

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 835

Short Title: Revise Law Governing Mergers.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS,
AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT
CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING
LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE
OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND
MODERN BUSINESS PRACTICES.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) The A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

- (1) By the chairman of the board of ~~directors of a domestic or foreign corporation, directors,~~ directors, 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.

A document submitted by an unincorporated entity must be executed by a person duly authorized to do so by the unincorporated entity."

1 Section 1.2. G.S. 55-1-40(9) reads as rewritten:

2 "(9) 'Entity' includes (without limiting the meaning of such term in Article 9)
3 corporation and foreign corporation; nonprofit corporation; professional
4 corporation; limited liability company; profit and nonprofit
5 unincorporated association; business trust, estate, partnership, trust, and
6 two or more persons having a joint or common economic interest; and
7 state, United States, and foreign government."

8 Section 1.3. G.S. 55-1-40 is amended by adding the following new
9 subdivisions, to be placed by the Codifier of Statutes in the appropriate order, to read:

10 "(24a) 'Surviving entity' means the corporation or unincorporated entity that is
11 the surviving entity of a merger pursuant to G.S. 55-11-10.

12 (25a) 'Unincorporated entity' means a domestic or foreign limited liability
13 company as defined in G.S. 57C-1-03, a domestic or foreign limited
14 partnership as defined in G.S. 59-102, or any other partnership as
15 defined in G.S. 59-36, whether or not formed under the laws of this
16 State, including a registered limited liability partnership as defined in
17 G.S. 59-32 and any other limited liability partnership formed under a
18 law other than the laws of this State."

19 Section 1.4. G.S. 55-4-05 reads as rewritten:

20 "**§ 55-4-05. Real property records.**

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

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

33 (c) The certificate required by this section shall be recorded by the register of
34 deeds in the same manner as deeds, and for the same fees, but no formalities as to
35 acknowledgement, probate, or approval by any other officer shall be required. The
36 former name of the corporation holding title to the real property before the ~~amendment or~~
37 ~~merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor'
38 index, and the ~~amended~~ new name of the corporation or the name of the other entity
39 holding title to the real property by virtue of the ~~amendment or merger~~ merger,
40 consolidation, or conversion shall appear in the 'Grantee' index."

41 Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

42 "(1) 'Business combination' includes any merger or consolidation of a
43 corporation with or into any other ~~corporation,~~ corporation or any

1 unincorporated entity, or the sale or lease of all or any substantial part of
2 the corporation's assets to, or any payment, sale or lease to the
3 corporation or any subsidiary thereof in exchange for securities of the
4 corporation of any assets (except assets having an aggregate fair market
5 value of less than five million dollars (\$5,000,000)) of any other entity."

6 Section 1.6. G.S. 55-9-04(d) reads as rewritten:

7 "(d) Nothing contained in this Article shall be construed to relieve any other entity
8 from any fiduciary obligation imposed by law. This Article shall be broadly construed so
9 as to be applicable to any transaction reasonably calculated to avoid the application of the
10 provisions hereof including, without limitation, any merger or other recapitalization,
11 initiated by or for the benefit of an other entity that owns more than twenty percent (20%)
12 of the voting shares, which would reincorporate a corporation under the laws of another
13 ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

14 Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

15 "(4) A proceeding pending by or against any corporation party to the merger
16 may be continued as if the merger did not occur or the surviving
17 corporation may be substituted in the proceeding for the corporation
18 whose existence ceased;"

19 Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by
20 adding a new section to read:

21 "**§ 55-11-10. Merger with business entity.**

22 (a) As used in this section, 'business entity' means a domestic corporation as
23 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a
24 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional
25 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as
26 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in
27 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102 and
28 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of
29 this State (including a registered limited liability partnership as defined in G.S. 59-32 and
30 any limited liability partnership formed under a law other than the laws of this State).

31 (b) One or more domestic corporations may merge with one or more
32 unincorporated entities and, if desired, one or more foreign corporations, domestic
33 nonprofit corporations, or foreign nonprofit corporations if:

34 (1) The merger is permitted by the laws of the state or country governing
35 the organization and internal affairs of each other merging business
36 entity; and

37 (2) Each merging domestic corporation and each other merging business
38 entity comply with the requirements of this section and, to the extent
39 applicable, the laws referred to in subdivision (1) of this subsection.

40 (c) Each merging domestic corporation and each other merging business entity
41 shall approve a written plan of merger containing:

42 (1) For each merging business entity, its name, type of business, and the
43 state or country whose laws govern its organization and internal affairs;

- 1 (2) The name of the merging business entity that shall survive the merger;
- 2 (3) The terms and conditions of the merger;
- 3 (4) The manner and basis for converting the interests in each merging
4 business entity into interests, obligations, or securities of the surviving
5 business entity or into cash or other property in whole or in part; and
- 6 (5) If the surviving business entity is a domestic corporation, any
7 amendments to its articles of incorporation that are to be made in
8 connection with the merger.

9 The plan of merger may contain other provisions relating to the merger.

10 In the case of a domestic corporation, approval of the plan of merger requires that the
11 plan of merger be adopted as provided in G.S. 55-11-03, unless the shareholder approval
12 is not required under subsection (g) of G.S. 55-11-03. In the case of each other
13 merging business entity, the plan of merger must be approved in accordance with the
14 laws of the state or country governing the organization and internal affairs of that
15 merging business entity.

16 After a plan of merger has been approved by a domestic corporation but before the
17 articles of merger become effective, the plan of merger (i) may be amended as
18 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual
19 rights) as provided in the plan of merger, or, if there is no such provision, as determined
20 by the board of directors without further shareholder action.

21 (d) After a plan of merger has been approved by each merging domestic
22 corporation and each other merging business entity as provided in subsection (c) of this
23 section, the surviving business entity shall deliver articles of merger to the Secretary of
24 State for filing. The articles of merger shall set forth:

- 25 (1) The plan of merger;
- 26 (2) For each merging business entity, its name, type of business, and the
27 state or country whose laws govern its organization and internal affairs;
- 28 (3) The name and address of the surviving business entity;
- 29 (4) A statement that the plan of merger was approved by each merging
30 business entity in the manner required by law;
- 31 (5) The effective date and time of merger if it is not to be effective at the
32 time of filing of the articles of merger; and
- 33 (6) If the surviving business entity is not a domestic limited liability
34 company, a domestic corporation, a domestic nonprofit corporation, or a
35 domestic limited partnership, the agreement of the surviving business
36 entity that it may be served with process in this State in any proceeding
37 for enforcement of (i) any obligation of any merging domestic limited
38 liability company, domestic corporation, domestic nonprofit
39 corporation, domestic limited partnership, or other partnership as
40 defined in G.S. 59-36 that is formed under the laws of this State, (ii) the
41 rights of dissenting shareholders of any merging domestic corporation
42 under Article 13 of Chapter 55 of the General Statutes, and (iii) any
43 obligation of the surviving business entity arising from the merger, and

1 a statement irrevocably appointing the Secretary of State as its agent for
2 service of process in any such proceeding and specifying the address to
3 which a copy of the process may be mailed to it by the Secretary of
4 State (subject to any subsequent change in address upon written
5 notification by the surviving business entity by the Secretary of State).

6 If the plan of merger is amended or abandoned before the articles of merger become
7 effective, the surviving business entity promptly shall deliver to the Secretary of State for
8 filing an amendment to the articles of merger reflecting the amendment or abandonment
9 of the plan of merger.

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

11 (e) A merger takes effect upon the effectiveness of the articles of merger. Upon
12 the effectiveness of the merger:

13 (1) Each other merging business entity merges into the surviving business
14 entity and the separate existence of each merging business entity except
15 the surviving business entity ceases;

16 (2) The title to all real estate and other property owned by each merging
17 business entity is vested in the surviving entity without reversion or
18 impairment;

19 (3) The surviving business entity has all liabilities of each merging business
20 entity;

21 (4) A proceeding pending by or against any merging business entity may be
22 continued as if the merger did not occur, or the surviving business entity
23 may be substituted in the proceeding for a merging business entity
24 whose existence ceases in the merger;

25 (5) If a domestic corporation is the surviving business entity, its articles of
26 incorporation and bylaws shall be amended to the extent provided in the
27 plan of merger;

28 (6) The interests in each merging business entity that are to be converted
29 into interests, obligations, or securities of the surviving business entity
30 or into the right to receive cash or other property are thereupon
31 converted, and the former holders of the interests are entitled only to the
32 rights provided to them in the articles of merger, or in the case of former
33 holders of shares in a domestic corporation, any rights they may have
34 under Article 13 of this Chapter; and

35 (7) If the surviving business entity is not a domestic corporation, the
36 surviving business entity is deemed to agree that it will promptly pay to
37 the dissenting shareholders of any merging domestic corporation the
38 amount, if any, to which they are entitled under Article 13 of this
39 Chapter and otherwise to comply with the requirements of Article 13 as
40 if it were a surviving domestic corporation in the merger.

41 The merger shall not affect the liability or absence of liability of any holder of an
42 interest in a merging business entity for any acts, omissions, or obligations of any
43 merging business equity made or incurred prior to the effectiveness of the merger. The

1 cessation of separate existence of a merging business entity in the merger shall not
2 constitute a dissolution or termination of the merging business entity.

3 (f) This section does not apply to a merger that does not include a merging
4 unincorporated entity."

5 Section 1.9. G.S. 55-15-21 reads as rewritten:

6 "**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger~~, merger,**
7 **consolidation, or conversion.**

8 (a) ~~Whenever the separate existence of a~~ foreign corporation authorized to transact
9 business in this State ceases its separate existence as a result of a statutory merger or
10 consolidation permitted by the laws of the state or country under which it was
11 incorporated, or converts into another entity as permitted by the law, the surviving
12 ~~corporation or resulting entity~~ shall apply for a certificate of withdrawal for the merged
13 foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of~~
14 ~~merger or a~~ certificate reciting the facts of the ~~merger, merger, consolidation, or~~
15 conversion, duly authenticated by the Secretary of State or other official having custody
16 of corporate records in the state or country under the laws of which such ~~statutory merger~~
17 ~~was effected.~~ foreign corporation was incorporated. If the surviving ~~corporation or~~
18 resulting entity is not authorized to transact business in this State the ~~articles of merger or~~
19 certificate must be accompanied by an application which must set forth:

20 (1) The name of ~~each merged the foreign~~ corporation authorized to transact
21 business in this ~~State and the State,~~ the type of entity and name of the
22 surviving ~~corporation or resulting entity,~~ and a statement that the
23 surviving ~~corporation or resulting entity~~ is not authorized to transact
24 business in this State;

25 (2) ~~That~~ A statement the surviving ~~corporation or resulting entity~~ consents
26 that service of process based upon any cause of action arising in this
27 State, or arising out of business transacted in this State, during the time
28 ~~each merged the foreign~~ corporation was authorized to transact business
29 in this State may thereafter be made ~~on such corporation~~ by service
30 thereof on the Secretary of State;

31 (3) A mailing address to which the Secretary of State may mail a copy of
32 any process served on him under subdivision (a)(2); and

33 (4) A commitment to notify the Secretary of State in the future of any
34 change in its mailing address.

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

37 (1) Endorse on the ~~articles of merger or certificate~~ and the application for
38 withdrawal, if required, the word 'filed' and the hour, day, month and
39 year of the filing thereof;

40 (2) File the ~~articles of merger or certificate~~ and the application, if required;

41 (3) Issue a certificate of withdrawal; and

- 1 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its
2 representative the certificate of withdrawal, together with the exact or
3 conformed copy of the application, if required, affixed thereto."

4 PART II. NONPROFIT CORPORATIONS.

5 Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

6 "(f) ~~The~~ A document submitted by a domestic or foreign corporation or business
7 corporation shall be executed:

- 8 (1) By the presiding officer of the board of directors ~~of a domestic or foreign~~
9 ~~corporation~~, by its president, or by another of its officers;
10 (2) If directors have not been selected or the corporation has not been
11 formed, by an incorporator; or
12 (3) If the corporation is in the hands of a receiver, trustee, or other court-
13 appointed fiduciary, by that fiduciary.

14 A document submitted by an unincorporated entity shall be executed by a person duly
15 authorized to do so by the unincorporated entity."

16 Section 2.2. G.S. 55A-1-40 is amended by adding the following new
17 subdivision to read:

18 "(25a) 'Unincorporated entity' means a domestic or foreign limited liability
19 company as defined in G.S. 57C-1-03, a domestic or foreign limited
20 partnership as defined in G.S. 59-102, or any other partnership as
21 defined in G.S. 59-36, whether or not formed under the laws of this
22 State, including a registered limited liability partnership as defined in
23 G.S. 59-32 and any other limited liability partnership formed under a
24 law other than the laws of this State."

25 Section 2.3. G.S. 55A-4-05 reads as rewritten:

26 "§ 55A-4-05. Real property records.

27 (a) Whenever the name of any domestic or foreign corporation holding title to real
28 property in this State is changed upon amendment to the articles of incorporation or
29 whenever title to real property in this State is ~~transferred~~ vested by operation of law upon
30 ~~merger of two or more corporations, merger, consolidation, or conversion of the~~
31 corporation, a certificate reciting the change or transfer name change, merger,
32 consolidation, or conversion shall be recorded by the corporation or its successor in the
33 office of the register of deeds of the county where the property lies, or if the property is
34 located in more than one county, then in each county where any portion of the property
35 lies.

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

40 (c) The certificate required by this section shall be recorded by the register of
41 deeds in the same manner as deeds, and for the same fees, but no formalities as to
42 acknowledgement, probate, or approval by any other officer shall be required. The
43 former name of the corporation holding title to the real property before the ~~amendment or~~

1 ~~merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor'
2 index, and the amended new name of the corporation or the name of the other entity
3 holding title to the real property by virtue of the ~~amendment or merger~~ merger,
4 consolidation, or conversion shall appear in the 'Grantee' index."

5 Section 2.4. G.S. 55A-11-02 reads as rewritten:

6 "**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

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

10 (1) A charitable or religious corporation;

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

13 (3) A wholly owned foreign or domestic corporation (business or nonprofit)
14 or unincorporated entity which is not a charitable or religious
15 ~~corporation, corporation or charitable or religious organization,~~ provided
16 the charitable or religious corporation or charitable or religious
17 organization is the ~~surviving corporation~~ survivor in the merger and
18 continues to be a charitable or religious corporation or charitable or
19 religious organization after the merger; or

20 (4) A business or nonprofit corporation (foreign or domestic) or
21 unincorporated entity other than a charitable or religious corporation,
22 provided that: (i) on or prior to the effective date of the merger, assets
23 with a value equal to the greater of the fair market value of the net
24 tangible and intangible assets (including goodwill) of the charitable or
25 religious corporation or the fair market value of the charitable or
26 religious corporation if it were to be operated as a business concern are
27 transferred or conveyed to one or more persons who would have
28 received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved;
29 (ii) it shall return, transfer or convey any assets held by it upon
30 condition requiring return, transfer or conveyance, which condition
31 occurs by reason of the merger, in accordance with such condition; and
32 (iii) the merger is approved by a majority of directors of the charitable
33 or religious corporation who are not and will not become ~~members~~
34 members, as 'members' is defined in G.S. 55A-1-40 or G.S. 57C-1-03,
35 partners, limited partners, or shareholders in or directors, managers,
36 officers, employees, agents, or consultants of the ~~surviving corporation.~~
37 survivor in the merger.

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

41 (c) Without the prior written consent of the Attorney General, or approval of the
42 superior court in a proceeding in which the Attorney General has been given notice, no
43 member of a charitable or religious corporation may receive or retain any property as a

1 result of a merger other than ~~a membership~~ an interest as a member, as defined in G.S.
2 55A-1-40(16), in the surviving corporation. ~~survivor of the merger.~~ The Attorney General
3 may consent to the transaction, or the court shall approve the transaction, if it is fair and
4 not contrary to the public interest."

5 Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

6 "(4) A proceeding pending by or against any corporation party to the merger
7 may be continued as if the merger did not occur or the surviving
8 corporation may be substituted in the proceeding for the corporation
9 whose existence ceased; and".

10 Section 2.6. G.S. 55A-11-07 reads as rewritten:

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

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

17 Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by
18 adding a new section to read:

19 "**§ 55A-11-09. Merger with unincorporated entity.**

20 (a) As used in this section, 'business entity' means a domestic corporation as
21 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a
22 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional
23 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as
24 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in
25 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and
26 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of
27 this State (including a registered limited liability partnership as defined in G.S. 59-32
28 and any limited liability partnership formed under a law other than the laws of this State).

29 (b) One or more domestic nonprofit corporations may merge with one or more
30 unincorporated entities and, if desired, one or more foreign nonprofit corporations,
31 domestic business corporations, or foreign business corporations if:

32 (1) The merger is permitted by the laws of the state or country governing
33 the organization and internal affairs of each merging business entity;

34 (2) Each merging domestic nonprofit corporation and each other merging
35 business entity comply with the requirements of this section and, to the
36 extent applicable, the laws referred to in subdivision (1) of this
37 subsection; and

38 (3) The merger complies with G.S. 55A-11-02, if applicable.

39 (c) Each merging domestic nonprofit corporation and each other merging business
40 entity shall approve a written plan of merger containing:

41 (1) For each merging business entity, its name, type of business, and the
42 state or country whose laws govern its organization and internal affairs;

43 (2) The name of the merging business entity that shall survive the merger;

- 1 (3) The terms and conditions of the merger;
2 (4) The manner and basis for converting the interests in each merging
3 business entity into interests, obligations, or securities of the surviving
4 business entity or into cash or other property in whole or in part; and
5 (5) If the surviving business entity is a domestic nonprofit corporation, any
6 amendments to its articles of incorporation or bylaws that are to be
7 made in connection with the merger.

8 The plan of merger may contain other provisions relating to the merger.

9 In the case of a domestic nonprofit corporation, approval of the plan of merger
10 requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of
11 each other merging business entity, the plan of merger must be approved in accordance
12 with the laws of the state or country governing the organization and internal affairs of
13 such merging business entity.

14 After a plan of merger has been approved by a domestic nonprofit corporation, but
15 before the articles of merger become effective, the plan of merger (i) may be amended as
16 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual
17 rights) as provided in the plan of merger, or, if there is no such provision, as determined
18 by the board of directors.

19 (d) After a plan of merger has been approved by each merging domestic nonprofit
20 corporation and each other merging business entity as provided in subsection (c) of this
21 section, the surviving business entity shall deliver articles of merger to the Secretary of
22 State for filing. The articles of merger shall set forth:

- 23 (1) The plan of merger;
24 (2) For each merging business entity, its name, type of business, and the
25 state or country whose laws govern its organization and internal affairs;
26 (3) The name and address of the surviving business entity;
27 (4) A statement that the plan of merger was approved by each merging
28 business entity in the manner required by law;
29 (5) The effective date and time of merger if it is not to be effective at the
30 time of filing of the articles of merger; and
31 (6) If the surviving business entity is not a domestic limited liability
32 company, a domestic business corporation, a domestic nonprofit
33 corporation, or a domestic limited partnership, the agreement of the
34 surviving business entity that it may be served with process in this State
35 in any proceeding for enforcement of (i) any obligation of any merging
36 domestic limited liability company, domestic business corporation,
37 domestic nonprofit corporation, domestic limited partnership, or other
38 partnership as defined in G.S. 59-36 that is formed under the laws of
39 this State, (ii) the rights of dissenting shareholders of any merging
40 domestic business corporation under Article 13 of Chapter 55 of the
41 General Statutes, and (iii) any obligation of the surviving business entity
42 arising from the merger, and a statement irrevocably appointing the
43 Secretary of State as its agent for service of process in any such

1 proceeding and specifying the address to which a copy of the process
2 may be mailed to it by the Secretary of State (subject to any subsequent
3 change in address upon written notification by the surviving business
4 entity by the Secretary of State).

5 If the plan of merger is amended or abandoned before the articles of merger become
6 effective, the surviving business entity promptly shall deliver to the Secretary of State for
7 filing an amendment to the articles of merger reflecting the amendment or abandonment
8 of the plan of merger.

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

10 (e) A merger takes effect upon the effectiveness of the articles of merger. Upon
11 the effectiveness of the merger:

12 (1) Each other merging business entity merges into the surviving business
13 entity and the separate existence of each merging business entity except
14 the surviving business entity ceases;

15 (2) The title to all real estate and other property owned by each merging
16 business entity is vested in the surviving entity without reversion or
17 impairment;

18 (3) The surviving business entity has all liabilities of each merging business
19 entity;

20 (4) A proceeding pending by or against any merging business entity may be
21 continued as if the merger did not occur, or the surviving business entity
22 may be substituted in the proceeding for a merging business entity
23 whose existence ceases in the merger;

24 (5) If a domestic nonprofit corporation is the surviving business entity, its
25 articles of incorporation and bylaws shall be amended to the extent
26 provided in the plan of merger;

27 (6) The interests in each merging business entity that are to be converted
28 into interests, obligations, or securities of the surviving business entity
29 or into the right to receive cash or other property are thereupon
30 converted, and the former holders of the interests are entitled only to the
31 rights provided to them in the articles of merger, or in the case of former
32 holders of shares in a domestic corporation, any rights they may have
33 under Article 13 of Chapter 55 of the General Statutes; and

34 (7) If the surviving business entity is not a domestic business corporation,
35 the surviving business entity is deemed to agree that it will promptly
36 pay to the dissenting shareholders of any merging domestic business
37 corporation the amount, if any, to which they are entitled under Article
38 13 of Chapter 55 of the General Statutes and otherwise to comply with
39 the requirements of Article 13 as if it were a surviving domestic
40 business corporation in the merger.

41 The merger shall not affect the liability or absence of liability of any holder of an
42 interest in a merging business entity for any acts, omissions, or obligations of any
43 merging business equity made or incurred prior to the effectiveness of the merger. The

1 cessation of separate existence of a merging business entity in the merger shall not
2 constitute a dissolution or termination of the merging business entity.

3 (f) This section does not apply to a merger that does not include a merging
4 unincorporated entity."

5 Section 2.8. G.S. 55A-15-21 reads as rewritten:

6 "**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger~~, merger,**
7 **consolidation, or conversion.**

8 (a) ~~Whenever the separate existence of a foreign corporation authorized to conduct~~
9 ~~affairs in this State ceases~~ its separate existence as a result of a statutory merger or
10 consolidation ~~permitted by the laws of the state or country under which it was~~
11 ~~incorporated, or converts into another entity as permitted by those laws, the surviving~~
12 ~~corporation or resulting entity shall apply for a certificate of withdrawal for the merged-the~~
13 foreign corporation by delivering to the Secretary of State for filing a copy of the articles of
14 merger or a certificate reciting the facts of the ~~merger~~, merger, consolidation, or
15 conversion ~~duly authenticated by the secretary of state or other official having custody of~~
16 ~~corporate records in the state or country under the laws of which such statutory merger was~~
17 ~~effected. the foreign corporation was incorporated. If the surviving or resulting~~
18 ~~corporation is not authorized to conduct affairs in this State, the articles of merger or~~
19 ~~certificate shall be accompanied by an application which must set forth:~~

20 (1) ~~The name of each merged-the foreign corporation authorized to conduct~~
21 ~~affairs in this State and State, the type of entity and the name of the~~
22 ~~surviving corporation or resulting entity, and a statement that the~~
23 ~~surviving corporation or resulting entity is not authorized to conduct~~
24 ~~affairs in this State;~~

25 (2) ~~That~~ A statement that the surviving corporation or resulting entity
26 consents that service of process based upon any cause of action arising
27 in this State, or arising out of affairs conducted in this State, during the
28 time each merged-the foreign corporation was authorized to conduct
29 affairs in this State may thereafter be made on such corporation by
30 service thereof on the Secretary of State;

31 (3) A mailing address to which the Secretary of State may mail a copy of
32 any process served on him under subdivision (a)(2) of this section; and

33 (4) A commitment to notify the Secretary of State in the future of any
34 change in its mailing address.

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

37 (1) Endorse on the ~~articles of merger~~ or certificate and the application for
38 withdrawal, if required, the word 'filed', and the hour, day, month, and
39 year of filing thereof;

40 (2) File the ~~articles of merger~~ or certificate and the application, if required;

41 (3) Issue a certificate of withdrawal; and

- 1 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its
2 representative the certificate of withdrawal, together with the exact or
3 conformed copy of the application, if required, affixed thereto."

4 **PART III. LIMITED LIABILITY COMPANIES.**

5 Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

6 "(f) ~~The~~ A document submitted by a domestic or foreign limited liability company
7 must be executed:

- 8 (1) By a manager of a ~~domestic or foreign~~ the limited liability company;
9 (2) If managers have not been selected, or if the limited liability company
10 does not have a manager other than a member, by any member;
11 (3) If the limited liability company has not been formed, by an organizer; or
12 (4) If the limited liability company is in the hands of a receiver, trustee, or
13 other court-appointed fiduciary, by that fiduciary.

14 A document submitted by a business entity other than a domestic or foreign limited
15 liability company must be executed by a person duly authorized to do so by the business
16 entity."

17 Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

18 "(3a) Business entity. – A corporation (including a professional corporation as
19 defined in G.S. 55B-2), a foreign corporation (including a foreign
20 professional corporation as defined in G.S. 55B-16), a domestic or
21 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic
22 or foreign limited liability company, a domestic or foreign limited
23 partnership as defined in G.S. 59-102, or any other partnership as
24 defined in G.S. 59-36 whether or not formed under the laws of this State
25 (including a registered limited liability partnership as defined in G.S.
26 59-32 and any limited liability partnership formed under a law other
27 than the laws of this State."

28 Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

29 "(15) Membership interest or interest. – All In the context of a member of a
30 limited liability company, the terms mean all of a member's rights in the
31 limited liability company, including without limitation the member's
32 share of the profits and losses of the limited liability company, the right
33 to receive distributions of the limited liability company assets, any right
34 to vote, and any right to participate in management."

35 Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

36 "(a) One or more persons may organize a limited liability company by delivering
37 executed articles of organization to the Secretary of State for filing. A limited liability
38 company may also be formed through the conversion of another business entity pursuant
39 to Part 1 of Article 9A of this Chapter."

40 Section 3.5. G.S. 57C-2-34 reads as rewritten:

41 "**§ 57C-2-34. Real property records.**

42 (a) Whenever the name of any domestic or foreign limited liability company
43 holding title to real property in this State is changed upon amendment to its articles of

1 organization or whenever title to its real property in this State is ~~transferred~~ vested by
2 operation of law in another entity upon ~~merger~~ merger, consolidation, or conversion of
3 ~~two or more the~~ limited liability companies, company, a certificate reciting the ~~change or~~
4 ~~transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office
5 of the register of deeds of the county where the property lies, or if the property is located
6 in more than one county, then in each county where any portion of the property lies.

7 (b) The Secretary of State shall adopt uniform certificates to be furnished for
8 registration in accordance with this section. In the case of a foreign limited liability
9 company, a similar certificate by any competent authority of the jurisdiction of
10 organization may be registered in accordance with this section.

11 (c) The certificate required by this section shall be recorded by the register of
12 deeds in the same manner as deeds, and for the same fees, but no formalities as to
13 acknowledgement, probate, or approval by any other officer shall be required. The
14 former name of the limited liability company holding title to the real property before the
15 ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in
16 the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the
17 name of the other entity holding title to the real property by virtue of the ~~amendment or~~
18 ~~merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee'
19 index."

20 Section 3.6. G.S. 57C-7-12 reads as rewritten:

21 "**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger.~~**
22 **merger, consolidation, or conversion.**

23 (a) Whenever ~~the separate existence of~~ a foreign limited liability company
24 authorized to transact business in this State ceases its separate existence as a result of a
25 statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or
26 country under which it was organized, or converts into another type of entity permitted
27 by the laws, the surviving or resulting entity shall apply for a certificate of withdrawal for
28 the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for
29 filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the merger,
30 consolidation, or conversion, duly authenticated by the Secretary of State or other official
31 having custody of limited liability company records in the state or country under the laws
32 of which ~~such statutory merger~~ the foreign limited liability company was ~~effected.~~
33 organized. If the surviving or resulting entity is not authorized to transact business in this
34 State, the ~~articles of merger or~~ certificate must be accompanied by an application which
35 must set forth:

36 (1) The name of ~~each merged~~ the foreign limited liability company
37 authorized to transact business in this ~~State and State,~~ the type of entity
38 and name of the surviving or resulting entity entity, and a statement that
39 the surviving or resulting entity is not authorized to transact business in
40 this State;

41 (2) ~~That~~ A statement that the surviving or resulting entity consents that
42 service of process based upon any cause of action arising in this State,
43 or arising out of business transacted in this State, during the time ~~each~~

- 1 (2) The terms and conditions of the conversion; and
2 (3) The manner and basis for converting the interests in the converting
3 business entity into interests, obligations, or securities of the resulting
4 domestic limited liability company or into cash or other property in
5 whole or in part.

6 The plan of conversion may also contain other provisions relating to the conversion.

7 (b) In the case of a domestic limited partnership or other partnership as defined in
8 G.S. 59-36 whose organization and internal affairs are governed by the laws of this State,
9 the plan of conversion must be approved in the manner provided for the approval of such
10 a conversion in a written partnership agreement that is binding on all the partners or, if
11 there is no such provision, by the unanimous consent of all the partners. In the case of a
12 foreign limited liability company, a foreign limited partnership, or other partnership as
13 defined in G.S. 59-36 whose organization and internal affairs are governed by a law other
14 than the laws of this State, the plan of conversion must be approved in accordance with
15 the laws of the state or country governing the organization and internal affairs of the
16 converting business entity.

17 (c) After a plan of conversion has been approved as provided in subsection (b) of
18 this section, but before articles of organization for the resulting domestic limited liability
19 company become effective, the plan of conversion may be amended or terminated to the
20 extent provided in the plan of conversion.

21 **"§ 57C-9A-03. Filing of articles of organization by converting business entity.**

22 (a) After a plan of conversion has been approved by the converting business entity
23 as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of
24 organization to the Secretary of State for filing. In addition to the matters required or
25 permitted by G.S. 57C-2-21, the articles of organization shall state:

- 26 (1) That the domestic limited liability company is being formed pursuant to
27 a conversion of another business entity;
28 (2) The name of the converting business entity and the state or country
29 whose laws govern its organization and internal affairs; and
30 (3) That a plan of conversion has been approved by the converting business
31 entity as required by law.

32 If the plan of conversion is abandoned before the articles of organization become
33 effective, the converting business entity promptly shall deliver to the Secretary of State
34 for filing an amendment to the articles of organization reflecting the abandonment of the
35 plan of conversion.

36 (b) The conversion takes effect upon the effectiveness of the articles of
37 organization as provided in G.S. 57C-1-23.

38 (c) The converting business entity shall furnish a copy of the plan of conversion,
39 on request and without cost, to any member or partner (whether general or limited) of the
40 converting business entity.

41 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

42 **"§ 57C-9A-04. Effects of conversion.**

43 Upon the conversion becoming effective:

- 1 (1) The converting business entity ceases its prior form of organization and
2 continues in existence as the resulting domestic limited liability
3 company;
- 4 (2) The title to all real estate and other property owned by the converting
5 business entity continues vested in the resulting domestic limited
6 liability company without reversion or impairment;
- 7 (3) All liabilities of the converting business entity continue as liabilities of
8 the resulting domestic limited liability company;
- 9 (4) A proceeding pending by or against the converting business entity may
10 be continued as if the conversion did not occur; and
- 11 (5) The interests in the converting business entity that are to be converted
12 into interests, obligations, or securities of the resulting domestic limited
13 liability company or into the right to receive cash or other property, are
14 thereupon so converted, and the former holders of interests in the
15 converting business entity are entitled only to the rights provided in the
16 plan of conversion.

17 The conversion shall not affect the liability or absence of liability of any holder of an
18 interest in the converting business entity for any acts, omissions, or obligations of the
19 converting business entity, made or incurred prior to the effectiveness of the conversion.
20 The cessation of the existence of the converting business entity in its prior form of
21 organization in the conversion shall not constitute a dissolution or termination of the
22 converting business entity.

"PART 2. MERGER.

"§ 57C-9A-05. Merger.

25 A domestic limited liability company may merge with one or more other domestic
26 limited liability companies or other business entities if:

- 27 (1) The merger is permitted by the laws of the state or country governing
28 the organization and internal affairs of each of the other merging
29 business entities; and
- 30 (2) Each merging domestic limited liability company and each other
31 merging business entity comply with the requirements of this Part and,
32 to the extent applicable, the laws referred to in subdivision (1) of this
33 section.

"§ 57C-9A-06. Plan of merger.

35 (a) Each merging domestic limited liability company and each other merging
36 business entity shall approve a written plan of merger containing:

- 37 (1) For each merging business entity, its name, type of business, and the
38 state or country whose laws govern its organization and internal affairs;
- 39 (2) The name of the merging business entity that shall survive the merger;
- 40 (3) The terms and conditions of the merger;
- 41 (4) The manner and basis for converting the interests in each merging
42 business entity into interests, obligations, or securities of the surviving
43 business entity or into cash or other property in whole or in part; and

1 (5) If the surviving business entity is a domestic limited liability company,
2 any amendments to its articles of organization that are to be made in
3 connection with the merger.

4 The plan of merger may contain other provisions relating to the merger.

5 (b) In the case of a merging domestic limited liability company, the plan of merger
6 must be approved in the manner provided in its articles of organization or a written
7 operating agreement for approval of a merger with the type of business entity
8 contemplated in the plan of merger, or, if there is no such provision, by the unanimous
9 consent of its members. In the case of each other merging business entity, the plan of
10 merger must be approved in accordance with the laws of the state or country governing
11 the organization and internal affairs of the merging business entity.

12 (c) After a plan of merger has been approved by a domestic limited liability
13 company, but before the articles of merger become effective, the plan of merger (i) may
14 be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any
15 contractual rights) as provided in the plan of merger, articles of organization, or written
16 operating agreement or, if not so provided, as determined by the managers of the
17 domestic limited liability company in accordance with G.S. 57C-3-20(b).

18 **"§ 57C-9A-07. Articles of merger.**

19 (a) After a plan of merger has been approved by each merging domestic limited
20 liability company and each other merging business entity as provided in G.S. 57C-9A-06,
21 the surviving business entity shall deliver articles of merger to the Secretary of State for
22 filing. The articles of merger shall set forth:

23 (1) The plan of merger;

24 (2) For each merging business entity, its name, type of business, and the
25 state or country whose laws govern its organization and internal affairs;

26 (3) The name and address of the surviving business entity;

27 (4) A statement that the plan of merger has been approved by each merging
28 business entity in the manner required by law;

29 (5) The effective date and time of the merger if it is not to be effective at
30 the time of filing of the articles of merger; and

31 (6) If the surviving business entity is not a domestic limited liability
32 company, a domestic corporation, a domestic nonprofit corporation, or a
33 domestic limited partnership, the agreement of the surviving business
34 entity that it may be served with process in this State in any proceeding
35 for enforcement of (i) any obligation of any merging domestic limited
36 liability company, domestic corporation, domestic nonprofit
37 corporation, domestic limited partnership, or other partnership as
38 defined in G.S. 59-36 that is formed under the laws of this State, (ii) the
39 rights of dissenting shareholders of any merging domestic corporation
40 under Article 13 of Chapter 55 of the General Statutes, and (iii) any
41 obligation of the surviving business entity arising from the merger, and
42 a statement irrevocably appointing the Secretary of State as its agent for
43 service of process in any such proceeding and specifying the address to

1 which a copy of the process may be mailed to it by the Secretary of
2 State (subject to any subsequent change in address upon written
3 notification by the surviving business entity by the Secretary of State).

4 If the plan of merger is amended or abandoned before the articles of merger become
5 effective, the surviving business entity promptly shall deliver to the Secretary of State for
6 filing an amendment to the articles of merger reflecting the amendment or abandonment
7 of the plan of merger.

8 (b) A merger takes effect upon the effectiveness of the articles of merger as
9 provided in G.S. 57C-1-23.

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

11 **"§ 57C-9A-08. Effects of merger.**

12 Upon the merger becoming effective:

- 13 (1) Each other merging business entity merges into the surviving business
14 entity. The separate existence of each merging business entity, except
15 the surviving business entity, ceases;
- 16 (2) The title to all real estate and other property owned by each merging
17 business entity is vested in the surviving business entity without
18 reversion or impairment;
- 19 (3) The surviving business entity has all liabilities of each merging business
20 entity;
- 21 (4) A proceeding pending by or against any merging business entity may be
22 continued as if the merger did not occur, or the surviving business entity
23 may be substituted in the proceeding for a merging business entity
24 whose existence ceases in the merger;
- 25 (5) If a domestic limited liability company is the surviving business entity,
26 its articles of organization shall be amended to the extent provided in
27 the plan of merger;
- 28 (6) The interests in each merging business entity that are to be converted
29 into interests, obligations, or securities of the surviving business entity
30 or into the right to receive cash or other property are thereupon so
31 converted, and the former holders of the interests are entitled only to the
32 rights provided to them in the plan of merger, or in the case of former
33 holders of shares in a domestic corporation, any rights they may have
34 under Article 13 of Chapter 55 of the General Statutes, the North
35 Carolina Business Corporation Act; and
- 36 (7) If the surviving business entity is not a domestic corporation, the
37 surviving business entity is deemed to agree that it will promptly pay to
38 the dissenting shareholders of any merging domestic corporation the
39 amount, if any, to which they are entitled under Article 13 of Chapter 55
40 of the General Statutes and otherwise to comply with the requirements
41 of Article 13 as if it were a surviving domestic corporation in the
42 merger.

1 The merger shall not affect the liability or absence of liability of any holder of an
2 interest in a merging business entity for any acts, omissions, or obligations of any
3 merging business entity made or incurred prior to the effectiveness of the merger. The
4 cessation of separate existence of a merging business entity in the merger shall not
5 constitute a dissolution or termination of that merging business entity."

6 **PART IV. PARTNERSHIPS.**

7 Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by
8 adding a new Part to read:

9 **"PART 7. CONVERSION AND MERGER.**

10 **"§ 59-73.1. Definitions.**

11 As used in this Part:

12 (1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that
13 is formed under the laws of this State, including a registered limited
14 liability partnership as defined in G.S. 59-32, but excluding a domestic
15 limited partnership as defined in G.S. 59-102.

16 (2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-
17 40 (including a professional corporation as defined in G.S. 55B-2), a
18 foreign corporation as defined in G.S. 55-1-40 (including a foreign
19 professional corporation as defined in G.S. 55B-16), a domestic or
20 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic
21 or foreign limited liability company as defined in G.S. 57C-1-03, a
22 domestic or foreign limited partnership as defined in G.S. 59-102, a
23 domestic partnership, or any other partnership as defined in G.S. 59-36
24 formed under a law other than the laws of this State (including a limited
25 liability partnership).

26 (3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or
27 not formed under the laws of this State including a registered limited
28 liability partnership and any other limited liability partnership formed
29 under a law other than the laws of this State but excluding a domestic
30 limited partnership as defined in G.S. 59-102 and a foreign limited
31 partnership as defined in G.S. 59-102.

32 **"§ 59-73.2. Conversion of domestic partnership.**

33 A domestic partnership may convert to a domestic limited liability company pursuant
34 to Part 1 of Article 9 of Chapter 57C of the General Statutes, the North Carolina Limited
35 Liability Company Act, or to a domestic limited partnership pursuant to Part 10A of
36 Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership
37 Act.

38 **"§ 59-73.3. Merger.**

39 A domestic partnership may merge with one or more other domestic partnerships or
40 other business entities if:

41 (1) The merger is permitted by laws of the state or country governing the
42 organization and internal affairs of each other merging business entity;
43 and

- 1 (2) Each merging domestic partnership and each other merging business
2 entity comply with the requirements of this Part and, to the extent
3 applicable, the laws referred to in subdivision (1) of this section.

4 **"§ 59-73.4. Plan of merger.**

5 (a) Each merging domestic partnership and each other merging business entity
6 shall approve a written plan of merger containing:

- 7 (1) For each merging business entity, its name, type of business, and the
8 state or country whose laws govern its organization and internal affairs;
9 (2) The name of the merging business entity that shall survive the merger;
10 (3) The terms and conditions of the merger; and
11 (4) The manner and basis for converting the interests in each merging
12 business entity into interests, obligations, or securities of the surviving
13 business entity or into cash or other property in whole or in part.

14 The plan of merger may contain other provisions relating to the merger.

15 (b) In the case of a merging domestic partnership, the plan of merger must be
16 approved in the manner provided in a written partnership agreement that is binding on all
17 the partners for approval of a merger with the type of business entity contemplated in the
18 plan of merger or, if there is no such provision by the unanimous consent of its partners.
19 In the case of each other merging business entity, the plan of merger must be approved in
20 accordance with the laws of the state or country governing the organization and internal
21 affairs of such merging business entity.

22 (c) After a plan of merger has been approved by the domestic partnership, but
23 before the articles of merger become effective, the plan of merger (i) may be amended as
24 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual
25 rights) as provided in the plan of merger or a written partnership agreement that is
26 binding on all the partners or, if not so provided, as determined by the partners.

27 **"§ 59-73.5. Articles of merger.**

28 (a) After a plan of merger has been approved by each merging domestic
29 partnership and each other merging business entity as provided in G.S. 59-73.4, the
30 surviving business entity shall deliver articles of merger to the Secretary of State for
31 filing. The articles of merger shall set forth:

- 32 (1) The plan of merger;
33 (2) For each merging business entity, its name, type of business, and the
34 state or country whose laws govern its organization and internal affairs;
35 (3) The name and address of the surviving business entity;
36 (4) A statement that the plan of merger was approved by each merging
37 business entity in the manner required by law;
38 (5) The effective date and time of the merger if it is not to be effective at
39 the time of filing of the articles of merger; and
40 (6) If the surviving business entity is not a domestic limited liability
41 company, a domestic corporation, a domestic nonprofit corporation, or a
42 domestic limited partnership, the agreement of the surviving business
43 entity that it may be served with process in this State in any proceeding

1 for enforcement of (i) any obligation of any merging domestic limited
2 liability company, domestic corporation, domestic nonprofit
3 corporation, domestic limited partnership, or other partnership as
4 defined in G.S. 59-36 that is formed under the laws of this State, (ii) the
5 rights of dissenting shareholders of any merging domestic corporation
6 under Article 13 of Chapter 55 of the General Statutes, and (iii) any
7 obligation of the surviving business entity arising from the merger, and
8 a statement irrevocably appointing the Secretary of State as its agent for
9 service of process in any such proceeding and specifying the address to
10 which a copy of the process may be mailed to it by the Secretary of
11 State (subject to any subsequent change in address upon written
12 notification by the surviving business entity by the Secretary of State).

13 If the plan of merger is amended or abandoned before the articles of merger become
14 effective, the surviving business entity promptly shall deliver to the Secretary of State for
15 filing an amendment to the articles of merger reflecting the amendment or abandonment
16 of the plan of merger.

17 (b) A merger takes effect upon the effectiveness of the articles of merger.

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

19 **"§ 59-73.6. Effects of merger.**

20 (a) Upon the effectiveness of the merger:

21 (1) Each other merging business entity merges into the surviving business
22 entity and the separate existence of each merging business entity except
23 the surviving business entity ceases;

24 (2) The title to all real estate and other property owned by each merging
25 business entity is vested in the surviving business entity without
26 reversion or impairment subject, in the case of real estate or other
27 property owned by a merging domestic or foreign nonprofit corporation,
28 to any and all conditions to which the property was subject prior to the
29 merger;

30 (3) The surviving business entity has all liabilities of each merging business
31 entity;

32 (4) A proceeding pending by or against any merging business entity may be
33 continued as if the merger did not occur, or the surviving business entity
34 may be substituted in the proceeding for the merging business entity
35 whose existence ceases in the merger;

36 (5) The interests in each merging business entity that are to be converted
37 into interests, obligations, or securities of the surviving business entity
38 or into the right to receive cash or other property are thereupon so
39 converted, and the former holders of the interests in each merging
40 business entity are entitled only to the rights provided to them in the
41 plan of merger or, in the case of former holders of shares in a domestic
42 corporation (as defined in G.S. 55-1-40), any rights they may have

1 under Article 13 of Chapter 55 of the General Statutes, the North
2 Carolina Business Corporation Act; and

- 3 (6) If the surviving business entity is not a domestic corporation, the
4 surviving business entity is deemed to agree that it will promptly pay to
5 the dissenting shareholders of any merging domestic corporation the
6 amount, if any, to which they are entitled under Article 13 of Chapter 55
7 of the General Statutes and otherwise to comply with the requirements
8 of Article 13 as if it were a surviving domestic corporation in the
9 merger.

10 The merger shall not affect the liability or absence of liability of any holder of an
11 interest in a merging business entity for any acts, omissions, or obligations of any
12 merging business entity made or incurred prior to the effectiveness of the merger. The
13 cessation of separate existence of a merging business entity shall not constitute a
14 dissolution or termination of the merging business entity.

15 **"§ 59-73.7. Filing of documents.**

16 (a) To be entitled to filing by the Secretary of State, a document submitted
17 pursuant to this Part must meet all of the following requirements:

- 18 (1) The document must contain the information required by this Part. It
19 may contain other information as well.
20 (2) The document must be typewritten or printed.
21 (3) The document must be in the English language.
22 (4) A document submitted by a partnership must be executed by a general
23 partner of the partnership. A document submitted by a business entity
24 other than a partnership must be executed by a person duly authorized to
25 do so by the business entity.
26 (5) The person executing the document must sign it and state beneath or
27 opposite the person's signature, the person's name and the capacity in
28 which the person signs. Any signature on the document may be a
29 facsimile. The document may, but need not, contain an
30 acknowledgment, verification, or proof.
31 (6) The document must be delivered to the Office of the Secretary of State
32 for filing and must be accompanied by one exact or conformed copy and
33 by the required filing fee.

34 (b) A partnership may correct a document filed by the Secretary of State pursuant
35 to this Part if the document (i) contains a statement that is incorrect and was incorrect
36 when the document was filed or (ii) was defectively executed, attested, sealed, verified,
37 or acknowledged.

38 A document is corrected by:

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

1 (2) Delivering the articles of correction to the Secretary of State for filing,
2 accompanied by one exact or conformed copy and the required filing
3 fee.

4 Articles of correction are effective on the effective date of the document that is
5 corrected except as to persons relying on the uncorrected document and adversely
6 affected by the correction. As to those persons, articles of correction are effective when
7 filed.

8 (c) The Secretary of State shall collect the following fees when the documents
9 described in this subsection are submitted by a partnership to the Secretary of State for
10 filing:

<u>Document</u>	<u>Fee</u>
<u>Articles of Merger</u>	<u>\$50.00</u>
<u>Articles of Correction</u>	<u>\$10.00</u>

14 The Secretary of State shall collect the following fees for copying, comparing, and
15 certifying a copy of a document filed by a partnership pursuant to this Part:

16 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
17 original; and

18 (2) Five dollars (\$5.00) for the certificate.

19 (d) The Secretary of State shall guarantee the expedited filing of a document upon
20 receipt of the document in proper form and the payment of the required filing fee. The
21 Secretary of State may collect the following additional fees for the expedited filing of a
22 document received in good form:

23 (1) Two hundred dollars (\$200.00) for the filing by the end of the same
24 business day of a document received by 12:00 p.m. Eastern Standard
25 Time; and

26 (2) One hundred dollars (\$100.00) for the filing of a document within 24
27 hours after receipt, excluding weekends and holidays.

28 The Secretary of State shall not collect the fees allowed in this subsection unless the
29 person submitting the document for filing requests an expedited filing and is informed by
30 the Secretary of State of the fees prior to the filing of the document.

31 (e) Upon request, the Secretary of State shall provide for the review of a document
32 prior to its submission for filing to determine whether it satisfies the requirements of this
33 Part. Submission of a document for review shall be accompanied by the proper fee and
34 shall be in accordance with procedures adopted by rule by the Secretary of State. The
35 advisory review shall be completed within 24 hours after submission, excluding
36 weekends and holidays, unless the person submitting the document is otherwise notified
37 in accordance with procedures adopted by rule by the Secretary of State fixing priority
38 between submissions under this subsection and filings under subsection (d) of this
39 section. Upon completion of the advisory review, the Secretary of State shall notify the
40 person submitting the document of any deficiencies in the document that would prevent
41 its filing.

42 (f) Except as provided in this subsection and in subsection (b) of this section, a
43 document accepted for filing is effective:

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

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

10 The fact that a document has become effective under this subsection does not
11 determine its validity or invalidity or the correctness or incorrectness of the information
12 contained in the document.

13 (g) If a document delivered to the Office of the Secretary of State for filing
14 satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed
15 with the Secretary of State pursuant to this Part may be maintained by the Secretary
16 either in their original form or in photographic, microfilm, optical disk media, or other
17 reproduced form. The Secretary may make reproductions of documents filed under this
18 Part, or under any predecessor act, by photographic, microfilm, optical disk media, or
19 other means of reproduction, and may destroy the originals of those documents
20 reproduced.

21 The Secretary of State files a document by stamping or otherwise endorsing 'Filed',
22 together with the Secretary of State's name and official title and the date and time of
23 filing, on both the original and the document copy. After filing a document, the Secretary
24 of State shall deliver the document copy to the partnership or its representative.

25 If the Secretary of State refuses to file a document, the Secretary of State shall return
26 it to the partnership or its representative within five days after the document was
27 received, together with a brief, written explanation of the reason for refusal. The
28 Secretary of State may correct apparent errors and omissions on a document submitted
29 for filing if authorized to make the corrections by the person submitting the document for
30 filing. Prior to making the correction, the Secretary shall confirm the authorization to
31 make the corrections according to procedures adopted by rule.

32 The Secretary of State's duty is to review and file documents that satisfy the
33 requirements of this Part. The Secretary of State's filing or refusing to file a document
34 does not:

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

40 (h) If the Secretary of State refuses to file a document delivered to the Secretary of
41 State's office for filing, the person tendering the document for filing may, within 30 days
42 after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is
43 commenced by filing a petition with the court and with the Secretary of State requesting

1 the court to compel the Secretary of State to file the document. The petition shall have
2 attached to it the document to be filed and the Secretary of State's explanation for the
3 refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the
4 General Statutes, the Administrative Procedure Act, and the court shall determine, based
5 upon what is appropriate under the circumstances, any further notice and opportunity to
6 be heard.

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

10 The court's final decision may be appealed as in other civil proceedings.

11 (i) A certificate attached to a copy of a document filed by the Secretary of State,
12 bearing the Secretary of State's signature (which may be in facsimile) and the seal of
13 office and certifying that the copy is a true copy of the document, is conclusive evidence
14 that the original document is on file with the Secretary of State. A photographic,
15 microfilm, optical disk media, or other reproduced copy of a document filed pursuant to
16 this Part or any predecessor act, when certified by the Secretary, shall be considered an
17 original for all purposes and is admissible in evidence in like manner as an original.

18 (j) A person commits an offense if the person signs a document the person knows
19 is false in any material respect with intent that the document be delivered to the Secretary
20 of State for filing. An offense under this subsection is a Class 1 misdemeanor.

21 (k) Whenever title to real property in this State held by a partnership is vested by
22 operation of law in another entity upon merger or conversion of the partnership, a
23 certificate reciting the merger or conversion shall be recorded in the office of the register
24 of deeds of the county where the property is located, or if the property is located in more
25 than one county, then in each county where any portion of the property is located.

26 The Secretary of State shall adopt uniform certificates to be furnished for registration
27 in accordance with this subsection. In the case of a partnership formed under a law other
28 than the laws of this State, a similar certificate by any competent authority of the
29 jurisdiction of organization may be registered in accordance with this subsection.

30 The certificate required by this subsection shall be recorded by the register of deeds in
31 the same manner as deeds, and for the same fees, but no formalities as to
32 acknowledgment, probate, or approval by any other officer shall be required. The former
33 name of the partnership holding title to the real property before the merger or conversion
34 shall appear in the 'Grantor' index and the name of the other entity holding title to the real
35 property by virtue of the merger or conversion shall appear in the 'Grantee' index."

36 Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

37 "(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-
38 40 (including without limitation, a professional corporation as defined
39 in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40
40 (including, without limitation, a foreign professional corporation as
41 defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as
42 defined in G.S. 55A-1-40, a domestic limited liability company as
43 defined in G.S. 57C-1-03, a foreign limited liability company as defined

1 in G.S. 57C-1-03, a domestic limited partnership, a foreign limited
2 partnership, or any other partnership as defined in G.S. 59-36, whether
3 or not formed under the laws of this State (including a registered limited
4 liability partnership as defined in G.S. 59-32 and any other limited
5 liability partnership formed under a law other than the laws of this
6 State)."

7 Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

8 "(d) A limited partnership may also be formed through the conversion of another
9 business entity in accordance with Part 10A of this Article."

10 Section 4.4. G.S. 59-204 reads as rewritten:

11 **"§ 59-204. Execution of certificates-documents.**

12 (a) Each certificate required by this Article to be filed in the office of the Secretary
13 of State shall be executed in the following manner:

14 (1) An original certificate of limited partnership must be signed by all
15 general partners;

16 (2) A certificate of amendment must be signed by at least one general
17 partner and by each other partner designated in the certificate as a new
18 general partner; and

19 (3) A certificate of cancellation must be signed by all general partners.

20 Any other document submitted by a domestic or foreign limited partnership for filing
21 pursuant to this Article must be signed by at least one general partner. Any document
22 submitted by a business entity other than a domestic or foreign limited partnership must
23 be executed by a person duly authorized to do so by the business entity.

24 (b) Any person may sign a certificate by an attorney-in-fact.

25 (b1) Any signature on any document authorized to be filed with the Secretary of
26 State under any provision of this Article may be a facsimile.

27 (c) The execution of a certificate or amendment by a general partner constitutes an
28 affirmation under the penalties of perjury that the facts stated therein are true."

29 Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

30 "(3a) Whenever the name of any domestic or foreign limited partnership
31 holding title to real property in this State is changed upon amendment to
32 the certificate of limited partnership, or whenever title to its real
33 property is vested by operation of law in another entity upon merger,
34 consolidation, or conversion of the domestic or foreign limited
35 partnership, a certificate reciting the ~~change or transfer name change,~~
36 merger, consolidation, or conversion shall be recorded in the office of
37 the register of deeds of the county where the property lies, or if the
38 property is located in more than one county, then in each county where
39 any portion of the property lies."

40 Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

41 "(5) The certificate required by this section shall be recorded by the register
42 of deeds in the same manner as deeds, and for the same fees, but no
43 formalities as to acknowledgement, probate, or approval by any other

1 officer shall be required. The former name of the domestic or foreign
2 limited partnership holding title to the real property before the
3 amendment—name change, merger, consolidation, or conversion shall
4 appear in the 'Grantor' index, and the amended—new name of the
5 domestic or foreign limited partnership or the name of the other entity
6 holding title to the real property by virtue of the amendment—merger,
7 consolidation, or conversion, as applicable, shall appear in the 'Grantee'
8 index."

9 Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by
10 adding a new Part to read:

11 **"PART 10A. CONVERSION AND MERGER.**

12 **"§ 59-1007. Conversions.**

13 (a) A domestic limited partnership may convert to a domestic limited liability
14 company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, the
15 North Carolina Limited Liability Company Act.

16 (b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign
17 limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or
18 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of
19 this State, including a registered limited liability partnership as defined in G.S. 59-32 and
20 any limited liability partnership formed under a law other than the laws of this State, but
21 excluding a domestic limited partnership, may convert to a domestic limited partnership
22 if:

23 (1) Such converting business entity complies with the requirements of G.S.
24 59-1008 and G.S. 59-1009; and

25 (2) If the organization and internal affairs of the converting business entity
26 are not governed by the laws of this State, the conversion is permitted
27 by laws of the state or country governing the organization and internal
28 affairs of the converting business entity, and the converting business
29 entity complies with the laws.

30 **"§ 59-1008. Plan of conversion.**

31 (a) The holders of the interests in the converting business entity shall approve a
32 written plan of conversion containing:

33 (1) The name of the resulting domestic limited partnership into which the
34 converting business entity shall convert;

35 (2) The terms and conditions of the conversion; and

36 (3) The manner and basis for converting the interests in the converting
37 business entity into interests, obligations, or securities of the resulting
38 domestic partnership or into cash or other property in whole or in part.

39 The plan of conversion may contain other provisions relating to the conversion.

40 (b) In the case of a domestic limited liability company, the plan of conversion
41 must be approved in the manner provided for approval of such a conversion in its articles
42 of organization or a written operating agreement or, if there is no such provision, by the
43 unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36

1 whose organization and internal affairs are governed by the laws of this State, the plan of
2 conversion must be approved in the manner provided for the approval of such a
3 conversion in a written partnership agreement that is binding on all the partners or, if
4 there is no such provision, by the unanimous consent of all the partners. In the case of a
5 foreign limited liability company, a foreign limited partnership, or other partnership as
6 defined in G.S. 59-36, whose organization and internal affairs are governed by a law
7 other than the laws of this State, the plan of conversion must be approved in accordance
8 with the laws of the state or country governing the organization and internal affairs of the
9 converting business entity.

10 (c) After a plan of conversion has been approved as provided in subsection (b) of
11 this section, but before a certificate of limited partnership for the resulting domestic
12 limited liability company becomes effective, the plan of conversion may be amended or
13 abandoned to the extent provided in the plan of conversion.

14 **"§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

15 (a) After a plan of conversion has been approved by the converting business entity
16 as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of
17 limited partnership to the Secretary of State for filing. In addition to the matters required
18 or permitted by G.S. 59-201, the certificate of limited partnership shall state:

19 (1) That the domestic limited partnership is being formed pursuant to a
20 conversion of another business entity;

21 (2) The name of the converting business entity, its type of business, and the
22 state or country whose laws govern its organization and internal affairs;
23 and

24 (3) That a plan of conversion was approved by the converting business
25 entity in the manner required by law.

26 If the plan of conversion is abandoned before the certificate of limited partnership
27 becomes effective, the converting business entity promptly shall deliver to the Secretary
28 of State for filing an amendment to the certificate of limited partnership reflecting the
29 abandonment of the plan of conversion.

30 (b) The conversion takes effect upon the effectiveness of the certificate of limited
31 partnership as provided in G.S. 59-206.

32 (c) The converting business entity shall furnish a copy of the plan of conversion,
33 on request and without cost, to any member or partner (whether general or limited) of the
34 converting business entity.

35 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

36 **"§ 59-1010. Effects of conversion.**

37 (a) Upon the effectiveness of the conversion:

38 (1) The converting business entity ceases its prior form of organization and
39 continues in existence as the resulting domestic limited partnership;

40 (2) The title to all real estate and other property owned by the converting
41 business entity continues vested in the resulting domestic limited
42 partnership without reversion or impairment;

- 1 (3) All liabilities of the converting business entity continue as liabilities of
2 the resulting domestic limited partnership;
3 (4) A proceeding pending by or against the converting business entity may
4 be continued as if the conversion did not occur; and
5 (5) The interests in the converting business entity that are to be converted
6 into interests, obligations, or securities of the resulting domestic
7 partnership or into the right to receive cash or other property are
8 thereupon so converted, and the former holders of interests in the
9 converting business entity are entitled only to the rights provided in the
10 plan of conversion.

11 The conversion shall not affect the liability or absence of liability of any holder of an
12 interest in the converting business entity for any acts, omissions, or obligations of the
13 converting business entity made or incurred prior to the effectiveness of the conversion.
14 The cessation of existence of the converting business entity in its prior form of
15 organization in the conversion shall not constitute a dissolution or termination of the
16 converting business entity.

17 **"§ 59-1011. Merger.**

18 A domestic limited partnership may merge with one or more other domestic limited
19 partnerships or other business entities if:

- 20 (1) The merger is permitted by the laws of the state or country governing
21 the organization and internal affairs of each other merging business
22 entity; and
23 (2) Each merging domestic limited partnership and each other merging
24 business entity comply with the requirements of G.S. 59-1012 and G.S.
25 59-1013, and, to the extent applicable, the laws referred to in
26 subdivision (1) of this section.

27 **"§ 59-1012. Plan of merger.**

28 (a) Each merging domestic limited partnership and each other merging business
29 entity shall approve a written plan of merger containing:

- 30 (1) For each merging business entity, its name, type of business, and the
31 state or country whose laws govern its organization and internal affairs;
32 (2) The name of the merging business entity that shall survive the merger;
33 (3) The terms and conditions of the merger;
34 (4) The manner and basis for converting the interests in each merging
35 business entity into interests, obligations, or securities of the surviving
36 business entity or into cash or other property in whole or in part; and
37 (5) If the surviving business entity is a domestic limited partnership, any
38 amendments to its certificate of limited partnership that are to be made
39 in connection with the merger.

40 The plan of merger may contain other provisions relating to the merger.

41 (b) In the case of a merging domestic limited partnership, the plan of merger must
42 be approved in the manner provided in a written partnership agreement that is binding on
43 all the partners for approval for a merger with the type(s) of business entities

1 contemplated in the plan of merger or, if there is no provision, by the unanimous consent
2 of its partners. In the case of each other merging business entity, the plan of merger must
3 be approved in accordance with the laws of the state or country governing the
4 organization and internal affairs of the merging business entity.

5 (c) After a plan of merger has been approved by a domestic limited partnership,
6 but before the articles of merger become effective, the plan of merger (i) may be
7 amended as provided in the plan of merger, or (ii) may be abandoned (subject to any
8 contractual rights) as provided in the plan of merger or a written partnership agreement
9 that is binding on all the partners or, if there is no such provision, as determined by all
10 partners.

11 **"§ 59-1013. Articles of merger.**

12 (a) After a plan of merger has been approved by each merging domestic limited
13 partnership and each other merging business entity as provided in G.S. 59-1012, the
14 surviving business entity shall deliver articles of merger to the Secretary of State for
15 filing. The articles of merger shall set forth:

- 16 (1) The plan of merger;
- 17 (2) For each merging business entity, its name, type of business, and the
18 state or country whose laws govern its organization and internal affairs;
- 19 (3) The name and address of the surviving business entity;
- 20 (4) A statement that the plan of merger was approved by each merging
21 business entity in the manner required by law;
- 22 (5) The effective date and time of the merger if it is not to be effective at
23 the time of filing of articles of merger; and
- 24 (6) If the surviving business entity is not a domestic limited liability
25 company, a domestic corporation, a domestic nonprofit corporation, or a
26 domestic limited partnership, the agreement of the surviving business
27 entity that it may be served with process in this State in any proceeding
28 for enforcement of (i) any obligation of any merging domestic limited
29 liability company, domestic corporation, domestic nonprofit
30 corporation, domestic limited partnership, or other partnership as
31 defined in G.S. 59-36 that is formed under the laws of this State, (ii) the
32 rights of dissenting shareholders of any merging domestic corporation
33 under Article 13 of Chapter 55 of the General Statutes, and (iii) any
34 obligation of the surviving business entity arising from the merger, and
35 a statement irrevocably appointing the Secretary of State as its agent for
36 service of process in any such proceeding and specifying the address to
37 which a copy of the process may be mailed to it by the Secretary of
38 State (subject to any subsequent change in address upon written
39 notification by the surviving business entity by the Secretary of State).

40 If the plan of merger is amended or abandoned before the articles of merger become
41 effective, the surviving business entity promptly shall deliver to the Secretary of State for
42 filing an amendment to the articles of merger reflecting the amendment or abandonment
43 of the plan of merger.

1 (b) A merger takes effect upon the effectiveness of the articles of merger.

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

3 **"§ 59-1014. Effects of merger.**

4 (a) Upon the effectiveness of the merger:

5 (1) Each other merging business entity merges into the surviving business
6 entity, and the separate existence of each merging business entity except
7 the surviving business entity ceases;

8 (2) The title of all real estate and other property owned by each merging
9 business entity is vested in the surviving business entity without
10 reversion or impairment;

11 (3) The surviving business entity has all liabilities of each merging business
12 entity;

13 (4) A proceeding pending by or against any merging business entity may be
14 continued as if the merger did not occur, or the surviving business entity
15 may be substituted in the proceeding for a merging business entity
16 whose existence ceases in the merger;

17 (5) If a domestic limited partnership is the surviving business entity, its
18 certificate of limited partnership shall be amended to the extent
19 provided in the plan of merger;

20 (6) The interests in each merging business entity that are to be converted
21 into interests, obligations, or securities of the surviving business entity
22 or into the right to receive cash or other property are thereupon so
23 converted, and the former holders of the interests are entitled only to the
24 rights provided to them in the plan of merger or, in the case of former
25 holders of shares in a domestic corporation as defined in G.S. 55-1-40,
26 any rights they have under Article 13 of Chapter 55 of the General
27 Statutes, the North Carolina Business Corporation Act; and

28 (7) If the surviving business entity is not a domestic corporation, the
29 surviving business entity is deemed to agree that it will promptly pay to
30 the dissenting shareholders of any merging domestic corporation the
31 amount, if any, to which they are entitled under Article 13 of Chapter 55
32 of the General Statutes and otherwise to comply with the requirements
33 of Article 13 as if it were a surviving domestic corporation in the
34 merger.

35 The merger shall not affect the liability or absence of liability of any holder of an
36 interest in a merging business entity for any acts, omissions, or obligations of any
37 merging business equity made or incurred prior to the effectiveness of the merger. The
38 cessation of separate existence of a merging business entity in the merger shall not
39 constitute a dissolution or termination of such merging business entity."

40 **PART V. CONFORMING CHANGES.**

41 Section 5.1. G.S. 47-18.1 reads as rewritten:

42 **"§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger,**
43 **consolidation, or conversion.**

1 (a) If title to real property in this State is ~~transferred~~ vested by operation of law in
2 another entity upon the ~~merger or consolidation of two or more corporations, merger,~~
3 consolidation, or conversion of an entity, such ~~transfer vesting~~ is effective against lien
4 creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly
5 owning the property, only from the time of registration of a certificate thereof as provided
6 in this section, in the county where the land lies, or if the land is located in more than one
7 county, then in each county where any portion of the land lies to be effective as to the
8 land in that county.

9 (b) The Secretary of State shall adopt uniform certificates of ~~merger or~~
10 ~~consolidation, merger, consolidation, or conversion,~~ to be furnished for registration, and
11 shall adopt such fees as are necessary for the expense of such certification. If the
12 ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any
13 competent authority in the jurisdiction of incorporation or organization may be registered
14 in accordance with this section.

15 (c) A certificate of the Secretary of State prepared in accordance with this section
16 shall be registered by the register of deeds in the same manner as deeds, and for the same
17 fees, but no formalities as to acknowledgment, probate, or approval by any other officer
18 shall be required. The name of the ~~corporation~~ entity formerly owning the property shall
19 appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property
20 by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear
21 in the 'Grantee' index."

22 Section 5.2. G.S. 105-129.4(e) reads as rewritten:

23 "(e) Change in Ownership of Business. – The sale, merger, consolidation,
24 conversion, acquisition, or bankruptcy of a business, or any transaction by which an
25 existing business reformulates itself as another business, does not create new eligibility in
26 a succeeding business with respect to credits for which the predecessor was not eligible
27 under this Article. A successor business may, however, take any installment of or carried-
28 over portion of a credit that its predecessor could have taken if it had a tax liability. The
29 acquisition of a business is a new investment that creates new eligibility in the acquiring
30 taxpayer under this Article if any of the following conditions are met:

- 31 (1) The business closed before it was acquired.
- 32 (2) The business was required to file a notice of plant closing or mass layoff
33 under the federal Worker Adjustment and Retraining Notification Act,
34 29 U.S.C. § 2102, before it was acquired.
- 35 (3) The business was acquired by its employees through an employee stock
36 option transaction or another similar mechanism."

37 Section 5.3. G.S. 105-129.27(d) reads as rewritten:

38 "(d) Change in Ownership of Facility. – The sale, merger, consolidation,
39 conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which
40 the facility is reformulated as another business, does not create new eligibility in a
41 succeeding owner with respect to a credit for which the predecessor was not eligible
42 under this section. A successor business may, however, take any carried-over portion of
43 a credit that its predecessor could have taken if it had a tax liability."

1 Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

2 "(3) The average value of property shall be determined by averaging the
3 values at the beginning and end of the income year, but in all cases the
4 Secretary of Revenue may require the averaging of monthly or other
5 periodic values during the income year if reasonably required to reflect
6 properly the average value of the corporation's property. A corporation
7 ~~which that~~ ceases its operations in this State before the end of its income
8 year because of its intention to dissolve or to relinquish its certificate of
9 authority, or because of a ~~merger~~ merger, conversion, or consolidation,
10 or for any other reason whatsoever shall use the real estate and tangible
11 personal property values as of the first day of the income year and the
12 last day of its operations in this State in determining the average value
13 of property, but the Secretary may require averaging of monthly or other
14 periodic values during the income year if reasonably required to reflect
15 properly the average value of the corporation's property."

16 Section 5.5. G.S. 105-130.17(e) reads as rewritten:

17 "(e) Any corporation ~~which that~~ ceases its operations in this State before the end of
18 its income year because of its intention to dissolve or to withdraw from this State, or
19 because of a ~~merger~~ merger, conversion, or consolidation or for any other reason
20 whatsoever shall file its return for the then current income year within 75 days after the
21 date it terminates its business in this State."

22 Section 5.6. G.S. 105-163.010(2) reads as rewritten:

23 "(2) Business. – A corporation, partnership, limited liability company,
24 association, or sole proprietorship operated for profit."

25 Section 5.7. G.S. 105-163.013(f) reads as rewritten:

26 "(f) Transfer of Registration. – A registration as a qualified business venture or
27 qualified grantee business may not be sold or otherwise transferred, except that if a
28 qualified business venture or qualified grantee business enters into a merger, conversion,
29 consolidation, or other similar transaction with another business and the surviving
30 ~~corporation~~ company would otherwise meet the criteria for being a qualified business
31 venture or qualified grantee business, the surviving company retains the registration
32 without further application to the Secretary of State. In such a case, the qualified business
33 venture or qualified grantee business shall provide the Secretary of State with written
34 notice of the merger, conversion, consolidation, or similar transaction and the name,
35 address, and jurisdiction of incorporation of the surviving company."

36 Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

37 "(1) Within one year after the investment was made, the taxpayer transfers
38 any of the securities received in the investment that qualified for the tax
39 credit to another person or entity, other than in a transfer resulting from
40 one of the following:

- 41 a. The death of the taxpayer.
- 42 b. A final distribution in liquidation to the owners of a taxpayer that
43 is a corporation or other entity.

- 1 c. A merger, conversion, consolidation, or similar transaction
2 requiring approval by the ~~shareholders~~owners of the qualified
3 business venture or qualified grantee business under applicable
4 State law, to the extent the taxpayer does not receive cash or
5 tangible property in the merger, conversion, consolidation, or
6 other similar transaction."

7 Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

- 8 "(2) To a ~~partnership~~partnership, limited liability company, or corporation as
9 an incident to the formation of the ~~partnership or corporation and~~
10 partnership, limited liability company, or corporation, no gain or loss
11 arises on the transfer of the motor vehicle under section 351 or section
12 721 of the Internal Revenue Code, ~~Code as defined in G.S. 105-228.90,~~
13 or to a partnership, limited liability company, or corporation by ~~merger~~
14 ~~or merger, conversion, or consolidation~~ in accordance with ~~G.S. 55-11-~~
15 ~~06-~~applicable law."

16 Section 5.10. G.S. 105-228.29 reads as rewritten:

17 "**§ 105-228.29. Conveyances excluded.**

18 The provisions of this Article shall not apply to transfers of an interest in real estate
19 by operation of law, by lease for a term of years, by or pursuant to the provisions of a
20 will, by intestacy, by gift, by ~~merger~~merger, conversion, or consolidation, or by
21 instruments securing indebtedness, or any other transfer where no consideration in
22 property or money is due or paid by the transferee to transferor."

23 **PART VI. EFFECTIVE DATE.**

24 Section 6. This act becomes effective October 1, 1999, and applies to contracts
25 entered into and mergers, consolidations, or conversions effective on or after that date.