Chapter 55A

North Carolina Nonprofit Corporation Act.

ARTICLE 1.

General Provisions.

Part 1. Short Title and Reservation of Power.

§ 55A-1-01. Short title.

This Chapter shall be known and may be cited as the "North Carolina Nonprofit Corporation Act". (1993, c. 398, s. 1.)

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

The General Assembly has power to amend or repeal all or part of this Chapter at any time and all domestic and foreign corporations subject to this Chapter are governed by the amendment or repeal. (1993, c. 398, s. 1.)

§§ 55A-1-03 through 55A-1-19. Reserved for future codification purposes.

Part 2. Filing Documents.

§ 55A-1-20. Filing requirements.

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

(1) By the presiding officer of its board of directors, by its president, or by another of its officers;

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

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (1955, c. 1230; 1967, c. 13, s. 2; c. 823, s. 21; 1985 (Reg. Sess., 1986), c. 801, s. 2; 1993, c. 398, s. 1; 1999-369, s. 2.1; 2001-358, s. 7(a); 2001-387, ss. 32, 155, 173, 175(a); 2001-413, s. 6.)

§ 55A-1-21. Forms.

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

(1) An application for a certificate of existence;

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

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

(4) Designation of Principal Office Address; and

(5) Corporation's Statement of Change of Principal Office.

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

(b) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 539, s. 9.)

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

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

	Document	Fee
(1)	Articles of incorporation	$60.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both $ 5.00	
(7)	Agent's statement of change of registered office for each affected corporation $ 5.00	
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both $ 5.00	
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	

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5.00

(24a) Designation of Principal Office Address

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5.00

(25) Articles of correction $10.00

(26) Application for certificate of existence or authorization (paper) $15.00

(26a) Application for certificate of existence or authorization (electronic) $10.00

(27) Any other document required or permitted to be filed by this Chapter $10.00

(28) Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.

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

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

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

(1957, c. 1179; 1967, c. 823, s. 24; 1969, c. 875, s. 10; 1975, 2nd Sess., c. 981, s. 2; 1983, c. 713, ss. 39-42; 1991, c. 574, s. 2; 1993, c. 398, s. 1; 1995, c. 539, s. 10; 1997-456, s. 55.3; 1997-475, s. 5.2; 1997-485, s. 11; 2001-358, s. 7(c); 2001-387, ss. 173, 175(a); 2001-413, s. 6; 2002-126, ss. 29A.27, 29A.28.)

§§ 55A-1-22.1 through 55A-1-27: Repealed by Session Laws 2001-358, s. 7(b), effective January 1, 2002.

§ 55A-1-28. Certificate of existence.

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

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

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

(2) That the domestic corporation is duly incorporated under the law of this State, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to conduct affairs in this State;

(3) That the articles of incorporation of a domestic corporation or the certificate of authority of a foreign corporation has not been suspended for failure to comply with the Revenue Act of this State and that the corporation has not been

administratively dissolved for failure to comply with the provisions of this Chapter;

(4) Repealed by Session Laws c. 539, s. 14.

(5) That articles of dissolution have not been filed; and

(6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to conduct affairs in this State. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 539, s. 14.)

§ 55A-1-29: Repealed by Session Laws 2001-358, s. 7(b).

Part 3. Secretary of State.

§ 55A-1-30. Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this Chapter. (1955, c. 1230; 1993, c. 398, s. 1.)

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

The Secretary of State may propound to any domestic or foreign corporation which the Secretary of State has reason to believe is subject to the provisions of this Chapter, and to any officer or director thereof, any written interrogatories as may be reasonably necessary and proper to enable the Secretary of State to ascertain whether the corporation is subject to the provisions of this Chapter or has complied with all the provisions of this Chapter applicable to it. The interrogatories shall be answered within 30 days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a corporation, they shall be answered by the presiding officer of the board of directors, the president, or by another officer of the corporation. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Chapter, requiring or permitting action by the Attorney General. (1955, c. 1230; 1993, c. 398, s. 1.)

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

(a) The knowing failure or refusal of a domestic or foreign corporation 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 shall constitute grounds for administrative dissolution under G.S. 55A-14-20 or for revocation under G.S. 55A-15-30, as the case may be.

(b) Each officer and director of a domestic or foreign corporation who knowingly fails or refuses, within the time prescribed by this Chapter, to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor. (1955, c. 1230; 1993, c. 398, s. 1; 1994, Ex. Sess., c. 14, s. 37.)

§ 55A-1-33. Information disclosed by interrogatories.

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except when the Secretary of State's official duty requires disclosure to be made public or when the interrogatories or the answers thereto are required for evidence in any criminal proceeding or in any other action or proceeding by this State. (1993, c. 398, s. 1.)

§§ 55A-1-34 through 55A-1-39. Reserved for future codification purposes.

Part 4. Definitions.

§ 55A-1-40. Chapter definitions.

In this Chapter unless otherwise specifically provided:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Board" or "board of directors" means the group of natural persons vested by the corporation with the management of its affairs whether or not the group is designated as directors in the articles of incorporation or bylaws.

(2a) "Business corporation" or "domestic business corporation" means a corporation as defined in G.S. 55-1-40.

(3) "Bylaws" means the rules (other than the articles) adopted pursuant to this Chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

(4) "Charitable or religious corporation" means any corporation that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section.

(4a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(5) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this Chapter, except a foreign corporation.

(6) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(7) "Deliver" includes mail.

(8) "Distribution" means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members, directors, or officers, or to or for the benefit of transferees in liquidation under Article 14 of this Chapter (other than creditors).

(8a) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57D-1-03.

(8b) "Domestic limited partnership" has the same meaning as in G.S. 59-102.

(9) "Effective date of notice" is defined in G.S. 55A-1-41.
(9a) "Electronic" has the same meaning as in G.S. 66-312.
(9b) "Electronic record" has the same meaning as in G.S. 66-312.
(9c) "Electronic signature" has the same meaning as in G.S. 66-312.
(10) "Entity" includes:
  a. Any domestic or foreign:
    1. Corporation; business corporation; professional corporation;
    2. Limited liability company;
    3. Profit and nonprofit unincorporated association, chapter or other organizational unit; and
    4. Business trust, estate, partnership, trust;
  b. Two or more persons having a joint or common economic interest; and
  c. The United States, and any state and foreign government.
(10a) "Foreign business corporation" means a foreign corporation as defined in G.S. 55-1-40.
(11) "Foreign corporation" means a corporation (with or without capital stock) organized under a law other than the law of this State for purposes for which a corporation might be organized under this Chapter.
(11a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
(11b) "Foreign limited partnership" has the same meaning as in G.S. 59-102.
(12) "Governmental subdivision" includes authority, county, district, and municipality.
(13) "Includes" denotes a partial definition.
(14) "Individual" denotes a natural person legally competent to act and also includes the estate of an incompetent or deceased individual.
(15) "Means" denotes an exhaustive definition.
(16) "Member" means a person who is, by the articles of incorporation or bylaws of the corporation, either (i) specifically designated as a member or (ii) included in a category of persons specifically designated as members. A person is not a member solely by reason of having voting rights or other rights associated with membership.
(17) "Nonprofit corporation" means a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers, except as permitted by Article 13 of this Chapter, and includes all associations without capital stock formed under Subchapter V of Chapter 54 of the General Statutes or under any act or acts replaced thereby.
(18) "Notice" includes demand and is defined in G.S. 55A-1-41.
(19) "Person" includes individual and entity.
(20) "Principal office" means the office (in or out of this State) where the principal offices of a domestic or foreign corporation are located, as most recently designated by the domestic or foreign corporation in its articles of incorporation, a Designation of Principal Office Address form, a Corporation's Statement of Change of Principal Office Address form, or in the case of a foreign corporation, its application for a certificate of authority.

(21) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

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

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

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

(24a) "Unincorporated entity" means a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.

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

(26) "Vote" includes authorization by written ballot and written consent, including through an electronic voting system or electronic ballot and electronic consent. (1955, c. 1230; 1959, c. 1161, s. 4; 1985 (Reg. Sess., 1986), c. 801, s. 1; 1993, c. 398, s. 1; 1995, c. 539, s. 15; 1999-369, s. 2.2; 2001-358, s. 5(b); 2001-387, ss. 33, 34, 35, 173, 175(a); 2001-413, s. 6; 2001-487, s. 62(e); 2008-37, s. 1; 2013-157, s. 4; 2021-162, s. 2(a).)

§ 55A-1-41. Notice.

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

(b) Notice may be communicated in person; by electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage prepaid and correctly addressed to the member's address shown in the corporation's current record of members. Notice by a domestic corporation in the form of an electronic record sent by electronic means to a member who has designated an email address as provided in G.S. 55A-1-70(b) is effective when it is sent as provided in G.S. 66-325.

(d) Written notice to a domestic or foreign corporation authorized to conduct affairs in this State may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal

Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

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

(1) When received.

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

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed.

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who have the same address, the corporation's bylaws may provide that a single notice may be given to the members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice. (1993, c. 398, s. 1; 1995, c. 539, s. 16; 2008-37, s. 2; 2021-162, s. 2(b).)

§§ 55A-1-42 through 55A-1-49. Reserved for future codification purposes.

Part 5. Private Foundations.

§ 55A-1-50. Private Foundations.

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

(1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code.

(2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code.

(3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code.

(4) Shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the Code.

(5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code.

All references in this section to sections of the Code shall be to sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States. (1955, c. 1230; 1957, c. 783, s. 7; 1969, c. 875, s. 4; 1971, c. 1136, s. 1; 1977, c. 236, s. 1, c. 663; 1979, c. 1027; 1985, c. 505; 1985 (Reg. Sess., 1986), c. 801, ss. 8-14; 1993, c. 398, s. 1.)

§§ 55A-1-51 through 55A-1-59. Reserved for future codification purposes.

Part 6. Judicial Relief.

§ 55A-1-60. Judicial relief.

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

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

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

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

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of the order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles of incorporation, bylaws, and this Chapter. (1993, c. 398, s. 1.)

Part 7. Miscellaneous.

§ 55A-1-70. Electronic transactions.

(a) A corporation may conduct a transaction by electronic means, except as limited by its articles of incorporation or bylaws or by action of its board of directors.

(b) Members who wish to communicate and conduct business with a corporation by electronic means shall first designate the email address to be used for communication and business between the member and the corporation and shall provide any other information required by the corporation to facilitate communication and business conducted between the member and the corporation. The corporation shall inform the members on how to designate an email address, of any additional information the corporation requires and how to provide it, and on how to update an email address and other required information previously provided.

(c) For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation that conducts an electronic transaction in accordance with this section is deemed to have agreed to conduct the transaction by electronic means. (2008-37, s. 3; 2021-162, s. 2(c).)

Article 2.

Organization.

§ 55A-2-01. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing. (1955, c. 1230; 1969, c. 875, s. 1; 1971, c. 1231, s. 1; 1993, c. 398, s. 1.)

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

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of G.S. 55D-20 and G.S. 55D-21;

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

(3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address;

(4) The name and address of each incorporator;

(5) Whether or not the corporation will have members;

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution; and

(7) The street address, and the mailing address, if different from the street address, of the principal office, and the county in which the principal office is located.

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

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) The names and addresses of the individuals who are to serve as the initial directors;

(3) Provisions not inconsistent with law regarding:

a. Managing and regulating the affairs of the corporation;

b. Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

c. The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(4) A provision limiting or eliminating the personal liability of any director for monetary damages arising out of an action whether by or in the right of the corporation or otherwise for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of the breach knew or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55A-8-32 or G.S. 55A-8-33, (iii) any transaction from which the director derived an improper personal financial benefit, or (iv) acts or omissions occurring prior to the date the provision became effective. As used herein, the term "improper personal financial benefit" does not include a director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a director, trustee, officer, employee, independent contractor, attorney, or consultant of the corporation. A provision permitted by this Chapter in the articles of incorporation, bylaws, or a contract or resolution indemnifying or agreeing to indemnify a director against personal liability shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Chapter. (1955, c. 1230; 1957, c. 979, s. 11; 1959, c. 1161, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 3, 4; 1993, c. 398, s. 1; 1995, c. 539, s. 17; 2001-358, s. 20; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55A-2-03. Incorporation.

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

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation. (1955, c. 1230; 1967, c. 13, s. 4; 1993, c. 398, s. 1.)

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

§ 55A-2-05. Organization of corporation.

(a) After incorporation:

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

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

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

(c) An organizational meeting may be held in or out of this State. (1955, c. 1230; 1969, c. 875, s. 2; 1985 (Reg. Sess., 1986), c. 801, s. 6; 1993, c. 398, s. 1.)

§ 55A-2-06. Bylaws.

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

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-2-07. Emergency bylaws.

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

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

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

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

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

(d) An emergency exists for purposes of this section if a natural or man-made disaster impedes the ability of the corporation's board of directors or members to comply with one or more provisions of the corporation's bylaws. (1993, c. 398, s. 1; 2021-162, s. 2(d).)

Article 3.

Purposes and Powers.

§ 55A-3-01. Purposes.

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

(b) A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this Chapter only if permitted by, and subject to all limitations of, the other statute. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-3-02. General powers.

(a) Unless its articles of incorporation or this Chapter provides otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers

as an individual to do all things necessary or convenient to carry out its affairs, including without limitation, power:

(1) To sue and be sued, complain and defend in its corporate name;
(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
(3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State, for regulating and managing the affairs of the corporation;
(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by G.S. 55A-8-32;
(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust, or other entity;
(10) To conduct its affairs, locate offices, and exercise the powers granted by this Chapter within or without this State;
(11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
(13) To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes, and to make payments or donations not inconsistent with law for other purposes that further the corporate interest;
(14) To impose dues, assessments, admission and transfer fees upon its members;
(15) To establish conditions for admission of members, admit members and issue memberships;
(16) To carry on a business;
(17) To procure insurance for its benefit on the life or physical or mental ability of any director, officer or employee and, in the case of a charitable or religious corporation, any sponsor, contributor, pledgor, student or former student whose death or disability might cause financial loss to the corporation, and for these purposes the corporation is deemed to have an insurable interest in each such person; and to procure insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest;

(18) To engage in any lawful activity that will aid governmental policy;

(19) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the powers enumerated in this section. (1955, c. 1230; 1957, c. 783, s. 7; 1969, c. 875, s. 4; 1971, c. 1136, s. 1; 1977, c. 236, s. 1, c. 663; 1979, c. 1027; 1985, c. 505; 1985 (Reg. Sess., 1986), c. 801, ss. 8-14; 1993, c. 398, s. 1.)

§ 55A-3-03. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

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

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

(d) An emergency exists for purposes of this section if a natural or man-made disaster impedes the ability of the corporation's board of directors or members to comply with one or more provisions of the corporation's bylaws. (1993, c. 398, s. 1; 2021-162, s. 2(e).)

§ 55A-3-04. Ultra vires.

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

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

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

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

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

(c) In a proceeding by a member or a director under subdivision (b)(1) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act. (1955, c. 1230; 1993, c. 398, s. 1.)

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

The Attorney General may upon the Attorney General's own information or upon complaint of a private party bring an action in the name of the State to restrain any person from exercising corporate franchises not granted. (1985 (Reg. Sess., 1986), c. 801, s. 5; 1993, c. 398, s. 1.)

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

Any corporation heretofore or hereafter formed for the purpose of creating and maintaining public parks and drives shall have full power and authority to lay out, manage, and control parks and drives within the State, under any rules and regulations as the corporation may prescribe and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers and trust for any town, city, township, or county, in connection with which the parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under any regulations and subject to any conditions as may be determined upon by the city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under any rules, laws, and regulations as the corporation may adopt through its board of directors, and it shall have power and authority to make and adopt all laws and regulations as it may determine upon for the reasonable management of such parks and drives. The terms "public parks and drives" as used in this section shall be construed so as to include playgrounds, recreational centers, and other recreational activities and facilities which may be provided and established under the sponsorship of any county, city, town, township, or school district in North Carolina and constructed or established with the assistance of the government of the United States or any agency thereof. (1955, c. 1230; 1973, c. 695, s. 9; 1993, c. 398, s. 1.)

§ 55A-3-07. Certain corporations subject to Public Records Act and Open Meetings Law.

Any of the following corporations organized under this Chapter is subject to the Public Records Act (Chapter 132 of the General Statutes) and the Open Meetings Law (Article 33C of Chapter 143 of the General Statutes):

(1) A corporation organized under the terms of any consent decree and final judgment in any civil action calling on a state officer to create the corporation, for the purposes of receipt and distribution of funds allocated to the State of North Carolina to provide economic impact assistance on account of one industry.

(2) A corporation organized upon the request of the State for the sole purpose of financing projects for public use. (1999-2, s. 7; 2001-84, s. 4.)

Article 4.

Names.

§§ 55A-4-01 through 55A-4-05: Repealed by Session Laws 2001-358, s. 23, effective January 1, 2002.

Article 5.

Office and Agent.

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

Each corporation 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. (1955, c. 1230; 1957, c. 979, s. 20; 1993, c. 398, s. 1; 1995, c. 400, s. 1; 2000-140, s. 101(d); 2001-358, s. 48(a); 2001-387, s. 173; 2001-413, s. 6.)

§ 55A-5-02: Repealed by Session Laws 2001-358, s. 48.

§ 55A-5-02.1: Transferred to § 55A-16-23 by Session Laws 2001-358, s. 48(d).

§§ 55A-5-03 through 55A-5-04: Repealed by Session Laws 2001-358, s. 48(c), effective January 1, 2002.

Article 6.

Members and Memberships.

Part 1. Admission of Members.

§ 55A-6-01. Members.

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

(b) No person shall be admitted as a member without the person's consent. (1955, c. 1230; 1993, c. 398, s. 1.)

§§ 55A-6-02 through 55A-6-19. Reserved for future codification purposes.

Part 2. Members' Rights and Obligations.

§ 55A-6-20. Designations, qualifications, rights, and obligations of members.

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

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

Except as otherwise provided in or authorized by the articles of incorporation or bylaws, all members shall have the same designations, qualifications, rights, and obligations. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

§ 55A-6-21. Prohibition of stock.

A corporation shall neither authorize nor issue shares of stock. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 32; 1993, c. 398, s. 1.)

§ 55A-6-22. Member's liability to third parties.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation. (1993, c. 398, s. 1.)

§ 55A-6-23. Member's liability for dues, assessments, and fees.

A member may become liable to the corporation for dues, assessments, or fees; provided, however, that a provision in the articles of incorporation or bylaws or a resolution adopted by the board of directors authorizing or imposing dues, assessments, or fees does not, of itself, create liability. (1993, c. 398, s. 1.)

§ 55A-6-24. Creditor's action against member.

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

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to collect and apply the proceeds of obligations owed to the corporation. Any or all members who are indebted to the corporation may be joined in such proceeding. (1993, c. 398, s. 1.)

§§ 55A-6-25 through 55A-6-29. Reserved for future codification purposes.

Part 3. Resignation and Termination.

§ 55A-6-30. Resignation.

(a) Any member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations incurred or commitments made to the corporation prior to resignation. (1993, c. 398, s. 1.)

§ 55A-6-31. Termination, expulsion, and suspension.

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

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

(c) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made by the member prior to expulsion or suspension. (1955, c. 1230; 1993, c. 398, s. 1.)

§§ 55A-6-32 through 55A-6-39. Reserved for future codification purposes.

Part 4. Delegates.

§ 55A-6-40. Delegates.

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

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

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

(2) Calling, noticing, holding, and conducting meetings of delegates; and

(3) Carrying on corporate activities during and between meetings of delegates. (1993, c. 398, s. 1.)

Article 7.

Members' Meetings and Voting; Derivative Proceedings.

Part 1. Meetings and Action Without Meetings.

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

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

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

(c) Annual and regular membership meetings may be held (i) in person in or out of this State at the place stated in or fixed in accordance with the bylaws or (ii) by means of remote communication, as provided in G.S. 55A-7-09. If no place is stated in or fixed in accordance with the bylaws, in-person annual and regular meetings shall be held at the corporation's principal office.

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

(e) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with the corporation's bylaws does not affect the validity of any corporate action. (1955, c. 1230; 1993, c. 398, s. 1; 2021-162, s. 2(f).)

§ 55A-7-02. Special meeting.

(a) A corporation with members shall hold a special meeting of members in any of the following circumstances:

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

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

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

(c) Special meetings of members may be held (i) in person in or out of this State at the place stated in or fixed in accordance with the bylaws or (ii) by means of remote communication as provided in G.S. 55A-7-09. If no place is stated or fixed in accordance with the bylaws, in-person special meetings shall be held at the corporation's principal office.

(d) Only those matters that are within the purpose or purposes described in the meeting notice required by G.S. 55A-7-05 may be acted upon at a special meeting of members. (1955, c. 1230; 1993, c. 398, s. 1; 2021-162, s. 2(g).)

§ 55A-7-03. Court-ordered meeting.

(a) The superior court of the county where a corporation's principal office, or, if there is none in this State, its registered office, is located may, after notice is given to the corporation and upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances, summarily order a meeting to be held in any of the following circumstances:

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

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

(b) The court may fix the time and place of the meeting, specify a record date for determining those persons entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting. The court may order that the meeting be held by means of remote communication as provided in G.S. 55A-7-09.

(c) If the court orders a meeting, it may also order the corporation to pay all or part of the member's costs, including reasonable attorneys' fees, incurred to obtain the order. (1993, c. 398, s. 1; 2021-162, s. 2(h).)

§ 55A-7-04. Action by written consent.

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Except as limited by the articles of incorporation or bylaws, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

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

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. (1977, c. 193, s. 2; 1993, c. 398, s. 1; 2008-37, s. 4; 2021-162, s. 2(i).)

§ 55A-7-05. Notice of meeting.

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

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are

considered; provided, however, that notice of matters referred to in subdivision (c)(2) of this section shall be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if it conforms to all of the following:

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

(1a) If the meeting will be held by means of remote communication, the notice shall include all the information required by G.S. 55A-7-09.

(2) Notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members under G.S. 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or 55A-14-02.

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

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If the meeting is to be continued by means of remote communication, the announcement shall also include a description of the means of remote communication. If a new record date for the adjourned meeting is or must be fixed under G.S. 55A-7-07, however, notice of the adjourned meeting shall be given under this section to the members of record entitled to vote at the meeting as of the new record date.

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

(1) The corporation is requested in writing to do so by a person or persons entitled to call a special meeting pursuant to G.S. 55A-7-02.

(2) The request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting. (1955, c. 1230; 1993, c. 398, s. 1; 2021-162, s. 2(j).)

§ 55A-7-06. Waiver of notice.

(a) A member 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. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting in person or by means of remote communication waives objection to all of the following:

(1) Lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or conducting business at the meeting.

(2) Consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter before it is voted upon in an in-person meeting. (1955, c. 1230; 1993, c. 398, s. 1; 2021-162, s. 2(k).)

§ 55A-7-07. Record date.

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

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

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

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

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

(f) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting. (1993, c. 398, s. 1.)

§ 55A-7-08. Member action by written ballot or electronic voting without a meeting.

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting by written ballots or electronic voting as follows:

(1) Written ballots. – The corporation may deliver a written ballot to members entitled to vote on the matter that sets forth each proposed action and provides an opportunity to vote for or against each proposed action. Unless secret balloting is required on the proposed action, the ballot shall contain or request information sufficient to identify the member or the member's proxy submitting the ballot. Written ballots may be submitted to the corporation by any reasonable means specified by the corporation, including email.

(2) Electronic voting. – For members who have complied with G.S. 55A-1-70, the corporation may provide an electronic ballot or electronic notice that sets forth each proposed action and provides an opportunity and instructions on how to vote for or against each proposed action using the electronic ballot or an electronic voting system.

(b) Repealed by Session Laws 2021-162, s. 2(*l*), effective September 20, 2021.

(c) All members entitled to vote on the matter shall be given the opportunity to vote on the proposed action by written ballot or electronic voting, or both. The board of directors may determine, in its discretion, whether votes shall be cast by written ballots or by electronic voting, or by both, provided that votes may be cast solely by electronic voting only if all members entitled to vote on the proposed action have complied with G.S. 55A-1-70(b). Approval by written ballot or electronic voting, or both, pursuant to this section shall be valid only when the number of votes cast by written ballot or electronic voting, or both, equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All written ballots or solicitations for votes by written ballot, all electronic ballots or solicitations for votes by electronic ballot, and all electronic voting notices shall indicate the time by which a written or electronic ballot shall be received by the corporation or by which electronic votes shall be cast in order to be counted. The deadline for the return of written ballots and electronic ballots and for the casting of electronic votes on any proposed action shall be identical.

(e) Except as otherwise provided in the articles of incorporation or bylaws, any written ballot, electronic ballot, or electronic vote that is submitted shall not be revoked. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 2008-37, s. 5; 2021-162, s. 2(*l*).)

§ 55A-7-09. Remote participation in meetings; meetings held solely by remote participation.

(a) Members of any class may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes the participation for that class. Participation as a member by means of remote communication is subject to any guidelines and procedures the board of directors adopts and the requirements of subsection (b) of this section.

(b) Members participating by means of remote communication are deemed present and may vote at the meeting if the corporation has implemented reasonable measures to do all of the following:

(1) Verify that each person participating remotely as a member is a member.

(2) Provide the members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members to the same extent they could participate and vote if present in person, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings.

(c) Unless member meetings held solely by means of remote communication are prohibited by the articles of incorporation or the bylaws, the board of directors may, in its sole discretion, determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication but only if the corporation implements the measures specified in subsection (b) of this section.

(d) In addition to the information required by G.S. 55A-7-05, notice of a meeting held solely by means of remote communication shall include notice that the meeting will be held solely by means of remote communication and sufficient instruction and information on how members may join the meeting remotely. (2021-162, s. 2(m).)

Part 2. Voting.

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

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

(b) Beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, the list of members shall be available for inspection by any member for the purpose of communication with other members concerning the meeting. The list shall be available (i) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to the list is provided with the notice of the meeting. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. A member, personally or by or with the member's representatives, is entitled on written demand to inspect and, subject to the limitations of G.S. 55A-16-02(c) and G.S. 55A-16-05 and at the member's expense, to copy the list at a reasonable time during the period it is available for inspection.

(c) If the meeting is to be held at a place, the corporation shall make the list of members available at the meeting, and any member, personally or by or with the member's representatives, is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, then the list shall also be open to inspection during the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

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

(e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting. (1993, c. 398, s. 1; 2021-162, s. 2(n).)

§ 55A-7-21. Voting entitlement generally.

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

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

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

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

(c) An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the number of votes any member is entitled

to cast on any member action, shall be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action before the amendment. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1995, c. 400, s. 2.)

§ 55A-7-22. Quorum requirements.

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

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

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

(d) Unless one-third or more of the votes entitled to be cast in the election of directors are represented in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-7-23. Voting requirements.

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

(b) An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the vote required for any member action, shall be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action before the amendment. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 400, s. 3.)

§ 55A-7-24. Proxies.

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for the member by signing an appointment form, either personally or by the member's attorney-in-fact. An appointment in the form of an electronic record submitted by a member who has agreed as provided in G.S. 55A-1-70 that either bears the member's electronic signature or is sent from the member's designated email address and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies by any kind of telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

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

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

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

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy [by] doing any of the following:

(1) Attending any meeting and voting in person.

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

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1999-139, s. 1; 2008-37, s. 6; 2021-162, s. 2(o).)

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

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

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

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

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

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of G.S. 55A-8-08 are met unless the votes cast against removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors elected at the time of the director's most recent election were then being elected. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

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

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

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

(2) By region or other geographic unit;

(3) By preferential voting; or

(4) By any other reasonable method. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985, (Reg. Sess., 1986), c. 801, ss. 19, 21; 1993, c. 398, s. 1.)

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

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

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

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

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

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

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

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

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

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

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

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise. (1993, c. 398, s. 1; 1995, c. 509, s. 27.)

§ 55A-7-28. Reserved for future codification purposes.

§ 55A-7-29. Reserved for future codification purposes.

Part 3. Voting Agreements.

§ 55A-7-30. Voting agreements.

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

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

(c) The provisions of a voting agreement created under this section will bind a transferee of a membership covered by the agreement only if the transferee acquires the membership with knowledge of the provisions. (1993, c. 398, s. 1.)

§§ 55A-7-31 through 55A-7-39. Reserved for future codification purposes.

Part 4. Derivative Proceedings.

§ 55A-7-40. Derivative proceedings.

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

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

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

(d) Such action shall not be discontinued, dismissed, compromised, or settled without the approval of the court. The court, in its discretion, may direct that notice, by publication or otherwise, shall be given to any directors, members, creditors, and other persons whose interests it determines will be substantially affected by the discontinuance, dismissal, compromise, or settlement. If notice is so directed to be given, the court may determine which one or more of the

parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of the expense shall be awarded as costs of the action.

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

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

(g) In proceedings hereunder, no member shall be entitled to obtain or have access to any communication within the scope of the corporation's attorney-client privilege which could not be obtained by or would not be accessible to a party in an action other than on behalf of the corporation. (1985 (Reg. Sess., 1986), c. 801, s. 34; 1993, c. 398, s. 1.)

Article 8.

Directors and Officers.

Part 1. Board of Directors.

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

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

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

(c) A corporation may dispense with or limit the authority of a board of directors by describing in its articles of incorporation 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 vests authority of the board of directors in an individual or group other than the board of directors, the 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. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 18; 1993, c. 398, s. 1.)

§ 55A-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 member of the corporation unless the articles of incorporation or bylaws so prescribe. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 18; 1993, c. 398, s. 1.)

§ 55A-8-03. Number of directors.

(a) A board of directors shall consist of one or more natural persons, 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 prescribed in the articles of incorporation or bylaws.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members entitled to vote for directors or (unless the articles of incorporation or an agreement valid under G.S. 55A-7-30 shall otherwise provide) the board of directors. If the corporation has members entitled to vote for directors, only such members may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

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

(a) If the corporation has members entitled to vote for directors, all the directors (except the initial directors) shall be elected at the first annual meeting of such members, and at each annual meeting thereafter, unless the articles of incorporation or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or are designated. If the articles of incorporation authorize dividing the members into classes, the articles of incorporation may also authorize the election of all or a specified number of directors by the members of one or more authorized classes.

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

(c) If any member entitled to vote for directors so demands, election of directors by the members shall be by ballot, unless the articles of incorporation or bylaws otherwise provide. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

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

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

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

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

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

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

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1; 1995, c. 509, s. 28.)

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

The articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need

not be uniform. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

§ 55A-8-07. Resignation of directors.

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

(b) A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective. (1993, c. 398, s. 1.)

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

(a) The members may remove one or more directors elected by them 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 class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by that class, chapter, unit, or grouping.

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

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

(1) If the number of votes; or

(2) If the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping;

sufficient to elect the director under cumulative voting, if an election were then being held, is voted against the director's removal.

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

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

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

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

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

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

(k) The articles of incorporation may:

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

(2) Set forth the vote and procedures by which the board of directors or any person may remove with or without cause a director elected by the members or the board. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

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

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

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

(1) An appointed director may be removed with or without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and to the corporation; and

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

(c) Notwithstanding any other provision of this section, the articles of incorporation or bylaws may provide that directors appointed after the effective date of such provision shall be removed automatically for missing a specified number of board meetings. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

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

(a) The superior court of the county where a corporation's principal office (or, if there is none in this State, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least ten percent (10%) of the votes entitled to be cast of any class of members, 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, or a final judgment has been entered finding that the director has violated a duty set forth in G.S. 55A-8-30 through G.S. 55A-8-33, and

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

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

(c) If members commence a proceeding under subsection (a) of this section, the corporation shall be made a party defendant. (1993, c. 398, s. 1.)

§ 55A-8-11. Vacancy on board.

(a) Unless the articles of incorporation or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, 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 members to elect the full authorized number of directors, the vacancy may be filled:

(1) By the members entitled to vote for directors, if any, or if the vacant office was held by a director elected by a class, chapter or other organizational unit, or by

region or other geographic grouping, by the members of that class, chapter, unit, or grouping;

(2) By the board of directors; or

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

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

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

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under G.S. 55A-8-07(b) or otherwise) may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-8-12. Compensation of directors.

Unless the articles of incorporation provide otherwise, a board of directors may fix the compensation of directors. (1985 (Reg. Sess., 1986), c. 801, s. 26; 1993, c. 398, s. 1.)

§§ 55A-8-13 through 55A-8-19. Reserved for future codification purposes.

Part 2. Meetings and Action of the Board.

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

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

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to 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 and be heard by each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. (1955, c. 1230; 1973, c. 314, s. 3; 1985 (Reg. Sess., 1986), c. 801, ss. 24, 25; 1993, c. 398, s. 1; 2021-162, s. 2(p).)

§ 55A-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 shall be evidenced by one or more written consents signed by each director before or after the action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. As authorized in G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

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

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. (1973, c. 314, s. 3; 1993, c. 398, s. 1; 2008-37, s. 7; 2021-162, s. 2(q).)

§ 55A-8-22. Notice of meetings.

(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: (i) this Chapter, (ii) the articles of incorporation, or (iii) the bylaws.

(c) Unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, ss. 24, 25; 1993, c. 398, s. 1.)

§ 55A-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) of this section, the waiver shall 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. 1230; 1985 (Reg. Sess., 1986), c. 801, ss. 24, 25; 1993, c. 398, s. 1; 1995, c. 509, s. 29.)

§ 55A-8-24. Quorum and voting.

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

(b) 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 unless: (i) this Chapter, (ii) the articles of incorporation, or (iii) the bylaws require the vote of a greater number of directors.

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

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

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

(3) He files written notice of his 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. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)

§ 55A-8-25. Committees of the board.

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

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

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

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

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

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

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

(1) Authorize distributions;

(2) Recommend to members or approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(3) Elect, appoint or remove directors, or fill vacancies on the board of directors or on any of its committees; or

(4) Adopt, amend, or repeal the articles of incorporation or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in G.S. 55A-8-30. (1955, c. 1230; 1969, c. 875, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 22, 23; 1993, c. 398, s. 1.)

§§ 55A-8-26 through 55A-8-29. Reserved for future codification purposes.

Part 3. Standards of Conduct.

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

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(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 the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties, a director 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 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; or

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

(c) A director is not entitled to the benefit of subsection (b) of this section if he 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 any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with 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 provided in G.S. 55A-8-60 or permitted in G.S. 55A-2-02(b)(4), and a director may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter.

(f) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property. (1985 (Reg. Sess., 1986), c. 801, s. 29; 1993, c. 398, s. 1.)

§ 55A-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 of the board and the board or committee authorized, approved, or ratified the transaction;

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

(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:

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

(2) Another entity of which he 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) who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. 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 subdivision (a)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subdivision (b)(1) of this section, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under

subdivision (a)(2) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the votes, whether or not present, that are entitled to be cast in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(e) The articles of incorporation, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions. (1985 (Reg. Sess., 1986), c. 801, s. 26; 1993, c. 398, s. 1.)

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

No loan, guaranty, or other form of security shall be made or provided by a corporation to or for the benefit of its directors or officers, except that loans, guaranties, or other forms of security may be made to full-time employees of the corporation who are also directors or officers by action of its board of directors in accordance with G.S. 55A-8-31(a)(1). (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 17; 1993, c. 398, s. 1.)

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

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

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

(c) A director who votes for or assents to a distribution made in violation of Article 13 of this Chapter, Article 14 of this Chapter, 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 Article 13 of this Chapter, Article 14 of this Chapter, or the articles of incorporation if it is established that he did not perform his duties in compliance with G.S. 55A-8-30. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

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

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

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

(e) No action shall be brought against the directors for liability under this section after three years from the time when the cause of action was discovered or ought to have been discovered. (1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)

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

Part 4. Officers.

§ 55A-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 person who, individually or collectively with one or more other persons, holds or occupies such office. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 28; 1993, c. 398, s. 1.)

§ 55A-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. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 28; 1993, c. 398, s. 1.)

§ 55A-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 the officer 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 the person's professional or expert competence.

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

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

(e) An officer may be entitled to immunity under Part 6 of Article 8 of this Chapter or to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter. (1985 (Reg. Sess., 1986), c. 801, s. 29; 1993, c. 398, s. 1.)

§ 55A-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 date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-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 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. (1955, c. 1230; 1993, c. 398, s. 1.)

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

Part 5. Indemnification.

§ 55A-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 business or nonprofit 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 the director's duties to the corporation also impose duties on, or otherwise involve services by, the director 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 actually incurred with respect to a proceeding.

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

(6) "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. 55A-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 business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

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

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal. (1993, c. 398, s. 1.)

§ 55A-8-51. Authority to indemnify.

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

(1) Conducted himself in good faith;

(2) 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, 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 the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of clause (ii) of subdivision (a)(2) of this section.

(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 shall 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 the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(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. (1977, c. 236, s. 2; 1985 (Reg. Sess., 1986), c. 801, ss. 15, 16; 1993, c. 398, s. 1.)

§ 55A-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 proceedings to which the director was a party because he is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)

§ 55A-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 the director is entitled to be indemnified by the corporation against such expenses. (1977, c. 236, s. 2; 1985 (Reg. Sess., 1986), c. 801, ss. 15, 16; 1993, c. 398, s. 1.)

§ 55A-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. 55A-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 whole or in part, in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in G.S. 55A-8-51 or was adjudged liable as described in G.S. 55A-8-51(d), but if the director was adjudged so liable, such indemnification is limited to reasonable expenses incurred. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)

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

(a) A corporation shall not indemnify a director under G.S. 55A-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 the director has met the standard of conduct set forth in G.S. 55A-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) of this subsection, by a 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) of this subsection; or (ii) if a quorum of the board cannot be obtained under subdivision (1) of this subsection and a committee cannot be designated under subdivision (2) of this subsection,

selected by majority vote of the full board (in which selection directors who are parties may participate); or

(4) By the members, but directors who are at the time parties to the proceeding shall not vote 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 subdivision (b)(3) of this section to select counsel. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)

§ 55A-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. 55A-8-52, and is entitled to apply for court-ordered indemnification under G.S. 55A-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 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. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)

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

(a) In addition to and separate and apart from the indemnification provided for in G.S. 55A-8-51, 55A-8-52, 55A-8-54, 55A-8-55, and 55A-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 shall not indemnify or agree to indemnify a person against liability or expenses the person may incur on account of his activities which were at the time taken, known, or believed by the person to be clearly in conflict with the best interests of the corporation or if the person received an improper personal benefit. 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) 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. (1977, c. 236, s. 2; 1985 (Reg. Sess., 1986), c. 801, ss. 15, 16; 1993, c. 398, s. 1.)

§ 55A-8-58. Application of Part.

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

(b) This Part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding. (1993, c. 398, s. 1.)

§ 55A-8-59. Reserved for future codification purposes.

Part 6. Immunity.

§ 55A-8-60. Immunity.

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

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

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

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

(c) Without diminishing the applicability of any other provisions of this Chapter, "nonprofit corporation" as referred to in this section shall include any credit union chartered under the laws of this State, the laws of any other state, or under the laws of the United States. (1987, c. 799, s. 3; 1989, c. 472; 1993, c. 398, s. 1.)

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. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 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. (1955, c. 1230; 1981, c. 372; 1985 (Reg. Sess., 1986), c. 801, ss. 36, 37; 1993, c. 398, s. 1.)

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

(2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less; and

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

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

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

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

(e) If the board or the members seek to have the amendment approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment. (1955, c. 1230; 1981, c. 372; 1985 (Reg. Sess., 1986), c. 801, ss. 36, 37; 1993, c. 398, s. 1; 1995, c. 400, s. 4.)

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

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

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

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

(2) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

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

(6) Authorize a new class of memberships.

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

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

(e) A class of members is entitled to the voting rights granted by this section although the articles of incorporation and bylaws provide that the class shall not vote on the proposed amendment. (1993, c. 398, s. 1.)

§ 55A-10-05. 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) The date of each amendment's adoption;
(4) If approval of members was not required, a statement to that effect and a brief explanation of why member action was not required, and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
(5) If approval by members was required, a statement that member approval was obtained as required by this Chapter;
(6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to G.S. 55A-10-30, a statement that the approval was obtained. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-10-06. Restated articles of incorporation.

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

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

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

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

(e) 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 whether the restated articles of incorporation contain an amendment to the articles of incorporation requiring member approval and, if they do not, that the board of directors adopted the restated articles of incorporation;

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

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

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

(g) 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 (e) of this section. (1965, c. 762; 1993, c. 398, s. 1.)

§ 55A-10-07. 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, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any restriction or condition upon which such property is held by the corporation or the existing rights of persons other than members 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. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 38; 1993, c. 398, s. 1.)

§§ 55A-10-08 through 55A-10-19. Reserved for future codification purposes.

Part 2. Bylaws.

§ 55A-10-20. Amendment by directors.

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 bylaws 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 of directors 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 bylaws 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. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-10-21. 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 bylaws to be adopted shall be approved:

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

(2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less; and

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

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

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

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

(e) If the board or the members seek to have the amendment approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment. (1955, c. 1230; 1993, c. 398, s. 1; 2002-27, s. 1.)

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

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

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

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

(2) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

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

(6) Authorize a new class of memberships.

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

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

(e) A class of members is entitled to the voting rights granted by this section although the articles of incorporation and bylaws provide that the class shall not vote on the proposed amendment. (1993, c. 398, s. 1.)

§§ 55A-10-23 through 55A-10-29. Reserved for future codification purposes.

Part 3. Articles of Incorporation and Bylaws.

§ 55A-10-30. Approval by third persons.

The articles of incorporation or bylaws may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors. Such a provision in the articles of incorporation or bylaws may only be amended with the approval in writing of such person or persons. (1993, c. 398, s. 1; 1995, c. 509, s. 30.)

Article 11.

Merger.

§ 55A-11-01. Approval of plan of merger.

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

(b) The plan of merger shall set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) The terms and conditions of the merger; and

(3) The manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the merger; and

(2) Other provisions relating to the merger.

(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 400, s. 5; 2005-268, s. 38.)

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

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

(1) A charitable or religious corporation.

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

(3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the merger.

(4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or G.S. 57D-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.

(b) At least 30 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than an interest as a member, as "member" is defined in G.S. 55A-1-40(16), in the survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest. (1993, c. 398, s. 1; c. 553, s. 83(a); 1995, c. 400, s. 6; 1999-204, s. 1; 1999-369, s. 2.4; 2013-157, s. 5.)

§ 55A-11-03. Action on plan.

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

(1) By the board;

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

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

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

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

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

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

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

(g) After a merger is adopted but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further action by the members or other persons who approved the plan of merger. (1955, c. 1230; 1993, c. 398, s. 1; 2005-268, s. 39.)

§ 55A-11-04. Articles of merger.

(a) After a plan of merger has been authorized as required by this Chapter, the surviving corporation shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The name and state or country of incorporation of each merging corporation.

(2) The name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3) If the surviving corporation is a domestic corporation, any amendment to the articles of incorporation of the corporation provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging corporation in the manner required by law.

(a1) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

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

(d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsections (a) and (a1) of this section to "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation as applicable. (1955, c. 1230; 1967, c. 823, s. 22; 1993, c. 398, s. 1; 2005-268, s. 40; 2006-264, s. 44(d).)

§ 55A-11-05. Effect of merger.

(a) When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

(1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases.

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

(3) The surviving corporation has all liabilities and obligations of each merging corporation.

(4) A proceeding pending by or against any merging corporation may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for a merging corporation whose separate existence ceases in the merger.

(5) If a domestic corporation survives the merger, its articles of incorporation are amended to the extent provided in the articles of merger.

(6) If a foreign corporation or a foreign business corporation survives the merger, it is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation and (ii) of any obligation of the surviving foreign corporation or foreign business corporation arising from the merger.

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State 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. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign business corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign business corporation. If the surviving foreign corporation or foreign business corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign business corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55A-11-04(a)(2).

The merger shall not affect the liability or absence of liability of any member of a merging corporation for acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsection (a) of this section to "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable. (1955, c. 1230; 1967, c. 950, s. 2; 1993, c. 398, s. 1; 1999-369, s. 2.5; 2005-268, s. 41; 2006-264, s. 44(e).)

§ 55A-11-06. Merger with foreign corporation.

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

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

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

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

(b) Repealed by Session Laws 2005, c. 268, s. 42.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise. (1973, c. 314, s. 4; 1985 (Reg. Sess., 1986), c. 801, s. 39; 1993, c. 398, s. 1; 1995, c. 400, s. 7; 2001-387, ss. 36, 37; 2005-268, s. 42; 2006-226, s. 16(c); 2006-264, s. 44(f).)

§ 55A-11-07. Devises and gifts.

Any devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the survivor in the merger unless the will or other instrument otherwise specifically provides. (1993, c. 398, s. 1; 1999-369, s. 2.6; 2011-284, s. 53.)

§ 55A-11-08. Merger with business corporation.

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving corporation; and

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

(b) Repealed by Session Laws 2005, c. 268, s. 43.

(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise. (1995, c. 400, s. 8; 2001-387, ss. 38, 39; 2005-268, s. 43.)

§ 55A-11-09. Merger with unincorporated entity.

(a) As used in this section, "business entity" means a domestic business corporation (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.

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

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

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

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

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

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

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

(3) The terms and conditions of the merger.

(4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic nonprofit corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic nonprofit corporation is a party, or any other agreement or document.

(c3) In the case of a merging domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member of a merging domestic nonprofit corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or written consent of the member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c4) After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

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

(1) Repealed by Session Laws 2005, c. 268, s. 45.

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

(3) The name of the merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

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

(5) Repealed by Session Laws 2005, c. 268, s. 45.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

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

(e) A merger takes effect when the articles of merger become effective. When a merger takes effect:

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

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

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

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

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

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

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

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

(e1) If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process 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 such process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (d) of this section.

(f) This section does not apply to a merger that does not include a merging unincorporated entity. (1999-369, s. 2.7; 2000-140, s. 48; 2001-387, ss. 40, 41, 42; 2001-487, s. 62(f); 2005-268, ss. 44, 45, 46; 2007-385, s. 3; 2011-347, ss. 13, 14; 2018-45, s. 29.)

§ 55A-11-10. Merger with certain charitable or religious corporation or hospital authority.

(a) A hospital authority created by a city may merge into a charitable or religious corporation having its principal office in the county in which the city is located, under a plan of merger approved by the city and the county and by a majority of the members of the board of commissioners of such authority and by or for the corporation as provided in G.S. 55A-11-03.

This section applies only to the merger of a hospital authority formed by a city in a county with a population of less than 150,000 as of the most recent U.S. Census and either (i) a charitable or religious corporation formed on or before September 29, 2005 having its principal office located in such county as of September 29, 2005, or (ii) a hospital authority formed after September 29, 2005 by the county in which the city is located.

(b) A hospital authority created by a city may merge into a hospital authority created by the county in which the city is located, pursuant to a plan of merger approved by the city and the county and by a majority of the members of the board of commissioners of each authority.

(c) The plan of merger shall include all of the following:

(1) The name of the city hospital authority and the charitable or religious corporation or the county hospital authority planning to merge and the name of the surviving charitable or religious corporation or county hospital authority into which such city hospital authority plans to merge.
(2) The terms and conditions of the merger.
(3) Any amendments to the articles or certificate of incorporation or bylaws of the surviving charitable or religious corporation or the surviving county hospital authority to be effected by the merger.
(4) Other provisions relating to the merger.

(d) After the plan of merger is approved, the surviving charitable or religious corporation or the surviving county hospital authority shall deliver to the Secretary of State for filing articles of merger that include all of the following:
(1) The plan of merger.
(2) In the case of a merger of a city hospital authority into a charitable or religious corporation, a statement that the plan of merger was approved by the city and by a majority of the members of the board of commissioners of the city hospital authority and the statements required under G.S. 55A-11-04(a)(2), (3), or (4); or
(3) In the case of a merger of a city hospital authority into a county hospital authority, a statement that the plan of merger was approved by the city and the county and a majority of each of the boards of commissioners of the authorities.

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

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

(g) All of the following shall occur upon an effective merger under this section:
(1) The separate existence of the city hospital authority that merges into the charitable or religious corporation or into the county hospital authority ceases.
(2) The title to all real estate and other property owned by the hospital authority is vested in the surviving charitable or religious corporation or in the surviving county hospital authority without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger.
(3) The surviving charitable or religious corporation or the surviving county hospital authority has all liabilities and obligations of the city hospital authority and the charitable or religious corporation or the county hospital authority party to the merger.
(4) A proceeding pending by or against the city hospital authority and the charitable or religious corporation or the county hospital authority party to the merger may be continued as if the merger did not occur or the surviving charitable or religious corporation or the surviving county hospital authority may be substituted in the proceeding for the city hospital authority whose existence ceased.
(5) The articles or certificate of incorporation and bylaws of the surviving charitable or religious corporation or the surviving county hospital authority are amended to the extent provided in the plan of merger.
(6) Any devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a city hospital authority that has merged into a charitable or religious corporation or into a county hospital authority and that takes effect or remains payable after the merger,

inures to the surviving charitable or religious corporation or the surviving county hospital authority unless the will or other instrument otherwise specifically provides.

(h) A merger pursuant to the provisions of this section will not be deemed to be a sale or conveyance of a hospital facility under or pursuant to G.S. 131E-8, 131E-13, or 131E-14 of the Municipal Hospital Act (Part 1, Article 2, Chapter 131E of the General Statutes) and G.S. 131E-13(d) will not be applicable to such merger. (2005-449, ss. 1, 2; 2011-284, s. 54.)

Article 11A.

Conversions.

Part 1. Reserved.

§ 55A-11A-1: Reserved for future codification purposes.

§ 55A-11A-2: Reserved for future codification purposes.

§ 55A-11A-3: Reserved for future codification purposes.

§ 55A-11A-4: Reserved for future codification purposes.

§ 55A-11A-5: Reserved for future codification purposes.

§ 55A-11A-6: Reserved for future codification purposes.

§ 55A-11A-7: Reserved for future codification purposes.

§ 55A-11A-8: Reserved for future codification purposes.

Part 2. Conversion of Corporation.

§ 55A-11A-9: Reserved for future codification purposes.

§ 55A-11A-10. Conversion.

A charitable or religious corporation may convert to a domestic limited liability company if the converting charitable or religious corporation complies with the requirements of this part and the requirements of G.S. 57D-9-20, 57D-9-21, and 57D-9-22. (2016-114, s. 5.)

Article 12.

Transfer of Assets.

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

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

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles of incorporation require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40; 1993, c. 398, s. 1.)

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

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

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

(1) By the board;

(2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the proposed transaction, whichever is less; and

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

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

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

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

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

(g) A charitable or religious corporation shall give written notice to the Attorney General 30 days before it sells, leases, exchanges, or otherwise disposes of all, or a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40; 1993, c. 398, s. 1; 1999-204, s. 2.)

Article 13.

Distributions.

§ 55A-13-01. Prohibited distributions.

Except as authorized by G.S. 55A-13-02 or Article 14 of this Chapter, a corporation shall not make any distributions. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 32; 1993, c. 398, s. 1.)

§ 55A-13-02. Authorized distributions.

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

(b) Subject to the provisions of subsection (d) of this section:

(1) A corporation may make distributions to any entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section.

(2) Any corporation other than a charitable or religious corporation may make distributions to any domestic or foreign corporation.

(3) Except as otherwise prohibited by statute, a corporation not operated for profit, the membership of which is limited to the owners or occupants of real property in a condominium, cooperative housing corporation, or other real property development, having as its primary purposes the management, operation, preservation, maintenance, and repair of common areas and improvements upon the real property owned by the members and the corporation or organization, may make distribution to its members of excess or surplus membership dues, fees, or assessments remaining after the payment of or provisions for common expenses and any prepayment of reserves; provided that these distributions are in proportion to the dues, fees, or assessments collected from the members.

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

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

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 32; 1993, c. 398, s. 1; 1999-369, s. 7.)

Article 14.

Dissolution.

Part 1. Voluntary Dissolution.

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

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

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

(b) Upon the filing of articles of dissolution under this section, the corporation becomes nonexistent and is cancelled as if such corporation had never been created. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 41, 43; 1993, c. 398, s. 1.)

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

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

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

(b) If the corporation does not have members entitled to vote thereon, dissolution shall be approved by a vote of a majority of the directors then in office. The corporation shall provide at least five days' written notice of any directors' meeting at which such approval will be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

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

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

(e) If the board seeks to have dissolution approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

§ 55A-14-03. Plan of dissolution.

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

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

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

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

(b) The plan of dissolution may set forth other provisions relating to the dissolution. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-04. Articles of dissolution.

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

(1) The name of the corporation;

(2) The names and addresses of its officers;

(3) The names and addresses of its directors;

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

(5) The date dissolution was authorized;

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

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

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

(b) A corporation is dissolved upon the effective date of its articles of dissolution. (1955, c. 1230; 1973, c. 314, s. 7; 1993, c. 398, s. 1.)

§ 55A-14-05. Revocation of dissolution.

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

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

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

(1) The name of the corporation;
(2) The effective date of the dissolution that was revoked;
(3) The date that the revocation of dissolution was authorized;
(4) If the corporation's board of directors revoked the dissolution, a statement to that effect;
(5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
(6) If member or third person action was required to revoke the dissolution, a statement that the action was taken as required.

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

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the filing of the articles of dissolution. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-06. Effect of dissolution.

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

(1) Preserving and protecting its assets;
(2) Discharging or making provision for discharging its liabilities and obligations;
(3) Disposing of its remaining assets in accordance with its plan of dissolution; and
(4) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;
(2) Subject its directors or officers to standards of conduct different from those prescribed in Article 8 of this Chapter;
(3) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
(4) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) Terminate the authority of the registered agent of the corporation. (1955, c. 1230; 1993, c. 398, s. 1.)

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

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

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

(1) Describe information that shall be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which shall not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

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

(1) If the corporation does not receive the claim by the deadline from a claimant who received written notice under subsection (b) of this section; or

(2) If a claimant whose claim was rejected by written notice from the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the date of receipt of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

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

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

(b) The notice shall:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if there is none in this State, its registered office) is or was last located;

(2) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

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

(1) A claimant who did not receive written notice under G.S. 55A-14-07;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) Nothing in this section shall bar:

(1) Any claim alleging the liability of the corporation; or

(2) Any proceeding or action to establish the liability of the corporation; or

(3) The recovery on any judgment against the corporation

to the extent that the corporation is protected by insurance coverage with respect to such claim, proceeding, or judgment. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

§ 55A-14-09. Enforcement of claims.

(a) A claim under G.S. 55A-14-07 or G.S. 55A-14-08 may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or

(2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

(b) Nothing in G.S. 55A-14-07 or G.S. 55A-14-08 shall extend any applicable period of limitation. (1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)

§§ 55A-14-10 through 55A-14-19. Reserved for future codification purposes.

Part 2. Administrative Dissolution.

§ 55A-14-20. Grounds for administrative dissolution.

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

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

(2) Repealed by Session Laws 1995, c. 539, s. 24.

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

(4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expires;

(6) 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; or

(7) The corporation does not designate the address of its principal office with the Secretary of State or does not notify the Secretary of State within 60 days that the principal office has changed. (1993, c. 398, s. 1; 1995, c. 539, ss. 24, 25.)

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

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

(b) If the corporation does not correct each ground for dissolution 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 shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the corporation.

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

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent. (1993, c. 398, s. 1.)

§ 55A-14-22. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(a1) If, at the time the corporation applies for reinstatement, the name of the corporation is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the corporation must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section, that the information is correct, and that the name of the corporation complies with G.S. 55D-21 and any other applicable section, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the Secretary of State's determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the certificate of dissolution. (1993, c. 398, s. 1; 1996, 2nd Ex. Sess., c. 17, s. 15.1(d); 1997-485, s. 2; 2001-390, s. 9; 2001-413, ss. 7.2, 7.3.)

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

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under G.S. 55D-33 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Superior Court of Wake County within 30 days after service of the notice of denial is perfected. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside

the dissolution. The petition shall have attached to it copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial. 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 corporation shall have the burden of establishing that it is entitled to reinstatement.

(c) 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 reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings. (1993, c. 398, s. 1; 2001-358, ss. 5A(c), 48(e); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

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

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55A-14-20 through G.S. 55A-14-23. (1993, c. 398, s. 1.)

§§ 55A-14-25 through 55A-14-29. Reserved for future codification purposes.

Part 3. Judicial Dissolution.

§ 55A-14-30. Grounds for judicial dissolution.

(a) The superior court may dissolve a corporation:

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

a. The corporation obtained its articles of incorporation through fraud; or

b. The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;

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

a. The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;

d. The corporate assets are being misapplied or wasted; or

e. The corporation is no longer able to carry out its purposes.

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

a. The creditor's claim has been reduced to judgment and execution on the judgment has been returned unsatisfied; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

(1) There are reasonable alternatives to dissolution;
(2) Dissolution is in the public interest, if the corporation is a charitable or religious corporation; and
(3) Dissolution is reasonably necessary for the protection of the rights or interests of the members, if any. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1.)

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

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

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

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1.)

§ 55A-14-32. Receivership.

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

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

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

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

(d) The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-33. Decree of dissolution.

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

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the notification of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08. The corporation's name becomes available for use by another entity as provided in G.S. 55D-21. (1955, c. 1230; 1967, c. 823, s. 23; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1; 2001-358, s. 24; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§§ 55A-14-34 through 55A-14-39. Reserved for future codification purposes.

Part 4. Miscellaneous.

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

Upon liquidation of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found shall be disposed of in accordance with Chapter 116B of the General Statutes. (1955, c. 1230; 1981, c. 682, s. 13; 1993, c. 398, s. 1.)

Article 14A.

Reorganization.

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

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

(1) Amend its articles of incorporation or bylaws, or both, so long as the articles of incorporation and bylaws as amended contain only such provisions as might be lawfully contained therein at the time of making such amendment;
(2) Constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or any of the directors or officers then in office;
(3) Make any change in its memberships or securities or cancel any or all of its outstanding memberships or securities;
(4) Dissolve and liquidate;
(5) Effect a merger;
(6) Transfer all or part of its assets;
(7) Change its registered office or registered agent, or both;
(8) Authorize the issuance of bonds, debentures, or other obligations of the corporation and fix the terms and conditions thereof.

(b) Any articles of amendment, statement of change of registered office or registered agent, restated articles of incorporation, articles of merger, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in

accordance with the provisions of this Chapter on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection (a) of this section.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. (1993, c. 398, s. 1.)

Article 15.

Foreign Corporations.

Part 1. Certificate of Authority.

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

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

(b) Without excluding other activities which might not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs 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 affecting the settlement thereof or the settlement of claims or disputes;
(2) Holding meetings of its directors or members 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 memberships or securities, or appointing and maintaining trustees or depositories with relation to those securities;
(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the 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) Conducting affairs 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. (1955, c. 1230; 1993, c. 398, s. 1.)

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

(a) No foreign corporation conducting affairs 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) 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 conducted affairs 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 the 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 conducts affairs 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.

(c) Notwithstanding subsection (a) of this section, 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.

(d) The Secretary of State is hereby directed to require that every foreign corporation conducting affairs 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 the Secretary of State's 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 conducting affairs in this State which may have failed to comply with the provisions of this Chapter. (1955, c. 1230; 1993, c. 398, s. 1; 1998-215, s. 118; 1999-151, s. 2.)

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

(a) A foreign corporation may apply for a certificate of authority to conduct affairs in this State by delivering an application to the Secretary of State for filing. The application shall 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 mailing address if different from the street address, of its principal office;
(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;
(6) The names and usual business addresses of its current officers; and
(7) Whether it has members.

(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, the Secretary of State shall when all fees have been tended 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 the Secretary of State's 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 conduct affairs in this State to which the Secretary of State 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. (1955, c. 1230; 1957, c. 979, s. 14; 1969, c. 875, s. 8; 1993, c. 398, s. 1; 2001-358, s. 21; 2001-387, ss. 169(b), 173, 175(a); 2001-413, s. 6.)

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

(a) A foreign corporation authorized to conduct affairs in this State shall 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 conduct affairs 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 conduct affairs in this State; and

(4) A statement of the change or changes being made.

Except for the content of the application, the requirements of G.S. 55A-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section. (1955, c. 1230; 1993, c. 398, s. 1.)

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

(a) A certificate of authority authorizes the foreign corporation to which it is issued to conduct affairs in this State subject, however, to the right of the State to revoke the certificate as provided in this Chapter. A foreign corporation, however, is not eligible or entitled to 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 his death.

(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. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-15-06: Repealed by Session Laws 2001-358, s. 22, effective January 1, 2002.

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

Each foreign corporation authorized to conduct affairs 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. (1955, c. 1230; 1993, c. 398, s. 1; 2000-140, s. 101(e); 2001-358, s. 48(b); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§§ 55A-15-08 through 55A-15-10: Repealed by Session Laws 2001-358, s. 48(c), effective January 1, 2002.

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

Part 2. Withdrawal.

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

(a) A foreign corporation authorized to conduct affairs in this State shall not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to conduct affairs in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall 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 conducting affairs in this State and that it surrenders its authority to conduct affairs 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 affairs conducted in this State, during the time the corporation was authorized to conduct affairs 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) of this subsection; and

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

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State 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 the Secretary of State's office;

(3) Issue a certificate of withdrawal to which the Secretary of State 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.

(d) 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 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. 55A-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. 1230; 1973, c. 476, s. 193; 1993, c. 398, s. 1; 1995, c. 400, s. 9; 2001-387, ss. 44, 45.)

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

(a) Whenever a foreign corporation authorized to conduct affairs 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 the foreign corporation was incorporated. If the surviving or resulting entity is not authorized to conduct affairs or transact business in this State, the articles or certificate shall be accompanied by an application which must set forth:

(1) The name of the foreign corporation authorized to conduct affairs in this State, the type of entity and the name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to conduct affairs or transact business 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 affairs conducted in this State, during the time the foreign corporation was authorized to conduct affairs 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 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 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. 55A-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 (a) of this section. (1993, c. 398, s. 1; 1999-369, s. 2.8; 2001-387, ss. 46, 47; 2001-487, s. 62(g).)

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

Part 3. Revocation of Certificate of Authority.

§ 55A-15-30. Grounds for revocation.

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

(1) Repealed by Session Laws 1995, c. 539, s. 28.

(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 signs 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. 1230; 1993, c. 398, s. 1; 1995, c. 509, s. 32; c. 539, s. 28; 2001-358, s. 48(f); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

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

(a) If the Secretary of State determines that one or more grounds exist under G.S. 55A-15-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign corporation written notice of the Secretary of State's 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 conduct affairs 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 affairs conducted in this State during the time the foreign corporation was authorized to conduct affairs 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. 1230; 1993, c. 398, s. 1; 1995, c. 400, s. 10; 2001-358, s. 48(g); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55A-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 service of the certificate of revocation is mailed. 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. (1993, c. 398, s. 1; c. 553, s. 83(b); 2001-358, s. 5A(d); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

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

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55A-15-30 through G.S. 55A-15-32. (1995, c. 400, s. 11.)

Article 16.

Records and Reports.

Part 1. Records.

§ 55A-16-01. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting pursuant to G.S. 55A-7-04, 55A-7-08, or 55A-8-21, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its members or board of directors relating to the number or classification of directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) The minutes of all membership meetings, and records of all actions taken by the members without a meeting pursuant to G.S. 55A-7-04 or G.S. 55A-7-08, for the past three years;

(5) All written communications to members generally within the past three years, and the financial statements, if any, that have been furnished or would have been required to be furnished to a member upon demand under G.S. 55A-16-20 during the past three years;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Repealed by Session Laws 1995, c. 539, s. 29, effective July 29, 1995. (1955, c. 1230; 1969, c. 875, s. 6; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1; 1995, c. 539, s. 29.)

§ 55A-16-02. Inspection of records by members.

(a) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in G.S. 55A-16-01(e) if the member gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under G.S. 55A-16-01(a), to the extent not subject to inspection under G.S. 55A-16-02(a);

(2) Accounting records of the corporation; and

(3) Subject to G.S. 55A-16-05, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) This section does not affect:

(1) The right of a member to inspect records under G.S. 55A-7-20 or, if the member is in litigation with the corporation, to inspect the records to the same extent as any other litigant; or

(2) The power of a court, independently of this Chapter, to compel the production of corporate records for examination.

(e) A member of a corporation that has the power to elect, appoint, or designate a majority of the directors of another domestic or foreign corporation, whether nonprofit or business, shall have inspection rights with respect to the records of that other corporation. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1.)

§ 55A-16-03. Scope of inspection rights.

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under G.S. 55A-16-02 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, magnetic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under G.S. 55A-16-02(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1.)

§ 55A-16-04. Court-ordered inspection.

(a) If a corporation does not allow a member who complies with G.S. 55A-16-02(a) to inspect and copy any records required by that subsection to be available for inspection, the superior court in the county where the corporation's principal office (or, if there is none in this State, its registered office) is located may, upon application of the member, summarily order inspection and copying of the records demanded at the corporation's expense.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with G.S. 55A-16-02(b) and (c) may apply to the superior court in the county where the corporation's principal office (or, if there is none in this State, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's cost (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member. (1993, c. 398, s. 1.)

§ 55A-16-05. Limitations on use of membership list.

Without consent of the board of directors, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

Without limiting the generality of the foregoing, and without the consent of the board, a membership list or any part thereof shall not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
(2) Used for any commercial purpose; or
(3) Sold to or purchased by any person. (1993, c. 398, s. 1; 1995, c. 509, s. 33.)

§§ 55A-16-06 through 55A-16-19. Reserved for future codification purposes.

Part 2. Reports.

§ 55A-16-20. Financial statements for members.

(a) Except as provided in the articles of incorporation or bylaws of a charitable or religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements, if any, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report shall accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year. (1993, c. 398, s. 1.)

§ 55A-16-21. Notice of indemnification to members.

If a corporation indemnifies or advances expenses to a director under G.S. 55A-8-51, 55A-8-52, 55A-8-53, 55A-8-54, or 55A-8-57 in connection with a proceeding by or in the right of the corporation, the corporation shall give notice of the indemnification or advance in writing to the members with or before the notice of the next meeting of members. (1993, c. 398, s. 1.)

§ 55A-16-22: Repealed by Session Laws 1995, c. 539, s. 8.

§ 55A-16-23. Principal office address.

(a) Any corporation that does not designate the street address and the mailing address, if different from the street address, of the corporation's principal office and the county of location in an annual report or its articles of incorporation shall file a Designation of Principal Office Address form with the Secretary of State that contains that information.

(b) A corporation may change its principal office by delivering to the Secretary of State for filing a Corporation's Statement of Change of Principal Office form that sets forth:

(1) The street address, and the mailing address if different from the street address, of the corporation's current principal office and the county in which it is located; and

(2) The street address, and the mailing address if different from the street address, of the new principal office and the county in which it is located. (1995, c. 539, s. 21; 2001-358, s. 48(d); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55A-16-24. Financial statements for the public.

(a) Notwithstanding any provisions in the articles of incorporation or bylaws, a corporation that receives over five thousand dollars ($5,000) of public funding within a fiscal year, including the amount of grants or loans and the value of any in-kind donations, from a local government, the State, or the federal government shall provide its latest annual financial statements upon written demand from any member of the public. The statements shall be substantively similar to those required under G.S. 55A-16-20 but shall contain additional details about the amount of public funds received and how those funds were used. Additionally, a corporation that receives public funding shall provide, upon written demand from any member of the public, a copy of its most recently completed and filed Internal Revenue Service Form 990 or Form 990-EZ, except of any information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3), or a copy of the message confirming the corporation's submission of Internal Revenue Service Form 990-N. A corporation may comply with the provisions of this section by maintaining on its public website a financial report as described in this section and a copy of its most recent Internal Revenue Service Form 990, Form 990-EZ, or Form 990-N submission confirmation or by having such materials posted, as part of a database of similar documents of other tax-exempt organization, on a website established and maintained by another entity, provided that the entity does not charge a fee to access the information and provided that the corporation provides a link on its public website to the website maintained by the other entity.

(b) Exceptions. – The following corporations already required to report information shall not be subject to subsection (a) of this section, but shall provide information on their public website to whom the corporation reports its information and how to access that information:

(1) A corporation required to report to the North Carolina Medical Care Commission of the Department of Health and Human Services.

(2) A corporation required to report to the Local Government Commission of the Department of State Treasurer.

(3) A private college that meets the definition of "institution" under G.S. 116-22 and is required to report to the State under G.S. 143C-6-23. (2012-169, s. 1; 2025-25, s. 29(5).)

Article 17.

Transition and Curative Provisions.

§ 55A-17-01. Applicability of Chapter.

(a) The provisions of this Chapter relating to domestic corporations shall apply to:

(1) All corporations heretofore or hereafter organized under this Chapter.

(2) All nonprofit corporations without capital stock heretofore or hereafter organized under any other act, unless there is some other specific statutory provision particularly applicable to such corporations or inconsistent with some provisions of this Chapter, in which case that other provision prevails. Nothing

herein shall apply to hospital and medical service corporations as defined in Article 65 of Chapter 58 of the General Statutes which were incorporated prior to July 1, 1957, or repeal or modify the provisions of G.S. 54-138.

(b) The provisions of this Chapter relating to foreign corporations shall apply to all corporations conducting affairs in this State for purposes for which a corporation might be organized under this Chapter. A foreign corporation authorized to conduct affairs in this State on July 1, 1994, is subject to this Chapter but is not required to obtain a new certificate of authority to conduct affairs under this Chapter. (1955, c. 1230; 1967, c. 659; 1991, c. 720, s. 76; 1993, c. 398, s. 1; 1995, c. 400, s. 12.)

§ 55A-17-02. Certain religious, etc., associations deemed incorporated.

In all cases where a religious, educational, or charitable association has been formed prior to January 1, 1894, and has since that date been acting as a corporation, exercising the powers and performing the duties of religious, educational, or charitable corporations as prescribed by the laws of this State, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation under the laws of this State on January 1, 1894, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby declared to be valid corporate acts. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-17-03. Saving provisions.

(a) The existence of corporations formed before the effective date of this Chapter, shall not be impaired by the enactment of this Chapter nor by any change made by this Chapter in the requirements for the formation of corporations nor by any amendment or repeal by this Chapter of the laws under which they were formed or created, and, except as otherwise expressly provided in this Chapter, the repeal of a prior act by this Chapter shall not affect any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

(b) Any proceeding or corporate action commenced prior to the effective date of this Chapter, may be completed in accordance with the law then in effect. (1993, c. 398, s. 1.)

§ 55A-17-04. Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Chapter that can be given effect without the invalid provision or application, and to this end the provisions of the Chapter are severable. (1993, c. 398, s. 1.)

§ 55A-17-05. Validation of amendments to corporate charters extending corporate existence; limitation of actions; intent.

(a) In every case where a corporation chartered under either the general or private laws of the State of North Carolina has continued or shall continue to act and conduct affairs as a corporation after the expiration of its period of existence as theretofore fixed in its charter and has thereafter filed in the office of the Secretary of State an amendment to its charter to extend or renew its corporate existence, such amendment is hereby validated and made effective for all intents and purposes to the same extent and with the same effect as if the amendment has been made within the period of such corporation's existence as theretofore fixed in its charter.

(b) No action or proceeding shall be brought or defense or counterclaim pleaded later than July 1, 1958, in which either the continued existence of the corporation or the validity of any of the

contracts, acts, deeds, rights, privileges, powers, franchises, and titles of the corporation is attacked or otherwise questioned on the grounds that the amendment was not filed within the period of the corporation's existence as theretofore fixed in its charter.

(c) In no event shall the limitation provided in subsection (b) of this section bar any action, proceeding, defense, or counterclaim based upon grounds other than those mentioned in subsection (b) of this section, unless the grounds set out in subsection (b) of this section are an essential part thereof. (1957, c. 509; 1993, c. 398, s. 1.)

Article 18.

The Personal Privacy Protection Act.

§ 55A-18-01. Short title.

This Article may be cited as The Personal Privacy Protection Act. (2025-79, s. 1.)

§ 55A-18-02. Purpose.

This Article prohibits public agencies from collecting, disclosing, or releasing personal information about members, volunteers, and financial and nonfinancial donors to 501(c) nonprofit organizations, except as permitted by State or federal law or regulation. This Article provides penalties for violation of these privacy protections. (2025-79, s. 1.)

§ 55A-18-03. Definitions.

In this Article, the following definitions apply:

(1) Nonprofit organization. – An entity that (i) is exempt from federal income tax under section 501(c) of the Internal Revenue Code of 1986 or any successor section, (ii) has submitted an application with the Internal Revenue Service for recognition of an exemption under section 501(c) of the Internal Revenue Code of 1986 or any successor section, or (iii) is a not-for-profit business entity recognized under State law.

(2) Person. – As defined in G.S. 12-3.

(3) Personal information. – Any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of financial or nonfinancial support to any nonprofit organization. For the purposes of this Article, the terms "supporter" and "volunteer" shall not include members of the governing board, officers, directors, or staff of a nonprofit organization.

(4) Public agency. – Any State or local governmental unit and its employees, however designated, including, but not limited to, this State; any department, agency, office, commission, board, division, or other entity of this State, including all boards, departments, and divisions; any political subdivision of this State, including, but not limited to, a county, city, local school administrative unit, community college, or any other local governmental unit, agency, authority, council, board, or commission; or any State or local court, tribunal, or other judicial or quasi-judicial body. (2025-79, s. 1.)

§ 55A-18-04. Protections afforded.

(a) Except as provided in G.S. 55A-18-05 of this Article, a public agency shall not do any of the following:

(1) Require any person or nonprofit organization to provide the public agency with personal information or otherwise compel the release of personal information.
(2) Release, publicize, or otherwise publicly disclose personal information in possession of the public agency.
(3) Request or require a current or prospective contractor or grantee with the public agency to provide a list of nonprofit organizations to which the current or prospective contractor or grantee has provided financial or nonfinancial support.

(b) Personal information is not a public record under Chapter 132 of the General Statutes. (2025-79, s. 1.)

§ 55A-18-05. Exemptions.

This Article does not preclude any of the following:

(1) Reporting or disclosure required by Article 22A of Chapter 163 of the General Statutes.
(2) Issuing of a lawful warrant for personal information by a court of competent jurisdiction.
(3) Request for discovery of personal information in litigation if both of the following conditions are met:
  a. The requestor demonstrates a compelling need for the personal information by clear and convincing evidence.
  b. The requestor obtains a protective order barring disclosure of personal information to any person not named in the litigation.
(4) Admission of personal information as relevant evidence before a court of competent jurisdiction. However, no court shall publicly reveal personal information absent a specific finding of good cause.
(5) Releasing personal information by a public agency that was voluntarily released to the public by the person or the nonprofit organization to which it relates.
(6) Collection of information disclosing the identity of any director, officer, registered agent, or incorporator of a nonprofit organization in any report or disclosure required by statute to be filed with the Secretary of State. This Article does not preclude an audit, examination, review, or investigation pursuant to the authority of the Secretary of State under Chapters 10B, 55A, 78A, 78C, 78D, 120C, or 131F of the General Statutes so long as both of the following apply:
  a. The personal information is only used in connection with the specific audit, examination, review, or investigation to which the request relates and for any related proceedings.
  b. Any personal information collected otherwise remains subject to G.S. 55A-18-04(a)(2), unless expressly required by law to be publicly disclosed.
(7) Disclosure of personal information derived from a donation to a nonprofit organization that is affiliated with a public agency and required by statute, if the person has not previously requested anonymity from the nonprofit organization.
(8) Collection and reporting by a national securities association that is registered pursuant to 15 U.S.C. § 78o-3, any regulations adopted under it, or any

information that the national securities association is required to provide pursuant to State law.

(9) Requests by the Attorney General for personal information required for an audit, examination, review, or investigation pursuant to Chapters 36C, 36E, 55A, 75, and 131F of the General Statutes. Personal information provided pursuant to this exception shall only be used in connection with the specific audit, examination, review, or investigation to which the request relates and for any related proceedings. Any personal information collected shall otherwise remain subject to the provisions of G.S. 55A-18-04(a)(2), unless expressly required by law to be publicly disclosed. (2025-79, s. 1.)

§ 55A-18-06. Penalties.

(a) A person alleging a violation of this Article may bring a civil action for appropriate injunctive relief, damages, or both. Damages awarded under this section may include one of the following, as appropriate:

(1) A sum of money not less than two thousand five hundred dollars ($2,500) to compensate for injury or loss caused by each violation of this Article.

(2) For an intentional violation of this Article, a sum of money not to exceed three times the sum described in subdivision (1) of this subsection.

(b) A court, in rendering a judgment in an action brought under this Article, may award all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, to the complainant in the action if the court determines that the award is appropriate.

(c) A person who knowingly violates this Article is guilty of a Class 2 misdemeanor. (2025-79, s. 1.)

§ 55A-18-07. Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid provision or application and, to that end, the provisions of this Article shall be severable. (2025-79, s. 1.)