

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 469
SENATE BILL 283

AN ACT TO AMEND CHAPTER 55 AND THE RELATED PROVISIONS OF THE
GENERAL STATUTES RELATING TO BUSINESS CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-3(a) is hereby amended by deleting from the fifth line thereof the word "unless" and inserting in lieu thereof the words "except to the extent that".

Sec. 2. G.S. 55-7(3) is hereby rewritten to read as follows:

"(3) The purpose or purposes for which the corporation is organized. It shall be sufficient to state, either alone or with other purposes, that the purpose for which the corporation is organized is to engage in any lawful act or activity for which corporations may be organized under this Chapter; and by such statement all lawful acts and activities for corporations organized under this Chapter shall be within the purposes of the corporation, subject to any express limitations."

Sec. 3. G.S. 55-14(c) is hereby amended to read as follows:

"(c) If the statement purporting to effectuate such changes is not recorded in all the offices wherein recording is required by this section, persons asserting claims against the corporation may treat as the registered agent or registered office of the corporation either the one newly designated in the statement or the preexisting one."

Sec. 4. G.S. 55-16(a)(2) is hereby amended to read as follows:

"(2) Any bylaw changing the statutory requirement for a quorum of directors or action by directors, as permitted by G.S. 55-28(d), or changing the statutory requirement for a quorum of shareholders or action by shareholders, as permitted by G.S. 55-65 and G.S. 55-66, may be adopted only by the shareholders, and any such bylaw can itself be amended or repealed only by the shareholders acting pursuant to any different quorum and greater vote so prescribed;".

Sec. 5. G.S. 55-19(d) is hereby amended by inserting in the last line thereof, immediately following the word "section," the words "or in G.S. 55-20 or G.S. 55-21," so that G.S. 55-19(d) reads as follows:

"(d) Expenses incurred by a director, officer, employee or agent in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section or in G.S. 55-20 or G.S. 55-21."

Sec. 6. G.S. 55-20(a) is hereby amended as follows:

- (1) By deleting from the first and second lines thereof the words "because of his duties or activities while" and inserting in lieu thereof the words "by reason of the fact that he is or was";
- (2) By rewriting subdivision (3)b. to read as follows:

"(3)b. A majority of a quorum consisting of directors who are not parties to such action, suit or proceeding shall determine that such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, and the corporation shall, not later than 60 days before any such payment or agreement to pay is made, send to all shareholders of record on a record date not more than 10 days prior to the date of mailing, at their registered addresses, a statement specifying the persons to be paid, the amounts to be paid, and the nature and status of the suit or proceedings at the time of mailing."

(3) By inserting in the fourth line of subdivision (3)c. thereof, immediately following the words "to be in", the words "or not opposed to".

Sec. 7. G.S. 55-27(f) is hereby amended by deleting from the first line thereof the words "Unless the charter or the bylaws otherwise provide," and inserting in place thereof the words "Unless otherwise provided in the charter or a bylaw adopted by the shareholders," so that G.S. 55-27(f) reads as follows:

"(f) Unless otherwise provided in the charter or a bylaw adopted by the shareholders, the entire board of directors or any individual director may be removed from office with or without cause by a vote of shareholders holding a majority of the outstanding shares entitled to vote at an election of directors. However, unless the entire board is removed, an individual director shall not be removed when the number of shares voting against the proposal for removal would be sufficient to elect a director if such shares could be voted cumulatively at an annual election. If any or all directors are so removed, new directors may be elected at the same meeting. Whenever a class or series of shares is entitled to elect one or more directors under authority granted by the charter the provisions of this subsection apply to the vote of that class or series as to those directors and not to the vote of the outstanding shares as a whole."

Sec. 8. G.S. 55-28(d) is hereby amended to read as follows:

"(d) A majority of the number of directors fixed by the charter or bylaws shall constitute a quorum for the transaction of business unless a greater number is required by the charter or a bylaw adopted by the shareholders. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this Chapter, the charter or a bylaw adopted by the shareholders."

Sec. 9. The first two lines of G.S. 55-29(a) are hereby amended to read as follows:

"(a) Action taken by the required majority of the directors or members of a committee without a meeting is nevertheless board or committee action if:"

Sec. 10. G.S. 55-29 is hereby amended by rewriting the catchline to read as follows: "Informal or irregular action by directors or committees; attendance by telephone." and by adding a new subsection (c) at the end thereof to read as follows:

"(c) Unless otherwise provided in the charter or bylaws, any one or more directors or members of a committee may participate in a meeting of the board or committee by means of a conference telephone or similar communications device which allows all persons participating in the meeting to hear each other, and such participation in a meeting shall be deemed presence in person at such meeting."

Sec. 11. G.S. 55-38(a) is hereby amended to read as follows:

"(a) For the purpose of this section, a qualified shareholder is a person, natural or corporate, who shall have been a shareholder of record in a corporation, domestic or foreign, for at least six months immediately preceding his demand or who shall be the holder of record of at least five percent (5%) of its outstanding shares of any class, and the term shareholder includes a holder of a voting trust certificate to the extent of the shares represented by said certificate; provided that the personal representative of the estate of a deceased holder, or the guardian, committee, trustee or conservator of the estate of a ward, incompetent or missing person who is a holder, or a trustee in bankruptcy of a holder, or a receiver or liquidator of the

estate or affairs of a holder, shall be deemed to be a qualified shareholder regardless of the period of time he has been a shareholder of record or the number of shares held by him."

Sec. 12. Chapter 55 of the General Statutes is hereby amended by inserting a new section G.S. 55-39.1 to read as follows:

"§ 55-39.1. Shareholders' derivative actions. — (a) An action may be brought in this State in the right of any domestic or foreign corporation by a shareholder or holder of a beneficial interest in shares of such corporation; provided that the plaintiff or plaintiffs must allege, and it must appear that each plaintiff was a shareholder or holder of a beneficial interest in such shares at the time of the transaction of which he complains or that his shares or beneficial interest in such shares devolved upon him by operation of law from a person who was a shareholder or holder of a beneficial interest in such shares at such time.

(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and the reasons for his failure to obtain the action or for not making the effort.

(c) Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the shareholders or any class or classes thereof, or of the creditors of the corporation, will be substantially affected by such discontinuance, dismissal, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such shareholders or creditors whose interests it determines will be so affected. 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 such expense shall be awarded as costs of the action.

(d) If the action on behalf of the corporation is successful, in whole or 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.

(e) 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."

Sec. 13. Chapter 55 of the General Statutes is hereby amended by inserting a new section G.S. 55-39.2 to read as follows:

"§ 55-39.2. Appointment of provisional director. — (a) If the directors of a corporation are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and if injury to the corporation is being suffered or is threatened by reason thereof, the superior court of the county where the registered office of the corporation is located may, notwithstanding any provisions of the charter or bylaws of the corporation and whether or not an action is pending for an involuntary dissolution of the corporation, appoint a provisional director pursuant to this section.

(b) Action for such appointment may be filed by not less than one-half of the directors or by the holders of not less than one-third of the total outstanding shares of the corporation regardless of voting rights. Notice of such action shall be served upon the directors (other than those who have filed the action) and upon the corporation in the manner provided by law for service of a summons and complaint, and a hearing shall be held not less than 10 days after such service is effected. At such hearing all interested persons shall be given an opportunity to be heard.

(c) The provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related by blood or marriage to any of the other directors of the corporation, or to any judge of the court by which he is appointed. The provisional director shall have all the rights and powers of a director, and shall be entitled to notice of the

meetings of the board of directors and to vote at such meetings, until he is removed by order of the court or by vote or written consent of the holders of a majority of the voting shares or holders of such higher number of voting shares as may be required under the charter or the bylaws for the election of directors. He shall be entitled to receive such compensation as may be agreed upon between him and the corporation, and in the absence of such agreement he shall be entitled to such compensation as shall be fixed by the court."

Sec. 14. G.S. 55-45(c) is hereby repealed.

Sec. 15. G.S. 55-46(b) is hereby amended by deleting from the fifth line thereof the words "such a person a shareholder" and inserting in lieu thereof the word "payment".

Sec. 16. G.S. 55-47(b)(2) is hereby amended by inserting in the fifth line thereof, immediately following the word "surplus", the words "and such portion thereof as may be entered as earned surplus as permitted by G.S. 55-49(k)".

Sec. 17. G.S. 55-49(k) is hereby amended as follows:

- (1) By placing a comma (,) after the word "merged" in line one thereof;
- (2) By inserting, after the word "all" in line two, the words "or substantially all";
and
- (3) By inserting, before the word "assets" in line two, the words "outstanding shares or".

Sec. 18. G.S. 55-50(d) is hereby amended to read as follows:

"(d) Subject to any provisions contained in its charter, for the purpose of paying a dividend out of earned surplus or net profits as permitted by subsection (a) of this section, a corporation engaged in the business of exploiting natural resources, patents, copyrights, leaseholds, and other assets wasting in a similar manner, or engaged primarily in the liquidation of specific assets, may compute its earned surplus or net profits derived from such exploitation or liquidation without taking into consideration the depletion or amortization of such assets resulting from lapse of time or from consumption, liquidation, or exploitation of such assets. If a dividend is paid from a source so computed, the corporation shall make the disclosure required by subsection (g) of this section."

Sec. 19. G.S. 55-50(f) is hereby amended by deleting from the third line thereof the words "otherwise provided in the charter or subscription agreement" and inserting in lieu thereof the words "the charter or subscription agreement provides for lesser dividend payments".

Sec. 20. Chapter 55 of the General Statutes is hereby amended by inserting a new subsection to be numbered G.S. 55-50(i) to read as follows:

"(i) As used in this subsection, net profits shall mean such net profits as can lawfully be paid in dividends to a particular class of shares after making allowance for the prior claims of shares, if any, entitled to preference in the payment of dividends, but in the determination of such profits the provisions of subsection (d) of this section shall not apply. If during its immediately preceding fiscal period a corporation having less than twenty-five shareholders on the final day of said period has not paid to any class of shares dividends in cash or property amounting to at least one-third of the net profits of said period allocable to that class, the holder or holders of twenty percent (20%) or more of the shares of that class may, within four months after the close of said period, make written demand upon the corporation for the payment of additional dividends for that period. After a corporation has received such a demand, the directors shall, during the then current fiscal period or within three months after the close thereof, either (1) cause dividends in cash or property to be paid to the shareholders of that class in an amount equal to the difference between the dividends paid in said preceding fiscal period to shareholders of that class and one-third of the net profits of said period allocable to that class, or in such lesser amount as may be demanded, or (2) give notice pursuant to subsection (j) of this section to all shareholders making such demand. A corporation shall not, however, be required to pay dividends pursuant to such demand insofar as (1) such payment

would exceed fifty percent (50%) of the net profits of the current fiscal period in which such demand is made, or (2) insofar as the net profits are being retained to eliminate a deficit, or (3) insofar as the directors of the corporation can show that its earnings are being retained to meet the reasonable anticipated needs of the business and that such retention of earnings is not inequitable in light of all the circumstances. Upon receipt of such a demand a corporation may elect to treat any dividend previously paid in the current fiscal period as having been paid in the preceding fiscal period, in which event the corporation shall so notify all shareholders. If a dividend is paid in satisfaction of a demand made in accordance with this subsection it shall be deemed to have been paid in the period for which it was demanded, and all shareholders shall be so informed concurrently with such payment.

(j) Upon receipt of a demand from the holders of twenty percent (20%) or more of the shares of any class of shares pursuant to subsection (i) of this section, the corporation receiving such demand may, during the then fiscal period or within three months after the close thereof, given written notice to each shareholder making such written demand that the corporation elects to redeem all share held by such shareholder in lieu of the payment of dividends as provided in subsection (i) of this section and shall pay to such shareholder the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice. A shareholder receiving such notice shall thereafter be entitled to receive the fair value of his shares, subject only to the surrender by him of his certificate representing his shares and to the provisions of G.S. 55-52, which value shall be determined and paid as follows:

- (1) If within 30 days after the date upon which a shareholder becomes entitled to payment for his shares under this subsection, the value of the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within 60 days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.
- (2) If within the such 30-day period the shareholder and the corporation do not agree as to the value of the shares, the shareholder may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least 10 days prior to the hearing of the petition by the court. The award of appraisers, or a majority of them, if no exceptions be filed thereto within 10 days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within 10 days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40 for the trial of cases under the eminent domain law of this State, and with the same right of appeal as is permitted in said chapter. The court shall assess the cost of said proceedings as it shall deem equitable. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the

time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as in this subsection provided, may be held and disposed of by the corporation as in the case of other treasury shares."

Subsection (j) of G.S. 55-50 is hereby renumbered (k).

Subsection (k) of G.S. 55-50 is hereby renumbered (1).

Sec. 21. G.S. 55-65(a) is hereby amended by deleting from the second line thereof the word "bylaws" and inserting in place thereof the words "a bylaw" so that G.S. 55-65(a) reads as follows:

"(a) Unless otherwise provided in this Chapter or in the charter or in a bylaw adopted by the shareholders, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the outstanding shares entitled to vote."

Sec. 22. G.S. 55-66 is hereby amended by deleting from the fifth line thereof the word "bylaws" and inserting in place thereof the words "a bylaw"; and by inserting in the seventh line thereof, immediately following the word "charter," the words "or a bylaw adopted by its shareholders"; and by adding at the end thereof a new subsection (c) so that G.S. 55-66 reads as follows:

"§ 55-66. **Votes required.** — (a) A majority of the shares voted at a meeting of shareholders, duly held and at which a quorum is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority is required by this Chapter or by the charter or a bylaw adopted by the shareholders.

(b) Except where other provisions of this Chapter expressly make this subsection inapplicable, any corporation may by its charter or a bylaw adopted by its shareholders require for any purpose the concurrence of a greater proportion of the votes of any class or classes of shares than required by this Chapter for such purpose.

(c) Any provision in the charter or bylaws prescribing the vote required for any purpose as permitted by this section may not itself be amended by a vote less than the vote therein prescribed."

Sec. 23. G.S. 55-68(b) is hereby amended to read as follows:

"(b) A proxy is not valid after the expiration of 11 months from the date of its execution unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy, whether or not designated as irrevocable as permitted by subsection (g) of this section, shall be valid after 10 years from the date of its execution, unless renewed or extended at any time before its expiration for not more than 10 years from the date of such renewal or extension."

Sec. 24. G.S. 55-68(c) is hereby amended to read as follows:

"(c) Any proxy duly executed is not revoked, and continues in full force and effect, until an instrument revoking it, or a duly executed proxy bearing a later date, is filed with the secretary of the corporation. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the corporation. Notwithstanding that a valid proxy is outstanding the powers of the proxy holder are suspended, except in the case of a valid proxy which is designated as irrevocable as permitted by subsection (g) of this section, if the person executing the proxy is present at the meeting and elects to vote in person."

Sec. 25. G.S. 55-68 is hereby amended by adding at the end thereof three new subsections to read as follows:

"(f) A proxy shall be irrevocable only when it clearly indicates that it is to be irrevocable and is held by any of the following or by a nominee of any of the following:

- (1) a pledgee of the shares which are the subject of the proxy; or
- (2) a person who has purchased or contracted to purchase the shares which are the subject of the proxy; or
- (3) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of a proxy, if such proxy specifically states that it was given in consideration of such extension or continuation of credit, and sets forth the amount of, and the name of the person extending or continuing, credit; or
- (4) a person who has contracted to perform services for the corporation under a contract which requires a proxy, if the proxy states that it was given in consideration of the contract, the name of the person, and the period of the contract; or
- (5) a person, including an arbitrator, designated by or under a shareholders' agreement permitted by G.S. 55-73.

Any such proxy shall become revocable after the pledge is redeemed, or the contract of purchase has been performed and the purchaser has become a shareholder of record, or the debt of the corporation is paid, or the period of the contract has been terminated, or the agreement permitted by G.S. 55-73 has terminated.

(g) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of such provision, unless notice of the proxy and of its irrevocability plainly appears on the face or back of the certificate representing such shares.

(h) The foregoing provisions shall be applicable to proxies given by the holders of a corporation's bonds, debentures or other obligations where a right to vote is conferred upon such holders by the charter as permitted by G.S. 55-44.1."

Sec. 26. G.S. 55-72(c) is hereby amended by adding a new sentence at the end thereof so that G.S. 55-72(c) reads as follows:

"(c) Notwithstanding the provisions of this section or of G.S. 55-59, the holders of record of the voting trust certificates shall have the same rights as if they were shareholders of record with respect to voting upon any amendment of the charter, amendment of the bylaws, reduction of stated capital, sale of the entire assets, merger, consolidation or dissolution. For this purpose the trustees, upon timely and adequate information and requests from the corporation, shall prepare and furnish the corporation with a list of the trust certificate holders, which shall conform substantially to the requirements of this Chapter relating to voting lists of shareholders, and the corporation shall send all proper notices, maintain and make available the said list for inspection and make all appropriate arrangements to permit the trust certificate holders to vote in person or by proxy at the meeting in question as if they were shareholders of record. This subsection (c) shall not apply to any voting trust initially created on or after October 1, 1973; and any voting trust created before that date may be amended by unanimous consent of the holders of record of the voting trust certificates to provide that this subsection (c) shall not thereafter be applicable to such voting trust."

Sec. 27. G.S. 55-72(d) is hereby amended to read as follows:

"(d) The trustee or trustees under a voting trust agreement shall, except to the extent otherwise provided by the agreement or subsection (c) of this section, have the right to vote upon and exercise any rights of dissent with respect to any charter amendment, merger, consolidation, dissolution, sale of assets or reduction of stated capital of the corporation."

Sec. 28. G.S. 55-72 is hereby amended by adding at the end thereof two new subsections (e) and (f) to read as follows:

"(e) At any time before the expiration of a voting trust agreement as originally created or as extended under this subsection, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such agreement, nominating the same or substitute trustee or trustees, for an additional period not to exceed 10 years from the date of such expiration. Such extension agreement shall not affect the rights or obligations of persons not parties to the extension agreement, and such persons shall be entitled to remove their shares from the trust upon the expiration of the voting trust agreement and promptly to have their share certificates reissued to them. The extension agreement shall comply with all provisions of this section applicable to the original voting trust agreement.

(f) The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of 10 years from the date of its creation or extension by the fact that by its terms it will or may last beyond such ten-year period."

Sec. 29. G.S. 55-73(a) is hereby amended to read as follows:

"(a) An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in the exercise of any voting rights of shares held by the parties, including any vote with respect to directors, such shares shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with any procedure (including arbitration) specified in the agreement. Such agreement shall be valid and enforceable as between the parties thereto for a period not to exceed 10 years from the date of its execution; and in an action by a shareholder who is a party to such an agreement a court of competent jurisdiction may enjoin another party or parties to the agreement from voting his or their shares in violation thereof, or, if the corporation is made a party to the action, may set aside an election of directors or other action resulting from the voting of shares in violation of the agreement, and may grant such other or further relief as may appear appropriate under the circumstances for the enforcement of the agreement. Such agreement may be extended or renewed in like manner as a voting trust may be extended or renewed as provided by G.S. 55-72(d). Nothing herein shall impair the privilege of the corporation to treat the shareholders of record as entitled to vote the shares standing in their names, as provided in G.S. 55-59 nor impair the power of a court to determine voting rights as provided in G.S. 55-71."

Sec. 30. G.S. 55-100(b)(3) is hereby amended by rewriting the last sentence and adding a new sentence at the end thereof so that G.S. 55-100(b)(3) reads as follows:

"(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of all the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of all the outstanding shares of each class of shares entitled to vote thereon as a class and a majority of all the other outstanding shares entitled to vote thereon. If the charter prescribes a different quorum or requires more than the majority vote herein prescribed, either for all amendments or for a specific amendment, such charter provision can itself be amended or repealed only by the shareholders acting pursuant to any different quorum and greater vote so prescribed. An amendment to the charter which adds a provision for liquidation or dissolution of the corporation as permitted by G.S. 55-125(a)(3), or which changes or repeals such a provision, must be approved by the affirmative vote of the holders of all the outstanding shares of the corporation, whether or not otherwise entitled to vote, or by the holders of such lesser number of shares, but not less than the number required for a regular charter

amendment, as may be specifically provided in the charter for adding, changing or repealing such a provision."

Sec. 31. G.S. 55-106 is hereby amended to read as follows:

"§ 55-106. **Procedure for merger.** — (a) One or more domestic corporations may merge into another corporation, hereinafter designated as the surviving corporation, pursuant to a plan of merger approved in the manner provided in this Chapter. All corporations which are parties to such merger are hereinafter designated collectively as the constituent corporations.

(b) The board of directors of each constituent corporation shall by resolution adopted by each such board, approve a plan of merger setting forth:

- (1) The name of each constituent corporation, and a designation of which constituent corporation is to be the surviving corporation.
- (2) The name which the surviving corporation is to have after the merger, which name may be that of any of the constituent corporations or any other available name permitted by this Chapter.
- (3) The terms and conditions of the proposed merger.
- (4) The manner and basis of converting the shares of each of the constituent corporations into shares or other securities or obligations of the surviving corporation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities or obligations of the surviving corporation, the cash, property, rights or shares or other securities or obligations of any other corporation which the holders of such shares are entitled to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash, property, rights or shares or other securities or obligations of any other corporation may be in addition to or in lieu of the shares or securities or obligations of the surviving corporation; or, if any constituent corporation is the wholly-owned subsidiary of the surviving corporation and no cash or shares or other securities or obligations will be distributed or issued upon conversion or cancellation of the shares of any such constituent corporation, a statement to that effect.
- (5) A statement of any changes in the charter of the surviving corporation to be effected by such merger.
- (6) Such other provisions not inconsistent with law as are deemed necessary or desirable."

Sec. 32. G.S. 55-107(b)(3) is hereby amended to read as follows:

- "(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation, and, if any shares of any consolidating corporation are not to be converted solely into shares or other securities or obligations of the new corporation, the cash, property, rights or shares or other securities or obligations of any other corporation which the holders of such shares are entitled to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash, property, rights or shares or other securities or obligations of any other corporation may be in addition to or in lieu of the shares or securities or obligations of the new corporation."

Sec. 33. G.S. 55-108.1 is hereby amended to read as follows:

"§ 55-108.1. **Mergers without approval of the shareholders of the surviving corporation.** — (a) Unless otherwise provided in the charter or bylaws, no approval by shareholders of the surviving corporation shall be required for a merger if at the time of approval of the plan of merger by the board of directors of each of the corporations, domestic or foreign, who are parties thereto, the surviving corporation is the owner of all the outstanding shares of the other

corporation, or corporations, domestic or foreign, who are parties to the merger, and the plan of merger does not provide for any changes in the charter of, or the issuance of any shares by, the surviving corporation.

(b) Unless otherwise provided in the charter or bylaws, no approval by-shareholders of the surviving corporation shall be required for a merger if (1) the plan of merger does not provide for any changes in the charter of the surviving corporation, (2) each share of the surviving corporation outstanding immediately prior to the merger becoming effective shall remain outstanding immediately after the merger as an identical share of the surviving corporation, and (3) either no common shares of the surviving corporation and no shares, securities or obligations convertible into common shares are to be issued or delivered under the plan of merger, or the authorized unissued common shares or the treasury common shares of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent (20%) of the common shares of the surviving corporation outstanding immediately prior to the effective date of the merger.

(c) In case of a merger under the provisions of this section, the articles of merger shall contain statements showing compliance with the conditions of this section, and, in lieu of statements required by G.S. 55-109(b) relating to the outstanding shares and the vote of shareholders of the surviving corporation, need only state the approval by its board of directors."

Sec. 34. G.S. 55-109(a) is hereby amended to read as follows:

"(a) After the approval by the directors and shareholders to the extent required by G.S. 55-108 and G.S. 55-108.1, articles of merger or of consolidation shall be executed by each corporation and be filed as provided in G.S. 55-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the register of deeds of each county wherein the constituent corporations have their registered offices. Certificates of merger or consolidation shall also be registered as provided in G.S. 47-18.1."

Sec. 35. G.S. 55-111(c) is hereby amended to read as follows:

"(c) If the surviving or new corporation, as the case may be, is a corporation of any state other than this State, it shall comply with the provisions of this Chapter with respect to foreign corporations if it is to transact business in this State; and, if after the merger or consolidation it transacts no business in this State, the courts of this State shall have jurisdiction in actions to enforce any obligation of any constituent corporation of this State arising out of the merger or consolidation or out of any act or omission of such constituent corporation prior to or contemporaneous with the merger or consolidation, and process therein may be served as provided in G.S. 55-146 or G.S. 55-146.1."

Sec. 36. G.S. 55-113(e) is hereby amended by deleting from the twentieth line thereof the words "to the Supreme Court".

Sec. 37. G.S. 55-113(i) is hereby amended by adding at the end thereof a new sentence so that G.S. 55-113(i) reads as follows:

"(i) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporation or corporations, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the shareholders of the surviving corporation. The provisions of this section shall also not apply to the shareholders of the surviving corporation if their approval of the merger is not required, as provided in G.S. 55-108.1(b)."

Sec. 38. Chapter 55 of the General Statutes is hereby amended by inserting therein a new section G.S. 55-113.1 to read as follows:

"§ 55-113.1. **Fundamental changes in reorganization proceedings.** — (a) Whenever a plan of reorganization of a corporation has been or shall be confirmed by decree or order of a court

of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the corporation may put into effect and carry out such plan and the decrees and orders of the court relative thereto and may take any proceeding and do any act provided in such plan or directed by such decrees and orders without further action by its directors or shareholders. Such action may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such 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 shareholders of the corporation. In particular and without limiting the generality or effect of the foregoing, such corporation may:

- (1) Amend its charter or bylaws, or both, so long as the charter 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 stated capital or surplus or in any or all of its outstanding shares or other securities, or cancel any or all of such outstanding shares or other securities;
- (4) Dissolve and liquidate;
- (5) Merge or consolidate;
- (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, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

(b) Any articles of amendment, statement of classification of shares, statement of change of registered office and registered agent, certificate of reduction of capital, restated charter, articles of merger, articles of consolidation, articles of dissolution, statement of revocation of dissolution, certificate of completed liquidation, 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).

(c) No action taken under this section shall give rise to any rights under G.S. 55-113, except as provided in the plan of reorganization.

(d) No action authorized by this section shall be taken after the entry of a final decree in the reorganization proceedings closing the case and discharging the trustee or trustees, if any."

Sec. 39. G.S. 55-114(a)(1) is hereby amended to read as follows:

"(1) Upon expiration of any period of duration to which the corporation is limited by its charter, by executing and filing in the office of the Secretary of State in accordance with the provisions of G.S. 55-4 articles of dissolution setting forth (i) the name of the corporation, (ii) the names and respective addresses of its officers and directors, and (iii) a statement of the expiration date presently contained in its charter."

Sec. 40. G.S. 55-114(a)(3) is hereby amended by placing a semicolon following the reference to G.S. 55-125 in the fourth line thereof and by deleting the balance of lines 4 and 5 thereof so that G.S. 55-114(a)(3) reads as follows:

"(3) By entry of a decree of dissolution by the superior court in involuntary proceedings for dissolution by the Attorney General, as prescribed in G.S.

55-122, or in proceedings to liquidate the assets and business of the corporation, as described in G.S. 55-1 25."

Sec. 41. Chapter 55 of the General Statutes is hereby amended by adding a new section G.S. 55-125.1 to read as follows:

"§ 55-125.1. Discretion of court to grant relief other than dissolution. — (a) In any action filed by a shareholder to dissolve the corporation under G.S. 55-125(a), the court may make such order or grant such relief, other than dissolution, as in its discretion it deems appropriate, including, without limitation, an order:

- (1) canceling or altering any provision contained in the charter or the bylaws of the corporation; or
- (2) canceling, altering, or enjoining any resolution or other act of the corporation; or
- (3) directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action; or
- (4) providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders, such fair value to be determined in accordance with such procedures as the court may provide.

(b) Such relief may be granted as an alternative to a decree of dissolution, or may be granted whenever the circumstances of the case are such that relief, but not dissolution, would be appropriate."

Sec. 42. G.S. 55-129 is hereby amended and rewritten to read as follows:

"§ 55-129. Duties of officials as to decrees and orders concerning dissolution or charter amendment. — A court decree effecting or canceling a dissolution of a corporation or canceling or altering any provision contained in its charter, or a court order declaring liquidation completed shall contain a direction to the clerk of that court promptly to file one certified copy of such decree or order with the Secretary of State and also to file a certified copy thereof with the register of deeds of the county wherein the corporation has its registered office. The fees for the preparation, certificates, and filing of such decree or order shall be taxed as a part of the costs in the action. The register of deeds shall record and index the order or decree in the Record of Incorporations; promptly after the recordation, the register shall note the fact of recordation on the said copy and return it to the corporation or its representative. If the corporation or its representative cannot be located, the register may destroy the copy."

Sec. 43. G.S. 55-145(a) is hereby amended by deleting from the second and third lines thereof the words "by a resident of this State or by a person having a usual place of business in this State," so that the first paragraph of G.S. 55-145(a) reads as follows:

"(a) Every foreign corporation shall be subject to suit in this State, whether or not such foreign corporation is transacting or has transacted business in this State and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:"

Sec. 44. G.S. 55-146.1 is hereby amended by deleting from the first line thereof the word "procedure" and by inserting in place thereof the word "provisions" so that G.S. 55-146.1 reads as follows:

"§ 55-146.1. Alternative jurisdiction over and service of process on foreign corporations. — In addition to the provisions set out in this Chapter, foreign corporations may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of Chapter 1 and Chapter 1A of the General Statutes."

Sec. 45. G.S. 55-164.1 is hereby amended by rewriting the first paragraph to read as follows:

"§ 55-164.1. New corporations organized to succeed to rights in corporate charter forfeited. — Whenever the charter of a corporation created under the laws of the State of North Carolina has, on account of failure to make any report or return or to pay any tax or fee for such

length of time as to lose its charter, and where thereafter, under the laws of the State of North Carolina, a new charter is issued, in the same name as the original corporation, and on behalf of the same corporation, such new corporation shall succeed to the same properties, to the same rights as the original corporation before losing its charter on account of neglect hereinbefore mentioned."

Sec. 45.1. G.S. 55-60(b) is hereby amended by deleting from the fourth line thereof the word "fifty" and inserting in lieu thereof the word "sixty".

Sec. 45.2. G.S. 55-46(a)(2) is hereby amended by inserting a comma after the word "corporation" in the first line thereof.

Sec. 45.3. G.S. 55-12 is hereby amended by adding at the end thereof a new subsection (k) to read as follows:

"(k) The issuance of a corporate charter to any domestic corporation shall not authorize the use in this State of the corporate name in violation of the rights of any third party under the Federal Trademark Act, the Trademark Act of this State, or the common law; and the issuance of such charter shall not be a defense to an action for violation of any such rights."

Sec. 45.4. G.S. 55-137 is hereby amended by adding at the end thereof a new subsection (e) to read as follows:

"(e) The issuance of a certificate of authority to any foreign corporation shall not authorize the use in this State of the corporate name in violation of the rights of any third party under the Federal Trademark Act, the Trademark Act of this State, or of the common law; and the issuance of such certificate shall not be a defense to an action for violation of any such rights."

Sec. 46. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 47. This act shall be effective on and after October 1, 1973.

In the General Assembly read three times and ratified, this the 14th day of May, 1973.