Article 15.

Foreign Corporations.

Part 1. Certificate of Authority.

§ 55-15-01. Authority to transact business required.

(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

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

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors;

(11) Owning, without more, real or personal property.

(c) Reserved for future codification purposes.

(d) Foreign insurance companies that are licensed by the Commissioner of Insurance are not required to obtain a certificate of authority from the Secretary of State.

(e) The following foreign corporations are not required to obtain a certificate of authority from the Secretary of State:

(1) A nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.

(2) A person issued a temporary license by the Department of Revenue under G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. (1901, c. 2, s. 93; Rev., s. 1193; 1915, c. 196, s. 1; C.S., s. 1180; G.S., s. 55-117; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.20; 1993, c. 552, s. 16; 2019-187, s. 1(b).)

§ 55-15-02. Consequences of transacting business without authority.

(a) No foreign corporation transacting business in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless the foreign corporation has obtained a certificate of authority prior to trial.

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

(b) Reserved for future codification purposes.

(c) Reserved for future codification purposes.

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

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(f) The Secretary of State is hereby directed to require that every foreign corporation transacting business in this State comply with the provisions of this Chapter. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign corporations now transacting business in this State which may have failed to comply with the provisions of this Chapter. (1901, c. 2, s. 57; 1903, c. 76; Rev., s. 1194; 1915, c. 263; C.S., s. 1181; 1935, c. 44; 1937, c. 343; 1939, c. 57; G.S., ss. 55-118, 55-120; 1953, c. 1152; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1998-215, s. 117; 1999-151, s. 1.)

§ 55-15-03. Application for certificate of authority.

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

(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of Article 3 of Chapter 55D of the General Statutes;

(2) The name of the state or country under whose law it is incorporated;
(3) Its date of incorporation and period of duration;
(4) The street address, and the mailing address if different from the street address, of its principal office if any, and the county in which the principal office, if any, is located;
(5) The street address, and the mailing address if different from the street address, of its registered office in this State, the county in which the registered office is located, and the name of its registered agent at that office; and
(6) The names and usual business addresses of its current officers.

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

(c) If the Secretary of State finds that the application conforms to law he shall, when all fees have been tendered as prescribed in this Chapter:
(1) Endorse on the application and an exact or conformed copy thereof the word "filed" and the hour, day, month, and year of the filing thereof;
(2) File in his office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);
(3) Issue a certificate of authority to transact business in this State to which he shall affix the exact or conformed copy of the application; and
(4) Send to the foreign corporation or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto. (1901, c. 2, s. 57; 1903, c. 766; Rev., s. 1194; 1915, c. 263; C.S., s. 1181; 1935, c. 44; 1939, c. 57; G.S., s. 55-118; 1953, c. 1152; 1955, c. 1371, s. 1; 1957, c. 979, s. 8; 1969, c. 751, s. 41; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, ss. 12.1(b), 12.21; 2001-358, s. 17; 2001-387, ss. 27A, 169(a), 173, 175(a); 2001-413, s. 6.)

§ 55-15-04. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it changes:
(1) Its corporate name;
(2) The period of its duration; or
(3) The state or country of its incorporation.

(b) A foreign corporation may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth:
(1) The name of the foreign corporation and the name in which the corporation is authorized to transact business in North Carolina if different;
(2) The name of the state or country under whose law it is incorporated;
(3) The date it was originally authorized to transact business in this State;
(4) A statement of the change or changes being made.

Except for the content of the application, the requirements of G.S. 55-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.22.)

§ 55-15-05. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject, however, to the right of the State to revoke the certificate as provided in this Chapter. A foreign corporation may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of that person's death only in accordance with applicable provisions of Article 24 of Chapter 53.

A foreign corporation qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4).

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

(c) Reserved for future codification purposes. (1901, c. 2, s. 93; Rev., s. 1193; 1915, c. 196, s. 1; C.S., s. 1180; G.S., s. 55-117; 1955, c. 1371, s. 1; 1969, c. 839; 1985, c. 689, s. 25; 1989, c. 265, s. 1; 2001-263, s. 4.)

§ 55-15-06: Repealed by Session Laws 2001-358, s. 18.

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

Each foreign corporation authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article. (1901, c. 5; Rev., s. 1243; C.S., s. 1137; G.S., s. 55-38; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2000-140, s. 101(c); 2001-358, s. 47(b); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§§ 55-15-08 through 55-15-10: Repealed by Session Laws 2001-358, s. 47(c), effective January 1, 2002.

§§ 55-15-11 through 55-15-19. Reserved for future codification purposes.

Part 2. Withdrawal.

§ 55-15-20. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

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

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) That the corporation revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the corporation was authorized

to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State;

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

(5) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(b1) If the Secretary of State finds that such application conforms to law, he shall:

(1) Endorse on the application and an exact or conformed copy thereof the word "filed", and the hour, day, month and year of the filing thereof;

(2) File the application in his office;

(3) Issue a certificate of withdrawal to which he shall affix the exact or conformed copy of the application; and

(4) Send to the foreign corporation or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.

(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (b) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation at the mailing address designated pursuant to subsection (b) of this section. (1955, c. 1371, s. 1; 1973, c. 476, s. 193; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.23; 2001-387, ss. 29, 30.)

§ 55-15-21. Withdrawal of foreign corporation by reason of a merger, consolidation, or conversion.

(a) Whenever a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such foreign corporation was incorporated. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State the articles or certificate must be accompanied by an application that sets forth:

(1) The name of the foreign corporation authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;

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

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

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

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

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month and year of the filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section. (1991, c. 645, s. 13; 1999-369, s. 1.9; 2001-387, s. 31.)

§§ 55-15-22 through 55-15-29. Reserved for future codification purposes.

Part 3. Revocation of Certificate of Authority.

§ 55-15-30. Grounds for revocation.

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

(1) The foreign corporation is delinquent in delivering its annual report;

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

(3) The foreign corporation is without a registered agent or registered office in this State for 60 days or more;

(4) The foreign corporation does not inform the Secretary of State under G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(7) The corporation is exceeding the authority conferred upon it by this Chapter; or
(8) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein shall be deemed to repeal or modify any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1993, c. 552, s. 18; 1997-475, s. 6.5; 2001-358, s. 47(e); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55-15-31. Procedure for and effect of revocation.

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

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

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

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign corporation was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55D-33.

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

(f) The corporation shall not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the reasonable satisfaction of the Secretary of State. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.24; 1991, c. 645, s. 14; 2001-358, s. 47(f); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55-15-32. Appeal from revocation.

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign corporation by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a judge of the superior court upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside.

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

(c) The court's final decision may be appealed as in other civil proceedings. (1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.25; 2001-358, s. 5A(b); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55-15-33. Inapplicability of Administrative Procedure Act.

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55-15-30 through 55-15-32. (1989, c. 265, s. 1.)