

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 398  
HOUSE BILL 624

AN ACT TO REWRITE CHAPTER 55A OF THE GENERAL STATUTES  
RELATING TO NONPROFIT CORPORATIONS AS RECOMMENDED BY THE  
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

"Chapter 55A.

"North Carolina Nonprofit Corporation Act.

"ARTICLE 1.

"General Provisions.

"Part 1. Short Title and Reservation of Power.

**"§ 55A-1-01. Short title.**

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

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

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

"Part 2. Filing Documents.

**"§ 55A-1-20. Filing requirements.**

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

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

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

(d) The document shall be typewritten or printed.

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

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

(f) The document shall be executed:

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

- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

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

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

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

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

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

**"§ 55A-1-21. Forms.**

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

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

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

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

**"§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

<u>Document</u>	<u>Fee</u>
(1) <u>Articles of incorporation</u>	<u>\$50.00</u>
(2) <u>Application for reserved name</u>	<u>\$10.00</u>
(3) <u>Notice of transfer of reserved name</u>	<u>\$10.00</u>
(4) <u>Application for registered name</u>	<u>\$10.00</u>
(5) <u>Application for renewal of registered name</u>	<u>\$10.00</u>
(6) <u>Corporation's statement of change of registered agent or registered office or both</u>	<u>\$ 5.00</u>
(7) <u>Agent's statement of change of registered office for each affected corporation</u>	<u>\$ 5.00</u>
(8) <u>Agent's statement of resignation</u>	<u>No fee</u>
(9) <u>Designation of registered agent or registered office or both</u>	<u>\$ 5.00</u>

(10)	<u>Amendment of articles of incorporation</u>	\$25.00
(11)	<u>Restated articles of incorporation without amendment of articles</u>	\$10.00
(12)	<u>Restated articles of incorporation with amendment of articles</u>	\$25.00
(13)	<u>Articles of merger</u>	\$25.00
(14)	<u>Articles of dissolution</u>	\$15.00
(15)	<u>Articles of revocation of dissolution</u>	\$10.00
(16)	<u>Certificate of administrative dissolution</u>	No fee
(17)	<u>Application for reinstatement following administrative dissolution</u>	\$25.00
(18)	<u>Certificate of reinstatement</u>	No fee
(19)	<u>Certificate of judicial dissolution</u>	No fee
(20)	<u>Application for certificate of authority</u>	\$100.00
(21)	<u>Application for amended certificate of authority</u>	\$25.00
(22)	<u>Application for certificate of withdrawal</u>	\$10.00
(23)	<u>Certificate of revocation of authority to conduct affairs</u>	No fee
(24)	<u>Annual Report</u>	\$10.00
(25)	<u>Articles of correction</u>	\$10.00
(26)	<u>Application for certificate of existence or authorization</u>	\$ 5.00
(27)	<u>Any other document required or permitted to be filed by this Chapter</u>	\$10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate.

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

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

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

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A

delayed effective date for a document shall not be later than the 90th day after the date it is filed.

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

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

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

(b) A document is corrected:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The domestic corporation's corporate name or the foreign corporation's name used in this State;
- (2) That the domestic corporation is duly incorporated under the law of this State, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to conduct affairs in this State;
- (3) That the articles of incorporation of a domestic corporation or the certificate of authority of a foreign corporation has not been suspended for failure to comply with the Revenue Act of this State and that the corporation has not been administratively dissolved for failure to comply with the provisions of this Chapter;
- (4) That its most recent annual report required by G.S. 55A-16-22 has been delivered to the Secretary of State;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

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

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

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

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

"Part 3. Secretary of State.

**"§ 55A-1-30. Powers.**

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

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

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

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

(a) The knowing failure or refusal of a domestic or foreign corporation to answer truthfully and fully, within the time prescribed in this Chapter, interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter shall constitute grounds for administrative dissolution under G.S. 55A-14-20 or for revocation under G.S. 55A-15-30, as the case may be.

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

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

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

"Part 4. Definitions.

**"§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

- (1) 'Articles of incorporation' include amended and restated articles of incorporation and articles of merger.
- (2) 'Board' or 'board of directors' means the group of natural persons vested by the corporation with the management of its affairs whether or not the group is designated as directors in the articles of incorporation or bylaws.
- (3) 'Bylaws' means the rules (other than the articles) adopted pursuant to this Chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.
- (4) 'Charitable or religious corporation' means any corporation that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section.
- (4a) 'Conspicuous' means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (5) 'Corporation' or 'domestic corporation' means a nonprofit corporation subject to the provisions of this Chapter, except a foreign corporation.
- (6) 'Delegates' means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
- (7) 'Deliver' includes mail.
- (8) 'Distribution' means a direct or indirect transfer of money or other property or incurrance of indebtedness by a corporation to or for the benefit of its members, directors, or officers, or to or for the benefit of transferees in liquidation under Article 14 of this Chapter (other than creditors).
- (9) 'Effective date of notice' is defined in G.S. 55A-1-41.
- (10) 'Entity' includes corporation and foreign corporation; domestic or foreign business corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association, chapter or other organizational unit; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

- (11) 'Foreign corporation' means a corporation (with or without capital stock) organized under a law other than the law of this State for purposes for which a corporation might be organized under this Chapter.
- (12) 'Governmental subdivision' includes authority, county, district, and municipality.
- (13) 'Includes' denotes a partial definition.
- (14) 'Individual' denotes a natural person legally competent to act and also includes the estate of an incompetent or deceased individual.
- (15) 'Means' denotes an exhaustive definition.
- (16) 'Member' means a person who is, by the articles of incorporation or bylaws of the corporation, either (i) specifically designated as a member or (ii) included in a category of persons specifically designated as members. A person is not a member solely by reason of having voting rights or other rights associated with membership.
- (17) 'Nonprofit corporation' means a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers, except as permitted by Article 13 of this Chapter, and includes all associations without capital stock formed under Subchapter V of Chapter 54 of the General Statutes or under any act or acts replaced thereby.
- (18) 'Notice' includes demand and is defined in G.S. 55A-1-41.
- (19) 'Person' includes individual and entity.
- (20) 'Principal office' means the office (in or out of this State) so designated in the annual report filed pursuant to G.S. 55A-16-22 where the principal offices of a domestic or foreign corporation are located.
- (21) 'Proceeding' includes civil suit and criminal, administrative, and investigatory action.
- (22) 'Record date' means the date established under Article 7 of this Chapter on which a corporation determines the identity of its members for the purposes of this Chapter.
- (23) 'Secretary' means the corporate officer to whom the board of directors has delegated responsibility under G.S. 55A-8-40(c) for custody of the minutes of the meetings of the board of directors and of the members and for authenticating records of the corporation.
- (24) 'State,' when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
- (25) 'United States' includes district, authority, bureau, commission, department, and any other agency of the United States.
- (26) 'Vote' includes authorization by written ballot and written consent.

**"§ 55A-1-41. Notice.**



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

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

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

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

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

- (1) When received;
- (2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;
- (4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;
- (5) When delivered to the member's address shown in the corporation's current list of members.

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

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

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice

requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

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

"Part 5. Private Foundations.

**"§ 55A-1-50. Private Foundations.**

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

- (1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code.
- (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code.
- (3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code.
- (4) Shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the Code.
- (5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code.

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

"Part 6. Judicial Relief.

**"§ 55A-1-60. Judicial relief.**

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

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

(c) The order issued pursuant to this section may, to the extent the court finds it reasonably required under the circumstances, dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to

quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles of incorporation, bylaws, or this Chapter.

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

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

"ARTICLE 2.

"Organization.

**"§ 55A-2-01. Incorporators.**

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

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

(a) The articles of incorporation shall set forth:

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

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

- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
- (2) The names and addresses of the individuals who are to serve as the initial directors;
- (3) Provisions not inconsistent with law regarding:
  - a. Managing and regulating the affairs of the corporation;

- b. Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and
  - c. The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
- (4) A provision limiting or eliminating the personal liability of any director for monetary damages arising out of an action whether by or in the right of the corporation or otherwise for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of the breach knew or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55A-8-32 or G.S. 55A-8-33, (iii) any transaction from which the director derived an improper personal financial benefit, or (iv) acts or omissions occurring prior to the date the provision became effective. As used herein, the term 'improper personal financial benefit' does not include a director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a director, trustee, officer, employee, independent contractor, attorney, or consultant of the corporation. A provision permitted by this Chapter in the articles of incorporation, bylaws, or a contract or resolution indemnifying or agreeing to indemnify a director against personal liability shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability.

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

**"§ 55A-2-03. Incorporation.**

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

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

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

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

**(a) After incorporation:**

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

complete the organization of the corporation, or (ii) to elect a board of directors who shall complete the organization of the corporation.

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

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

**"§ 55A-2-06. Bylaws.**

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

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

**"§ 55A-2-07. Emergency bylaws.**

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

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

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

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

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

**"ARTICLE 3.**

**"Purposes and Powers.**

**"§ 55A-3-01. Purposes.**

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

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

**"§ 55A-3-02. General powers.**

(a) Unless its articles of incorporation or this Chapter provides otherwise, every corporation has perpetual duration and succession in its corporate name and has the

same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation, power:

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

- (17) To procure insurance for its benefit on the life or physical or mental ability of any director, officer or employee and, in the case of a charitable or religious corporation, any sponsor, contributor, pledgor, student or former student whose death or disability might cause financial loss to the corporation, and for these purposes the corporation is deemed to have an insurable interest in each such person; and to procure insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest;
- (18) To engage in any lawful activity that will aid governmental policy;
- (19) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

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

**"§ 55A-3-03. Emergency powers.**

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

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

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

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

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

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

**"§ 55A-3-04. Ultra vires.**

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

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

- (1) In a proceeding by a member or a director against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under G.S. 55A-14-30.

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

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

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

**"§ 55A-3-06. Special powers; public parks and drives and certain recreational corporations.**

Any corporation heretofore or hereafter formed for the purpose of creating and maintaining public parks and drives shall have full power and authority to lay out, manage, and control parks and drives within the State, under any rules and regulations as the corporation may prescribe and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers and trust for any town, city, township, or county, in connection with which the parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under any regulations and subject to any conditions as may be determined upon by the city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under any rules, laws, and regulations as the corporation may adopt through its board of directors, and it shall have power and authority to make and adopt all laws and regulations as it may determine upon for the reasonable management of such parks and drives. The terms 'public parks and drives' as used in this section shall be construed so as to include playgrounds, recreational centers, and other recreational activities and facilities which may be provided and established under the sponsorship of any county, city, town, township, or school district in North Carolina and constructed or established with the assistance of the government of the United States or any agency thereof.

"ARTICLE 4.

"Names.

**"§ 55A-4-01. Corporate name.**

(a) A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by G.S. 55A-3-01 and its articles of incorporation.

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



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

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

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

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

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

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

**"§ 55A-4-02. Reserved name.**

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

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

(c) Any person acquiring the goodwill of a domestic corporation or of a foreign corporation authorized to conduct affairs in this State may, on furnishing the Secretary

of State satisfactory evidence of such acquisition, reserve the exclusive right to that corporate name for a period of 10 years.

**"§ 55A-4-03. Registered name.**

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

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

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

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

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

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

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

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

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

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to real property in this State is transferred by operation of law upon merger of two or more corporations, a certificate reciting the change or transfer shall be

recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

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

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

#### "ARTICLE 5.

#### "Office and Agent.

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

Each corporation shall continuously maintain in this State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"ARTICLE 6.

"Members and Memberships.

"Part 1. Admission of Members.

**"§ 55A-6-01. Members.**

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

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

"Part 2. Members' Rights and Obligations.

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

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

- (1) Conditions of admission and membership;
- (2) Voting rights and the manner of exercising voting rights;
- (3) The relative rights and obligations of members among themselves, to the corporation, and with respect to the property of the corporation;
- (4) The manner of terminating membership in the corporation;
- (5) The rights and obligations of the members and the corporation upon such termination;
- (6) The transferability or nontransferability of memberships; and
- (7) Any other matters.

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

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

A corporation shall neither authorize nor issue shares of stock.

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

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

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

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

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

(a) A creditor of a corporation shall not bring a proceeding to enforce any liability of a member to the corporation unless final judgment has been rendered in

favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless a proceeding against the corporation would be futile.

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

#### "Part 3. Resignation and Termination.

##### **"§ 55A-6-20. Resignation.**

(a) Any member may resign at any time.

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

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

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

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

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

#### "Part 4. Delegates.

##### **"§ 55A-6-40. Delegates.**

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

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

- (1) The characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;
- (2) Calling, noticing, holding, and conducting meetings of delegates; and
- (3) Carrying on corporate activities during and between meetings of delegates.

#### "ARTICLE 7.

##### "Members' Meetings and Voting; Derivative Proceedings.

###### "Part 1. Meetings and Action Without Meetings.

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

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

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

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

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

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

**"§ 55A-7-02. Special meeting.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 55A-7-05. Notice of meeting.**

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

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

(c) Notice is fair and reasonable if:

- (1) The corporation gives notice to all members entitled to vote at the meeting of the place, date, and time of each annual, regular, and special meeting of members no fewer than 10, or, if notice is mailed by other than first class, registered or certified mail, no fewer than 30, nor more than 60 days before the meeting date;
- (2) Notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members under G.S. 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or 55A-14-02; and
- (3) Notice of special meeting includes a description of the matter or matters for which the meeting is called.

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

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



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

**"§ 55A-7-06. Waiver of notice.**

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

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

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

**"§ 55A-7-07. Record date.**

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

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

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

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

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

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

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

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

(b) A written ballot shall:

(1) Set forth each proposed action; and

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

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

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

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

"Part 2. Voting.

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

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 55A-7-22. Quorum requirements.**

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

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

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

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

**"§ 55A-7-23. Voting requirements.**

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

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

**"§ 55A-7-24. Proxies.**

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

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

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

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

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

- (1) Attending any meeting and voting in person; or
- (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### "Part 3. Voting Agreements.

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

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

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

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

#### "Part. 4. Derivative Proceedings.

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

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

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

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

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

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

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

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

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

"ARTICLE 8.

"Directors and Officers.

"Part 1. Board of Directors.

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

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

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

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

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

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

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

**"§ 55A-8-03. Number of directors.**

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

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

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

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

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

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

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

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

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

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



- (c) Except as provided in the articles of incorporation or bylaws:
- (1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
  - (2) The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

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

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

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

- (a) A director may resign at any time by communicating his resignation to the board of directors, its presiding officer, or to the corporation.
- (b) A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective.

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

- (a) The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (b) If a director is elected by a class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by that class, chapter, unit, or grouping.
- (c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section, only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.
- (d) If cumulative voting is authorized, a director shall not be removed:
- (1) If the number of votes; or
  - (2) If the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping; sufficient to elect the director under cumulative voting, if an election were then being held, is voted against the director's removal.
- (e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.
- (f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.
- (g) An entire board of directors may be removed under subsections (a) through (e) of this section.

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

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

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

(k) The articles of incorporation may:

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

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 55A-8-11. Vacancy on board.**

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

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

(2) By the board of directors; or

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

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

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

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

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

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

"Part 2. Meetings and Action of the Board.

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

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

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

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

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

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

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

**"§ 55A-8-22. Notice of meetings.**

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

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

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

**"§ 55A-8-23. Waiver of notice.**

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

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

**"§ 55A-8-24. Quorum and voting.**

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

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

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

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

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

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

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

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

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

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

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

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

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

"Part 3. Standards of Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (d) A director held liable under subsection (b) or (c) of this section is entitled to:
- (1) Contribution from every other director who could be held liable under subsection (b) or (c) of this section for the unlawful loan or distribution; and
  - (2) Reimbursement from each person for the amount he accepted knowing the unlawful loan or distribution was made in violation of G.S. 55A-8-32, Article 13 of this Chapter, or Article 14 of this Chapter, or the articles of incorporation.

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

#### "Part 4. Officers.

##### **"§ 55A-8-40. Officers.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

"Part 5. Indemnification.

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

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

(b) Definitions in this Part:

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

- (2) 'Director' means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. 'Director' includes, unless the context requires otherwise, the estate or personal representative of a director.
- (3) 'Expenses' means expenses of every kind incurred in defending a proceeding, including counsel fees.
- (4) 'Liability' means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.
- (5) 'Officer,' 'employee,' or 'agent' includes, unless the context requires otherwise, the estate or personal representative of a person who acted in that capacity.
- (6) 'Official capacity' means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in G.S. 55A-8-56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. 'Official capacity' does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.
- (7) 'Party' includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (8) 'Proceeding' means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

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

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

- (1) Conducted himself in good faith;
- (2) Reasonably believed (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and (ii) in all other cases, that his conduct was at least not opposed to its best interests; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The determination shall be made:

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

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

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

Unless a corporation's articles of incorporation provide otherwise:

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

- (2) The corporation may indemnify and advance expenses under this Part to an officer, employee, or agent of the corporation to the same extent as to a director; and
- (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

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

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

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

**"§ 55A-8-58. Application of Part.**

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

(b) This Part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a

time when the director has not been made a named defendant or respondent to the proceeding.

"Part 6. Immunity.

**"§ 55A-8-60. Immunity.**

(a) In addition to the immunity that is authorized in G.S. 55A-2-02(b)(4), a person serving as a director or officer of a nonprofit corporation shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

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

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

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

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

"ARTICLE 9. [Reserved]

"ARTICLE 10.

"Amendment of Articles of Incorporation and Bylaws.

"Part 1. Amendment of Articles of Incorporation.

**"§ 55A-10-01. Authority to amend.**

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

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

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

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

- (1) To delete the names and addresses of the initial directors;
- (2) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (3) To change the corporate name by substituting the word 'corporation', 'incorporated', 'company', 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.', for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or
- (4) To make any other change expressly permitted by this Chapter to be made by director action.

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

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

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

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

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

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

(d) If the board or the members seek to have the amendment approved by the members entitled to vote thereon at a membership meeting, the corporation shall give notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the purpose, or one of the purposes, of the meeting is to

consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

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

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

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

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

- (1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner that is different from the manner in which the amendment would affect another class;
- (2) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class;
- (3) Increase or decrease the number of memberships authorized for that class;
- (4) Increase the number of memberships authorized for another class;
- (5) Effect an exchange, reclassification, or termination of the memberships of that class; or
- (6) Authorize a new class of memberships.

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

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

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

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

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

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;



- (4) If approval of members was not required, a statement to that effect and a brief explanation of why member action was not required, and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required, a statement that member approval was obtained as required by this Chapter;
- (6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to G.S. 55A-10-30, a statement that the approval was obtained.

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

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

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

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

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

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

- (1) Set forth the name of the corporation;
- (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- (3) State whether the restated articles of incorporation contain an amendment to the articles of incorporation requiring member approval and, if they do not, that the board of directors adopted the restated articles of incorporation;
- (4) If the restated articles of incorporation contain an amendment to the articles of incorporation requiring member approval, state that member approval was obtained as required by this Chapter; and
- (5) If the restated articles of incorporation contain an amendment to the articles of incorporation requiring approval by a person whose approval is required pursuant to G.S. 55A-10-30, state that such approval was obtained.

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

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

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

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any restriction or condition upon which such property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

"Part 2. Bylaws.

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

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

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

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

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

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

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

(d) If the board or the members seek to have the amendment approved by the members entitled to vote thereon at a membership meeting, the corporation shall give

notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

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

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

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

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

- (1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner that is different from the manner in which such amendment would affect another class;
- (2) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class;
- (3) Increase or decrease the number of memberships authorized for that class;
- (4) Increase the number of memberships authorized for another class;
- (5) Effect an exchange, reclassification, or termination of all or part of the memberships of that class; or
- (6) Authorize a new class of memberships.

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

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

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

"Part 3. Articles of Incorporation and Bylaws.

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

The articles of incorporation or bylaws may require an amendment to the articles or incorporation or bylaws to be approved in writing by a specified person or persons other

than the board of directors. Such a provision in the articles of incorporation or bylaws may only be amended with the approval in writing of such person or persons.

"ARTICLE 11.

"Merger.

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

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

(b) The plan of merger shall set forth:

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

(c) The plan of merger may set forth:

- (1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the merger; and
- (2) Other provisions relating to the merger.

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

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

- (1) A charitable or religious corporation;
- (2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;
- (3) A wholly-owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, provided the charitable or religious corporation is the surviving corporation and continues to be a charitable or religious corporation after the merger;  
or
- (4) A business or nonprofit corporation other than a charitable or religious corporation, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-06(a)(5) and (6) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with

such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members or shareholders in or directors, officers, employees, agents, or consultants of the surviving corporation.

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

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

**"§ 55A-11-03. Action on plan.**

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

- (1) By the board;
- (2) By the members entitled to vote thereon, if any, by two-thirds of the votes cast or a majority of the votes entitled to be cast on the plan of merger, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30 for an amendment to the articles of incorporation or bylaws.

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

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

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

(e) If the board seeks to have the plan approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles of incorporation and bylaws that will be in effect immediately after the merger takes effect.

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

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

**"§ 55A-11-04. Articles of merger.**

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

- (1) The plan of merger;
- (2) If approval by members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required, a statement that the merger was approved by the members as required by this Chapter;
- (4) If approval by some person or persons other than the members or the board was required pursuant to G.S. 55A-11-03(a)(3), a statement that the approval was obtained.

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

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

**"§ 55A-11-05. Effect of merger.**

When a merger takes effect:

- (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

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

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

- (1) The merger is permitted by the law of the state or county under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the merger; and
- (3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04.

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

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

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

"ARTICLE 12.

"Transfer of Assets.

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

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

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

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

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

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property other than in the usual and regular course of its activities

on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (b) of this section.

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

- (1) By the board;
- (2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the proposed transaction, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30 for an amendment to the articles of incorporation or bylaws.

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

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

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

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

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

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

"ARTICLE 13.



"Distributions.

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

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

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

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

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

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

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

- (1) The corporation would not be able to pay its debts as they become due in the usual course of business; or
- (2) The corporation's total assets would be less than the sum of its total liabilities.

"ARTICLE 14.

"Dissolution.

"Part 1. Voluntary Dissolution.

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

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

- (1) The name of the corporation;
- (2) The names and addresses of its officers, if any;
- (3) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;
- (4) The date of its incorporation;
- (5) That the corporation has not admitted members entitled to vote on dissolution, has not commenced activities, and has no assets;
- (6) That no debt of the corporation remains unpaid; and

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

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

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

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

(1) By the board;

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

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

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

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

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

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

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

(a) The plan of dissolution approved pursuant to G.S. 55A-14-02 shall provide that all liabilities and obligations of the corporation be paid and discharged, or adequate provisions be made therefor, and that the remainder of the corporation's assets be distributed as follows:

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

- (2) Other assets, if any, of a charitable or religious corporation shall, subject to the articles of incorporation or bylaws, be transferred or conveyed to one or more of the following: the United States, a state, a charitable or religious corporation, or a person that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section;
- (3) Other assets, if any, of a corporation that is not a charitable or religious corporation shall, subject to the articles of incorporation and bylaws, be distributed as provided in the plan of dissolution.

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

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

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

- (1) The name of the corporation;
- (2) The names and addresses of its officers;
- (3) The names and addresses of its directors;
- (4) The plan of dissolution as required by G.S. 55A-14-03;
- (5) The date dissolution was authorized;
- (6) If approval by members was not required, a statement to that effect and a statement that the plan of dissolution was approved by a sufficient vote of the board of directors;
- (7) If approval by members was required, a statement that the plan of dissolution was approved as required by this Chapter; and
- (8) If approval of dissolution by some person or persons other than the members or the board of directors is required pursuant to G.S. 55A-14-02(a)(3), a statement that the approval was obtained.

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

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

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

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

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

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

- (4) If the corporation's board of directors revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, a statement that the action was taken as required.

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

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

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

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

- (1) Preserving and protecting its assets;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its remaining assets in accordance with its plan of dissolution; and
- (4) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

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

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

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

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

- (1) Describe information that shall be included in a claim;
- (2) Provide a mailing address where a claim may be sent;

- (3) State the deadline, which shall not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved corporation is barred:
  - (1) If the corporation does not receive the claim by the deadline from a claimant who received written notice under subsection (b) of this section; or
  - (2) If a claimant whose claim was rejected by written notice from the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the date of receipt of the rejection notice.
- (d) For purposes of this section, 'claim' does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

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

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

(b) The notice shall:

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

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

- (1) A claimant who did not receive written notice under G.S. 55A-14-07;
- (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) Nothing in this section shall bar:

- (1) Any claim alleging the liability of the corporation; or
- (2) Any proceeding or action to establish the liability of the corporation;  
or
- (3) The recovery on any judgment against the corporation

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

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

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

- (1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or
- (2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

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

"Part 2. Administrative dissolution.

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

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

- (1) The corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;
- (2) The corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;
- (3) The corporation is without a registered agent or registered office in this State for 60 days or more;
- (4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) The corporation's period of duration stated in its articles of incorporation expires; or
- (6) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

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

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

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

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

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

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

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

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

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

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

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

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

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

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

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

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

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

"Part 3. Judicial Dissolution.

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

- (a) The superior court may dissolve a corporation:
  - (1) In a proceeding by the Attorney General if it is established that:
    - a. The corporation obtained its articles of incorporation through fraud; or
    - b. The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;
  - (2) In a proceeding by a member or director, if it is established that:
    - a. The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;
    - b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
    - c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;
    - d. The corporate assets are being misapplied or wasted; or
    - e. The corporation is no longer able to carry out its purposes.
  - (3) In a proceeding by a creditor if it is established that:
    - a. The creditor's claim has been reduced to judgment and execution on the judgment has been returned unsatisfied; or
    - b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.
  - (4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.
- (b) Prior to dissolving a corporation, the court shall consider whether:
  - (1) There are reasonable alternatives to dissolution;
  - (2) Dissolution is in the public interest, if the corporation is a charitable or religious corporation; and
  - (3) Dissolution is reasonably necessary for the protection of the rights or interests of the members, if any.

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

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

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

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation.

**"§ 55A-14-32. Receivership.**



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

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

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

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

(d) The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets.

**"§ 55A-14-33. Decree of dissolution.**

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 55A-14-30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the notification of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08.

"Part 4. Miscellaneous.

**"§ 55A-14-40. Disposition of amounts due to unavailable members and creditors.**

Upon liquidation of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found shall be disposed of in accordance with Chapter 116B of the General Statutes.

"ARTICLE 14A.

"Reorganization.

**"§ 55A-14A-01. Fundamental changes in reorganization proceedings.**

(a) Whenever a plan of reorganization of a corporation is confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation pursuant to the provisions of any applicable statute of the United States

relating to reorganization of corporations, the corporation may put into effect and carry out the plan and the decrees and orders of the court relative thereto and may take any action provided in the plan or directed by the decrees and orders without further action by its directors or members. Such action may be taken, as may be directed by the decrees or orders, by the trustee or trustees of the corporation appointed in the reorganization proceedings, or by designated officers of the corporation, or by a master or other representative appointed by the court, with like effect as if taken by unanimous action of the directors and members of the corporation. In particular and without limiting the generality or effect of the foregoing, the corporation may:

- (1) Amend its articles of incorporation or bylaws, or both, so long as the articles of incorporation and bylaws as amended contain only such provisions as might be lawfully contained therein at the time of making such amendment;
- (2) Constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or any of the directors or officers then in office;
- (3) Make any change in its memberships or securities or cancel any or all of its outstanding memberships or securities;
- (4) Dissolve and liquidate;
- (5) Effect a merger;
- (6) Transfer all or part of its assets;
- (7) Change its registered office or registered agent, or both;
- (8) Authorize the issuance of bonds, debentures, or other obligations of the corporation and fix the terms and conditions thereof.

(b) Any articles of amendment, statement of change of registered office or registered agent, restated articles of incorporation, articles of merger, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in accordance with the provisions of this Chapter on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection (a) of this section.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

"ARTICLE 15.

"Foreign Corporations.

"Part 1. Certificate of Authority.

**"§ 55A-15-01. Authority to conduct affairs required.**

(a) A foreign corporation shall not conduct affairs in this State until it obtains a certificate of authority from the Secretary of State.

(b) Without excluding other activities which might not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State solely for the purposes of this Chapter, by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or affecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities, or appointing and maintaining trustees or depositories with relation to those securities;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Conducting affairs in interstate commerce;
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
- (10) Selling through independent contractors;
- (11) Owning, without more, real or personal property.

**"§ 55A-15-02. Consequences of conducting affairs without authority.**

(a) No foreign corporation conducting affairs in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless each corporation shall have obtained a certificate of authority prior to trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the conduct of affairs by such corporation in this State until:

- (1) A certificate of authority shall have been obtained by the corporation or by a foreign entity which has acquired substantially all of its assets and is entitled to obtain a certificate of authority; or
- (2) Substantially all of its assets have been acquired by a foreign entity which is not entitled to obtain a certificate of authority by a domestic corporation or by one or more individuals.

An issue arising under this subsection shall be raised by motion and determined by the trial judge prior to trial.

(b) A foreign corporation failing to obtain a certificate of authority as required by this Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it conducted affairs in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it conducts affairs in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

(c) Notwithstanding subsection (a) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

(d) The Secretary of State is hereby directed to require that every foreign corporation conducting affairs in this State comply with the provisions of this Chapter. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in the Secretary of State's office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign corporations now conducting affairs in this State which may have failed to comply with the provisions of this Chapter.

**"§ 55A-15-03. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to conduct affairs in this State by delivering an application to the Secretary of State for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of G.S. 55A-15-06;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The street address, and mailing address if different from the street address, of its principal office;
- (5) The street address, and the mailing address if different from the street address, of its registered office in this State, the county in which the registered office is located, and the name of its registered agent at that office;
- (6) The names and usual business addresses of its current officers; and
- (7) Whether it has members.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall when all fees have been tendered as prescribed in this Chapter:

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;
- (2) File in the Secretary of State's office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);
- (3) Issue a certificate of authority to conduct affairs in this State to which the Secretary of State shall affix the exact or conformed copy of the application; and
- (4) Send to the foreign corporation or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

**"§ 55A-15-04. Amended certificate of authority.**

(a) A foreign corporation authorized to conduct affairs in this State shall obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) A foreign corporation may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth:

- (1) The name of the foreign corporation and the name in which the corporation is authorized to conduct affairs in North Carolina if different;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date it was originally authorized to conduct affairs in this State; and
- (4) A statement of the change or changes being made.

Except for the content of the application, the requirements of G.S. 55A-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**"§ 55A-15-05. Effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to conduct affairs in this State subject, however, to the right of the State to revoke the certificate as provided in this Chapter. A foreign corporation, however, is not eligible or entitled to qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of his death.

(b) Except as otherwise provided by this Chapter, a foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

**"§ 55A-15-06. Corporate name of foreign corporation.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of G.S. 55A-4-01, the foreign corporation, to obtain or maintain a

certificate of authority to conduct affairs in this State, may use a fictitious name to conduct affairs in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsection (c) of this section, the corporate name (including a fictitious name) of a foreign corporation shall be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of a corporation incorporated or authorized to conduct affairs in this State;
- (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S. 55-4-03 or under G.S. 55A-4-02 or G.S. 55A-4-03;
- (3) The fictitious name of another foreign corporation authorized to conduct affairs in this State; and
- (4) The corporate name of a business corporation incorporated or authorized to transact business in this State.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this State a name that is not distinguishable upon his records from the name of another corporation (incorporated or authorized to conduct affairs in this State). The Secretary of State shall authorize use of the name applied for if:

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

(d) If a foreign corporation authorized to conduct affairs in this State changes its corporate name to one that does not satisfy the requirements of G.S. 55A-4-01, it shall not conduct affairs in this State under the changed name until it adopts a name satisfying the requirements of G.S. 55A-4-01 and obtains an amended certificate of authority under G.S. 55A-15-04.

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

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

**"§ 55A-15-07. Registered office and registered agent of foreign corporation.**

(a) Each foreign corporation authorized to conduct affairs in this State shall continuously maintain in this State:

- (1) A registered office that may be the same as any place where it conducts affairs; and

(2) A registered agent; who shall be: (i) an individual who resides in this State and whose office is identical with the registered office; (ii) a domestic business or nonprofit corporation whose office is identical with the registered office; or (iii) a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this State whose office is identical with the registered office.

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

**"§ 55A-15-08. Change of registered office or registered agent of foreign corporation.**

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

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

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

**"§ 55A-15-09. Resignation of registered agent of foreign corporation.**

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

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

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

**"§ 55A-15-10. Service on foreign corporation.**

(a) The registered agent of a foreign corporation authorized to conduct affairs in this State is an agent of the corporation for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) When a foreign corporation authorized to conduct affairs in this State fails to appoint or maintain a registered agent in this State, or when its registered agent cannot with due diligence be found at the registered office, or when its certificate of authority shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the corporation department of the Secretary of State's office, duplicate copies of such process, notice, or demand. In the event any process, notice, or demand is served on the Secretary of State, he shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a foreign corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State.

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

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

"Part 2. Withdrawal.

**"§ 55A-15-20. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to conduct affairs in this State shall not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to conduct affairs in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not conducting affairs in this State and that it surrenders its authority to conduct affairs in this State;



- (3) That the corporation revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State;
- (4) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (3) of this subsection; and
- (5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall:

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed', and the hour, day, month, and year of the filing thereof;
- (2) File the application in the Secretary of State's office; and
- (3) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application.

(d) After the withdrawal of the corporation is effective, service of process on the Secretary of State in accordance with subdivision (b)(3) of this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

**"§ 55A-15-21. Withdrawal of foreign corporation by reason of a merger.**

(a) Whenever the separate existence of a foreign corporation authorized to conduct affairs in this State ceases as a result of a statutory merger permitted by the laws of the state or country under which it was incorporated, the surviving corporation shall apply for a certificate of withdrawal for the merged corporation by delivering to the Secretary of State for filing a copy of the articles of merger or a certificate reciting the facts of the merger, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which such statutory merger was effected. If the surviving corporation is not authorized to conduct affairs in this State, the articles of merger or certificate shall be accompanied by an application which must set forth:

- (1) The name of each merged corporation authorized to conduct affairs in this State and the name of the surviving corporation and a statement that the surviving corporation is not authorized to conduct affairs in this State;
- (2) That the surviving corporation consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time each merged corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State;

- (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and
- (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles of merger or certificate and the application for withdrawal, if required, conforms to law the Secretary of State shall:

- (1) Endorse on the articles of merger or certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;
- (2) File the articles of merger or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the foreign corporation or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

"Part. 3. Revocation of Certificate of Authority.

**"§ 55A-15-30. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under G.S. 55A-15-31 to revoke the certificate of authority of a foreign corporation authorized to conduct affairs in this State if:

- (1) The foreign corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;
- (2) The foreign corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;
- (3) The foreign corporation is without a registered agent or registered office in this State for 60 days or more;
- (4) The foreign corporation does not inform the Secretary of State under G.S. 55A-15-08 or G.S. 55A-15-09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;
- (5) An incorporator, director, officer, or agent of the foreign corporation signs a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;
- (6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;
- (7) The corporation is exceeding the authority conferred upon it by this Chapter; or
- (8) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein shall be deemed to repeal or modify any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof.

**"§ 55A-15-31. Procedure and effect of revocation.**

(a) If the Secretary of State determines that one or more grounds exist under G.S. 55A-15-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign corporation written notice of the Secretary of State's determination.

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

(c) The authority of a foreign corporation to conduct affairs in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of affairs conducted in this State during the time the foreign corporation was authorized to conduct affairs in this State. The Secretary of State shall then proceed in accordance with G.S. 55A-15-10.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**"§ 55A-15-32. Appeal from revocation.**

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

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

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

"ARTICLE 16.

"Records and Reports.

"Part 1. Records.

**"§ 55A-16-01. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting pursuant to G.S. 55A-7-04, 55A-7-08, or 55A-8-21, and a record of all actions taken by committees 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 members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(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 of incorporation 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 members or board of directors relating to the number or classification of directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) The minutes of all membership meetings, and records of all actions taken by the members without a meeting pursuant to G.S. 55A-7-04 or G.S. 55A-7-08, for the past three years;
- (5) All written communications to members generally within the past three years, and the financial statements, if any, that have been furnished or would have been required to be furnished to a member upon demand under G.S. 55A-16-20 during the past three years;
- (6) A list of the names and business or home addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the Secretary of State under G.S. 55A-16-22.

**"§ 55A-16-02. Inspection of records by members.**

(a) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in G.S. 55A-16-01(e) if the member gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy.

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

- (1) Excerpts from any records required to be maintained under G.S. 55A-16-01(a), to the extent not subject to inspection under G.S. 55A-16-02(a);
- (2) Accounting records of the corporation; and
- (3) Subject to G.S. 55A-16-05, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

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

(d) This section does not affect:

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

(e) A member of a corporation that has the power to elect, appoint, or designate a majority of the directors of another domestic or foreign corporation, whether nonprofit or business, shall have inspection rights with respect to the records of that other corporation.

**"§ 55A-16-03. Scope of inspection rights.**

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

(b) The right to copy records under G.S. 55A-16-02 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, magnetic, or other means.

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

(d) The corporation may comply with a member's demand to inspect the record of members under G.S. 55A-16-02(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

**"§ 55A-16-04. Court-ordered inspection.**

(a) If a corporation does not allow a member who complies with G.S. 55A-16-02(a) to inspect and copy any records required by that subsection to be available for inspection, the superior court in the county where the corporation's principal office (or, if there is none in this State, its registered office) is located may, upon application of the member, 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 member to inspect and copy any other record, the member who complies with G.S. 55A-16-02(b) and (c) may apply to the superior court in the county where the corporation's principal office

(or, if there is 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 member's cost (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 member 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 member.

**"§ 55A-16-05. Limitations on use of membership list.**

Without consent of the board of directors, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, and without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

"Part 2. Reports.

**"§ 55A-16-20. Financial statements for members.**

(a) Except as provided in the articles of incorporation or bylaws of a charitable or religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements, if any, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

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

- (1) Stating the president's or other person's reasonable belief as to 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.

**"§ 55A-16-21. Notice of indemnification to members.**

If a corporation indemnifies or advances expenses to a director under G.S. 55A-8-51, 55A-8-52, 55A-8-53, 55A-8-54, or 55A-8-57 in connection with a proceeding by or in the right of the corporation, the corporation shall give notice of the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

**"§ 55A-16-22. Annual report for the Secretary of State.**

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in this State, shall deliver to the Secretary of State for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both;
- (3) The address of its principal office;
- (4) The names, titles, and business or residence addresses of its directors and principal officers;
- (5) A brief description of the nature of its activities; and
- (6) Whether or not it has members.

(b) The information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(c) The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.

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

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

"ARTICLE 17.

"Transition and Curative Provisions.

**"§ 55A-17-01. Applicability of Chapter.**

(a) The provisions of this Chapter relating to domestic corporations shall apply to:

- (1) All corporations heretofore or hereafter organized under this Chapter.

(2) All nonprofit corporations without capital stock heretofore or hereafter organized under any other act, unless there is some other specific statutory provision particularly applicable to such corporations or inconsistent with some provisions of this Chapter, in which case that other provision prevails. Nothing herein shall apply to hospital and medical service corporations as defined in Article 65 of Chapter 58 of the General Statutes which were incorporated prior to July 1, 1957, or repeal or modify the provisions of G.S. 54-138.

(b) The provisions of this Chapter relating to foreign corporations shall apply to all such corporations conducting affairs in this State for purposes for which a corporation might be organized under this Chapter.

**"§ 55A-17-02. Certain religious, etc., associations deemed incorporated.**

In all cases where a religious, educational, or charitable association has been formed prior to January 1, 1894, and has since that date been acting as a corporation, exercising the powers and performing the duties of religious, educational, or charitable corporations as prescribed by the laws of this State, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation under the laws of this State on January 1, 1894, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby declared to be valid corporate acts.

**"§ 55A-17-03. Saving provisions.**

(a) The existence of corporations formed before the effective date of this Chapter, shall not be impaired by the enactment of this Chapter nor by any change made by this Chapter in the requirements for the formation of corporations nor by any amendment or repeal by this Chapter of the laws under which they were formed or created, and, except as otherwise expressly provided in this Chapter, the repeal of a prior act by this Chapter shall not affect any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

(b) Any proceeding or corporate action commenced prior to the effective date of this Chapter, may be completed in accordance with the law then in effect.

**"§ 55A-17-04. Severability.**

If any provision of this Chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Chapter that can be given effect without the invalid provision or application, and to this end the provisions of the Chapter are severable.

**"§ 55A-17-05. Validation of amendments to corporate charters extending corporate existence; limitation of actions; intent.**

(a) In every case where a corporation chartered under either the general or private laws of the State of North Carolina has continued or shall continue to act and conduct affairs as a corporation after the expiration of its period of existence as theretofore fixed in its charter and has thereafter filed in the office of the Secretary of State an amendment to its charter to extend or renew its corporate existence, such amendment is hereby validated and made effective for all intents and purposes to the



same extent and with the same effect as if the amendment has been made within the period of such corporation's existence as theretofore fixed in its charter.

(b) No action or proceeding shall be brought or defense or counterclaim pleaded later than July 1, 1958, in which either the continued existence of the corporation or the validity of any of the contracts, acts, deeds, rights, privileges, powers, franchises, and titles of the corporation is attacked or otherwise questioned on the grounds that the amendment was not filed within the period of the corporation's existence as theretofore fixed in its charter.

(c) In no event shall the limitation provided in subsection (b) of this section bar any action, proceeding, defense, or counterclaim based upon grounds other than those mentioned in subsection (b) of this section, unless the grounds set out in subsection (b) of this section are an essential part thereof."

Sec. 2. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 3. This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 19th day of July, 1993.

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Dennis A. Wicker  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives