

March 3, 2005

**S 324. REVISE BUSINESS CORPORATION ACT. TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS.** Effective October 1, 2005, makes numerous changes to the NC Business Corporation Act, GS Ch. 55, as described below and makes conforming changes to GS Ch. 55A, 57C, and 59.

*Shareholders.* Amends GS 55-7-04(b) to permit shareholder to revoke written consent that corporate action may be taken without a meeting by delivering written revocation to corporation. Amends GS 55-7-24(b)(4) to add "pledgee" to list of those whose signature may be accepted as shareholder vote. Amends GS 55-7-24(d) to clarify that in order to avoid liability for error in accepting or rejecting shareholder vote, corporation must comply with section and GS 55-7-22(b).

*Directors and Officers.* Amends GS 55-8-03 by reorganizing section and deleting limitation on board of directors' authorization to increase or decrease board by no more than 30% during any 12-month period and deleting requirement that shareholders approve the size range of the board or change board from a fixed to a variable range size board or vice versa. Deletes requirement in GS 55-8-06 that the articles of incorporation may stagger terms only if the number of directors is fixed at nine or more. Adopts requirement in GS 55-8-21(b) that actions take by a board of directors without a meeting are effective when one or more unrevoked consents signed by all directors are delivered to the corporation (was, when last director signs the consent). Also amends subsection to authorize director to revoke consent to take action without a meeting. Revises GS 55-8-25(a) to permit board of directors committees to have one or more members (was, two or more members required). Deletes GS 55-8-25(e)(7) and (8), which prohibited board committees from authorizing share reacquisitions except by formula, and from approving a share issuance or sale or determining share rights, unless specific limits were adopted by board of directors. GS 55-8-43 is amended to authorize the appointing officers to fill an office vacancy and to allow removal of officers by the board of directors, appointing officer, or others identified by the bylaws.

*Amendment of Articles/Bylaws.* Amends GS 55-10-02 to clarify that board of directors may, without shareholder approval, amend articles of incorporation to increase number of whole shares only if corporation has only one class of shares outstanding, and also to permit board to increase number of authorized shares in order to issue a share dividend. Further amends section to permit board of directors, without shareholder approval, to delete a class of shares upon corporation's acquisition of all authorized shares of that class. Deletes GS 55-10-07(c) requirements for notifying shareholder of meeting to approve restated articles of incorporation.

*Merger and Share Exchange.* Amends GS 55-11-01(d) (corporate mergers), GS 55-11-02(c1) (corporate share exchanges), GS 55-11-03(e) (unincorporated entities), and GS 55-11A-02(a) (plan of conversion) to allow information required in those sections to be provided by reference to facts outside plan of merger, such as statistical or market indices, official determinations by corporation or other entities, or any agreement or document. Amends GS 55-11-03(e) to require approval of a merger by any shareholder of merging corporation that has or will have personal liability for obligations of the surviving corporation. Amends GS 55-11-03(i) to authorize corporation to amend a plan of merger or share exchange after either is authorized but before filing of articles of merger or exchange. Places limitations upon parent corporation's power to merge subsidiary into itself under GS 55-11-04(a) without shareholder approval. Deletes GS 55-11-04(b) – (e), requiring that subsidiary's shareholders be notified of plan of merger, requiring that plan of merger include information on share conversions, and prohibiting articles of merger from including amendments to surviving corporation's articles of incorporation, and replaces them with requirement that parent corporation notify each subsidiary shareholder of the merger if it occurred without approval of the subsidiary shareholders. Revises GS 55-11-05(a) to specify information that must be included in surviving corporation's articles of incorporation after merger or plan of share exchange and adopts new GS 55-11-05(a1) to require that corporation deliver to Secretary of State any amendments adopted before effective date of merger or share exchange. New GS 55-11-05(d) lists types of corporations to which section applies. Enacts new GS 55-11-06(a)(7) and amends GS 55-11-06(b) to state that any foreign corporation or foreign nonprofit corporation that survives a merger or a share exchange with a domestic corporation is deemed to:

(1) agree to promptly pay dissenting shareholders amounts due under Article 13 of GS Ch. 55 (Dissenters' Rights); and (2) consent to service of process in State and to appoint the Secretary of State as its agent for service of process in proceedings to enforce the merged domestic corporation's or surviving foreign corporation's obligations and proceedings addressing the rights of dissenting shareholders (was, GS 55-11-07(b) required appointment of Secretary of State as agent for service of process in actions concerning rights of dissenting shareholders). Adopts new GS 55-11-10(d)(3a) to require that articles of merger of unincorporated entity include those amendments to articles of incorporation provided in the merger plan.

*Dissolution.* New GS 55-14-03(c) defines a dissolved corporation as one whose articles of dissolution are effective, including a successor entity receiving the remaining assets of dissolved corporation subject to its liabilities for the purpose of liquidation. Enacts new GS 55-14-09 to authorize a dissolved corporation to file an application for a determination of the amount and form of security to be provided for known or contingent claims payments in the superior court of the county where the corporation has its principal office, or if corporation does not have principal office in state, its registered office. Establishes procedures for process of application filed by corporation. Adds articles of restatement and conversion to list of documents GS 55-14A-01(b) requires that corporation file when making specific changes to its reorganization proceedings, and requires that corporation include certain listed information in filing.

*Records and Reports.* Amends GS 55-16-03(b) (inspection and copying of corporate records) to allow shareholders to inspect corporate records by electronic transmission. Enacts GS 55-16-05 to establish procedures for inspection of corporate records by directors of corporation. Enacts GS 55-16-06 to exempt corporation from notice requirements of Chapter where notice of two consecutive annual meetings was sent to a shareholder and returned undeliverable, or all dividend payments (but no less than two) sent during a 12-month period have been returned as undeliverable; but requires that notice requirements be reinstated once shareholder notifies corporation of current address.

*Miscellaneous.* Makes other technical corrections and conforming changes.

**Intro. by Clodfelter.**

Ref. to Judiciary I

GS 55, 55A, 57C, 59

April 13, 2005

**S 324. REVISE CORPORATION ACT.** Intro. 3/3/05. Senate committee substitute makes the following changes to 1st edition. Amends GS 55-7-04(b) to clarify that a shareholder may revoke a written consent only in the manner specified in that subsection. Amends GS 55-8-31(c) to delete provision which prevented authorization of a conflict of interest transaction (a transaction in which a director of the corporation has an interest) by a single member of a corporation's board of directors. Makes technical changes.

August 15, 2005

**SL 2005-268 (S 324). REVISE BUSINESS CORPORATION ACT. AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS.** Summarized in *Daily Bulletin* 3/3/05 and 4/13/05. Enacted August 12, 2005. Effective October 1, 2005.