document appropriate to complete any action permitted by this
22 section shall be executed and filed in accordance with the provisions of this Chapter on
23 behalf of the corporation by such person or persons as may be authorized to take such
24 action pursuant to subsection (a) of this section.

25 (c) This section does not apply after entry of a final decree in the reorganization
26 proceeding even though the court retains jurisdiction of the proceeding for limited
27 purposes unrelated to consummation of the reorganization plan.

28 **"ARTICLE 15.**

29 **"FOREIGN CORPORATIONS.**

30 **"PART 1. CERTIFICATE OF AUTHORITY.**

31 **"§ 55A-15-01. Authority to conduct affairs required.**

32 (a) A foreign corporation may not conduct affairs in this State until it obtains a
33 certificate of authority from the Secretary of State.

34 (b) Without excluding other activities which may not constitute conducting
35 affairs in this State, a foreign corporation shall not be considered to be conducting
36 affairs in this State solely for the purposes of this Chapter, by reason of carrying on in
37 this State any one or more of the following activities:

- 38 (1) Maintaining or defending any action or suit or any administrative or
39 arbitration proceeding, or affecting the settlement thereof or the
40 settlement of claims or disputes;
- 41 (2) Holding meetings of its directors or members or carrying on other
42 activities concerning its internal affairs;

- 1 (3) Maintaining bank accounts or borrowing money in this State, with or
2 without security, even if such borrowings are repeated and continuous
3 transactions;
- 4 (4) Maintaining offices or agencies for the transfer, exchange, and
5 registration of memberships or securities, or appointing and
6 maintaining trustees or depositories with relation to those securities;
- 7 (5) Soliciting or procuring orders, whether by mail or through employees
8 or agents or otherwise, where the orders require acceptance without
9 this State before becoming binding contracts;
- 10 (6) Making or investing in loans with or without security including
11 servicing of mortgages or deeds of trust through independent agencies
12 within the State, the conducting of foreclosure proceedings and sale,
13 the acquiring of property at foreclosure sale, and the management and
14 rental of such property for a reasonable time while liquidating its
15 investment, provided no office or agency therefor is maintained in this
16 State;
- 17 (7) Taking security for or collecting debts due to it or enforcing any rights
18 in property securing the same;
- 19 (8) Conducting affairs in interstate commerce;
- 20 (9) Conducting an isolated transaction completed within a period of six
21 months and not in the course of a number of repeated transactions of
22 like nature;
- 23 (10) Selling through independent contractors;
- 24 (11) Owning, without more, real or personal property.

25 **"§ 55A-15-02. Consequences of conducting affairs without authority.**

26 (a) No foreign corporation conducting affairs in this State without permission
27 obtained through a certificate of authority under this Chapter or through domestication
28 under prior acts shall be permitted to maintain any action or proceeding in any court of
29 this State unless each corporation shall have obtained a certificate of authority prior to
30 trial; nor shall any action or proceeding be maintained in any court of this State by any
31 successor or assignee of such corporation on any cause of action arising out of the
32 conduct of affairs by such corporation in this State until:

- 33 (1) A certificate of authority shall have been obtained by the corporation
34 or by a foreign entity which has acquired substantially all of its assets
35 and is entitled to obtain a certificate of authority; or
- 36 (2) Substantially all of its assets have been acquired by a foreign entity
37 which is not entitled to obtain a certificate of authority by a domestic
38 corporation or by one or more individuals.

39 An issue arising under this subsection must be raised by motion and determined by
40 the trial judge prior to trial.

41 (b) A foreign corporation failing to obtain a certificate of authority as required by
42 this Chapter or by prior acts then applicable shall be liable to the State for the years or
43 parts thereof during which it conducted affairs in this State without a certificate of
44 authority in an amount equal to all fees and taxes which would have been imposed by

1 law upon the corporation had it duly applied for and received such permission, plus
2 interest and all penalties imposed by law for failure to pay such fees and taxes. In
3 addition, the foreign corporation shall be liable for a civil penalty of ten dollars (\$10.00)
4 for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or
5 part thereof, it conducts affairs in this State without a certificate of authority. The
6 Attorney General may bring actions to recover all amounts due the State under the
7 provisions of this subsection.

8 (c) Notwithstanding subsection (a) of this section, the failure of a foreign
9 corporation to obtain a certificate of authority does not impair the validity of its
10 corporate acts or prevent it from defending any proceeding in this State.

11 (d) The Secretary of State is hereby directed to require that every foreign
12 corporation conducting affairs in this State comply with the provisions of this Chapter.
13 The Secretary of State is authorized to employ such assistants as shall be deemed
14 necessary in the Secretary of State's office for the purpose of enforcing the provisions of
15 this Article and for making such investigations as shall be necessary to ascertain foreign
16 corporations now conducting affairs in this State which may have failed to comply with
17 the provisions of this Chapter.

18 **"§ 55A-15-03. Application for certificate of authority.**

19 (a) A foreign corporation may apply for a certificate of authority to conduct
20 affairs in this State by delivering an application to the Secretary of State for filing. The
21 application must set forth:

22 (1) The name of the foreign corporation or, if its name is unavailable for
23 use in this State, a corporate name that satisfies the requirements of
24 G.S. 55A-15-06;

25 (2) The name of the state or country under whose law it is incorporated;

26 (3) Its date of incorporation and period of duration;

27 (4) The street address, and mailing address if different from the street
28 address, of its principal office;

29 (5) The street address, and the mailing address if different from the street
30 address, of its registered office in this State, the county in which the
31 registered office is located, and the name of its registered agent at that
32 office;

33 (6) The names and usual business addresses of its current officers; and

34 (7) Whether it has members.

35 (b) The foreign corporation shall deliver with the completed application a
36 certificate of existence (or a document of similar import) duly authenticated by the
37 Secretary of State or other official having custody of corporate records in the state or
38 country under whose law it is incorporated.

39 (c) If the Secretary of State finds that the application conforms to law, the
40 Secretary of State shall when all fees have been tended as prescribed in this Chapter:

41 (1) Endorse on the application and an exact or conformed copy thereof the
42 word 'filed' and the hour, day, month, and year of the filing thereof;

- 1 (2) File in the Secretary of State's office the application and the certificate
2 of existence (or document of similar import as described in subsection
3 (b) of this section);
- 4 (3) Issue a certificate of authority to conduct affairs in this State to which
5 the Secretary of State shall affix the exact or conformed copy of the
6 application; and
- 7 (4) Send to the foreign corporation or its representative the certificate of
8 authority, together with the exact or conformed copy of the application
9 affixed thereto.

10 **"§ 55A-15-04. Amended certificate of authority.**

11 (a) A foreign corporation authorized to conduct affairs in this State must obtain
12 an amended certificate of authority from the Secretary of State if it changes:

- 13 (1) Its corporate name;
14 (2) The period of its duration; or
15 (3) The state or country of its incorporation.

16 (b) A foreign corporation may apply for an amended certificate of authority by
17 delivering an application to the Secretary of State for filing that sets forth:

- 18 (1) The name of the foreign corporation and the name in which the
19 corporation is authorized to conduct affairs in North Carolina if
20 different;
21 (2) The name of the state or country under whose law it is incorporated;
22 (3) The date it was originally authorized to conduct affairs in this State;
23 and
24 (4) A statement of the change or changes being made.

25 Except for the content of the application, the requirements of G.S. 55A-15-03 for
26 obtaining an original certificate of authority apply to obtaining an amended certificate
27 under this section.

28 **"§ 55A-15-05. Effect of certificate of authority.**

29 (a) A certificate of authority authorizes the foreign corporation to which it is
30 issued to conduct affairs in this State subject, however, to the right of the State to revoke
31 the certificate as provided in this Chapter. A foreign corporation, however, is not
32 eligible or entitled to qualify in this State as executor, administrator, or guardian, or as
33 trustee under the will of any person domiciled in this State at the time of his death.

34 (b) Except as otherwise provided by this Chapter, a foreign corporation with a
35 valid certificate of authority has the same but no greater rights and has the same but no
36 greater privileges as, and is subject to the same duties, restrictions, penalties, and
37 liabilities now or later imposed on, a domestic corporation of like character.

38 **"§ 55A-15-06. Corporate name of foreign corporation.**

39 (a) If the corporate name of a foreign corporation does not satisfy the
40 requirements of G.S. 55A-4-01, the foreign corporation, to obtain or maintain a
41 certificate of authority to conduct affairs in this State, may use a fictitious name to
42 conduct affairs in this State if its real name is unavailable and it delivers to the Secretary
43 of State for filing a copy of the resolution of its board of directors, certified by its
44 secretary, adopting the fictitious name.

1 (b) Except as authorized by subsection (c) of this section, the corporate name
2 (including a fictitious name) of a foreign corporation must be distinguishable upon the
3 records of the Secretary of State from:

4 (1) The corporate name of a corporation incorporated or authorized to
5 conduct affairs in this State;

6 (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S.
7 55-4-03 or under G.S. 55A-4-02 or G.S. 55A-4-03;

8 (3) The fictitious name of another foreign corporation authorized to
9 conduct affairs in this State; and

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

12 (c) A foreign corporation may apply to the Secretary of State for authorization to
13 use in this State a name that is not distinguishable upon his records from the name of
14 another corporation (incorporated or authorized to conduct affairs in this State). The
15 Secretary of State shall authorize use of the name applied for if:

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

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

23 (d) If a foreign corporation authorized to conduct affairs in this State changes its
24 corporate name to one that does not satisfy the requirements of G.S. 55A-4-01, it may
25 not conduct affairs in this State under the changed name until it adopts a name
26 satisfying the requirements of G.S. 55A-4-01 and obtains an amended certificate of
27 authority under G.S. 55A-15-04.

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

30 (f) Neither the reservation or registration of a corporate name nor the issuance of
31 a certificate of authority to a foreign corporation shall authorize the use in this State of a
32 corporate name in violation of the rights of any third party under the federal trademark
33 act, the trademark act of this State, or other statutory or common law, or be a defense to
34 an action for violation of any such rights.

35 **"§ 55A-15-07. Registered office and registered agent of foreign corporation.**

36 (a) Each foreign corporation authorized to conduct affairs in this State must
37 continuously maintain in this State:

38 (1) A registered office that may be the same as any place where it
39 conducts affairs; and

40 (2) A registered agent; who shall be: (i) an individual who resides in this
41 State and whose office is identical with the registered office; (ii) a
42 domestic business or nonprofit corporation whose office is identical
43 with the registered office; or (iii) a foreign business or nonprofit

1 corporation authorized to transact business or conduct affairs in this
2 State whose office is identical with the registered office.

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

6 **"§ 55A-15-08. Change of registered office or registered agent of foreign**
7 **corporation.**

8 (a) A foreign corporation authorized to conduct affairs in this State may change
9 its registered office or registered agent by delivering to the Secretary of State for filing a
10 statement of change that sets forth:

11 (1) Its name;

12 (2) The street address, and the mailing address if different from the street
13 address, of the corporation's current registered office, and the county in
14 which it is located;

15 (3) If the address of the corporation's registered office is to be changed,
16 the street address, and the mailing address if different from the street
17 address, of the new registered office, and the county in which it is
18 located;

19 (4) The name of its current registered agent;

20 (5) If the current registered agent is to be changed, the name of its new
21 registered agent and the new agent's written consent (either on the
22 statement or attached to it) to the appointment; and

23 (6) That after the change or changes are made, the addresses of its
24 registered office and the office of its registered agent will be identical.

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

31 **"§ 55A-15-09. Resignation of registered agent of foreign corporation.**

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

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

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

1 **"§ 55A-15-10. Service on foreign corporation.**

2 (a) The registered agent of a foreign corporation authorized to conduct affairs in
3 this State is an agent of the corporation for service of process, notice, or demand
4 required or permitted by law to be served on the foreign corporation.

5 (b) When a foreign corporation authorized to conduct affairs in this State fails to
6 appoint or maintain a registered agent in this State, or when its registered agent cannot
7 with due diligence be found at the registered office, or when its certificate of authority
8 shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent
9 of such corporation upon whom any process, notice, or demand may be served. Service
10 on the Secretary of State of any process, notice, or demand shall be made by delivering
11 to and leaving with the Secretary of State or with any clerk having charge of the
12 corporation department of this office, duplicate copies of such process, notice, or
13 demand. In the event any process, notice, or demand is served on the Secretary of State,
14 he shall immediately mail one of the copies thereof, by registered or certified mail,
15 return receipt requested, to the corporation at its principal office shown in its most
16 recent annual report or in any subsequent communication received from the corporation
17 stating the current mailing address of its principal office or, if there is no mailing
18 address for the principal office on file, to the corporation at its registered office. Service
19 on a foreign corporation under this subsection shall be effective for all purposes from
20 and after the date of such service on the Secretary of State.

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

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

27 **"PART 2. WITHDRAWAL.**

28 **"§ 55A-15-20. Withdrawal of foreign corporation.**

29 (a) A foreign corporation authorized to conduct affairs in this State may not
30 withdraw from this State until it obtains a certificate of withdrawal from the Secretary
31 of State.

32 (b) A foreign corporation authorized to conduct affairs in this State may apply for
33 a certificate of withdrawal by delivering an application to the Secretary of State for
34 filing. The application must set forth:

35 (1) The name of the foreign corporation and the name of the state or
36 country under whose law it is incorporated;

37 (2) That it is not conducting affairs in this State and that it surrenders its
38 authority to conduct affairs in this State;

39 (3) That the corporation revokes the authority of its registered agent to
40 accept service of process and consents that service of process in any
41 action or proceeding based upon any cause of action arising in this
42 State, or arising out of affairs conducted in this State, during the time
43 the corporation was authorized to conduct affairs in this State may

1 thereafter be made on such corporation by service thereof on the
2 Secretary of State;

3 (4) A mailing address to which the Secretary of State may mail a copy of
4 any process served on the Secretary of State under subdivision (3) of
5 this subsection; and

6 (5) A commitment to notify the Secretary of State in the future of any
7 change in its mailing address.

8 (c) If the Secretary of State finds that the application conforms to law, the
9 Secretary of State shall:

10 (1) Endorse on the application and an exact or conformed copy thereof the
11 word 'filed', and the hour, day, month, and year of the filing thereof;

12 (2) File the application in the Secretary of State's office; and

13 (3) Issue a certificate of withdrawal to which the Secretary of State shall
14 affix the exact or conformed copy of the application.

15 (d) After the withdrawal of the corporation is effective, service of process on the
16 Secretary of State in accordance with subdivision (b)(3) of this section is service on the
17 foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of
18 the process to the foreign corporation at the mailing address set forth under subsection
19 (b) of this section.

20 **"§ 55A-15-21. Withdrawal of foreign corporation by reason of a merger.**

21 (a) Whenever the separate existence of a foreign corporation authorized to
22 conduct affairs in this State ceases as a result of a statutory merger permitted by the
23 laws of the state or country under which it was incorporated, the surviving corporation
24 shall apply for a certificate of withdrawal for the merged corporation by delivering to
25 the Secretary of State for filing a copy of the articles of merger or a certificate reciting
26 the facts of the merger, duly authenticated by the Secretary of State or other official
27 having custody of corporate records in the state or country under the laws of which such
28 statutory merger was effected. If the surviving corporation is not authorized to conduct
29 affairs in this State, the articles of merger or certificate must be accompanied by an
30 application which must set forth:

31 (1) The name of each merged corporation authorized to conduct affairs in
32 this State and the name of the surviving corporation and a statement
33 that the surviving corporation is not authorized to conduct affairs in
34 this State;

35 (2) That the surviving corporation consents that service of process based
36 upon any cause of action arising in this State, or arising out of affairs
37 conducted in this State, during the time each merged corporation was
38 authorized to conduct affairs in this State may thereafter be made on
39 such corporation by service thereof on the Secretary of State;

40 (3) A mailing address to which the Secretary of State may mail a copy of
41 any process served on him under subdivision (a)(2) of this section; and

42 (4) A commitment to notify the Secretary of State in the future of any
43 change in its mailing address.

1 (b) If the Secretary of State finds that the articles of merger or certificate and the
2 application for withdrawal, if required, conforms to law the Secretary of State shall:

- 3 (1) Endorse on the articles of merger or certificate and the application for
4 withdrawal, if required, the word 'filed', and the hour, day, month, and
5 year of filing thereof;
6 (2) File the articles of merger or certificate and the application, if required;
7 (3) Issue a certificate of withdrawal; and
8 (4) Send to the foreign corporation or its representative the certificate of
9 withdrawal, together with the exact or conformed copy of the
10 application, if required, affixed thereto.

11 **"PART. 3. REVOCATION OF CERTIFICATE OF AUTHORITY.**

12 **"§ 55A-15-30. Grounds for revocation.**

13 (a) The Secretary of State may commence a proceeding under G.S. 55A-15-31 to
14 revoke the certificate of authority of a foreign corporation authorized to conduct affairs
15 in this State if:

- 16 (1) The foreign corporation does not deliver its annual report to the
17 Secretary of State within 60 days after it is due;
18 (2) The foreign corporation does not pay within 60 days after they are due
19 any penalties, fees, or other payments due under this Chapter;
20 (3) The foreign corporation is without a registered agent or registered
21 office in this State for 60 days or more;
22 (4) The foreign corporation does not inform the Secretary of State under
23 G.S. 55A-15-08 or G.S. 55A-15-09 that its registered agent or
24 registered office has changed, that its registered agent has resigned, or
25 that its registered office has been discontinued within 60 days of the
26 change, resignation, or discontinuance;
27 (5) An incorporator, director, officer, or agent of the foreign corporation
28 signs a document he knew was false in any material respect with intent
29 that the document be delivered to the Secretary of State for filing;
30 (6) The Secretary of State receives a duly authenticated certificate from
31 the secretary of state or other official having custody of corporate
32 records in the state or country under whose law the foreign corporation
33 is incorporated stating that it has been dissolved or disappeared as the
34 result of a merger; or
35 (7) The corporation is exceeding the authority conferred upon it by this
36 Chapter.

37 (b) Nothing herein shall be deemed to repeal or modify any provision of the
38 Revenue Act relating to the suspension of the certificate of authority of foreign
39 corporations for failure to comply with the provisions thereof.

40 **"§ 55A-15-31. Procedure and effect of revocation.**

41 (a) If the Secretary of State determines that one or more grounds exist under G.S.
42 55A-15-30 for revocation of a certificate of authority, the Secretary of State shall mail
43 to the foreign corporation written notice of the Secretary of State's determination.

1 **(b)** If the foreign corporation does not correct each ground for revocation or
2 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
3 determined by the Secretary of State does not exist within 60 days after notice is mailed,
4 the Secretary of State may revoke the foreign corporation's certificate of authority by
5 signing a certificate of revocation that recites the ground or grounds for revocation and
6 its effective date. The Secretary of State shall file the original of the certificate and mail
7 a copy to the foreign corporation.

8 **(c)** The authority of a foreign corporation to conduct affairs in this State ceases
9 on the date shown on the certificate revoking its certificate of authority.

10 **(d)** The Secretary of State's revocation of a foreign corporation's certificate of
11 authority appoints the Secretary of State the foreign corporation's agent for service of
12 process in any proceeding based on a cause of action arising in this State or arising out
13 of affairs conducted in this State during the time the foreign corporation was authorized
14 to conduct affairs in this State. The Secretary of State shall then proceed in accordance
15 with G.S. 55A-15-10.

16 **(e)** Revocation of a foreign corporation's certificate of authority does not
17 terminate the authority of the registered agent of the corporation.

18 **"§ 55A-15-32. Appeal from revocation.**

19 **(a)** A foreign corporation may appeal the Secretary of State's revocation of its
20 certificate of authority to the Superior Court of Wake County within 30 days after
21 service of the certificate of revocation is mailed. The appeal is commenced by filing a
22 petition with the court and with the Secretary of State requesting the court to set aside
23 the revocation. The petition shall have attached to it copies of the corporation's
24 certificate of authority and the Secretary of State's certificate of revocation. The appeal
25 to the superior court shall be determined upon such further evidence, notice, and
26 opportunity to be heard, if any, as the court may deem appropriate under the
27 circumstances. The foreign corporation shall have the burden of establishing that it is
28 entitled to have the revocation set aside.

29 **(b)** Upon consideration of the petition and any response made by the Secretary of
30 State, the court may, prior to entering final judgment, order the Secretary of State to set
31 aside the revocation or may take any other action the court considers appropriate.

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

33 **"ARTICLE 16.**

34 **"RECORDS AND REPORTS.**

35 **"PART 1. RECORDS.**

36 **"§ 55A-16-01. Corporate records.**

37 **(a)** A corporation shall keep as permanent records minutes of all meetings of its
38 members and board of directors, a record of all actions taken by the members or
39 directors without a meeting, and a record of all actions taken by committees of the board
40 of directors in place of the board of directors on behalf of the corporation.

41 **(b)** A corporation shall maintain appropriate accounting records.

42 **(c)** A corporation or its agent shall maintain a record of its members, in a form
43 that permits preparation of a list of the names and addresses of all members, in

1 alphabetical order by class, showing the number of votes each member is entitled to
2 cast.

3 (d) A corporation shall maintain its records in written form or in another form
4 capable of conversion into written form within a reasonable time.

5 (e) A corporation shall keep a copy of the following records at its principal
6 office:

7 (1) Its articles of incorporation or restated articles of incorporation and all
8 amendments to them currently in effect;

9 (2) Its bylaws or restated bylaws and all amendments to them currently in
10 effect;

11 (3) Resolutions adopted by its members or board of directors relating to
12 the number or classification of directors or to the characteristics,
13 qualifications, rights, limitations, and obligations of members or any
14 class or category of members;

15 (4) The minutes of all meetings of members and records of all actions
16 approved by the members for the past three years;

17 (5) All written communications to members generally within the past three
18 years, and the financial statements, if any, that have been furnished or
19 would have been required to be furnished to a member upon demand
20 under G.S. 55A-16-20 during the past three years;

21 (6) A list of the names and business or home addresses of its current
22 directors and officers; and

23 (7) Its most recent annual report delivered to the Secretary of State under
24 G.S. 55A-16-22.

25 **"§ 55A-16-02. Inspection of records by members.**

26 (a) A member is entitled to inspect and copy, at a reasonable time and location
27 specified by the corporation, any of the records of the corporation described in G.S.
28 55A-16-01(e) if the member gives the corporation written notice of his demand at least
29 five business days before the date on which the member wishes to inspect and copy.

30 (b) A member is entitled to inspect and copy, at a reasonable time and reasonable
31 location specified by the corporation, any of the following records of the corporation if
32 the member meets the requirements of subsection (c) of this section and gives the
33 corporation written notice of his demand at least five business days before the date on
34 which the member wishes to inspect and copy:

35 (1) Excerpts from any records required to be maintained under G.S. 55A-
36 16-01(a), to the extent not subject to inspection under G.S. 55A-16-
37 02(a);

38 (2) Accounting records of the corporation; and

39 (3) Subject to G.S. 55A-16-05, the membership list.

40 (c) A member may inspect and copy the records identified in subsection (b) of
41 this section only if:

42 (1) The member's demand is made in good faith and for a proper purpose;

43 (2) The member describes with reasonable particularity the purpose and
44 the records the member desires to inspect; and

1 (3) The records are directly connected with this purpose.

2 (d) This section does not affect:

3 (1) The right of a member to inspect records under G.S. 55A-7-20 or, if
4 the member is in litigation with the corporation, to inspect the records
5 to the same extent as any other litigant; or

6 (2) The power of a court, independently of this Chapter, to compel the
7 production of corporate records for examination.

8 (e) A member of a corporation that has the power to elect, appoint, or designate a
9 majority of the directors of another domestic or foreign corporation, whether nonprofit
10 or business, shall have inspection rights with respect to the records of that other
11 corporation.

12 **"§ 55A-16-03. Scope of inspection rights.**

13 (a) A member's agent or attorney has the same inspection and copying rights as
14 the member the agent or attorney represents.

15 (b) The right to copy records under G.S. 55A-16-02 includes, if reasonable, the
16 right to receive copies made by photographic, xerographic, electronic, magnetic, or
17 other means.

18 (c) The corporation may impose a reasonable charge, covering the costs of labor
19 and material, for producing for inspection or copying any records provided to the
20 member. The charge may not exceed the estimated cost of production or reproduction
21 of the records.

22 (d) The corporation may comply with a member's demand to inspect the record
23 of members under G.S. 55A-16-02(b)(3) by providing the member with a list of its
24 members that was compiled no earlier than the date of the member's demand.

25 **"§ 55A-16-04. Court-ordered inspection.**

26 (a) If a corporation does not allow a member who complies with G.S. 55A-16-
27 02(a) to inspect and copy any records required by that subsection to be available for
28 inspection, the superior court in the county where the corporation's principal office (or,
29 if there is none in this State, its registered office) is located may, upon application of the
30 member, summarily order inspection and copying of the records demanded at the
31 corporation's expense.

32 (b) If a corporation does not within a reasonable time allow a member to inspect
33 and copy any other record, the member who complies with G.S. 55A-16-02(b) and (c)
34 may apply to the superior court in the county where the corporation's principal office
35 (or, if there is none in this State, its registered office) is located for an order to permit
36 inspection and copying of the records demanded. The court shall dispose of an
37 application under this subsection on an expedited basis.

38 (c) If the court orders inspection and copying of the records demanded, it shall
39 also order the corporation to pay the member's cost (including reasonable attorneys'
40 fees) incurred to obtain the order unless the corporation proves that it refused inspection
41 in good faith because it had a reasonable basis for doubt about the right of the member
42 to inspect the records demanded.

1 (d) If the court orders inspection and copying of the records demanded, it may
2 impose reasonable restrictions on the use or distribution of the records by the
3 demanding member.

4 **"§ 55A-16-05. Limitations on use of membership list.**

5 Without consent of the board of directors, a membership list or any part thereof may
6 not be obtained or used by any person for any purpose unrelated to a member's interest
7 as a member. Without limiting the generality of the foregoing, and without the consent
8 of the board, a membership list or any part thereof may not be:

- 9 (1) Used to solicit money or property unless such money or property will
10 be used solely to solicit the votes of the members in an election to be
11 held by the corporation;
12 (2) Used for any commercial purpose; or
13 (3) Sold to or purchased by any person.

14 **"PART 2. REPORTS.**

15 **"§ 55A-16-20. Financial statements for members.**

16 (a) Except as provided in the articles of incorporation or bylaws of a charitable or
17 religious corporation, a corporation upon written demand from a member shall furnish
18 that member its latest annual financial statements, if any, which may be consolidated or
19 combined statements of the corporation and one or more of its subsidiaries or affiliates,
20 as appropriate, that include a balance sheet as of the end of the fiscal year and statement
21 of operations for that year. If financial statements are prepared for the corporation on
22 the basis of generally accepted accounting principles, the annual financial statements
23 must also be prepared on that basis.

24 (b) If annual financial statements are reported upon by a public accountant, the
25 accountant's report must accompany them. If not, the statements must be accompanied
26 by the statement of the president or the person responsible for the corporation's financial
27 accounting records:

- 28 (1) Stating the president's or other person's reasonable belief as to whether
29 the statements were prepared on the basis of generally accepted
30 accounting principles and, if not, describing the basis of preparation;
31 and
32 (2) Describing any respects in which the statements were not prepared on
33 a basis of accounting consistent with the statements prepared for the
34 preceding year.

35 **"§ 55A-16-21. Notice of indemnification to members.**

36 If a corporation indemnifies or advances expenses to a director under G.S. 55A-8-
37 51, 55A-8-52, 55A-8-53, 55A-8-54, or 55A-8-57 in connection with a proceeding by or
38 in the right of the corporation, the corporation shall give notice of the indemnification or
39 advance in writing to the members with or before the notice of the next meeting of
40 members.

41 **"§ 55A-16-22. Annual report for the Secretary of State.**

42 (a) Each domestic corporation, and each foreign corporation authorized to
43 conduct affairs in this State, shall deliver to the Secretary of State for filing an annual
44 report that sets forth:

- 1 (1) The name of the corporation and the state or country under whose law
2 it is incorporated;
- 3 (2) The street address, and the mailing address if different from the street
4 address, of the registered office, the county in which its registered
5 office is located, and the name of its registered agent at that office in
6 this State, and a statement of any change of such registered office or
7 registered agent, or both;
- 8 (3) The address of its principal office;
- 9 (4) The names, titles, and business or residence addresses of its directors
10 and principal officers;
- 11 (5) A brief description of the nature of its activities; and
- 12 (6) Whether or not it has members.
- 13 (b) The information in the annual report must be current as of the date the annual
14 report is executed on behalf of the corporation.
- 15 (c) The annual report shall be delivered to the Secretary of State each year within
16 60 days immediately following the last day of the month in which the domestic
17 corporation was incorporated or the foreign corporation received a certificate of
18 authority in this State. Forms required for the filing of the annual report shall be mailed
19 by the Secretary of State to the domestic or foreign corporation at its registered office
20 for the first annual report, then to its principal office for subsequent annual reports.
- 21 (d) If an annual report does not contain the information required by this section,
22 the Secretary of State shall promptly notify the reporting domestic or foreign
23 corporation in writing and return the report to it for correction. If the report is corrected
24 to contain the information required by this section and delivered to the Secretary of
25 State within 30 days after the effective date of notice, it is deemed to be timely filed.
- 26 (e) Amendments to any previously filed annual report may be filed at any time
27 for the purpose of correcting, updating, or augmenting the information contained in such
28 annual report.

"ARTICLE 17.

"TRANSITION AND CURATIVE PROVISIONS.

"§ 55A-17-01. Applicability of Chapter.

- 32 (a) The provisions of this Chapter relating to domestic corporations shall apply
33 to:
- 34 (1) All corporations hereafter organized under this Chapter.
- 35 (2) All nonprofit corporations without capital stock heretofore or hereafter
36 organized under any other act, unless there is some other specific
37 statutory provision particularly applicable to such corporations or
38 inconsistent with some provisions of this Chapter, in which case that
39 other provision prevails. Nothing herein shall apply to hospital and
40 medical service corporations as defined in Article 65 of Chapter 58 of
41 the General Statutes which were incorporated prior to July 1, 1957, or
42 repeal or modify the provisions of G.S. 54-138.

1 (b) The provisions of this Chapter relating to foreign corporations shall apply to
2 all such corporations conducting affairs in this State for purposes for which a
3 corporation might be organized under this Chapter.

4 **"§ 55A-17-02. Certain religious, etc., associations deemed incorporated.**

5 In all cases where a religious, educational, or charitable association has been formed
6 prior to January 1, 1894, and has since that date been acting as a corporation, exercising
7 the powers and performing the duties of religious, educational, or charitable
8 corporations as prescribed by the laws of this State, then such association shall be
9 conclusively presumed to have been duly and regularly organized and existing as a
10 corporation under the laws of this State on January 1, 1894, and all of its acts as a
11 corporation from and after said date, if otherwise valid, are hereby declared to be valid
12 corporate acts.

13 **"§ 55A-17-03. Saving provisions.**

14 (a) The existence of corporations formed before the effective date of this
15 Chapter, shall not be impaired by the enactment of this Chapter nor by any change made
16 by this Chapter in the requirements for the formation of corporations nor by any
17 amendment or repeal by this Chapter of the laws under which they were formed or
18 created, and, except as otherwise expressly provided in this Chapter, the repeal of a
19 prior act by this Chapter shall not affect any liability or penalty incurred, under the
20 provisions of such act, prior to the repeal thereof.

21 (b) Any proceeding or corporate action commenced prior to the effective date of
22 this Chapter, may be completed in accordance with the law then in effect.

23 **"§ 55A-17-04. Severability.**

24 If any provision of this Chapter or its application to any person or circumstance is
25 held invalid by a court of competent jurisdiction, the invalidity does not affect other
26 provisions or applications of the Chapter that can be given effect without the invalid
27 provision or application, and to this end the provisions of the Chapter are severable.

28 **"§ 55A-17-05. Validation of amendments to corporate charters extending**
29 **corporate existence; limitation of actions; intent.**

30 (a) In every case where a corporation chartered under either the general or
31 private laws of the State of North Carolina has continued or shall continue to act and
32 conduct affairs as a corporation after the expiration of its period of existence as
33 theretofore fixed in its charter and has thereafter filed in the office of the Secretary of
34 State an amendment to its charter to extend or renew its corporate existence, such
35 amendment is hereby validated and made effective for all intents and purposes to the
36 same extent and with the same effect as if the amendment has been made within the
37 period of such corporation's existence as theretofore fixed in its charter.

38 (b) No action or proceeding shall be brought or defense or counterclaim pleaded
39 later than July 1, 1958, in which either the continued existence of the corporation or the
40 validity of any of the contracts, acts, deeds, rights, privileges, powers, franchises, and
41 titles of the corporation is attacked or otherwise questioned on the grounds that the
42 amendment was not filed within the period of the corporation's existence as theretofore
43 fixed in its charter.

1 (c) In no event shall the limitation provided in subsection (b) of this section bar
2 any action, proceeding, defense, or counterclaim based upon grounds other than those
3 mentioned in subsection (b) of this section, unless the grounds set out in subsection (b)
4 of this section are an essential part thereof."

5 Sec. 2. The Revisor of Statutes shall cause to be printed along with this act
6 all explanatory comments of the drafters of this act as the Revisor may deem
7 appropriate.

8 Sec. 3. This act becomes effective July 1, 1994.