Article 10.

Amendment of Articles of Incorporation and Bylaws.

Part 1. Amendment of Articles of Incorporation.

§ 55-10-01. 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 shareholder 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, capital structure, dividend entitlement, or purpose or duration of the corporation. (1901, c. 2, ss. 29,30,37; 1903, c. 510; Rev., ss. 1175, 1178; C.S., s. 1131; 1927, c. 142, G.S., s. 55-31; 1955, c. 1371, s. 1; 1959, c. 1316, s. 29; 1989, c. 265, s. 1.)

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

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt any of the following amendments to the corporation's articles of incorporation without shareholder approval:

(1) Reserved for future codification purposes.

(2) To delete the names and addresses of the initial directors.

(3) 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.

(4) If the corporation has only one class of shares outstanding, to do any of the following:

a. Change each issued and unissued authorized share of the class into a greater number of whole shares of the class.

b. Increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(5) To change the corporate name.

(5a) To reflect a reduction in authorized shares pursuant to G.S. 55-6-31(b) when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

(5b) To delete a class of shares from the articles of incorporation in either of the following circumstances:

a. If, as a result of the operation of G.S. 55-6-31(b), there are no remaining authorized shares of the class because the corporation has acquired all authorized shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

b. If, under G.S. 55-6-02, the articles of incorporation authorized the board of directors to create the class and no shares of the class or rights to acquire shares of the class are outstanding.

(6) To make any other change expressly permitted by this Chapter to be made without shareholder approval. (1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 28, 29, 30, 37; 1903, c. 510; Rev., ss. 1174, 1175, 1178; C.S., ss. 1130, 1131; 1925, c. 118, ss. 1, 2a; 1927, c. 142; 1931, c. 243, ss. 4, 5; 1933, c. 100, ss. 7, 8; 1941, c. 97, s. 5; G.S., ss. 55-30, 55-31; 1953, c. 54; c. 119, ss. 1, 2; 1955, c. 1371, s. 1;

1959, c. 1316, s. 25; 1973, c. 469, s. 30; 1989, c. 265, s. 1; 2005-268, s. 13; 2021-106, s. 4(a); 2023-130, s. 3(a).)

§ 55-10-03. Amendment by board of directors and shareholders.

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted pursuant to this section. Except as provided in G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors.

(b) Except as provided in G.S. 55-7-31(f), 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the amendment to the shareholders at the time it submits the amendment to the shareholders:

(1) The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the amendment.

(2) G.S. 55-8-26 applies.

(c) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(d) If the amendment must be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and the notice must contain or be accompanied by a copy or summary of the amendment. If the amendment is required to be approved by the shareholders and the approval is to be obtained through action without meeting, the corporation must notify shareholders if required by G.S. 55-7-04(d).

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by all of the following:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create appraisal rights.

(2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment. (1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 28, 29, 30, 37; 1903, c. 510; Rev., ss. 1174, 1175, 1178; C.S., ss. 1130, 1131; 1925, c. 118, ss. 1, 2a; 1927, c. 142; 1931, c. 243, ss. 4, 5; 1933, c. 100, ss. 7, 8; 1941, c. 97, s. 5; G.S., ss. 55-30, 55-31; 1953, c. 54; c. 119, ss. 1, 2; 1955, c. 1371, s. 1; 1959, c. 1316, s. 25; 1973, c. 469, s. 30; 1989, c. 265, s. 1; 1991, c. 645, s. 8; 2000-140, s. 101(b); 2005-268, s. 14; 2011-347, s. 5; 2013-153, s. 8; 2018-45, s. 14.)

§ 55-10-04. Voting on amendments by voting groups.

(a) Except as provided in subsection (e) of this section, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise

required by this Chapter, on a proposed amendment if the amendment would do any of the following:

(1) Increase or decrease the aggregate number of authorized shares of the class.
(2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.
(3) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class.
(4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class.
(5) Change the shares of all or part of the class into a different number of shares of the same class.
(6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.
(7) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.
(8) Limit or deny an existing preemptive right of all or part of the shares of the class.
(9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.
(10) Change the corporation into a nonprofit corporation or a cooperative organization.

(b) Except as provided in subsection (e) of this section, if a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

(e) The right of a class or series to vote as a separate voting group under subdivision (6) or (7) of subsection (a) of this section may be restricted in whole or in part if so provided in the original articles of incorporation or by an amendment to the articles of incorporation that is adopted prior to the issuance of any shares of the class or series or that is approved by a majority of the votes of the class or series entitled to be cast on the amendment. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 30, 31; 1969, c. 751, s. 36; 1989, c. 265, s. 1; 2023-130, s. 4(a).)

§ 55-10-05. Amendment before issuance of shares.

If a corporation has not yet issued shares, the board of directors, or if the corporation has no directors, a majority of the incorporators may adopt one or more amendments to the corporation's articles of incorporation. (1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 28, 29, 30, 37; 1903, c. 510; Rev., ss. 1174, 1175, 1178; C.S., ss. 1130, 1131; 1925, c. 118, ss. 1, 2a; 1927, c. 142; 1931, c. 243,

ss. 4, 5; 1933, c. 100, ss. 7, 8; 1941, c. 97, s. 5; G.S., ss. 55-30, 55-31; 1953, c. 54; c. 119, ss. 1, 2; 1955, c. 1371, s. 1; 1959, c. 1316, s. 25; 1973, c. 469, s. 30; 1989, c. 265, s. 1; 1991, c. 645, s. 9.)

§ 55-10-06. Articles of amendment.

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

(1) The name of the corporation;
(2) The text of each amendment adopted;
(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
(4) The date of each amendment's adoption;
(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and a brief explanation of why shareholder action was not required;
(6) If an amendment was approved by the shareholders, a statement that shareholder approval was obtained as required by this Chapter. (1955, c. 1371, s. 1; 1959, c. 1316, s. 32; 1989, c. 265, s. 1; 1991, c. 645, s. 10(a).)

§ 55-10-07. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) The restated articles of incorporation may include one or more new amendments to the articles. If the restated articles of incorporation include a new amendment requiring shareholder approval, it must be adopted and approved as provided in G.S. 55-10-03. The restated articles of incorporation may include a statement of the address of the current registered office and the name of the current registered agent of the corporation, and no other.

(c) Repealed by Session Laws 2005, c. 268, s. 15.

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

(1) Set forth the name of the corporation;
(2) Attach as an exhibit thereto the text of the restated articles of incorporation;
(3) State that the restated articles of incorporation consolidate all amendments into a single document; and
(4) If the restated articles of incorporation contain a new amendment to the articles, include the statements required by G.S. 55-10-06.

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

(f) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the other information required by subsection (d) of this section. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1991, c. 645, ss. 11, 18; 2005-268, s. 15.)

§ 55-10-08. Reserved for future codification purposes.

§ 55-10-09. Effect of amendment.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

§§ 55-10-10 through 55-10-19. Reserved for future codification purposes.

Part 2. Amendment of Bylaws.

§ 55-10-20. Amendment by board of directors or shareholders.

(a) A corporation's board of directors may amend or repeal the corporation's bylaws, except to the extent otherwise provided in the articles of incorporation or a bylaw adopted by the shareholders or this Chapter, and except that a bylaw adopted, amended or repealed by the shareholders may not be readopted, amended or repealed by the board of directors if neither the articles of incorporation nor a bylaw adopted by the shareholders authorizes the board of directors to adopt, amend or repeal that particular bylaw or the bylaws generally. The limitations set forth in this subsection on the ability of a corporation's board of directors to amend or repeal the corporation's bylaws shall not apply to any amendment to the extent that it is effected pursuant to G.S. 55-7-31(f).

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 2, 3; 1973, c. 469, s. 4; 1989, c. 265, s. 1; 2018-45, s. 15.)

§ 55-10-21. Reserved for future codification purposes.

§ 55-10-22. Bylaw increasing quorum or voting requirement for directors or prohibiting a meeting of shareholders solely by remote participation.

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors or that prohibits a meeting of shareholders solely by means of remote communication may be amended or repealed as follows:

(1) If originally adopted by the shareholders, only by the shareholders, unless amendment or repeal by the board of directors is permitted pursuant to subsection (b) of this section.

(2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) The following applies to a bylaw referred to in subsection (a) of this section.

(1) It shall not be adopted by the board of directors by a vote less than a majority of the directors then in office.

(2) It shall not itself be amended by a quorum or vote of the directors less than the quorum or vote therein prescribed or prescribed by the shareholders pursuant to subsection (b) of this section. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 2, 3; 1973, c. 469, s. 4; 1989, c. 265, s. 1; 2021-162, s. 1(f).)