

Article 16.

Records and Reports.

Part 1. Records.

§ 55-16-01. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its incorporators, shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) All written communications to shareholders generally within the past three years and the financial statements required to be made available to the shareholders for the past three years under G.S. 55-16-20;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered as required by G.S. 55-16-22. (1901, c. 2, ss. 38, 45; Rev., ss. 1180, 1181; C.S., s. 1170; G.S., s. 55-107; 1955, c. 1371, s. 1; 1969, c. 751, s. 14; 1989, c. 265, s. 1; 1997-475, s. 6.6.)

§ 55-16-02. Inspection of records by shareholders.

(a) A qualified shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in G.S. 55-16-01(e) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

(b) A qualified shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

- (1) Records of any final action taken with or without a meeting by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of

the shareholders and records of action taken by the shareholders without a meeting, to the extent not subject to inspection under G.S. 55-16-02 (a);

- (2) Accounting records of the corporation; and
- (3) The record of shareholders;

provided that a shareholder of a public corporation shall not be entitled to inspect or copy any accounting records of the corporation or any records of the corporation with respect to any matter which the corporation determines in good faith may, if disclosed, adversely affect the corporation in the conduct of its business or may constitute material nonpublic information at the time the shareholder's notice of demand to inspect and copy is received by the corporation.

(c) A qualified shareholder may inspect and copy the records described in subsection (b) only if:

- (1) His demand is made in good faith and for a proper purpose;
- (2) He describes with reasonable particularity his purpose and the records he desires to inspect; and
- (3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

- (1) The right of a shareholder to inspect records under G.S. 55-7-20 or, if the shareholder is in litigation with the corporation, to inspect the records to the same extent as any other litigant;
- (2) The power of a court, independently of this Chapter, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf and whose beneficial ownership is certified to the corporation by that voting trust or nominee.

(g) For purposes of this section a "qualified shareholder" of a corporation is a person who shall have been a shareholder in the corporation for at least six months immediately preceding his demand or who shall be the holder of at least five percent (5%) of the corporation's outstanding shares of any class.

(h) A qualified shareholder of a corporation that has the power to elect, appoint, or designate a majority of the directors of another domestic or foreign corporation or of a domestic or foreign nonprofit corporation, shall have the inspection rights provided in this section with respect to the records of that other corporation.

(i) Notwithstanding the provisions of this section or any other provisions of this Chapter or interpretations thereof to the contrary, a shareholder of a public corporation shall have no common law rights to inspect or copy any accounting records of the corporation or any other records of the corporation that may not be inspected or copied by a shareholder of a public corporation as provided in G.S. 55-16-02(b). (1901, c. 2, ss. 38, 45, 49; Rev., ss. 1179-1181; C.S., ss. 1170, 1172; G.S., ss. 55-107, 55-109; 1955, c. 1371, s. 1; 1965, c. 609; 1973, c. 469, s. 11; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.26; 1993, c. 552, s. 19.)

§ 55-16-03. Scope of inspection right.

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under G.S. 55-16-02(b)(3) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand. (1901, c. 2, s. 49; Rev., s. 1179; C.S., s. 1172; G.S., s. 55-109; 1955, c. 1371, s. 1; 1965, c. 609; 1973, c. 469, s. 11; 1989, c. 265, s. 1; 2005-268, s. 35.)

§ 55-16-04. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with G.S. 55-16-02(a) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office (or, if none in this State, its registered office) is located may, upon application of the shareholder, summarily order inspection and copying of the records demanded at the corporation's expense.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with G.S. 55-16-02(b) and (c) may apply to the superior court in the county where the corporation's principal office (or, if none in this State, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder. (1901, c. 2, s. 49; Rev., s. 1179, C.S., s. 1172; G.S., s. 55-109; 1955, c. 1371, s. 1; 1965, c. 609; 1973, c. 469, s. 11; 1989, c. 265, s. 1.)

§ 55-16-05. Inspection of records by directors.

(a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The superior court of the county where the corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon

exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application. (2005-268, s. 36.)

§ 55-16-06. Exception to notice requirements.

(a) Whenever notice is required to be given under any provision of this Chapter to a shareholder, the notice shall not be required to be given if either of the following applies:

- (1) Notice of two consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.
- (2) All, but not less than two, payments of dividends on securities during a 12-month period, or two consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a shareholder delivers to the corporation a written notice setting forth that shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated. (2005-268, s. 36.)

§§ 55-16-07 through 55-16-19. Reserved for future codification purposes.

Part 2. Reports.

§ 55-16-20. Financial statements for shareholders.

(a) A corporation shall make available to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of cash flows for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

- (1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements, or a written notice of their availability, to each shareholder within 120 days after the close of each fiscal year; provided that the failure of the corporation to comply with this requirement shall not constitute the basis for any claim of damages by any shareholder unless such failure was in bad faith. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the latest financial statements. (1901, c. 2, ss. 38, 45, 49; Rev., ss. 1179-1181; C.S., ss. 1170, 1172; G.S., ss. 55-107, 55-109; 1955, c. 1371, s. 1; 1965, c. 609; 1973, c. 469, s. 11; 1989, c. 265, s. 1.)

§ 55-16-21: Repealed by Session Laws 2005-268, s. 37, effective October 1, 2005.

§ 55-16-22. Annual report.

(a) Requirement. – Except as provided in subsections (a1) and (a2) of this section, each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver an annual report directly to the Secretary of State in electronic form or in paper form as prescribed by the Secretary of State under this section.

(a1) Insurers. – Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) Professional Corporations Exempt. – A corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) Form; Required Information. – The annual report required by this section shall be in a form prescribed by the Secretary of State. The Secretary of State shall prescribe the form needed to file an annual report electronically and shall provide this form by electronic means. The annual report shall set forth all of the following:

- (1) The name of the corporation and the state or country under whose law it is incorporated.
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both.
- (3) The address and telephone number of its principal office.
- (4) The names, titles, and business addresses of its principal officers.
- (4a) Repealed by Session Laws 1997-475, s. 6.1, effective January 1, 1998.
- (5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(a4) Form; Certain Veteran-Owned Businesses. – The Secretary of State shall also provide appropriate space and instructions on the annual report form for a domestic corporation or foreign corporation to voluntarily indicate whether or not the corporation is a veteran-owned small business or a service-disabled veteran-owned small business.

(b) Currency of Information. – Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) Due Date. – An annual report is due by the fifteenth day of the fourth month following the close of the corporation's fiscal year.

(d) Incomplete Information. – If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and submitted to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments. – Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) Expired.

(g) Repealed by Session Laws 2017-204, s. 1.13, effective August 11, 2017.

(h) Delinquency. – If the Secretary of State does not receive an annual report within 60 days of the date the report is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by evidence of delivery presented by the filing corporation. (1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1066, s. 32(a); 1993, c. 218, s. 2; 1997-475, s. 6.1; 2003-233, s. 3; 2010-31, s. 31.4(a); 2017-90, s. 1(b); 2017-204, s. 1.13; 2019-177, s. 5.)

§ 55-16-22.1. Repealed by Session Laws 1998-228, S.17.

§ 55-16-22.2. Report of veteran-owned small businesses and service-disabled veteran-owned small businesses.

Using the information reported pursuant to G.S. 55-16-22(a4), the Secretary of State shall compile summary information on an aggregate basis about the number of veteran-owned small businesses and the number of service-disabled veteran-owned small businesses reporting in this State. The Secretary of State shall annually report this summary information to the Department of Military and Veterans Affairs by March 1 of each year. (2017-90, s. 1(c).)