Article 8.

Directors and Officers.

Part 1. Board of Directors.

§ 55-8-01. Requirement for and duties of board of directors.

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

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31(b).

(c) A corporation may dispense with or limit the authority of a board of directors by describing in its articles of incorporation or in an agreement valid under G.S. 55-7-31(b) who will perform some or all of the duties of a board of directors; but no such limitation upon the authority which the board of directors would otherwise have shall be effective against other persons without actual knowledge of such limitation.

(d) To the extent the articles of incorporation or an agreement valid under G.S. 55-7-31(b) vests authority of the board of directors in an individual or group other than the board of directors, such individual or group in the exercise of such authority shall be deemed to be acting as the board of directors for all purposes of this Chapter. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2005-268, s. 6.)

§ 55-8-02. Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

§ 55-8-03. Number and election of directors.

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

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) applies in which shares are entitled to be voted cumulatively, the number of directors shall not be decreased unless one of the following applies:

(1) The decrease is approved by the shareholders in a vote in which the number of shares entitled to be voted cumulatively that vote against the proposal for decrease would not be sufficient to elect a director by cumulative voting.

(2) The decrease is made pursuant to a provision of the articles of incorporation or bylaws fixing a minimum and maximum number of directors and authorizing the number of directors to be fixed or changed from time to time, within the maximum and the minimum, by the shareholders or, unless the articles of incorporation or an agreement valid under G.S. 55-7-31 provides otherwise, the board of directors.

(c) Repealed by Session Laws 2005-268, s. 7.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under G.S. 55-8-06. (1901, c. 2, ss. 14, 39; Rev., ss. 1147, 1182; C.S., ss. 1144, 1175; 1927, c. 138; G.S., ss. 55-48, 55-112; 1955, c. 1371, s. 1; 1959, c. 1316, s. 33; 1969, c. 751, ss. 10, 11; 1989, c. 265, s. 1; 1993, c. 552, s. 13; 2005-268, s. 7; 2006-264, s. 44(a).)

§ 55-8-04. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class (or classes) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. (1901, c. 2, ss. 14, 39; Rev., ss. 1147, 1182; C.S., ss. 1144, 1175; 1927, c. 138; G.S., ss. 55-48, 55-112; 1955, c. 1371, s. 1; 1959, c. 1316, s. 33; 1969, c. 751, ss. 10, 11; 1989, c. 265, s. 1.)

§ 55-8-05. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under G.S. 55-8-06.

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

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors. (1901, c. 2, ss. 14, 39; Rev., ss. 1147, 1182; C.S., ss. 1144, 1175; 1927, c. 138; G.S., ss. 55-48, 55-112; 1955, c. 1371, s. 1; 1959, c. 1316, s. 33; 1969, c. 751, ss. 10, 11; 1989, c. 265, s. 1.)

§ 55-8-06. Staggered terms for directors.

The articles of incorporation or bylaws adopted by the shareholders may provide for staggering the terms of directors by dividing the total number of directors into two, three, or four groups, with each group containing one-half, one-third, or one-fourth of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, the terms of the third group, if any, expire at the third annual shareholders' meeting after their election, and the terms of the fourth group, if any, expire at the fourth annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two, three, or four years, as the case may be, to succeed those whose terms expire. (1901, c. 2, ss. 14, 44; Rev., ss. 1147, 1148; C.S., s. 1144; 1937, c. 179; 1945, c. 200; 1949, c. 917; G.S., s. 55-48; 1955, c. 914, s. 1; c. 1371, s. 1; 1959, c. 1316, s. 7; 1989, c. 265, s. 1; 1993, c. 552, s. 10; 2005-268, s. 8.)

§ 55-8-07. Resignation of directors.

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

(b) A resignation is effective when it is communicated unless it specifies in writing a later effective date or subsequent event upon which it will become effective. (1955, c. 1371, s. 1; 1959, c. 1316, s. 34; 1973, c. 469, s. 7; 1989, c. 265, s. 1; 2001-358, s. 6(c); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55-8-08. Removal of directors by shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, unless the entire board of directors is to be removed, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may not be removed by the shareholders at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) Unless otherwise provided in the articles of incorporation or a bylaw adopted by the shareholders, the entire board of directors may be removed from office with or without cause by the affirmative vote of a majority of the votes entitled to be cast at any election of directors. (1955, c. 1371, s. 1; 1959, c. 1316, s. 34; 1973, c. 469, s. 7; 1989, c. 265, s. 1; 1991, c. 645, s. 6.)

§ 55-8-09. Removal of directors by judicial proceeding.

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

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

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

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant. (1955, c. 1371, s. 1; 1959, c. 1316, s. 34; 1973, c. 469, s. 7; 1989, c. 265, s. 1.)

§ 55-8-10. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or from the failure by the shareholders to elect the full authorized number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

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

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the remaining director or directors elected by that voting group or the holders of shares of that voting group are entitled to fill the vacancy.

(c) A vacancy that will occur upon a specific later date or subsequent event (by reason of a resignation effective upon a later date or subsequent event under G.S. 55-8-07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. (1955, c. 1371, s. 1; 1959, c. 1316, s. 34; 1973, c. 469, s. 7; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.12.)

§ 55-8-11. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors, without regard to personal interest, may fix the compensation of directors for services in any capacity as a director. The compensation established pursuant to this section of directors of a public corporation or of a corporation that so provides in its articles of incorporation is presumed to be fair to the corporation unless proven not to be fair to the corporation by a preponderance of the evidence. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2018-45, s. 7; 2021-106, s. 2(a).)

§§ 55-8-12 through 55-8-19. Reserved for future codification purposes.

Part 2. Meetings and Action of the Board.

§ 55-8-20. Meetings.

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

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

(c) Unless the bylaws provide otherwise, special meetings of the board of directors may be called by the president or any two directors. (1955, c. 1371, s. 1; 1959, c. 1316, s. 8; 1969, c. 751, s. 12; 1973, c. 469, ss. 8-10; 1989, c. 265, s. 1; 1991, c. 645, s. 7.)

§ 55-8-21. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more unrevoked written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when one or more unrevoked consents signed by all of the directors are delivered to the corporation, unless the consents specify a different effective date. A director's consent to action may be revoked in a writing signed by the director and delivered to the corporation prior to the action becoming effective.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. (1955, c. 1371, s. 1; 1959, c. 1316, s. 8; 1969, c. 751, s. 12; 1973, c. 469, ss. 8-10; 1989, c. 265, s. 1; 2001-387, s. 15; 2005-268, s. 9.)

§ 55-8-22. Notice of meeting.

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

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

incorporation or bylaws. (1955, c. 1371, s. 1; 1969, c. 751, s. 12; 1973, c. 469, s. 8; 1989, c. 265, s. 1.)

§ 55-8-23. Waiver of notice.

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

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. (1955, c. 1371, s. 1; 1969, c. 751, s. 12; 1973, c. 469, s. 8; 1989, c. 265, s. 1.)

§ 55-8-24. Quorum and voting.

(a) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in this Chapter, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The quorum of the board of directors provided in the articles of incorporation or bylaws shall not consist of less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in this Chapter.

(d) A director who is present at a meeting of the board of directors or a committee or subcommittee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless any of the following requirements are met:

(1) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting.

(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

(3) The director files written notice of the director's dissent or abstention with the presiding officer of the meeting before its adjournment or with the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. (Code, s. 681; 1901, c. 2, ss. 33, 52; Rev., s. 1192; C.S., s. 1179; 1927, c. 121; 1933, c. 354, s. 1; G.S., s. 55-116; 1955, c. 1371, s. 1; 1959, c. 1316, s. 35; 1969, c. 751, s. 12; 1973, c. 469, s. 8; 1989, c. 265, s. 1; 2018-45, s. 8; 2021-106, s. 3(a).)

§ 55-8-25. Committees.

(a) Unless this Chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on the committee. Unless otherwise provided in the articles of

incorporation, the bylaws, or the resolution of the board of directors designating the committee, a committee, by action of a majority of its members then in office when the action is taken, may create one or more subcommittees consisting of one or more members of the committee and delegate to the one or more subcommittees any or all of the powers and authority of the committee.

(b) Unless this Chapter provides otherwise, the creation of a committee and appointment of members to it shall be approved by the greater of either of the following:

(1) A majority of all the directors in office when the action is taken.

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

(b1) The creation and appointment of a committee pursuant to G.S. 55-7-44(b)(2) may be approved in the manner set forth in G.S. 55-7-44(b)(2).

(c) G.S. 55-8-20 through G.S. 55-8-24 apply both to committees and subcommittees of the board of directors and to their members.

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

(e) A committee shall not, however, do any of the following:

(1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors.

(2) Approve or propose to shareholders action that this Chapter requires be approved by shareholders.

(3) Fill vacancies on the board of directors or on any of its committees.

(4) Repealed by Session Laws 2025-33, s. 6, effective June 30, 2025.

(5) Adopt, amend, or repeal bylaws.

(6) Approve a plan of merger not requiring shareholder approval.

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

(g) The board of directors may appoint one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, or a subcommittee of the committee, during the member's absence or disqualification. (1955, c. 1371, s. 1; 1969, c. 751, s. 13; 1973, c. 1087, ss. 1, 2; 1989, c. 265, s. 1; 2005-268, s. 10; 2007-385, s. 1; 2018-45, s. 9; 2025-33, s. 6.)

§ 55-8-26. Submission of matters for shareholder vote.

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter. (2013-153, s. 7.)

§ 55-8-27: Reserved for future codification purposes.

§ 55-8-28: Reserved for future codification purposes.

§ 55-8-29: Reserved for future codification purposes.

Part 3. Standards of Conduct.

§ 55-8-30. General standards for directors.

(a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee or subcommittee, in accordance with all of the following:

(1) In good faith.

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

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

(b) In discharging the duties of a director's office, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within their professional or expert competence.

(3) A committee or subcommittee of the board of directors of which the director is not a member if the director reasonably believes the committee or subcommittee merits confidence.

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

(d) A director is not liable for (i) any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section or (ii) any failure to offer the corporation the right to have or participate in a business opportunity prior to the pursuit or taking of the opportunity by the director or other person if the corporation's articles of incorporation include a provision authorized by G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were complied with or obtained prior to the pursuit or taking of the opportunity by the director or other person. The duties of a director weighing a change of control situation shall not be any different, nor the standard of care any higher, than otherwise provided in this section.

(e) A director's personal liability for monetary damages for breach of a duty as a director may be limited or eliminated only to the extent permitted in G.S. 55-2-02(b)(3), and a director may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1993, c. 552, s. 11; 2018-45, s. 10.)

§ 55-8-31. Director conflict of interest.

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

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee or subcommittee of the board of directors and the board of directors, or the committee or subcommittee of the board of directors, authorized, approved, or ratified the transaction.

(2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(3) The transaction was fair to the corporation.

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

(1) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

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

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

(d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the shares that would if present be entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2005-268, s. 11; 2018-45, s. 11.)

§ 55-8-32. Loans to directors.

(a) Except as provided by subsection (c), a corporation may not directly or indirectly lend money to or guarantee the obligation of a director of the corporation unless:

(1) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(2) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

(d) For purposes of this section, a loan or guarantee is made indirectly to or for a director if such director has an indirect interest in the loan or guarantee as defined in G.S. 55-8-31 (b). (1955, c. 1371, s. 1; 1959, c. 1316, s. 6; 1961, c. 198; 1969, c. 751, s. 9; 1989, c. 265, s. 1.)

§ 55-8-33. Liability for unlawful distributions.

(a) A director who votes for or assents to a distribution made in violation of G.S. 55-6-40 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating G.S. 55-6-40 or the articles of incorporation if it is established that he did not perform his duties in compliance with G.S. 55-8-30. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) Reimbursement from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of G.S. 55-6-40 or the articles of incorporation.

(c) A proceeding under subsection (a) is barred unless it is commenced within three years after the date on which the effect of the distribution was measured under G.S. 55-6-40(e) or (g). (Code, s. 681; 1901, c. 2, ss. 33, 52; Rev., s. 1192; C.S., s. 1179; 1927, c. 121; 1933, c. 354, s. 1; G.S., s. 55-116; 1955, c. 1371, s. 1; 1959, c. 1316, s. 35; 1989, c. 265, s. 1.)

§§ 55-8-34 through 55-8-39. Reserved for future codification purposes.

Part 4. Officers.

§ 55-8-40. Officers.

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

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

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

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

(e) Whenever a specific office is referred to in this Chapter, it shall be deemed to include any individual who, alone or collectively with one or more other individuals, holds or occupies such office. (1901, c. 2, ss. 15, 16, 17; Rev., ss. 1149, 1150, 1151; C.S., s. 1145; G.S., s. 55-49; 1955, c. 1371, s. 1; 1959, c. 1316, s. 9; 1973, c. 1217; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.13.)

§ 55-8-41. Duties of officers.

Each officer has the authority and duties set forth in the bylaws or, to the extent consistent with the bylaws, the authority and duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the authority and duties of other officers. (1901, c. 2, ss. 15, 16, 17; Rev., ss. 1149, 1150, 1151; C.S., s. 1145; G.S., s. 55-49; 1955, c. 1371, s. 1; 1959, c. 1316, s. 9; 1973, c. 1217; 1989, c. 265, s. 1.)

§ 55-8-42. Standards of conduct for officers.

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

(1) In good faith;

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

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

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

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

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within their professional or expert competence.

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

(d) An officer is not liable for (i) any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section or (ii) any failure to offer the corporation the right to have or participate in a business opportunity prior to the pursuit or taking of the opportunity by the officer or other person if the corporation's articles of incorporation include a provision authorized by G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were complied with or obtained prior to the pursuit or taking of the opportunity by the officer or other person.

(e) An officer may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2018-45, s. 12.)

§ 55-8-43. Resignation and removal of officers.

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

(b) An officer may be removed at any time with or without cause by (i) the board of directors, (ii) the appointing officer, unless the bylaws or the board of directors provide otherwise, or (iii) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed. (1901, c. 2, ss. 15, 16, 17; Rev., ss. 1149, 1150, 1151; C.S., s. 1145; G.S., s. 55-49; 1955, c. 1371, s. 1; 1959, c. 1316, s. 9; 1973, c. 1217; 1989, c. 265, s. 1; 2005-268, s. 12.)

§ 55-8-44. Contract rights of officers.

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

(b) An officer's removal does not itself affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. (1901, c. 2, ss. 15, 16, 17; Rev., ss. 1149, 1150, 1151; C.S., s. 1145; G.S., s. 55-49; 1955, c. 1371, s. 1; 1959, c. 1316, s. 9; 1973, c. 1217; 1989, c. 265, s. 1.)

§§ 55-8-45 through 55-8-49. Reserved for future codification purposes.

Part 5. Indemnification.

§ 55-8-50. Policy statement and definitions.

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

(b) Definitions in this Part:

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

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" means expenses of every kind incurred in defending a proceeding, including counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(4a) "Officer", "employee", or "agent" includes, unless the context requires otherwise, the estate or personal representative of a person who acted in that capacity.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in G.S. 55-8-56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

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

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. (1955, c. 1371, s. 1; 1969, c. 797, s. 2; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 39; 1989, c. 265, s. 1; 1993, c. 552, s. 12.)

§ 55-8-51. Authority to indemnify.

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

(1) He conducted himself in good faith; and

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

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

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

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

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

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

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

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

(f) The authorization, approval or favorable recommendation by the board of directors of a corporation of indemnification, as permitted by this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such indemnification shall be void or voidable on such ground. (1955, c. 1371, s. 1; 1969, c. 797, s. 2; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 39; 1989, c. 265, s. 1.)

§ 55-8-52. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding. (1955, c. 1371, s. 1; 1969, c. 797, ss. 2, 3; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, ss. 39, 40; 1989, c. 265, s. 1.)

§ 55-8-53. Advance for expenses.

Expenses incurred by a director in defending a proceeding may be paid by the corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provision in the articles of incorporation or bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of the director to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation against such expenses. (1955, c. 1371, s. 1; 1969, c. 797, s. 1; 1973, c. 469, s. 5; 1985 (Reg. Sess., 1986), c. 1027, ss. 35-38; 1989, c. 265, s. 1.)

§ 55-8-54. Court-ordered indemnification.

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

(1) The director is entitled to mandatory indemnification under G.S. 55-8-52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in G.S. 55-8-51 or was adjudged liable as described in G.S. 55-8-51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred. (1955, c. 1371, s. 1; 1969, c. 797, ss. 2, 3; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, ss. 39, 40; 1989, c. 265, s. 1.)

§ 55-8-55. Determination and authorization of indemnification.

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

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or (ii) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and

evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel. (1955, c. 1371, s. 1; 1969, c. 797, s. 2; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 39; 1989, c. 265, s. 1.)

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

Unless a corporation's articles of incorporation provide otherwise:

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

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

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. (1955, c. 1371, s. 1; 1969, c. 797, s. 2; 1973, c. 469, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 39; 1989, c. 265, s. 1.)

§ 55-8-57. Additional indemnification and insurance.

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

(b) The authorization, adoption, approval, or favorable recommendation by the board of directors of a public corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation or bylaw provision or contract or resolution shall be void or voidable on such grounds. The authorization, adoption, approval, or favorable recommendation by the board of directors of a nonpublic corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, which occurred prior to July 1, 1990, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation, bylaw provision, contract or

resolution shall be void or voidable on such grounds. Except as permitted in G.S. 55-8-31, no such bylaw, contract, or resolution not adopted, authorized, approved or ratified by shareholders shall be effective as to claims made or liabilities asserted against any director prior to its adoption, authorization, or approval by the board of directors.

(c) A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under any provision of this Chapter. (1955, c. 1371, s. 1; 1969, c. 797, s. 1; 1973, c. 469, s. 5; 1985 (Reg. Sess., 1986), c. 1027, ss. 35-38; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.14.)

§ 55-8-58. Application of Part.

(a) Subject to subsection (d) of this section, if the articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

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

(c) This Part shall not affect rights or liabilities arising out of acts or omissions occurring before July 1, 1990.

(d) A right of indemnification, or to advances for expenses, created by this Part or under G.S. 55-8-57(a) and in effect at the time of an act or omission, shall not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of the act or omission, unless, in the case of a right created under G.S. 55-8-57(a), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment of the right after the act or omission has occurred. (1989, c. 265, s. 1; 2018-45, s. 13.)