

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 624*
Committee Substitute Favorable 5/11/93
Committee Substitute #2 Favorable 5/27/93

Short Title: Nonprofit Corporation Act.

(Public)

Sponsors:

Referred to:

March 29, 1993

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

5 The General Assembly of North Carolina enacts:

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

7 **"CHAPTER 55A.**

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

9 **"ARTICLE 1.**

10 **"GENERAL PROVISIONS.**

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

12 **"§ 55A-1-01. Short title.**

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

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

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

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

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

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

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

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

8 (d) The document shall be typewritten or printed.

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

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

13 (f) The document shall be executed:

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

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

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

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

23 (1) The corporate seal;

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

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

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

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

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

33 **"§ 55A-1-21. Forms.**

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

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

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

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

39 (4) The annual report.

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

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

44 **"§ 55A-1-22. Filing, service, and copying fees.**

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

	<u>Document</u>	<u>Fee</u>
3		
4	(1) <u>Articles of incorporation</u>	<u>\$50.00</u>
5	(2) <u>Application for reserved name</u>	<u>\$10.00</u>
6	(3) <u>Notice of transfer of reserved name</u>	<u>\$10.00</u>
7	(4) <u>Application for registered name</u>	<u>\$10.00</u>
8	(5) <u>Application for renewal of registered name</u>	<u>\$10.00</u>
9	(6) <u>Corporation's statement of change of registered agent or registered</u>	
10	<u>office or both</u>	<u>\$ 5.00</u>
11	(7) <u>Agent's statement of change of registered office for each affected</u>	
12	<u>corporation</u>	<u>\$ 5.00</u>
13	(8) <u>Agent's statement of resignation</u>	<u>No fee</u>
14	(9) <u>Designation of registered agent or registered office or both</u>	<u>\$ 5.00</u>
15	(10) <u>Amendment of articles of incorporation</u>	<u>\$25.00</u>
16	(11) <u>Restated articles of incorporation without amendment of articles</u>	
17	<u>\$10.00</u>	
18	(12) <u>Restated articles of incorporation with amendment of articles</u>	
19	<u>\$25.00</u>	
20	(13) <u>Articles of merger</u>	<u>\$25.00</u>
21	(14) <u>Articles of dissolution</u>	<u>\$15.00</u>
22	(15) <u>Articles of revocation of dissolution</u>	<u>\$10.00</u>
23	(16) <u>Certificate of administrative dissolution</u>	<u>No fee</u>
24	(17) <u>Application for reinstatement following administrative dissolution</u>	
25	<u>\$25.00</u>	
26	(18) <u>Certificate of reinstatement</u>	<u>No fee</u>
27	(19) <u>Certificate of judicial dissolution</u>	<u>No fee</u>
28	(20) <u>Application for certificate of authority</u>	<u>\$100.00</u>
29	(21) <u>Application for amended certificate of authority</u>	<u>\$25.00</u>
30	(22) <u>Application for certificate of withdrawal</u>	<u>\$10.00</u>
31	(23) <u>Certificate of revocation of authority to conduct affairs</u>	<u>No</u>
32	<u>fee</u>	
33	(24) <u>Annual Report</u>	<u>\$10.00</u>
34	(25) <u>Articles of correction</u>	<u>\$10.00</u>
35	(26) <u>Application for certificate of existence or authorization</u>	<u>\$ 5.00</u>
36	(27) <u>Any other document required or permitted to be filed by this</u>	
37	<u>Chapter</u>	<u>\$10.00.</u>

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

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

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

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

4 **"§ 55A-1-23. Effective time and date of document.**

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

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

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

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

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

20 **"§ 55A-1-24. Correcting filed document.**

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

24 (b) A document is corrected:

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

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

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

35 **"§ 55A-1-25. Filing duty of Secretary of State.**

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

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

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

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

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

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

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

15 **"§ 55A-1-26. Appeal from Secretary of State's refusal to file document.**

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

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

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

30 **"§ 55A-1-27. Evidentiary effect of certificate of filing.**

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

35 **"§ 55A-1-28. Certificate of existence.**

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

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

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

42 (2) That the domestic corporation is duly incorporated under the law of
43 this State, the date of its incorporation, and the period of its duration if

- 1 less than perpetual; or that the foreign corporation is authorized to
2 conduct affairs in this State;
3 (3) That the articles of incorporation of a domestic corporation or the
4 certificate of authority of a foreign corporation has not been suspended
5 for failure to comply with the Revenue Act of this State and that the
6 corporation has not been administratively dissolved for failure to
7 comply with the provisions of this Chapter;
8 (4) That its most recent annual report required by G.S. 55A-16-22 has
9 been delivered to the Secretary of State;
10 (5) That articles of dissolution have not been filed; and
11 (6) Other facts of record in the office of the Secretary of State that may be
12 requested by the applicant.

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

17 **"§ 55A-1-29. Penalty for signing false document.**

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

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

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

23 **"§ 55A-1-30. Powers.**

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

26 **"§ 55A-1-31. Interrogatories by Secretary of State.**

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

42 **"§ 55A-1-32. Penalties imposed upon corporations, officers, and directors for**
43 **failure to answer interrogatories.**

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

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

9 **"§ 55A-1-33. Information disclosed by interrogatories.**

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

16 **"PART 4. DEFINITIONS.**

17 **"§ 55A-1-40. Chapter definitions.**

18 In this Chapter unless otherwise specifically provided:

- 19 (1) 'Articles of incorporation' include amended and restated articles of
20 incorporation and articles of merger.
- 21 (2) 'Board' or 'board of directors' means the group of natural persons
22 vested by the corporation with the management of its affairs whether
23 or not the group is designated as directors in the articles of
24 incorporation or bylaws.
- 25 (3) 'Bylaws' means the rules (other than the articles) adopted pursuant to
26 this Chapter for the regulation or management of the affairs of the
27 corporation irrespective of the name or names by which the rules are
28 designated.
- 29 (4) 'Charitable or religious corporation' means any corporation that is
30 exempt under section 501(c)(3) of the Internal Revenue Code of 1986
31 or any successor section, or that is organized exclusively for one or
32 more of the purposes specified in section 501(c)(3) of the Internal
33 Revenue Code of 1986 or any successor section and that upon
34 dissolution shall distribute its assets to a charitable or religious
35 corporation, the United States, a state or an entity that is exempt under
36 section 501(c)(3) of the Internal Revenue Code of 1986 or any
37 successor section.
- 38 (4a) 'Conspicuous' means so written that a reasonable person against whom
39 the writing is to operate should have noticed it. For example, printing
40 in italics or boldface or contrasting color, or typing in capitals or
41 underlined, is conspicuous.
- 42 (5) 'Corporation' or 'domestic corporation' means a nonprofit corporation
43 subject to the provisions of this Chapter, except a foreign corporation.

- 1 (6) 'Delegates' means those persons elected or appointed to vote in a
2 representative assembly for the election of a director or directors or on
3 other matters.
- 4 (7) 'Deliver' includes mail.
- 5 (8) 'Distribution' means a direct or indirect transfer of money or other
6 property or incurrence of indebtedness by a corporation to or for the
7 benefit of its members, directors, or officers, or to or for the benefit of
8 transferees in liquidation under Article 14 of this Chapter (other than
9 creditors).
- 10 (9) 'Effective date of notice' is defined in G.S. 55A-1-41.
- 11 (10) 'Entity' includes corporation and foreign corporation; domestic or
12 foreign business corporation; professional corporation; limited liability
13 company; profit and nonprofit unincorporated association, chapter or
14 other organizational unit; business trust, estate, partnership, trust, and
15 two or more persons having a joint or common economic interest; and
16 state, United States, and foreign government.
- 17 (11) 'Foreign corporation' means a corporation (with or without capital
18 stock) organized under a law other than the law of this State for
19 purposes for which a corporation might be organized under this
20 Chapter.
- 21 (12) 'Governmental subdivision' includes authority, county, district, and
22 municipality.
- 23 (13) 'Includes' denotes a partial definition.
- 24 (14) 'Individual' denotes a natural person legally competent to act and also
25 includes the estate of an incompetent or deceased individual.
- 26 (15) 'Means' denotes an exhaustive definition.
- 27 (16) 'Member' means a person who is, by the articles of incorporation or
28 bylaws of the corporation, either (i) specifically designated as a
29 member or (ii) included in a category of persons specifically
30 designated as members. A person is not a member solely by reason of
31 having voting rights or other rights associated with membership.
- 32 (17) 'Nonprofit corporation' means a corporation intended to have no
33 income or intended to have income none of which is distributable to its
34 members, directors, or officers, except as permitted by Article 13 of
35 this Chapter, and includes all associations without capital stock formed
36 under Subchapter V of Chapter 54 of the General Statutes or under any
37 act or acts replaced thereby.
- 38 (18) 'Notice' includes demand and is defined in G.S. 55A-1-41.
- 39 (19) 'Person' includes individual and entity.
- 40 (20) 'Principal office' means the office (in or out of this State) so designated
41 in the annual report filed pursuant to G.S. 55A-16-22 where the
42 principal offices of a domestic or foreign corporation are located.
- 43 (21) 'Proceeding' includes civil suit and criminal, administrative, and
44 investigatory action.

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

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

8 (24) 'State,' when referring to a part of the United States, includes a state
9 and commonwealth (and their agencies and governmental
10 subdivisions) and a territory, and insular possession (and their agencies
11 and governmental subdivisions) of the United States.

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

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

15 **"§ 55A-1-41. Notice.**

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

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

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

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

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

39 (1) When received;

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

- 1 (3) On the date shown on the return receipt, if sent by registered or
2 certified mail, return receipt requested, and the receipt is signed by or
3 on behalf of the addressee;
- 4 (4) If mailed with less than first-class postage, 30 days after its deposit in
5 the United States mail, as evidenced by the postmark or otherwise, if
6 mailed with postage thereon prepaid and correctly addressed;
- 7 (5) When delivered to the member's address shown in the corporation's
8 current list of members.
- 9 (f) Written notice is correctly addressed to a member of a domestic or foreign
10 corporation if addressed to the member's address shown in the corporation's current list
11 of members. In the case of members who are residents of the same household and who
12 have the same address, the corporation's bylaws may provide that a single notice may be
13 given to such members jointly.
- 14 (g) Oral notice is effective when actually communicated to the person entitled to
15 oral notice.
- 16 (h) If this Chapter prescribes notice requirements for particular circumstances,
17 those requirements govern. If articles of incorporation or bylaws prescribe notice
18 requirements not inconsistent with this section or other provisions of this Chapter, those
19 requirements govern.
- 20 (i) Written notice need not be provided in a separate document and may be
21 included as part of a newsletter, magazine, or other publication regularly sent to
22 members if conspicuously identified as a notice.

23 **"PART 5. PRIVATE FOUNDATIONS.**

24 **"§ 55A-1-50. Private Foundations.**

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

- 28 (1) Shall distribute such amounts for each taxable year at such time and in
29 such manner as not to subject the corporation to tax under section 4942
30 of the Code.
- 31 (2) Shall not engage in any act of self-dealing as defined in section
32 4941(d) of the Code.
- 33 (3) Shall not retain any excess business holdings as defined in section
34 4943(c) of the Code.
- 35 (4) Shall not make any investments in such manner as to subject the
36 corporation to tax under section 4944 of the Code.
- 37 (5) Shall not make any taxable expenditures as defined in section 4945(d)
38 of the Code.

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

42 **"PART 6. JUDICIAL RELIEF.**

43 **"§ 55A-1-60. Judicial relief.**

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

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

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

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

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

32 "ARTICLE 2.

33 "ORGANIZATION.

34 "§ 55A-2-01. Incorporators.

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

37 "§ 55A-2-02. Articles of incorporation.

38 (a) The articles of incorporation shall set forth:

39 (1) A corporate name for the corporation that satisfies the requirements of
40 G.S. 55A-4-01;

41 (2) If the corporation is a charitable or religious corporation, a statement
42 to that effect if it was incorporated on or after the effective date of this
43 Chapter;

- 1 (3) The street address, and the mailing address if different from the street
2 address, of the corporation's initial registered office, the county in
3 which the initial registered office is located, and the name of the
4 corporation's initial registered agent at that address;
5 (4) The name and address of each incorporator;
6 (5) Whether or not the corporation will have members; and
7 (6) Provisions not inconsistent with law regarding the distribution of
8 assets on dissolution.

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

- 11 (1) The purpose or purposes for which the corporation is organized, which
12 may be, either alone or in combination with other purposes, the
13 transaction of any lawful activity;
14 (2) The names and addresses of the individuals who are to serve as the
15 initial directors;
16 (3) Provisions not inconsistent with law regarding:
17 a. Managing and regulating the affairs of the corporation;
18 b. Defining, limiting, and regulating the powers of the corporation,
19 its board of directors, and members (or any class of members);
20 and
21 c. The characteristics, qualifications, rights, limitations, and
22 obligations attaching to each or any class of members;
23 (4) A provision limiting or eliminating the personal liability of any
24 director for monetary damages arising out of an action whether by or
25 in the right of the corporation or otherwise for breach of any duty as a
26 director. No such provision shall be effective with respect to (i) acts or
27 omissions that the director at the time of the breach knew or believed
28 were clearly in conflict with the best interests of the corporation, (ii)
29 any liability under G.S. 55A-8-32 or G.S. 55A-8-33, (iii) any
30 transaction from which the director derived an improper personal
31 financial benefit, or (iv) acts or omissions occurring prior to the date
32 the provision became effective. As used herein, the term 'improper
33 personal financial benefit' does not include a director's reasonable
34 compensation or other reasonable incidental benefit for or on account
35 of his service as a director, trustee, officer, employee, independent
36 contractor, attorney, or consultant of the corporation. A provision
37 permitted by this Chapter in the articles of incorporation, bylaws, or a
38 contract or resolution indemnifying or agreeing to indemnify a director
39 against personal liability shall be fully effective whether or not there is
40 a provision in the articles of incorporation limiting or eliminating
41 personal liability.

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

44 **"§ 55A-2-03. Incorporation.**

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

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

7 **"§ 55A-2-04. Reserved for future codification purposes.**

8 **"§ 55A-2-05. Organization of corporation.**

9 (a) After incorporation:

10 (1) If initial directors are named in the articles of incorporation, the initial
11 directors shall hold an organizational meeting at the call of a majority
12 of the directors to complete the organization of the corporation by
13 appointing officers, adopting bylaws, and conducting any other
14 business brought before the meeting.

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

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

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

26 **"§ 55A-2-06. Bylaws.**

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

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

32 **"§ 55A-2-07. Emergency bylaws.**

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

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

39 (2) Quorum requirements for the meeting; and

40 (3) Designation of additional or substitute directors.

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

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

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

7 **"ARTICLE 3.**

8 **"PURPOSES AND POWERS.**

9 **"§ 55A-3-01. Purposes.**

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

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

16 **"§ 55A-3-02. General powers.**

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

- 21 (1) To sue and be sued, complain and defend in its corporate name;
22 (2) To have a corporate seal, which may be altered at will, and to use it, or
23 a facsimile of it, by impressing or affixing it or in any other manner
24 reproducing it;
25 (3) To make and amend bylaws not inconsistent with its articles of
26 incorporation or with the laws of this State, for regulating and
27 managing the affairs of the corporation;
28 (4) To purchase, receive, lease, or otherwise acquire, and own, hold,
29 improve, use, and otherwise deal with, real or personal property, or
30 any legal or equitable interest in property, wherever located;
31 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
32 dispose of all or any part of its property;
33 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold,
34 vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and
35 deal in and with shares or other interests in, or obligations of, any other
36 entity;
37 (7) To make contracts and guarantees, incur liabilities, borrow money,
38 issue its notes, bonds, and other obligations, and secure any of its
39 obligations by mortgage or pledge of any of its property, franchises, or
40 income;
41 (8) To lend money, invest and reinvest its funds, and receive and hold real
42 and personal property as security for repayment, except as limited by
43 G.S. 55A-8-32;

- 1 (9) To be a promoter, partner, member, associate or manager of any
2 partnership, joint venture, trust, or other entity;
- 3 (10) To conduct its affairs, locate offices, and exercise the powers granted
4 by this Chapter within or without this State;
- 5 (11) To elect or appoint directors, officers, employees, and agents of the
6 corporation, define their duties, and fix their compensation;
- 7 (12) To pay pensions and establish pension plans, pension trusts, and other
8 benefit and incentive plans for any or all of its current or former
9 directors, officers, employees, and agents;
- 10 (13) To make donations for the public welfare or for charitable, religious,
11 cultural, scientific, or educational purposes, and to make payments or
12 donations not inconsistent with law for other purposes that further the
13 corporate interest;
- 14 (14) To impose dues, assessments, admission and transfer fees upon its
15 members;
- 16 (15) To establish conditions for admission of members, admit members and
17 issue memberships;
- 18 (16) To carry on a business;
- 19 (17) To procure insurance for its benefit on the life or physical or mental
20 ability of any director, officer or employee and, in the case of a
21 charitable or religious corporation, any sponsor, contributor, pledgor,
22 student or former student whose death or disability might cause
23 financial loss to the corporation, and for these purposes the corporation
24 is deemed to have an insurable interest in each such person; and to
25 procure insurance for its benefit on the life or physical or mental
26 ability of any other person in whom it has an insurable interest;
- 27 (18) To engage in any lawful activity that will aid governmental policy;
- 28 (19) To do all things necessary or convenient, not inconsistent with law, to
29 further the activities and affairs of the corporation.
- 30 (b) It shall not be necessary to set forth in the articles of incorporation any of the
31 powers enumerated in this section.
- 32 **"§ 55A-3-03. Emergency powers.**
- 33 (a) In anticipation of or during an emergency defined in subsection (d) of this
34 section, the board of directors of a corporation may:
- 35 (1) Modify lines of succession to accommodate the incapacity of any
36 director, officer, employee, or agent; and
- 37 (2) Relocate the principal office, designate alternative principal offices or
38 regional offices, or authorize the officers to do so.
- 39 (b) During an emergency defined in subsection (d) of this section, unless
40 emergency bylaws provide otherwise:
- 41 (1) Notice of a meeting of the board of directors need be given only to
42 those directors it is practicable to reach and may be given in any
43 practicable manner, including by publication and radio; and

1 (2) One or more officers of the corporation present at a meeting of the
2 board of directors may be deemed to be directors for the meeting, in
3 order of rank and within the same rank in order of seniority, as
4 necessary to achieve a quorum.

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

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

11 **"§ 55A-3-04. Ultra vires.**

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

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

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

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

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

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

27 **"§ 55A-3-05. Exercise of corporate franchises not granted.**

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

31 **"§ 55A-3-06. Special powers; public parks and drives and certain recreational**
32 **corporations.**

33 Any corporation heretofore or hereafter formed for the purpose of creating and
34 maintaining public parks and drives shall have full power and authority to lay out,
35 manage, and control parks and drives within the State, under any rules and regulations
36 as the corporation may prescribe and shall have power to purchase and hold property
37 and take gifts or donations for such purpose. It may hold property and exercise such
38 powers and trust for any town, city, township, or county, in connection with which the
39 parks and drives shall be maintained. Any city, town, township, or county, holding such
40 property, may vest and transfer the same to any such corporation for the purpose of
41 controlling and maintaining the same as public parks and drives under any regulations
42 and subject to any conditions as may be determined upon by the city, town, township, or
43 county. All such lands as the corporation may acquire shall be held in trust as public
44 parks and drives, and shall be held open to the public under any rules, laws, and

1 regulations as the corporation may adopt through its board of directors, and it shall have
2 power and authority to make and adopt all laws and regulations as it may determine
3 upon for the reasonable management of such parks and drives. The terms 'public parks
4 and drives' as used in this section shall be construed so as to include playgrounds,
5 recreational centers, and other recreational activities and facilities which may be
6 provided and established under the sponsorship of any county, city, town, township, or
7 school district in North Carolina and constructed or established with the assistance of
8 the government of the United States or any agency thereof.

9 **"ARTICLE 4.**

10 **"NAMES.**

11 **"§ 55A-4-01. Corporate name.**

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

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

17 (1) The corporate name of a domestic nonprofit corporation or a foreign
18 nonprofit corporation authorized to conduct affairs in this State;

19 (2) The corporate name of a business corporation incorporated or
20 authorized to transact business in this State;

21 (3) A corporate name reserved or registered under G.S. 55A-4-02, 55A-4-
22 03, 55-4-02, or 55-4-03; or

23 (4) The fictitious name adopted by a foreign business or nonprofit
24 corporation authorized to transact business or conduct affairs in this
25 State because its real name is unavailable.

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

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

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

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

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

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

4 **"§ 55A-4-02. Reserved name.**

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

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

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

19 **"§ 55A-4-03. Registered name.**

20 (a) A foreign corporation may register its corporate name, or its corporate name
21 with any addition required by G.S. 55A-15-06, if the name is distinguishable upon the
22 records of the Secretary of State from the corporate names described in G.S. 55-4-
23 01(b)(4).

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

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

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

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

36 (d) A foreign corporation whose registration is effective may renew it for
37 successive years by filing with the Secretary of State between October 1 and December
38 31 of the preceding year a renewal application which complies with the requirements of
39 subsection (b) of this section. The renewal application renews the registration for the
40 following calendar year. Any renewal application filed after the expiration of the
41 registration shall be treated as a new application for registration.

42 (e) A foreign corporation whose registration is effective may thereafter qualify as
43 a foreign corporation under that name or consent in writing to the use of that name by a
44 corporation thereafter incorporated under this Chapter or by another foreign corporation

1 thereafter authorized to conduct affairs in this State. The registration terminates when
2 the domestic corporation is incorporated or the foreign corporation qualifies or consents
3 to the qualification of another foreign corporation under the registered name.

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

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

12 **"§ 55-4-05. Real property records.**

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

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

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

31 **"ARTICLE 5.**

32 **"OFFICE AND AGENT.**

33 **"§ 55A-5-01. Registered office and registered agent.**

34 Each corporation shall continuously maintain in this State:

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

1 **"§ 55A-5-02. Change of registered office or registered agent.**

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

4 (1) The name of the corporation;

5 (2) The street address, and the mailing address if different from the street
6 address, of the corporation's current registered office, and the county in
7 which it is located;

8 (3) If the address of the corporation's registered office is to be changed,
9 the street address, and the mailing address if different from the street
10 address, of the new registered office, and the county in which it is
11 located;

12 (4) The name of its current registered agent;

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

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

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

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

27 **"§ 55A-5-03. Resignation of registered agent.**

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

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

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

41 **"§ 55A-5-04. Service on corporation.**

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

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

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

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

"ARTICLE 6.

"MEMBERS AND MEMBERSHIPS.

"PART 1. ADMISSION OF MEMBERS.

"§ 55A-6-01. Members.

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

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

"PART 2. MEMBERS' RIGHTS AND OBLIGATIONS.

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

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

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

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

3 **"§ 55A-6-11. Prohibition of stock.**

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

5 **"§ 55A-6-12. Member's liability to third parties.**

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

8 **"§ 55A-6-13. Member's liability for dues, assessments, and fees.**

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

13 **"§ 55A-6-14. Creditor's action against member.**

14 (a) A creditor of a corporation shall not bring a proceeding to enforce any
15 liability of a member to the corporation unless final judgment has been rendered in
16 favor of the creditor against the corporation and execution has been returned unsatisfied
17 in whole or in part or unless a proceeding against the corporation would be futile.

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

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

24 **"§ 55A-6-20. Resignation.**

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

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

28 **"§ 55A-6-21. Termination, expulsion, and suspension.**

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

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

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

38 **"PART 4. DELEGATES.**

39 **"§ 55A-6-40. Delegates.**

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

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

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

- 1 (2) Calling, noticing, holding, and conducting meetings of delegates; and
2 (3) Carrying on corporate activities during and between meetings of
3 delegates.

"ARTICLE 7.

"MEMBERS' MEETINGS AND VOTING; DERIVATIVE PROCEEDINGS.

"PART 1. MEETINGS AND ACTION WITHOUT MEETINGS.

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

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

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

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

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

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

"§ 55A-7-02. Special meeting.

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

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

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

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

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

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

"§ 55A-7-03. Court-ordered meeting.

42 (a) The superior court of the county where a corporation's principal office, or, if
43 there is none in this State, its registered office, is located may, after notice is given to
44 the corporation and upon such further notice and opportunity to be heard, if any, as the

1 court may deem appropriate under the circumstances, summarily order a meeting to be
2 held:

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

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

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

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

17 **"§ 55A-7-04. Action by written consent.**

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

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

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

29 **"§ 55A-7-05. Notice of meeting.**

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

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

37 (c) Notice is fair and reasonable if:

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

43 (2) Notice of an annual or regular meeting includes a description of any
44 matter or matters that shall be approved by the members under G.S.

1 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02,
2 or 55A-14-02; and

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

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

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

14 (1) Requested in writing to do so by a person or persons entitled to call a
15 special meeting pursuant to G.S. 55A-7-02; and

16 (2) The request is received by the secretary or president of the corporation
17 at least 10 days before the corporation gives notice of the meeting.

18 **"§ 55A-7-06. Waiver of notice.**

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

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

25 (1) Waives objection to lack of notice or defective notice of the meeting,
26 unless the member at the beginning of the meeting objects to holding
27 the meeting or conducting business at the meeting; and

28 (2) Waives objection to consideration of a particular matter at the meeting
29 that is not within the purpose or purposes described in the meeting
30 notice, unless the member objects to considering the matter before it is
31 voted upon.

32 **"§ 55A-7-07. Record date.**

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

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

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

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

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

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

18 **"§ 55A-7-08. Action by written ballot.**

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

23 (b) A written ballot shall:

24 (1) Set forth each proposed action; and

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

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

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

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

35 **"PART 2. VOTING.**

36 **"§ 55A-7-20. Members' list for meeting.**

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

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

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

13 (d) If the corporation refuses to allow a member or his representative to inspect
14 or copy the list of members as permitted in subsections (b) and (c) of this section, the
15 superior court of the county where a corporation's principal office (or, if there is none in
16 this State, its registered office) is located, on application of the member, after notice is
17 given to the corporation and upon such further evidence, notice and opportunity to be
18 heard, if any, as the court may deem appropriate under the circumstances, may
19 summarily order the inspection or copying at the corporation's expense. The court may
20 postpone the meeting for which the list was prepared until the inspection or copying is
21 complete and may order the corporation to pay the member's costs, including reasonable
22 attorneys' fees, incurred to obtain the order.

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

25 **"§ 55A-7-21. Voting entitlement generally.**

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

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

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

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

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

36 **"§ 55A-7-22. Quorum requirements.**

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

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

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

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

10 **"§ 55A-7-23. Voting requirements.**

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

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

16 **"§ 55A-7-24. Proxies.**

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

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

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

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

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

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

40 **(2)** Signing and delivering to the secretary or other officer or agent
41 authorized to tabulate proxy votes either a writing stating that the
42 appointment of the proxy is revoked or a subsequent appointment
43 form.

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

4 **"§ 55A-7-25. Voting for directors; cumulative voting.**

5 (a) Unless otherwise provided in the articles of incorporation, the bylaws, or an
6 agreement valid under G.S. 55A-7-30, directors are elected by a plurality of the votes
7 cast by the members entitled to vote in the election at a meeting at which a quorum is
8 present. If the articles of incorporation, bylaws, or an agreement valid under G.S. 55A-
9 7-30 provides for cumulative voting by members, members may so vote, by multiplying
10 the number of votes the members are entitled to cast by the number of directors for
11 whom they are entitled to vote, and casting the product for a single candidate or
12 distributing the product among two or more candidates.

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

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

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

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

30 **"§ 55A-7-26. Other methods of electing directors.**

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

33 (1) On the basis of chapter or other organizational unit;

34 (2) By region or other geographic unit;

35 (3) By preferential voting; or

36 (4) By any other reasonable method.

37 **"§ 55A-7-27. Corporation's acceptance of votes.**

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

42 (b) If the name signed on a vote, consent, waiver, or proxy appointment does not
43 correspond to the record name of a member, the corporation if acting in good faith is

1 nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give
2 it effect as the act of the member if:

3 (1) The member is an entity and the name signed purports to be that of an
4 officer or agent of the entity;

5 (2) The name signed purports to be that of an attorney-in-fact of the
6 member and, if the corporation requests it, evidence acceptable to the
7 corporation of the signatory's authority to sign for the member is
8 presented with respect to the vote, consent, waiver, or proxy
9 appointment;

10 (3) Two or more persons hold the membership as cotenants or fiduciaries
11 and the name signed purports to be the name of at least one of the
12 coholders and the person signing appears to be acting on behalf of all
13 the coholders; and

14 (4) In the case of a corporation other than a charitable or religious
15 corporation:

16 a. The name signed purports to be that of an administrator,
17 executor, guardian, or conservator representing the member
18 and, if the corporation requests it, evidence of fiduciary status
19 acceptable to the corporation is presented with respect to the
20 vote, consent, waiver, or proxy appointment;

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

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

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

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

36 **"PART 3. VOTING AGREEMENTS.**

37 **"§ 55A-7-30. Voting agreements.**

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

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

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

6 **"PART. 4. DERIVATIVE PROCEEDINGS.**

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

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

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

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

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

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

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

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

5 **"ARTICLE 8.**

6 **"DIRECTORS AND OFFICERS.**

7 **"PART 1. BOARD OF DIRECTORS.**

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

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

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

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

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

23 **"§ 55A-8-02. Qualifications of directors.**

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

27 **"§ 55A-8-03. Number of directors.**

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

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

32 (c) The articles of incorporation or bylaws may establish a variable range for the
33 size of the board of directors by fixing a minimum and maximum number of directors.
34 If a variable range is established, the number of directors may be fixed or changed from
35 time to time, within the minimum and maximum, by the members entitled to vote for
36 directors or (unless the articles of incorporation or an agreement valid under G.S. 55A-
37 7-30 shall otherwise provide) the board of directors. If the corporation has members
38 entitled to vote for directors, only such members may change the range for the size of
39 the board or change from a fixed to a variable-range size board or vice versa.

40 **"§ 55A-8-04. Election, designation, and appointment of directors.**

41 (a) If the corporation has members entitled to vote for directors, all the directors
42 (except the initial directors) shall be elected at the first annual meeting of such
43 members, and at each annual meeting thereafter, unless the articles of incorporation or
44 bylaws provide some other time or method of election, or provide that some of the

1 directors are appointed by some other person or are designated. If the articles of
2 incorporation authorize dividing the members into classes, the articles of incorporation
3 may also authorize the election of all or a specified number of directors by the members
4 of one or more authorized classes.

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

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

13 **"§ 55A-8-05. Terms of directors generally.**

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

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

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

20 (1) The term of a director filling a vacancy in the office of a director
21 elected by members expires at the next election of directors by
22 members; and

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

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

28 **"§ 55A-8-06. Staggered terms for directors.**

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

32 **"§ 55A-8-07. Resignation of directors.**

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

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

37 **"§ 55A-8-08. Removal of directors elected by members or directors.**

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

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

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

5 (d) If cumulative voting is authorized, a director shall not be removed:

6 (1) If the number of votes; or

7 (2) If the director was elected by a class, chapter, unit, or grouping of
8 members, the number of votes of that class, chapter, unit, or grouping;
9 sufficient to elect the director under cumulative voting, if an election were then being
10 held, is voted against the director's removal.

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

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

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

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

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

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

35 (k) The articles of incorporation may:

36 (1) Limit the application of this section in the case of a charitable or
37 religious corporation; and

38 (2) Set forth the vote and procedures by which the board of directors or
39 any person may remove with or without cause a director elected by the
40 members or the board.

41 **"§ 55A-8-09. Removal of designated or appointed directors.**

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

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

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

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

11 **"§ 55A-8-10. Removal of directors by judicial proceeding.**

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

- 17 (1) The director engaged in fraudulent or dishonest conduct, or gross
18 abuse of authority or discretion, with respect to the corporation, or a
19 final judgment has been entered finding that the director has violated a
20 duty set forth in G.S. 55A-8-30 through G.S. 55A-8-33, and
21 (2) Removal is in the best interest of the corporation.

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

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

26 **"§ 55A-8-11. Vacancy on board.**

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

- 32 (1) By the members entitled to vote for directors, if any, or if the vacant
33 office was held by a director elected by a class, chapter or other
34 organizational unit, or by region or other geographic grouping, by the
35 members of that class, chapter, unit, or grouping;
36 (2) By the board of directors; or
37 (3) If the directors remaining in the office constitute fewer than a quorum
38 of the board, by the affirmative vote of a majority of all the directors,
39 or by the sole director, remaining in office.

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

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

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

4 **"§ 55A-8-12. Compensation of directors.**

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

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

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

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

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

17 **"§ 55A-8-21. Action without meeting.**

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

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

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

28 **"§ 55A-8-22. Notice of meetings.**

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

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

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

41 **"§ 55A-8-23. Waiver of notice.**

42 (a) A director may waive any notice required by this Chapter, the articles of
43 corporation, or bylaws before or after the date and time stated in the notice. Except as

1 provided by subsection (b) of this section, the waiver shall be in writing, signed by the
2 director entitled to the notice, and filed with the minutes or corporate records.

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

7 **"§ 55A-8-24. Quorum and voting.**

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

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

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

19 (1) He objects at the beginning of the meeting (or promptly upon his
20 arrival) to holding it or transacting business at the meeting;

21 (2) His dissent or abstention from the action taken is entered in the
22 minutes of the meeting; or

23 (3) He files written notice of his dissent or abstention with the presiding
24 officer of the meeting before its adjournment or with the corporation
25 immediately after adjournment of the meeting. The right of dissent or
26 abstention is not available to a director who votes in favor of the action
27 taken.

28 **"§ 55A-8-25. Committees of the board.**

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

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

35 (1) A majority of all the directors in office when the action is taken; or

36 (2) The number of directors required by the articles of incorporation or
37 bylaws to take action under G. S. 55A-8-24.

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

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

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

- 1 (1) Authorize distributions;
- 2 (2) Recommend to members or approve dissolution, merger or the sale,
- 3 pledge, or transfer of all or substantially all of the corporation's assets;
- 4 (3) Elect, appoint or remove directors, or fill vacancies on the board of
- 5 directors or on any of its committees; or
- 6 (4) Adopt, amend, or repeal the articles of incorporation or bylaws.
- 7 (f) The creation of, delegation of authority to, or action by a committee does not
- 8 alone constitute compliance by a director with the standards of conduct described in
- 9 G.S. 55A-8-30.

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

11 **"§ 55A-8-30. General standards for directors.**

12 (a) A director shall discharge his duties as a director, including his duties as a

13 member of a committee:

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

19 (b) In discharging his duties, a director is entitled to rely on information,

20 opinions, reports, or statements, including financial statements and other financial data,

21 if prepared or presented by:

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

30 (c) A director is not entitled to the benefit of subsection (b) of this section if he

31 has actual knowledge concerning the matter in question that makes reliance otherwise

32 permitted by subsection (b) of this section unwarranted.

33 (d) A director is not liable for any action taken as a director, or any failure to take

34 any action, if he performed the duties of his office in compliance with this section.

35 (e) A director's personal liability for monetary damages for breach of a duty as a

36 director may be limited or eliminated only to the extent provided in G.S. 55A-8-60 or

37 permitted in G.S. 55A-2-02(b)(4), and a director may be entitled to indemnification

38 against liability and expenses pursuant to Part 5 of Article 8 of this Chapter.

39 (f) A director shall not be deemed to be a trustee with respect to the corporation

40 or with respect to any property held or administered by the corporation, including

41 without limit, property that may be subject to restrictions imposed by the donor or

42 transferor of such property.

43 **"§ 55A-8-31. Director conflict of interest.**

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

5 (1) The material facts of the transaction and the director's interest were
6 disclosed or known to the board of directors or a committee of the
7 board and the board or committee authorized, approved, or ratified the
8 transaction;

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

12 (3) The transaction was fair to the corporation.

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

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

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

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

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

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

44 **"§ 55A-8-32. Loans to or guaranties for directors and officers.**

1 No loan, guaranty, or other form of security shall be made or provided by a
2 corporation to or for the benefit of its directors or officers, except that loans, guaranties,
3 or other forms of security may be made to full-time employees of the corporation who
4 are also directors or officers by action of its board of directors in accordance with G.S.
5 55A-8-31(a)(1).

6 **"§ 55A-8-33. Liability for unlawful loans or distributions.**

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

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

15 (c) A director who votes for or assents to a distribution made in violation of
16 Article 13 of this Chapter, Article 14 of this Chapter, or the articles of incorporation is
17 personally liable to the corporation for the amount of the distribution that exceeds what
18 could have been distributed without violating Article 13 of this Chapter, Article 14 of
19 this Chapter, or the articles of incorporation if it is established that he did not perform
20 his duties in compliance with G.S. 55A-8-30. In any proceeding commenced under this
21 section, a director has all of the defenses ordinarily available to a director.

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

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

26 (2) Reimbursement from each person for the amount he accepted knowing
27 the unlawful loan or distribution was made in violation of G.S. 55A-8-
28 32, Article 13 of this Chapter, or Article 14 of this Chapter, or the
29 articles of incorporation.

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

33 **"PART 4. OFFICERS.**

34 **"§ 55A-8-40. Officers.**

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

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

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

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

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

4 **"§ 55A-8-41. Duties of officers.**

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

9 **"§ 55A-8-42. Standards of conduct for officers.**

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

12 (1) In good faith;

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

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

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

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

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

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

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

32 (e) An officer may be entitled to immunity under Part 6 of Article 8 of this
33 Chapter or to indemnification against liability and expenses pursuant to Part 5 of Article
34 8 of this Chapter.

35 **"§ 55A-8-43. Resignation and removal of officers.**

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

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

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

- 1 (a) The appointment of an officer does not itself create contract rights.
2 (b) An officer's removal does not affect the officer's contract rights, if any, with
3 the corporation. An officer's resignation does not affect the corporation's contract
4 rights, if any, with the officer.

5 **"PART 5. INDEMNIFICATION.**

6 **"§ 55A-8-50. Policy statement and definitions.**

- 7 (a) It is the public policy of this State to enable corporations organized under this
8 Chapter to attract and maintain responsible, qualified directors, officers, employees, and
9 agents, and, to that end, to permit corporations organized under this Chapter to allocate
10 the risk of personal liability of directors, officers, employees, and agents through
11 indemnification and insurance as authorized in this Part.
- 12 (b) Definitions in this Part:
- 13 (1) 'Corporation' includes any domestic or foreign corporation absorbed in
14 a merger which, if its separate existence had continued, would have
15 had the obligation or power to indemnify its directors, officers,
16 employees, or agents, so that a person who would have been entitled to
17 receive or request indemnification from such corporation if its separate
18 existence had continued shall stand in the same position under this Part
19 with respect to the surviving corporation.
- 20 (2) 'Director' means an individual who is or was a director of a corporation
21 or an individual who, while a director of a corporation, is or was
22 -serving at the corporation's request as a director, officer, partner,
23 trustee, employee, or agent of another foreign or domestic business or
24 nonprofit corporation, partnership, joint venture, trust, employee
25 benefit plan, or other enterprise. A director is considered to be serving
26 an employee benefit plan at the corporation's request if the director's
27 duties to the corporation also impose duties on, or otherwise involve
28 services by, the director to the plan or to participants in or beneficiaries
29 of the plan. 'Director' includes, unless the context requires otherwise,
30 the estate or personal representative of a director.
- 31 (3) 'Expenses' means expenses of every kind incurred in defending a
32 proceeding, including counsel fees.
- 33 (4) 'Liability' means the obligation to pay a judgment, settlement, penalty,
34 fine (including an excise tax assessed with respect to an employee
35 benefit plan), or reasonable expenses actually incurred with respect to
36 a proceeding.
- 37 (5) 'Officer,' 'employee,' or 'agent' includes, unless the context requires
38 otherwise, the estate or personal representative of a person who acted
39 in that capacity.
- 40 (6) 'Official capacity' means: (i) when used with respect to a director, the
41 office of director in a corporation; and (ii) when used with respect to
42 an individual other than a director, as contemplated in G.S. 55A-8-56,
43 the office in a corporation held by the officer or the employment or
44 agency relationship undertaken by the employee or agent on behalf of

1 the corporation. 'Official capacity' does not include service for any
2 other foreign or domestic business or nonprofit corporation or any
3 partnership, joint venture, trust, employee benefit plan, or other
4 enterprise.

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

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

10 **"§ 55A-8-51. Authority to indemnify.**

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

14 (1) Conducted himself in good faith;

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

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

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

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

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

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

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

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

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

43 **"§ 55A-8-52. Mandatory indemnification.**

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

6 **"§ 55A-8-53. Advance for expenses.**

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

14 **"§ 55A-8-54. Court-ordered indemnification.**

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

- 20 (1) The director is entitled to mandatory indemnification under G.S. 55A-
21 8-52, in which case the court shall also order the corporation to pay the
22 director's reasonable expenses incurred to obtain court-ordered
23 indemnification; or
24 (2) The director is fairly and reasonably entitled to indemnification, in
25 whole or in part, in view of all the relevant circumstances, whether or
26 not the director met the standard of conduct set forth in G.S. 55A-8-51
27 or was adjudged liable as described in G.S. 55A-8-51(d), but if the
28 director was adjudged so liable, such indemnification is limited to
29 reasonable expenses incurred.

30 **"§ 55A-8-55. Determination and authorization of indemnification.**

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

35 (b) The determination shall be made:

- 36 (1) By the board of directors by majority vote of a quorum consisting of
37 directors not at the time parties to the proceeding;
38 (2) If a quorum cannot be obtained under subdivision (1) of this
39 subsection, by a majority vote of a committee duly designated by the
40 board of directors (in which designation directors who are parties may
41 participate), consisting solely of two or more directors not at the time
42 parties to the proceeding;
43 (3) By special legal counsel (i) selected by the board of directors or its
44 committee in the manner prescribed in subdivision (1) or (2) of this

1 subsection; or (ii) if a quorum of the board cannot be obtained under
2 subdivision (1) of this subsection and a committee cannot be
3 designated under subdivision (2) of this subsection, selected by
4 majority vote of the full board (in which selection directors who are
5 parties may participate); or

6 (4) By the members, but directors who are at the time parties to the
7 proceeding shall not vote on the determination.

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

13 **"§ 55A-8-56. Indemnification of officers, employees, and agents.**

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

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

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

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

26 **"§ 55A-8-57. Additional indemnification and insurance.**

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

1 indemnification granted therein and may further include provisions establishing
2 reasonable procedures for determining and enforcing the rights granted therein.

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

12 **"§ 55A-8-58. Application of Part.**

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

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

20 **"PART 6. IMMUNITY.**

21 **"§ 55A-8-60. Immunity.**

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

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

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

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

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

"ARTICLE 9. [RESERVED]"ARTICLE 10."AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS."PART 1. AMENDMENT OF ARTICLES OF INCORPORATION."§ 55A-10-01. Authority to amend.

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

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

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

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

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

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

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

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

- 1 (1) By the board or in lieu thereof in writing by the number or proportion
2 of members entitled under G.S. 55A-7-02(a)(2) to call a special
3 meeting to consider such amendment;
4 (2) By the members by a majority of the votes entitled to be cast on the
5 amendment; and
6 (3) In writing by any person or persons whose approval is required by a
7 provision of the articles of incorporation authorized by G.S. 55A-10-
8 30.

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

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

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

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

25 **"§ 55A-10-04. Class voting by members on amendments.**

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

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

- 33 (1) Affect the rights, privileges, preferences, restrictions, or conditions of
34 that class as to voting, dissolution, redemption, or transfer of
35 memberships in a manner that is different from the manner in which
36 the amendment would affect another class;
37 (2) Affect the rights, privileges, preferences, restrictions, or conditions of
38 that class as to voting, dissolution, redemption, or transfer of
39 memberships by changing the rights, privileges, preferences,
40 restrictions, or conditions of another class;
41 (3) Increase or decrease the number of memberships authorized for that
42 class;
43 (4) Increase the number of memberships authorized for another class;

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

3 (6) Authorize a new class of memberships.

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

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

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

14 **"§ 55A-10-05. Articles of amendment.**

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

17 (1) The name of the corporation;

18 (2) The text of each amendment adopted;

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

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

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

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

29 **"§ 55A-10-06. Restated articles of incorporation.**

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

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

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

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

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

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

7 (2) Attach as an exhibit thereto the text of the restated articles of
8 incorporation;

9 (3) State whether the restated articles of incorporation contain an
10 amendment to the articles of incorporation requiring member approval
11 and, if they do not, that the board of directors adopted the restated
12 articles of incorporation;

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

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

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

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

25 **"§ 55A-10-07. Effect of amendment.**

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

33 **"PART 2. BYLAWS.**

34 **"§ 55A-10-20. Amendment by directors.**

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

44 **"§ 55A-10-21. Amendment by directors and members.**

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

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

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

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

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

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

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

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

30 **"§ 55A-10-22. Class voting by members on amendments.**

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

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

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

42 (2) Affect the rights, privileges, preferences, restrictions, or conditions of
43 that class as to voting, dissolution, redemption, or transfer of

- 1 memberships by changing the rights, privileges, preferences,
2 restrictions, or conditions of another class;
3 (3) Increase or decrease the number of memberships authorized for that
4 class;
5 (4) Increase the number of memberships authorized for another class;
6 (5) Effect an exchange, reclassification, or termination of all or part of the
7 memberships of that class; or
8 (6) Authorize a new class of memberships.
9 (c) If a class is to be divided into two or more classes as a result of an
10 amendment to the bylaws, the amendment shall be approved by the members of each
11 class that would be created by the amendment.
12 (d) If a class vote is required to approve an amendment to the bylaws, the
13 amendment shall be approved by the members of the class by two-thirds of the votes
14 cast by the class or a majority of the votes entitled to be cast by the class on the
15 amendment, whichever is less.
16 (e) A class of members is entitled to the voting rights granted by this section
17 although the articles of incorporation and bylaws provide that the class shall not vote on
18 the proposed amendment.

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

20 **"§ 55A-10-30. Approval by third persons.**

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

25 **"ARTICLE 11.**

26 **"MERGER.**

27 **"§ 55A-11-01. Approval of plan of merger.**

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

31 (b) The plan of merger shall set forth:

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

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

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

44 **"§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

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

4 (1) A charitable or religious corporation;

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

7 (3) A wholly-owned foreign or domestic corporation (business or
8 nonprofit) which is not a charitable or religious corporation, provided
9 the charitable or religious corporation is the surviving corporation and
10 continues to be a charitable or religious corporation after the merger;
11 or

12 (4) A business or nonprofit corporation other than a charitable or religious
13 corporation, provided that: (i) on or prior to the effective date of the
14 merger, assets with a value equal to the greater of the fair market value
15 of the net tangible and intangible assets (including goodwill) of the
16 charitable or religious corporation or the fair market value of the
17 charitable or religious corporation if it were to be operated as a
18 business concern are transferred or conveyed to one or more persons
19 who would have received its assets under G.S. 55A-14-06(a)(5) and
20 (6) had it dissolved; (ii) it shall return, transfer or convey any assets
21 held by it upon condition requiring return, transfer or conveyance,
22 which condition occurs by reason of the merger, in accordance with
23 such condition; and (iii) the merger is approved by a majority of
24 directors of the charitable or religious corporation who are not and will
25 not become members or shareholders in or directors, officers,
26 employees, agents, or consultants of the surviving corporation.

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

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

36 **"§ 55A-11-03. Action on plan.**

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

41 (1) By the board;

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

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

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

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

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

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

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

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

43 **§ 55A-11-04. Articles of merger.**

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

4 (1) The plan of merger;

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

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

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

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

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

15 **"§ 55A-11-05. Effect of merger.**

16 When a merger takes effect:

17 (1) Every other corporation party to the merger merges into the surviving
18 corporation and the separate existence of every corporation except the
19 surviving corporation ceases;

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

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

26 (4) A proceeding pending against any corporation party to the merger may
27 be continued as if the merger did not occur or the surviving
28 corporation may be substituted in the proceeding for the corporation
29 whose existence ceased; and

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

32 **"§ 55A-11-06. Merger with foreign corporation.**

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

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

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

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

43 (b) Upon the merger taking effect, the surviving corporation, if it does not have a
44 registered agent in this State, shall be deemed to have appointed the Secretary of State

1 as its registered agent for service of process in a proceeding to enforce any obligation of
2 a domestic corporation party to the merger, until such time as it appoints a registered
3 agent in this State.

4 **"§ 55A-11-07. Bequests, devises, and gifts.**

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

9 **"ARTICLE 12.**

10 **"TRANSFER OF ASSETS.**

11 **"§ 55A-12-01. Sale of assets in regular course of activities and mortgage of assets.**

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

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

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

21 **"§ 55A-12-02. Sale of assets other than in regular course of activities.**

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

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

- 30 (1) By the board;
31 (2) By the members entitled to vote thereon by two-thirds of the votes cast
32 or a majority of the votes entitled to be cast on the proposed
33 transaction, whichever is less; and
34 (3) In writing by any person or persons whose approval is required by a
35 provision of the articles of incorporation authorized by G.S. 55A-10-
36 30 for an amendment to the articles of incorporation or bylaws.

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

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

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

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

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

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

24 **"ARTICLE 13.**

25 **"DISTRIBUTIONS.**

26 **"§ 55A-13-01. Prohibited distributions.**

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

29 **"§ 55A-13-02. Authorized distributions.**

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

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

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

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

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

7 **"ARTICLE 14.**

8 **"DISSOLUTION.**

9 **"PART 1. VOLUNTARY DISSOLUTION.**

10 **"§ 55A-14-01. Dissolution by incorporators or directors prior to commencement of**
11 **activities.**

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

- 16 (1) The name of the corporation;
17 (2) The names and addresses of its officers, if any;
18 (3) The names and addresses of its directors, if any, or if none, the names
19 and addresses of its incorporators;
20 (4) The date of its incorporation;
21 (5) That the corporation has not admitted members entitled to vote on
22 dissolution, has not commenced activities, and has no assets;
23 (6) That no debt of the corporation remains unpaid; and
24 (7) That a majority of the incorporators or directors authorized the
25 dissolution.

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

28 **"§ 55A-14-02. Dissolution by directors, members, and third persons.**

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

- 33 (1) By the board;
34 (2) By the members entitled to vote thereon, if any, by two-thirds of the
35 votes cast or a majority of the votes entitled to be cast on the plan of
36 dissolution, whichever is less; and
37 (3) In writing by any person or persons whose approval is required by a
38 provision of the articles of incorporation authorized by G.S. 55A-10-
39 30 for an amendment to the articles of incorporation or bylaws.

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

1 purposes, of the meeting is to consider dissolution of the corporation and contain or be
2 accompanied by a copy or summary of the plan of dissolution.

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

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

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

15 **"§ 55A-14-03. Plan of dissolution.**

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

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

24 (2) Other assets, if any, of a charitable or religious corporation shall,
25 subject to the articles of incorporation or bylaws, be transferred or
26 conveyed to one or more of the following: the United States, a state, a
27 charitable or religious corporation, or a person that is exempt under
28 section 501(c)(3) of the Internal Revenue Code of 1986 or any
29 successor section;

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

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

35 **"§ 55A-14-04. Articles of dissolution.**

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

39 (1) The name of the corporation;

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

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

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

43 (5) The date dissolution was authorized;

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

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

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

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

11 **"§ 55A-14-05. Revocation of dissolution.**

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

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

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

21 (1) The name of the corporation;

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

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

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

26 (5) If the corporation's board of directors revoked a dissolution authorized
27 by the members alone or in conjunction with another person or
28 persons, a statement that revocation was permitted by action by the
29 board of directors alone pursuant to that authorization; and

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

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

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

38 **"§ 55A-14-06. Effect of dissolution.**

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

41 (1) Preserving and protecting its assets;

42 (2) Discharging or making provision for discharging its liabilities and
43 obligations;

- 1 (3) Disposing of its remaining assets in accordance with its plan of
2 dissolution; and
3 (4) Doing every other act necessary to wind up and liquidate its assets and
4 affairs.
5 (b) Dissolution of a corporation does not:
6 (1) Transfer title to the corporation's property;
7 (2) Subject its directors or officers to standards of conduct different from
8 those prescribed in Article 8 of this Chapter;
9 (3) Change quorum or voting requirements for its board of directors or
10 members; change provisions for selection, resignation, or removal of
11 its directors or officers or both; or change provisions for amending its
12 bylaws;
13 (4) Prevent commencement of a proceeding by or against the corporation
14 in its corporate name;
15 (5) Abate or suspend a proceeding pending by or against the corporation
16 on the effective date of dissolution; or
17 (6) Terminate the authority of the registered agent of the corporation.

18 **"§ 55A-14-07. Known claims against dissolved corporation.**

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

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

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

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

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

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

38 **"§ 55A-14-08. Unknown and certain other claims against dissolved corporation.**

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

42 (b) The notice shall:

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

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

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

18 (d) Nothing in this section shall bar:

- 19 (1) Any claim alleging the liability of the corporation; or
20 (2) Any proceeding or action to establish the liability of the corporation;
21 or
22 (3) The recovery on any judgment against the corporation
23 to the extent that the corporation is protected by insurance coverage with respect to such
24 claim, proceeding, or judgment.

25 **"§ 55A-14-09. Enforcement of claims.**

- 26 (a) A claim under G.S. 55A-14-07 or G.S. 55A-14-08 may be enforced:
27 (1) Against the dissolved corporation, to the extent of its undistributed
28 assets, including coverage under any applicable insurance policy, or
29 (2) If the assets have been distributed in liquidation, against any person,
30 other than a creditor of the corporation, to whom the corporation
31 distributed its property to the extent of the distributee's pro rata share
32 of the claim or the corporate assets distributed to such person in
33 liquidation, whichever is less, but the distributee's total liability for all
34 claims under this section shall not exceed the total amount of assets
35 distributed to the distributee.

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

38 **"PART 2. ADMINISTRATIVE DISSOLUTION.**

39 **"§ 55A-14-20. Grounds for administrative dissolution.**

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

- 42 (1) The corporation does not pay within 60 days after they are due any
43 penalties, fees, or other payments due under this Chapter;

- 1 (2) The corporation does not deliver its annual report to the Secretary of
2 State within 60 days after it is due;
3 (3) The corporation is without a registered agent or registered office in this
4 State for 60 days or more;
5 (4) The corporation does not notify the Secretary of State within 60 days
6 that its registered agent or registered office has been changed, that its
7 registered agent has resigned, or that its registered office has been
8 discontinued; or
9 (5) The corporation's period of duration stated in its articles of
10 incorporation expires.

11 **"§ 55A-14-21. Procedure for and effect of administrative dissolution.**

12 (a) If the Secretary of State determines that one or more grounds exist under G.S.
13 55A-14-20 for dissolving a corporation, the Secretary of State shall mail the corporation
14 written notice of the Secretary of State's determination.

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

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

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

26 **"§ 55A-14-22. Reinstatement following administrative dissolution.**

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

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

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

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

1 **"§ 55A-14-23. Appeal from denial of reinstatement.**

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

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

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

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

19 **"§ 55A-14-24. Inapplicability of Administrative Procedure Act.**

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

22 **"PART 3. JUDICIAL DISSOLUTION.**

23 **"§ 55A-14-30. Grounds for judicial dissolution.**

24 (a) The superior court may dissolve a corporation:

25 (1) In a proceeding by the Attorney General if it is established that:

- 26 a. The corporation obtained its articles of incorporation through
27 fraud; or
28 b. The corporation has, after written notice by the Attorney
29 General given at least 20 days prior thereto, continued to exceed
30 or abuse the authority conferred upon it by law;

31 (2) In a proceeding by a member or director, if it is established that:

- 32 a. The directors are deadlocked in the management of the
33 corporate affairs, and the members, if any, are unable to break
34 the deadlock;
35 b. The directors or those in control of the corporation have acted,
36 are acting, or will act in a manner that is illegal, oppressive, or
37 fraudulent;
38 c. The members are deadlocked in voting power and have failed,
39 for a period that includes at least two consecutive annual
40 meeting dates, to elect successors to directors whose terms
41 have, or would otherwise have, expired;
42 d. The corporate assets are being misapplied or wasted; or
43 e. The corporation is no longer able to carry out its purposes.

44 (3) In a proceeding by a creditor if it is established that:

- 1 a. The creditor's claim has been reduced to judgment and
2 execution on the judgment has been returned unsatisfied; or
3 b. The corporation has admitted in writing that the creditor's claim
4 is due and owing and the corporation is insolvent.
5 (4) In a proceeding by the corporation to have its voluntary dissolution
6 continued under court supervision.
7 (b) Prior to dissolving a corporation, the court shall consider whether:
8 (1) There are reasonable alternatives to dissolution;
9 (2) Dissolution is in the public interest, if the corporation is a charitable or
10 religious corporation; and
11 (3) Dissolution is reasonably necessary for the protection of the rights or
12 interests of the members, if any.

13 **§ 55A-14-31. Procedure for judicial dissolution.**

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

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

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

23 **§ 55A-14-32. Receivership.**

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

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

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

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

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

4 **"§ 55A-14-33. Decree of dissolution.**

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

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

13 **"PART 4. MISCELLANEOUS.**

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

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

18 **"ARTICLE 14A.**

19 **"REORGANIZATION.**

20 **"§ 55A-14A-01. Fundamental changes in reorganization proceedings.**

21 (a) Whenever a plan of reorganization of a corporation is confirmed by decree or
22 order of a court of competent jurisdiction in proceedings for the reorganization of the
23 corporation pursuant to the provisions of any applicable statute of the United States
24 relating to reorganization of corporations, the corporation may put into effect and carry
25 out the plan and the decrees and orders of the court relative thereto and may take any
26 action provided in the plan or directed by the decrees and orders without further action
27 by its directors or members. Such action may be taken, as may be directed by the
28 decrees or orders, by the trustee or trustees of the corporation appointed in the
29 reorganization proceedings, or by designated officers of the corporation, or by a master
30 or other representative appointed by the court, with like effect as if taken by unanimous
31 action of the directors and members of the corporation. In particular and without
32 limiting the generality or effect of the foregoing, the corporation may:

- 33 (1) Amend its articles of incorporation or bylaws, or both, so long as the
34 articles of incorporation and bylaws as amended contain only such
35 provisions as might be lawfully contained therein at the time of
36 making such amendment;
- 37 (2) Constitute or reconstitute and classify or reclassify its board of
38 directors, and name, constitute or appoint directors and officers in
39 place of or in addition to all or any of the directors or officers then in
40 office;
- 41 (3) Make any change in its memberships or securities or cancel any or all
42 of its outstanding memberships or securities;
- 43 (4) Dissolve and liquidate;
- 44 (5) Effect a merger;

- 1 (6) Transfer all or part of its assets;
2 (7) Change its registered office or registered agent, or both;
3 (8) Authorize the issuance of bonds, debentures, or other obligations of
4 the corporation and fix the terms and conditions thereof.

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

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

14 "ARTICLE 15.

15 "FOREIGN CORPORATIONS.

16 "PART 1. CERTIFICATE OF AUTHORITY.

17 "§ 55A-15-01. Authority to conduct affairs required.

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

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

- 24 (1) Maintaining or defending any action or suit or any administrative or
25 arbitration proceeding, or affecting the settlement thereof or the
26 settlement of claims or disputes;
27 (2) Holding meetings of its directors or members or carrying on other
28 activities concerning its internal affairs;
29 (3) Maintaining bank accounts or borrowing money in this State, with or
30 without security, even if such borrowings are repeated and continuous
31 transactions;
32 (4) Maintaining offices or agencies for the transfer, exchange, and
33 registration of memberships or securities, or appointing and
34 maintaining trustees or depositories with relation to those securities;
35 (5) Soliciting or procuring orders, whether by mail or through employees
36 or agents or otherwise, where the orders require acceptance without
37 this State before becoming binding contracts;
38 (6) Making or investing in loans with or without security including
39 servicing of mortgages or deeds of trust through independent agencies
40 within the State, the conducting of foreclosure proceedings and sale,
41 the acquiring of property at foreclosure sale, and the management and
42 rental of such property for a reasonable time while liquidating its
43 investment, provided no office or agency therefor is maintained in this
44 State;

- 1 (7) Taking security for or collecting debts due to it or enforcing any rights
- 2 in property securing the same;
- 3 (8) Conducting affairs in interstate commerce;
- 4 (9) Conducting an isolated transaction completed within a period of six
- 5 months and not in the course of a number of repeated transactions of
- 6 like nature;
- 7 (10) Selling through independent contractors;
- 8 (11) Owning, without more, real or personal property.

9 **"§ 55A-15-02. Consequences of conducting affairs without authority.**

10 (a) No foreign corporation conducting affairs in this State without permission

11 obtained through a certificate of authority under this Chapter or through domestication

12 under prior acts shall be permitted to maintain any action or proceeding in any court of

13 this State unless each corporation shall have obtained a certificate of authority prior to

14 trial; nor shall any action or proceeding be maintained in any court of this State by any

15 successor or assignee of such corporation on any cause of action arising out of the

16 conduct of affairs by such corporation in this State until:

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

23 An issue arising under this subsection shall be raised by motion and determined by

24 the trial judge prior to trial.

25 (b) A foreign corporation failing to obtain a certificate of authority as required by

26 this Chapter or by prior acts then applicable shall be liable to the State for the years or

27 parts thereof during which it conducted affairs in this State without a certificate of

28 authority in an amount equal to all fees and taxes which would have been imposed by

29 law upon the corporation had it duly applied for and received such permission, plus

30 interest and all penalties imposed by law for failure to pay such fees and taxes. In

31 addition, the foreign corporation shall be liable for a civil penalty of ten dollars (\$10.00)

32 for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or

33 part thereof, it conducts affairs in this State without a certificate of authority. The

34 Attorney General may bring actions to recover all amounts due the State under the

35 provisions of this subsection.

36 (c) Notwithstanding subsection (a) of this section, the failure of a foreign

37 corporation to obtain a certificate of authority does not impair the validity of its

38 corporate acts or prevent it from defending any proceeding in this State.

39 (d) The Secretary of State is hereby directed to require that every foreign

40 corporation conducting affairs in this State comply with the provisions of this Chapter.

41 The Secretary of State is authorized to employ such assistants as shall be deemed

42 necessary in the Secretary of State's office for the purpose of enforcing the provisions of

43 this Article and for making such investigations as shall be necessary to ascertain foreign

1 corporations now conducting affairs in this State which may have failed to comply with
2 the provisions of this Chapter.

3 **"§ 55A-15-03. Application for certificate of authority.**

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

7 (1) The name of the foreign corporation or, if its name is unavailable for
8 use in this State, a corporate name that satisfies the requirements of
9 G.S. 55A-15-06;

10 (2) The name of the state or country under whose law it is incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The street address, and mailing address if different from the street
13 address, of its principal office;

14 (5) The street address, and the mailing address if different from the street
15 address, of its registered office in this State, the county in which the
16 registered office is located, and the name of its registered agent at that
17 office;

18 (6) The names and usual business addresses of its current officers; and

19 (7) Whether it has members.

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

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

26 (1) Endorse on the application and an exact or conformed copy thereof the
27 word 'filed' and the hour, day, month, and year of the filing thereof;

28 (2) File in the Secretary of State's office the application and the certificate
29 of existence (or document of similar import as described in subsection
30 (b) of this section);

31 (3) Issue a certificate of authority to conduct affairs in this State to which
32 the Secretary of State shall affix the exact or conformed copy of the
33 application; and

34 (4) Send to the foreign corporation or its representative the certificate of
35 authority, together with the exact or conformed copy of the application
36 affixed thereto.

37 **"§ 55A-15-04. Amended certificate of authority.**

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

40 (1) Its corporate name;

41 (2) The period of its duration; or

42 (3) The state or country of its incorporation.

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

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

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

11 **"§ 55A-15-05. Effect of certificate of authority.**

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

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

21 **"§ 55A-15-06. Corporate name of foreign corporation.**

22 (a) If the corporate name of a foreign corporation does not satisfy the
23 requirements of G.S. 55A-4-01, the foreign corporation, to obtain or maintain a
24 certificate of authority to conduct affairs in this State, may use a fictitious name to
25 conduct affairs in this State if its real name is unavailable and it delivers to the Secretary
26 of State for filing a copy of the resolution of its board of directors, certified by its
27 secretary, adopting the fictitious name.

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

- 31 (1) The corporate name of a corporation incorporated or authorized to
32 conduct affairs in this State;
- 33 (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S.
34 55-4-03 or under G.S. 55A-4-02 or G.S. 55A-4-03;
- 35 (3) The fictitious name of another foreign corporation authorized to
36 conduct affairs in this State; and
- 37 (4) The corporate name of a business corporation incorporated or
38 authorized to transact business in this State.

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

- 43 (1) The other corporation consents to the use in writing and submits an
44 undertaking in form satisfactory to the Secretary of State to change its

1 name to a name that is distinguishable upon the records of the
2 Secretary of State from the name of the applying corporation; or
3 (2) The applicant delivers to the Secretary of State a certified copy of a
4 final judgment of a court of competent jurisdiction establishing the
5 applicant's right to use the name applied for in this State.

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

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

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

18 **"§ 55A-15-07. Registered office and registered agent of foreign corporation.**

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

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

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

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

32 **"§ 55A-15-08. Change of registered office or registered agent of foreign**
33 **corporation.**

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

37 (1) Its name;

38 (2) The street address, and the mailing address if different from the street
39 address, of the corporation's current registered office, and the county in
40 which it is located;

41 (3) If the address of the corporation's registered office is to be changed,
42 the street address, and the mailing address if different from the street
43 address, of the new registered office, and the county in which it is
44 located;

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

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

13 **"§ 55A-15-09. Resignation of registered agent of foreign corporation.**

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

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

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

27 **"§ 55A-15-10. Service on foreign corporation.**

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

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

1 Service on a foreign corporation under this subsection shall be effective for all purposes
2 from and after the date of such service on the Secretary of State.

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

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

9 **"PART 2. WITHDRAWAL.**

10 **"§ 55A-15-20. Withdrawal of foreign corporation.**

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

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

17 (1) The name of the foreign corporation and the name of the state or
18 country under whose law it is incorporated;

19 (2) That it is not conducting affairs in this State and that it surrenders its
20 authority to conduct affairs in this State;

21 (3) That the corporation revokes the authority of its registered agent to
22 accept service of process and consents that service of process in any
23 action or proceeding based upon any cause of action arising in this
24 State, or arising out of affairs conducted in this State, during the time
25 the corporation was authorized to conduct affairs in this State may
26 thereafter be made on such corporation by service thereof on the
27 Secretary of State;

28 (4) A mailing address to which the Secretary of State may mail a copy of
29 any process served on the Secretary of State under subdivision (3) of
30 this subsection; and

31 (5) A commitment to notify the Secretary of State in the future of any
32 change in its mailing address.

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

35 (1) Endorse on the application and an exact or conformed copy thereof the
36 word 'filed', and the hour, day, month, and year of the filing thereof;

37 (2) File the application in the Secretary of State's office; and

38 (3) Issue a certificate of withdrawal to which the Secretary of State shall
39 affix the exact or conformed copy of the application.

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

1 **"§ 55A-15-21. Withdrawal of foreign corporation by reason of a merger.**

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

- 12 (1) The name of each merged corporation authorized to conduct affairs in
13 this State and the name of the surviving corporation and a statement
14 that the surviving corporation is not authorized to conduct affairs in
15 this State;
16 (2) That the surviving corporation consents that service of process based
17 upon any cause of action arising in this State, or arising out of affairs
18 conducted in this State, during the time each merged corporation was
19 authorized to conduct affairs in this State may thereafter be made on
20 such corporation by service thereof on the Secretary of State;
21 (3) A mailing address to which the Secretary of State may mail a copy of
22 any process served on him under subdivision (a)(2) of this section; and
23 (4) A commitment to notify the Secretary of State in the future of any
24 change in its mailing address.

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

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

35 **"PART. 3. REVOCATION OF CERTIFICATE OF AUTHORITY.**

36 **"§ 55A-15-30. Grounds for revocation.**

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

- 40 (1) The foreign corporation does not deliver its annual report to the
41 Secretary of State within 60 days after it is due;
42 (2) The foreign corporation does not pay within 60 days after they are due
43 any penalties, fees, or other payments due under this Chapter;

- 1 (3) The foreign corporation is without a registered agent or registered
2 office in this State for 60 days or more;
- 3 (4) The foreign corporation does not inform the Secretary of State under
4 G.S. 55A-15-08 or G.S. 55A-15-09 that its registered agent or
5 registered office has changed, that its registered agent has resigned, or
6 that its registered office has been discontinued within 60 days of the
7 change, resignation, or discontinuance;
- 8 (5) An incorporator, director, officer, or agent of the foreign corporation
9 signs a document he knew was false in any material respect with intent
10 that the document be delivered to the Secretary of State for filing;
- 11 (6) The Secretary of State receives a duly authenticated certificate from
12 the secretary of state or other official having custody of corporate
13 records in the state or country under whose law the foreign corporation
14 is incorporated stating that it has been dissolved or disappeared as the
15 result of a merger; or
- 16 (7) The corporation is exceeding the authority conferred upon it by this
17 Chapter.

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

21 "**§ 55A-15-31. Procedure and effect of revocation.**"

22 (a) If the Secretary of State determines that one or more grounds exist under G.S.
23 55A-15-30 for revocation of a certificate of authority, the Secretary of State shall mail
24 to the foreign corporation written notice of the Secretary of State's determination.

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

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

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

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

42 "**§ 55A-15-32. Appeal from revocation.**"

43 (a) A foreign corporation may appeal the Secretary of State's revocation of its
44 certificate of authority to the Superior Court of Wake County within 30 days after

1 service of the certificate of revocation is mailed. The appeal is commenced by filing a
2 petition with the court and with the Secretary of State requesting the court to set aside
3 the revocation. The petition shall have attached to it copies of the corporation's
4 certificate of authority and the Secretary of State's certificate of revocation. The appeal
5 to the superior court shall be determined upon such further evidence, notice, and
6 opportunity to be heard, if any, as the court may deem appropriate under the
7 circumstances. The foreign corporation shall have the burden of establishing that it is
8 entitled to have the revocation set aside.

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

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

13 **"ARTICLE 16.**

14 **"RECORDS AND REPORTS.**

15 **"PART 1. RECORDS.**

16 **"§ 55A-16-01. Corporate records.**

17 (a) A corporation shall keep as permanent records minutes of all meetings of its
18 members and board of directors, a record of all actions taken by the members or
19 directors without a meeting pursuant to G.S. 55A-7-04, 55A-7-08, or 55A-8-21, and a
20 record of all actions taken by committees of the board of directors in place of the board
21 of directors on behalf of the corporation.

22 (b) A corporation shall maintain appropriate accounting records.

23 (c) A corporation or its agent shall maintain a record of its members, in a form
24 that permits preparation of a list of the names and addresses of all members, in
25 alphabetical order by class, showing the number of votes each member is entitled to
26 cast.

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

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

31 (1) Its articles of incorporation or restated articles of incorporation and all
32 amendments to them currently in effect;

33 (2) Its bylaws or restated bylaws and all amendments to them currently in
34 effect;

35 (3) Resolutions adopted by its members or board of directors relating to
36 the number or classification of directors or to the characteristics,
37 qualifications, rights, limitations, and obligations of members or any
38 class or category of members;

39 (4) The minutes of all membership meetings, and records of all actions
40 taken by the members without a meeting pursuant to G.S. 55A-7-04 or
41 G.S. 55A-7-08, for the past three years;

42 (5) All written communications to members generally within the past three
43 years, and the financial statements, if any, that have been furnished or

1 would have been required to be furnished to a member upon demand
2 under G.S. 55A-16-20 during the past three years;

3 (6) A list of the names and business or home addresses of its current
4 directors and officers; and

5 (7) Its most recent annual report delivered to the Secretary of State under
6 G.S. 55A-16-22.

7 **"§ 55A-16-02. Inspection of records by members.**

8 (a) A member is entitled to inspect and copy, at a reasonable time and location
9 specified by the corporation, any of the records of the corporation described in G.S.
10 55A-16-01(e) if the member gives the corporation written notice of his demand at least
11 five business days before the date on which the member wishes to inspect and copy.

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

17 (1) Excerpts from any records required to be maintained under G.S. 55A-
18 16-01(a), to the extent not subject to inspection under G.S. 55A-16-
19 02(a);

20 (2) Accounting records of the corporation; and

21 (3) Subject to G.S. 55A-16-05, the membership list.

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

24 (1) The member's demand is made in good faith and for a proper purpose;

25 (2) The member describes with reasonable particularity the purpose and
26 the records the member desires to inspect; and

27 (3) The records are directly connected with this purpose.

28 (d) This section does not affect:

29 (1) The right of a member to inspect records under G.S. 55A-7-20 or, if
30 the member is in litigation with the corporation, to inspect the records
31 to the same extent as any other litigant; or

32 (2) The power of a court, independently of this Chapter, to compel the
33 production of corporate records for examination.

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

38 **"§ 55A-16-03. Scope of inspection rights.**

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

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

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

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

8 **"§ 55A-16-04. Court-ordered inspection.**

9 (a) If a corporation does not allow a member who complies with G.S. 55A-16-
10 02(a) to inspect and copy any records required by that subsection to be available for
11 inspection, the superior court in the county where the corporation's principal office (or,
12 if there is none in this State, its registered office) is located may, upon application of the
13 member, summarily order inspection and copying of the records demanded at the
14 corporation's expense.

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

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

26 (d) If the court orders inspection and copying of the records demanded, it may
27 impose reasonable restrictions on the use or distribution of the records by the
28 demanding member.

29 **"§ 55A-16-05. Limitations on use of membership list.**

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

34 (1) Used to solicit money or property unless such money or property will
35 be used solely to solicit the votes of the members in an election to be
36 held by the corporation;

37 (2) Used for any commercial purpose; or

38 (3) Sold to or purchased by any person.

39 **"PART 2. REPORTS.**

40 **"§ 55A-16-20. Financial statements for members.**

41 (a) Except as provided in the articles of incorporation or bylaws of a charitable or
42 religious corporation, a corporation upon written demand from a member shall furnish
43 that member its latest annual financial statements, if any, which may be consolidated or
44 combined statements of the corporation and one or more of its subsidiaries or affiliates,

1 as appropriate, that include a balance sheet as of the end of the fiscal year and statement
2 of operations for that year. If financial statements are prepared for the corporation on
3 the basis of generally accepted accounting principles, the annual financial statements
4 shall also be prepared on that basis.

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

9 (1) Stating the president's or other person's reasonable belief as to whether
10 the statements were prepared on the basis of generally accepted
11 accounting principles and, if not, describing the basis of preparation;
12 and

13 (2) Describing any respects in which the statements were not prepared on
14 a basis of accounting consistent with the statements prepared for the
15 preceding year.

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

17 If a corporation indemnifies or advances expenses to a director under G.S. 55A-8-
18 51, 55A-8-52, 55A-8-53, 55A-8-54, or 55A-8-57 in connection with a proceeding by or
19 in the right of the corporation, the corporation shall give notice of the indemnification or
20 advance in writing to the members with or before the notice of the next meeting of
21 members.

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

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

26 (1) The name of the corporation and the state or country under whose law
27 it is incorporated;

28 (2) The street address, and the mailing address if different from the street
29 address, of the registered office, the county in which its registered
30 office is located, and the name of its registered agent at that office in
31 this State, and a statement of any change of such registered office or
32 registered agent, or both;

33 (3) The address of its principal office;

34 (4) The names, titles, and business or residence addresses of its directors
35 and principal officers;

36 (5) A brief description of the nature of its activities; and

37 (6) Whether or not it has members.

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

40 (c) The annual report shall be delivered to the Secretary of State each year within
41 60 days immediately following the last day of the month in which the domestic
42 corporation was incorporated or the foreign corporation received a certificate of
43 authority in this State. Forms required for the filing of the annual report shall be mailed

1 by the Secretary of State to the domestic or foreign corporation at its registered office
2 for the first annual report, then to its principal office for subsequent annual reports.

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

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

11 "ARTICLE 17.

12 "TRANSITION AND CURATIVE PROVISIONS.

13 "§ 55A-17-01. Applicability of Chapter.

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

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

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

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

28 "§ 55A-17-02. Certain religious, etc., associations deemed incorporated.

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

37 "§ 55A-17-03. Saving provisions.

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

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

3 **"§ 55A-17-04. Severability.**

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

8 **"§ 55A-17-05. Validation of amendments to corporate charters extending**
9 **corporate existence; limitation of actions; intent.**

10 (a) In every case where a corporation chartered under either the general or
11 private laws of the State of North Carolina has continued or shall continue to act and
12 conduct affairs as a corporation after the expiration of its period of existence as
13 theretofore fixed in its charter and has thereafter filed in the office of the Secretary of
14 State an amendment to its charter to extend or renew its corporate existence, such
15 amendment is hereby validated and made effective for all intents and purposes to the
16 same extent and with the same effect as if the amendment has been made within the
17 period of such corporation's existence as theretofore fixed in its charter.

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

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

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

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