

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 280*
Judiciary II Committee Substitute Adopted 5/3/89
House Committee Substitute Favorable 6/1/89

Short Title: Business Corporation Act.

(Public)

Sponsors:

Referred to:

February 27, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE CHAPTER 55 OF THE GENERAL STATUTES RELATING
3 TO BUSINESS CORPORATIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 55 of the General Statutes is rewritten to read:

6 "CHAPTER 55.

7 "N.C. BUSINESS CORPORATION ACT.

8 "ARTICLE 1.

9 "GENERAL PROVISIONS.

10 "PART 1. SHORT TITLE AND RESERVATION OF POWER.

11 "§ 55-1-01. Short title.

12 This act shall be known and may be cited as the 'North Carolina Business
13 Corporation Act'.

14 "§ 55-1-02. Reservation of power to amend or repeal.

15 The General Assembly has power to amend or repeal all or part of this act at any
16 time and all domestic and foreign corporations subject to this act are governed by the
17 amendment or repeal.

18 "PART 2. FILING DOCUMENTS.

19 "§ 55-1-20. Filing requirements.

20 (a) To be entitled to filing by the Secretary of State under this act, a document
21 must satisfy the requirements of this section, and of any other section that adds to or
22 varies these requirements.

1 (b) The document must be one that is required or permitted by this act to be filed
2 in the office of the Secretary of State.

3 (c) The document must contain the information required by this act. It may
4 contain other information as well.

5 (d) The document must be typewritten or printed.

6 (e) The document must be in the English language.

7 A corporate name need not be in English if written in English letters or Arabic or
8 Roman numerals, and the certificate of existence required of foreign corporations need
9 not be in English if accompanied by a reasonably authenticated English translation.

10 (f) The document must be executed:

11 (1) By the chairman of the board of directors of a domestic or foreign
12 corporation, by its president, or by another of its officers;

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

15 (3) If the corporation is in the hands of a receiver, trustee, or other court-
16 appointed fiduciary, by that fiduciary.

17 (g) The person executing the document shall sign it and state beneath or opposite
18 his signature his name and the capacity in which he signs. The document may but need
19 not contain:

20 (1) The corporate seal;

21 (2) An attestation by the secretary or an assistant secretary; and

22 (3) An acknowledgement, verification, or proof.

23 (h) If the Secretary of State has prescribed a mandatory form for the document
24 under G.S. 55-1-21, the document must be in or on the prescribed form.

25 (i) The document must be delivered to the office of the Secretary of State for
26 filing and must be accompanied by one exact or conformed copy (except as provided in
27 G.S. 55-5-03 and G.S. 55-15-09), and all fees and taxes required by this act.

28 **"§ 55-1-21. Forms.**

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

30 (1) An application for a certificate of existence;

31 (2) A foreign corporation's application for a certificate of authority to
32 transact business in this State;

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

34 (4) The annual report.

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

36 (b) The Secretary of State may promulgate and furnish on request forms for other
37 documents required or permitted to be filed by this act but their use is not mandatory.

38 **"§ 55-1-22. Reserved for future codification purposes.**

39 **"§ 55-1-23. Effective time and date of document.**

40 (a) Except as provided in subsection (b) and G.S. 55-1-24(c), a document
41 accepted for filing is effective:

42 (1) At the time of filing on the date it is filed, as evidenced by the
43 Secretary of State's date and time endorsement on the original
44 document; or

1 (2) At the time specified in the document as its effective time on the date
2 it is filed.

3 (b) A document may specify a delayed effective time and date, and if it does so
4 the document becomes effective at the time and date specified. If a delayed effective
5 date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A
6 delayed effective date for a document may not be later than the 90th day after the date it
7 is filed.

8 (c) The fact that a document has become effective under this section does not
9 determine its validity or invalidity or the correctness or incorrectness of the information
10 contained in the document.

11 **"§ 55-1-24. Correcting filed document.**

12 (a) A domestic or foreign corporation may correct a document filed by the
13 Secretary of State if the document (1) contains an incorrect statement or (2) was
14 defectively executed, attested, sealed, verified, or acknowledged.

15 (b) A document is corrected:

16 (1) By preparing articles of correction that (i) describe the document
17 (including its filing date) or attach a copy of it to the articles, (ii)
18 specify the incorrect statement and the reason it is incorrect or the
19 manner in which the execution was defective, and (iii) correct the
20 incorrect statement or defective execution; and

21 (2) By delivering the articles to the Secretary of State for filing.

22 (c) Articles of correction are effective on the effective date of the document they
23 correct except as to persons relying on the uncorrected document and adversely affected
24 by the correction. As to those persons, articles of correction are effective when filed.

25 **"§ 55-1-25. Filing duty of Secretary of State.**

26 (a) If a document delivered to the office of the Secretary of State for filing
27 satisfies the requirements of this Chapter, the Secretary of State shall file it.

28 (b) The Secretary of State files a document by stamping or otherwise endorsing
29 'Filed', together with his name and official title and the date and time of filing, on both
30 the original and the document copy. After filing a document, except as provided in G.S.
31 55-5-03 and G.S. 55-15-10, the Secretary of State shall deliver the document copy to the
32 domestic or foreign corporation or its representative.

33 (c) If the Secretary of State refuses to file a document, he shall return it to the
34 domestic or foreign corporation or its representative within five days after the document
35 was received, together with a brief, written explanation of the reason for his refusal.

36 (d) The Secretary of State's duty is to review and file documents that satisfy the
37 requirements of this Chapter. His filing or refusing to file a document does not:

38 (1) Affect the validity or invalidity of the document in whole or part;

39 (2) Relate to the correctness or incorrectness of information contained in
40 the document;

41 (3) Create a presumption that the document is valid or invalid or that
42 information contained in the document is correct or incorrect.

43 **"§ 55-1-26. Appeal from Secretary of State's refusal to file document.**

1 (a) If the Secretary of State refuses to file a document delivered to his office for
2 filing, the domestic or foreign corporation may, within 30 days after such refusal, appeal
3 the refusal to the superior court of Wake County. The appeal is commenced by filing a
4 petition with the court and with the Secretary of State requesting the court to compel the
5 Secretary of State to file the document. The petition shall have attached to it the
6 document to be filed and the Secretary of State's explanation for his refusal to file. The
7 appeal to the superior court is not governed by the Administrative Procedure Act and
8 shall be determined upon such further notice and opportunity to be heard, if any, as the
9 court may deem appropriate under the circumstances.

10 (b) Upon consideration of the petition and any response made by the Secretary of
11 State, the court may, prior to entering final judgment, order the Secretary of State to file
12 the document or take other action the court considers appropriate.

13 (c) The court's final decision may be appealed as in other civil proceedings.

14 **"§ 55-1-27. Evidentiary effect of copy of filed document.**

15 A certificate attached to a copy of a document filed by the Secretary of State,
16 bearing his signature (which may be in facsimile) and the seal of his office and
17 certifying that said copy is a true copy of said document, is conclusive evidence that the
18 original document is on file with the Secretary of State.

19 **"§ 55-1-28. Certificate of existence.**

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

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

- 24 (1) The domestic corporation's corporate name or the foreign corporation's
25 corporate name used in this State;
- 26 (2) That (i) the domestic corporation is duly incorporated under the law of
27 this State, the date of its incorporation, and the period of its duration if
28 less than perpetual; or (ii) that the foreign corporation is authorized to
29 transact business in this State;
- 30 (3) That all fees, taxes, and penalties owed to this State have been paid, if
31 (i) payment is reflected in the records of the Secretary of State and (ii)
32 nonpayment affects the existence or authorization of the domestic or
33 foreign corporation;
- 34 (4) That its most recent annual report required by G.S. 55-16-22 has been
35 delivered to the Secretary of State;
- 36 (5) That articles of dissolution have not been filed; and
- 37 (6) Other facts of record in the office of the Secretary of State that may be
38 requested by the applicant.

39 (c) Subject to any qualification stated in the certificate, a certificate of existence
40 or authorization issued by the Secretary of State may be relied upon as conclusive
41 evidence that the domestic or foreign corporation is in existence or is authorized to
42 transact business in this State.

43 **"§ 55-1-29. Penalty for signing false document.**

1 (a) A person commits an offense if he signs a document he knows is false in any
2 material respect with intent that the document be delivered to the Secretary of State for
3 filing.

4 (b) An offense under this section is a misdemeanor.

5 **"PART 3. SECRETARY OF STATE.**

6 **"§ 55-1-30. Powers.**

7 The Secretary of State has the power reasonably necessary to perform the duties
8 required of him by this act.

9 **"§ 55-1-31. Interrogatories by Secretary of State.**

10 The Secretary of State may propound to any corporation, domestic or foreign which
11 he has reason to believe is subject to the provisions of this act, and to any officer or
12 director thereof, such written interrogatories as may be reasonably necessary and proper
13 to enable him to ascertain whether such corporation is subject to the provisions of this
14 act or has complied with all the provisions of this act applicable to it. Subject to
15 applicable jurisdictional requirements, such interrogatories shall be answered within 30
16 days after the mailing therefor, or within such additional time as shall be fixed by the
17 Secretary of State, and the answers thereto shall be full and complete and shall be made
18 in writing and under oath. If such interrogatories be directed to an individual they shall
19 be answered by him, and if directed to a corporation they shall be answered by the
20 president, vice-president, secretary or assistant secretary thereof. The Secretary of State
21 shall certify to the Attorney General, for such action as the Attorney General may deem
22 appropriate, all interrogatories and answers thereto which disclose a violation of any of
23 the provisions of this act, requiring or permitting action by the Attorney General.

24 **"§ 55-1-32. Penalties imposed upon corporations, officers, and directors for failure
25 to answer interrogatories.**

26 (a) If a corporation, domestic or foreign, fails or refuses to answer truthfully and
27 fully within the time prescribed in this act interrogatories propounded by the Secretary
28 of State in accordance with the provisions of this act, the Secretary of State may
29 suspend its articles of incorporation or its certificate of authority to do business.

30 (b) Each officer and director of a corporation, domestic or foreign, who fails or
31 refuses within the time prescribed by this act to answer truthfully and fully
32 interrogatories propounded to him by the Secretary of State in accordance with the
33 provisions of this act shall be guilty of a misdemeanor.

34 **"§ 55-1-33. Information disclosed by interrogatories.**

35 Interrogatories propounded by the Secretary of State and the answers thereto shall
36 not be open to public inspection nor shall the Secretary of State disclose any facts or
37 information obtained therefrom except insofar as his official duty may require the same
38 to be made public or in the event such interrogatories or the answers thereto are required
39 for evidence in any criminal proceedings or in any other action or proceedings by this
40 State.

41 **"PART 4. DEFINITIONS.**

42 **"§ 55-1-40. Act definitions.**

43 In this act unless otherwise specifically provided:

- 1 (1) 'Articles of incorporation' include amended and restated articles of
2 incorporation and articles of merger.
- 3 (2) 'Authorized shares' means the shares of all classes a domestic or
4 foreign corporation is authorized to issue.
- 5 (3) 'Conspicuous' means so written that a reasonable person against
6 whom the writing is to operate should have noticed it. For
7 example, printing in italics or boldface or contrasting color, or
8 typing in capitals or underlined, is conspicuous.
- 9 (4) 'Corporation' or 'domestic corporation' means a corporation for
10 profit or a corporation having capital stock that is incorporated
11 under or subject to the provisions of this act and that is not a
12 foreign corporation except that in G.S. 55-9-01 'corporation'
13 includes domestic and foreign corporations.
- 14 (5) 'Deliver' includes mail.
- 15 (6) 'Distribution' means a direct or indirect transfer of money or other
16 property (except its own shares) or incurrence of indebtedness by a
17 corporation to or for the benefit of its shareholders in respect of any
18 of its shares. A distribution may be in the form of a declaration or
19 payment of a dividend; a purchase, redemption, or other acquisition
20 of shares; a distribution of indebtedness; or otherwise.
- 21 (6a) 'Dividend credit' as used in G.S. 55-6-01(d)(5) means the
22 aggregate of all yearly dividend credits. 'Yearly dividend credit'
23 means with respect to noncumulative preferred shares, the amount
24 by which the full dividend preference of such a share, to the extent
25 that such preference is earned by the corporation with respect to
26 such a share in a particular fiscal year, exceeds the dividends paid
27 on said share for that year; provided, that no dividend credit shall
28 accrue unless, and only to the extent that, there exists an earned
29 surplus at the end of such fiscal year. Computations of earnings
30 allocable to classes of shares made in good faith by the board of
31 directors in accordance with generally accepted accounting
32 principles shall be conclusive. For the purpose of this definition, a
33 dividend is deemed paid if it has been declared and funds for its
34 payment have been set aside.
- 35 (7) 'Effective date of notice' is defined in G.S. 55-1-41.
- 36 (8) Reserved for future codification purposes.
- 37 (9) 'Entity' includes (without limiting the meaning of such term in
38 Article 9) corporation and foreign corporation; nonprofit
39 corporation; professional corporation; profit and nonprofit
40 unincorporated association; business trust, estate, partnership, trust,
41 and two or more persons having a joint or common economic
42 interest; and state, United States, and foreign government.

- 1 (10) 'Foreign corporation' means a corporation for profit or a
2 corporation having capital stock incorporated under a law other
3 than the law of this State.
- 4 (11) 'Governmental subdivision' includes authority, county, district, and
5 municipality.
- 6 (12) 'Includes' means a partial definition.
- 7 (13) 'Individual' denotes a natural person legally competent to act and
8 also includes the estate of an incompetent or deceased individual.
- 9 (13a) An item is 'mailed' when it is deposited in the United States mail
10 with postage thereon prepaid and correctly addressed. When a
11 corporation mails an item to a shareholder, 'correctly addressed'
12 means addressed to the shareholder's address as shown in the
13 corporation's current record of shareholders.
- 14 (14) 'Means' denotes an exhaustive definition.
- 15 (14a) 'Merger' as used in Article 9 includes a 'share exchange' as used in
16 Article 11.
- 17 (15) 'Notice' includes demand and is defined in G.S. 55-1-41.
- 18 (16) 'Person' includes individual and entity.
- 19 (17) 'Principal office' means the office (in or out of this State) so
20 designated in the annual report where the principal executive
21 offices of a domestic or foreign corporation are located.
- 22 (18) 'Proceeding' includes civil suit and criminal, administrative, and
23 investigatory action.
- 24 (18a) 'Public corporation' means any corporation that has a class of
25 shares registered under Section 12 of the Securities Exchange Act
26 of 1934, as amended (15 U.S.C. § 781).
- 27 (19) 'Record date' means the date established under Article 6 or 7 on
28 which a corporation determines the identity of its shareholders for
29 purposes of this act.
- 30 (20) 'Secretary' means the corporate officer to whom the board of
31 directors has delegated responsibility under G.S. 55-8-40(c) for
32 custody of the minutes of the meetings of the board of directors and
33 of the shareholders and for authenticating records of the
34 corporation.
- 35 (21) 'Shares' means the units into which the proprietary interests in a
36 corporation are divided.
- 37 (22) 'Shareholder' means the person in whose name shares are
38 registered in the records of a corporation or the beneficial owner of
39 shares to the extent of the rights granted by a nominee certificate
40 on file with a corporation.
- 41 (23) 'State', when referring to a part of the United States, includes a
42 state and commonwealth (and their agencies and governmental
43 subdivisions) and a territory and insular possession (and their
44 agencies and governmental subdivisions) of the United States.

- 1 (24) 'Subscriber' means a person who subscribes for shares in a
2 corporation, whether before or after incorporation.
- 3 (25) 'United States' includes district, authority, bureau, commission,
4 department, and any other agency of the United States.
- 5 (26) 'Voting group' means all shares of one or more classes or series
6 that under the articles of incorporation or this act are entitled to
7 vote and be counted together collectively on a matter at a meeting
8 of shareholders. All shares entitled by the articles of incorporation
9 or this act to vote generally on the matter are for that purpose a
10 single voting group.

11 **"§ 55-1-41. Notice.**

12 (a) Notice under this act shall be in writing unless oral notice is authorized in the
13 corporation's articles of incorporation or bylaws.

14 (b) Notice may be communicated in person; by telephone, telegraph, teletype, or
15 other form of wire or wireless communication, or by facsimile transmission; or by mail
16 or private carrier. If these forms of personal notice are impracticable as to one or more
17 persons, notice may be communicated to such persons by publishing notice in a
18 newspaper in the county wherein the corporation has its principal place of business in
19 the State, or if it has no principal place of business in the State, the county wherein it
20 has its registered office; or by radio, television, or other form of public broadcast
21 communication.

22 (c) Written notice by a domestic or foreign corporation to its shareholder is
23 effective when deposited in the United States mail with postage thereon prepaid and
24 correctly addressed to the shareholder's address shown in the corporation's current
25 record of shareholders.

26 (d) Written notice to a domestic or foreign corporation (authorized to transact
27 business in this State) may be addressed to its registered agent at its registered office or
28 to the corporation or its secretary at its principal office shown in its most recent annual
29 report on file in the office of the Secretary of State or, in the case of a foreign
30 corporation that has not yet delivered an annual report, in its application for a certificate
31 of authority.

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

34 (1) When received;

35 (2) Five days after its deposit in the United States mail, as evidenced
36 by the postmark, if mailed with postage thereon prepaid and
37 correctly addressed;

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

41 (f) Oral notice is effective when actually communicated to the person entitled
42 thereto.

43 (g) If this act prescribes notice requirements for particular circumstances, those
44 requirements govern. If articles of incorporation or bylaws prescribe notice

1 requirements not inconsistent with this section or other provisions of this act, those
2 requirements govern.

3 **"§ 55-1-42. Number of shareholders.**

4 (a) For purposes of this act, the following identified as a shareholder in a
5 corporation's current record of shareholders constitutes one shareholder:

- 6 (1) All co-owners of the same shares;
- 7 (2) A corporation, partnership, trust, estate, or other entity;
- 8 (3) The trustees, guardians, custodians, or other fiduciaries of a single
9 trust, estate, or account.

10 (b) For purposes of this act, shareholdings registered in substantially similar
11 names constitute one shareholder if it is reasonable to believe that the names represent
12 the same person.

13 "ARTICLE 2.

14 **"INCORPORATION.**

15 **"§ 55-2-01. Incorporators.**

16 One or more persons may act as the incorporator or incorporators of a corporation by
17 delivering articles of incorporation to the Secretary of State for filing.

18 **"§ 55-2-02. Articles of incorporation.**

19 (a) The articles of incorporation must set forth:

- 20 (1) A corporate name for the corporation that satisfies the requirements
21 of G.S. 55-4-01;
- 22 (2) The number of shares the corporation is authorized to issue and any
23 other information required by G.S. 55-6-01;
- 24 (3) The street address, and the mailing address if different from the
25 street address, of the corporation's initial registered office, the
26 county in which the initial registered office is located, and the
27 name of the corporation's initial registered agent at that address;
28 and
- 29 (4) The name and address of each incorporator.

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

- 32 (1) The names and addresses of the individuals who are to serve as the
33 initial directors;
- 34 (2) Provisions not inconsistent with law regarding (i) the purpose or
35 purposes for which the corporation is organized; (ii) managing the
36 business and regulating the affairs of the corporation; (iii) defining,
37 limiting, and regulating the powers of the corporation, its board of
38 directors, and shareholders; (iv) a par value for authorized shares or
39 classes of shares; (v) the imposition of personal liability on
40 shareholders for the debts of the corporation to a specified extent
41 and upon specified conditions; (vi) any limitation on the duration
42 of the corporation; and
- 43 (3) A provision limiting or eliminating the personal liability of each
44 director arising out of an action whether by or in the right of the

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

18 (c) The articles of incorporation need not set forth any of the corporate powers
19 enumerated in this act.

20 **"§ 55-2-03. Incorporation.**

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

23 (b) The Secretary of State's filing of the articles of incorporation is conclusive
24 proof that the incorporators satisfied all conditions precedent to incorporation except in
25 a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve
26 the corporation.

27 (c) No provision in this act or any prior act shall be construed to require that a
28 corporation have more than one shareholder.

29 **"§ 55-2-04. Reserved for future codification purposes.**

30 **"§ 55-2-05. Organization of corporation.**

31 (a) After incorporation:

32 (1) If initial directors are named in the articles of incorporation, the
33 initial directors shall hold an organizational meeting at the call of a
34 majority of the directors to complete the organization of the
35 corporation by appointing officers, adopting bylaws, and carrying
36 on any other business brought before the meeting;

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

42 (b) Action required or permitted by this act to be taken by incorporators at an
43 organizational meeting may be taken without a meeting if the action taken is evidenced
44 by one or more written consents describing the action taken and signed by each

1 incorporator. If the incorporators act at a meeting, the notice and procedural provisions
2 of G.S. 55-8-22, 55-8-23, and 55-8-24 shall apply.

3 (c) An organizational meeting may be held in or out of this State.

4 **"§ 55-2-06. Bylaws.**

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

7 (b) The bylaws of a corporation may contain any provision for managing the
8 business and regulating the affairs of the corporation that is not inconsistent with law or
9 the articles of incorporation.

10 **"§ 55-2-07. Emergency bylaws.**

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

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

17 (2) Quorum requirements for the meeting; and

18 (3) Designation of additional or substitute directors.

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

22 (c) Corporate action taken in good faith in accordance with the emergency
23 bylaws binds the corporation and the fact that the action was taken by special
24 procedures may not be used to impose liability on a corporate director, officer,
25 employee, or agent.

26 (d) An emergency exists for purposes of this section if a quorum of the
27 corporation's directors cannot readily be assembled because of some catastrophic event.

28 **"ARTICLE 3.**

29 **"PURPOSES AND POWERS.**

30 **"§ 55-3-01. Purposes.**

31 (a) Every corporation incorporated under this act has the purpose of engaging in
32 any lawful business unless a more limited purpose is set forth in its articles of
33 incorporation.

34 (b) A corporation engaging in a business that is subject to regulation under
35 another statute of this State may incorporate under this act only if permitted by, and
36 subject to all limitations of, the other statute.

37 **"§ 55-3-02. General powers.**

38 (a) Unless its articles of incorporation or this act provide otherwise, every
39 corporation has perpetual duration and succession in its corporate name and has the
40 same powers as an individual to do all things necessary or convenient to carry out its
41 business and affairs, including without limitation power:

42 (1) To sue and be sued, complain and defend in its corporate name;

- 1 (2) To have a corporate seal, which may be altered at will, and to use
2 it, or a facsimile of it, by impressing or affixing it or in any other
3 manner reproducing it;
- 4 (3) To make and amend bylaws, not inconsistent with its articles of
5 incorporation or with the laws of this State, for managing the
6 business and regulating the affairs of the corporation;
- 7 (4) To purchase, receive, lease, or otherwise acquire, and own, hold,
8 improve, use, and otherwise deal with, real or personal property, or
9 any legal or equitable interest in property, wherever located;
- 10 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
11 dispose of all or any part of its property;
- 12 (6) To purchase, receive, subscribe for, or otherwise acquire; own,
13 hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose
14 of; and deal in and with shares or other interests in, or obligations
15 of, any other entity;
- 16 (7) To make contracts and guarantees, incur liabilities, borrow money,
17 issue its notes, bonds, and other obligations (which may be
18 convertible into or include the option to purchase other securities of
19 the corporation), and secure any of its obligations by mortgage or
20 pledge of any of its property, franchises, or income;
- 21 (8) To lend money, invest and reinvest its funds, and receive and hold
22 real and personal property as security for repayment;
- 23 (9) To be a promoter, partner, member, associate, or manager of any
24 partnership, joint venture, trust, or other entity;
- 25 (10) To conduct its business, locate offices, and exercise the powers
26 granted by this act within or without this State;
- 27 (11) To elect or appoint directors, officers, employees, and agents of the
28 corporation, define their duties, fix their compensation, and lend
29 them money and credit;
- 30 (12) To pay pensions and establish pension plans, pension trusts, profit
31 sharing plans, stock bonus plans, stock option plans, and other
32 benefit or incentive plans for any or all of its current or former
33 directors, officers, employees, and agents;
- 34 (13) To make donations for the public welfare or for charitable,
35 religious, cultural, scientific, or educational purposes;
- 36 (14) To transact any lawful business that will aid governmental policy;
- 37 (15) To make payments or donations, or do any other act, not
38 inconsistent with law, that furthers the business and affairs of the
39 corporation; and
- 40 (16) To provide insurance for its benefit on the life or physical or
41 mental ability of any of its directors, officers or employees or on
42 the life or physical or mental ability of any security holder for the
43 purpose of acquiring at his death or disability its securities owned
44 by such security holder, and for these purposes the corporation is

1 deemed to have an insurable interest in its directors, officers,
2 employees, or security holders; and to provide insurance for its
3 benefit on the life or physical or mental ability of any other person
4 in whom it has an insurable interest.

5 (b) It shall not be necessary to set forth in the articles of incorporation any of the
6 powers enumerated in this section.

7 **"§ 55-3-03. Emergency powers.**

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

- 10 (1) Modify lines of succession to accommodate the incapacity of any
11 director, officer, employee, or agent; and
12 (2) Relocate the principal office, designate alternative principal offices or
13 regional offices, or authorize the officers to do so.

14 (b) During an emergency defined in subsection (d), unless emergency bylaws
15 provide otherwise:

- 16 (1) Notice of a meeting of the board of directors need be given only to
17 those directors whom it is practicable to reach and may be given in any
18 practicable manner, including by publication and radio; and
19 (2) One or more officers of the corporation present at a meeting of the
20 board of directors may be deemed to be directors for the meeting, in
21 order of rank and within the same rank in order of seniority, as
22 necessary to achieve a quorum.

23 (c) Corporate action taken in good faith during an emergency under this section
24 to further the ordinary business affairs of the corporation binds the corporation and the
25 fact that said action is taken by special procedures may not be used to impose liability
26 on a corporate director, officer, employee, or agent.

27 (d) An emergency exists for purposes of this section if a quorum of the
28 corporation's directors cannot readily be assembled because of some catastrophic event.

29 **"§ 55-3-04. Ultra vires.**

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

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

- 33 (1) In a proceeding by a shareholder against the corporation to enjoin the
34 act;
35 (2) In a proceeding by the corporation, directly, derivatively, or through a
36 receiver, trustee, or other legal representative, against an incumbent or
37 former director, officer, employee, or agent of the corporation; or
38 (3) In a proceeding by the Attorney General under G.S. 55-14-30.

39 (c) In a shareholder's proceeding under subsection (b)(1) to enjoin an
40 unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if
41 all affected persons are parties to the proceeding, and may award damages for loss
42 (other than anticipated profits) suffered by the corporation or another party because of
43 enjoining the unauthorized act.

44 **"§ 55-3-05. Exercise of corporate franchises not granted.**

1 The Attorney General may upon his own information or upon complaint of a private
2 party bring an action in the name of the State to restrain any person from exercising
3 corporate franchises not granted.

4 **"ARTICLE 4.**

5 **"NAME.**

6 **"§ 55-4-01. Corporate name.**

7 (a) A corporate name:

8 (1) Must contain the word 'corporation', 'incorporated', 'company', or
9 'limited', or the abbreviation 'corp.', 'inc.', 'co.', or 'ltd.'; and

10 (2) May not contain language stating or implying that the corporation is
11 organized for a purpose other than that permitted by G.S. 55-3-01 and
12 its articles of incorporation.

13 (b) Except as authorized by subsection (c), a corporate name must be
14 distinguishable upon the records of the Secretary of State from:

15 (1) The corporate name of a corporation incorporated or authorized to
16 transact business in this State;

17 (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S.
18 55-4-03;

19 (3) The fictitious name adopted by a foreign corporation authorized to
20 transact business in this State because its real name is unavailable; and

21 (4) The corporate name of a nonprofit corporation incorporated or
22 authorized to transact business in this State.

23 (c) A corporation may apply to the Secretary of State for authorization to use a
24 name that is not distinguishable upon his records from one or more of the names
25 described in subsection (b). The Secretary of State shall authorize use of the name
26 applied for if:

27 (1) The other corporation consents to the use in writing and submits an
28 undertaking in form satisfactory to the Secretary of State to change its
29 name to a name that is distinguishable upon the records of the
30 Secretary of State from the name of the applying corporation; or

31 (2) The applicant delivers to the Secretary of State a certified copy of the
32 final judgment of a court of competent jurisdiction establishing the
33 applicant's right to use the name applied for in this State.

34 (d) Reserved for future codification purposes.

35 (e) The use of assumed names or fictitious names, as provided for in Chapter 66,
36 is not affected by this act.

37 (f) Neither the reservation or registration of a corporate name nor the
38 incorporation of any domestic corporation shall authorize the use in this State of a
39 corporate name in violation of the rights of any third party under the federal trademark
40 act, the trademark act of this State, or other statutory or common law, or be a defense to
41 an action for violation of any such rights.

42 (g) The name of a corporation dissolved under Article 14 may not be used by
43 another corporation until the expiration of two years after the effective date of the
44 dissolution unless the dissolved corporation consents in writing to the use.

1 **"§ 55-4-02. Reserved name.**

2 (a) A person may reserve the exclusive use of a corporate name, including a
3 fictitious name for a foreign corporation whose corporate name is not available, by
4 filing an application with the Secretary of State. The application must set forth the
5 name and address of the applicant and the name proposed to be reserved. If the
6 Secretary of State finds that the corporate name applied for is available, he shall reserve
7 the name for the applicant's exclusive use for a nonrenewable 120-day period.

8 (b) The owner of a reserved corporate name may transfer the reservation to
9 another person by filing with the Secretary of State a signed notice of the transfer that
10 states the name and address of the transferee.

11 (c) Any person acquiring the goodwill of a domestic corporation or of a foreign
12 corporation authorized to transact business in this State may, on furnishing the Secretary
13 of State satisfactory evidence of such acquisition, reserve the exclusive right to the
14 corporate name of the said corporation for a period of 10 years.

15 **"§ 55-4-03. Registered name.**

16 (a) A foreign corporation may register its corporate name, or its corporate name
17 with any addition required by G.S. 55-15-06, if the name is distinguishable upon the
18 records of the Secretary of State from the corporate names that are not available under
19 G.S. 55-4-01(b) (3).

20 (b) A foreign corporation registers its corporate name, or its corporate name with
21 any addition required by G.S. 55-15-06, by filing with the Secretary of State an
22 application:

23 (1) Setting forth its corporate name, or its corporate name with any
24 addition required by G.S. 55-15-06, the state or country and date of its
25 incorporation, and a brief description of the nature of the business in
26 which it is engaged; and

27 (2) Accompanied by a certificate of existence (or a document of a similar
28 import) from the state or country of incorporation.

29 (c) The name is registered for the applicant's exclusive use upon the effective
30 date of the application and until the end of the calendar year in which it became
31 effective.

32 (d) A foreign corporation whose registration is effective may renew it for
33 successive years by filing with the Secretary of State a renewal application, which
34 complies with the requirements of subsection (b), between October 1 and December 31
35 of the preceding year. The renewal application renews the registration for the following
36 calendar year. Any renewal application filed after the expiration of the registration shall
37 be treated as a new application for registration.

38 (e) A foreign corporation whose registration is effective may thereafter qualify as
39 a foreign corporation under that name or consent in writing to the use of that name by a
40 corporation thereafter incorporated under this act or by another foreign corporation
41 thereafter authorized to transact business in this State. The registration terminates when
42 the domestic corporation is incorporated or the foreign corporation qualifies or consents
43 to the qualification of another foreign corporation under the registered name.

44 **"§ 55-4-04. Reserved and registered names, powers of the Secretary of State.**

1 The Secretary of State may revoke any reservation or registration of a corporate
2 name if he finds, upon a hearing not less than 20 days after written notice has been sent
3 by registered or certified mail, return receipt requested, to the person or corporation
4 who made the reservation or registration, that the application thereof or any transfer
5 thereof was not made in good faith or that any statement contained in the application for
6 reservation or registration was false when such application was filed or has thereafter
7 become false.

8 **"§ 55-4-05. Real property records.**

9 (a) Whenever the name of any domestic or foreign corporation holding title to
10 real property in this State is changed upon amendment to the articles of incorporation or
11 whenever title to real property in this State is transferred by operation of law upon
12 merger of two or more corporations, a certificate reciting such change or transfer shall
13 be recorded in the office of the register of deeds of the county where the property lies,
14 or if the property is located in more than one county, then in each county where any
15 portion of the property lies.

16 (b) The Secretary of State shall adopt uniform certificates to be furnished for
17 registration in accordance with this section. If the corporation involved is not a
18 domestic corporation or a foreign corporation authorized to do business in this State, a
19 similar certificate by any competent authority of the jurisdiction of incorporation may
20 be registered in accordance with this section.

21 (c) The certificate required by this section shall be recorded by the register of
22 deeds in the same manner as deeds, and for the same fees, but no formalities as to
23 acknowledgement, probate, or approval by any other officer shall be required. The
24 former name of the corporation holding title to the real property before the amendment
25 or merger shall appear in the 'Grantor' index, and the amended name of the corporation
26 holding title to the real property by virtue of the amendment or merger shall appear in
27 the 'Grantee' index.

28 **"ARTICLE 5.**

29 **"OFFICE AND AGENT.**

30 **"§ 55-5-01. Registered office and registered agent.**

31 (a) Each corporation must continuously maintain in this State:

- 32 (1) A registered office that may be the same as any of its places of
33 business; and
34 (2) A registered agent, who shall be (i) an individual who resides in this
35 State and whose business office is identical with the registered office;
36 (ii) a domestic corporation or nonprofit domestic corporation whose
37 business office is identical with the registered office; or (iii) a foreign
38 corporation or nonprofit foreign corporation authorized to transact
39 business in this State whose business office is identical with the
40 registered office.

41 (b) The sole duty of the registered agent to the corporation is to forward to the
42 corporation at its last known address any notice, process, or demand that is served on
43 the registered agent.

44 **"§ 55-5-02. Change of registered office or registered agent.**

1 (a) A corporation may change its registered office or registered agent by
2 delivering to the Secretary of State for filing a statement of change that sets forth:

3 (1) The name of the corporation;

4 (2) The street address, and the mailing address if different from the street
5 address, of the corporation's current registered office, and the county in
6 which it is located;

7 (3) If the address of the corporation's registered office is to be changed,
8 the street address, and the mailing address if different from the street
9 address, of the new registered office, and the county in which it is
10 located;

11 (4) The name of its current registered agent;

12 (5) If the current registered agent is to be changed, the name of the new
13 registered agent and the new agent's written consent (either on the
14 statement or attached to it) to the appointment; and

15 (6) That after the change or changes are made, the addresses of its
16 registered office and the business office of its registered agent will be
17 identical.

18 (b) If a registered agent changes the address of his business office, he may
19 change the address of the registered office of any corporation for which he is the
20 registered agent by notifying the corporation in writing of the change and signing (either
21 manually or in facsimile) and delivering to the Secretary of State for filing a statement
22 that complies with the requirements of subsection (a) and recites that the corporation
23 has been notified of the change.

24 **"§ 55-5-03. Resignation of registered agent.**

25 (a) A registered agent may resign his agency appointment by signing and filing
26 with the Secretary of State the signed original and two exact or conformed copies of a
27 statement of resignation which may include a statement that the registered office is also
28 discontinued. The statement must be accompanied by a certification from the registered
29 agent that he has mailed or delivered to the corporation at its last known address written
30 notice of this resignation. Such certification shall include the name and title of the
31 officer notified, if any, and the address to which the notice was mailed or delivered.

32 (b) After filing the statement the Secretary of State shall mail one copy to the
33 registered office (if not discontinued) and the other copy to the corporation at its
34 principal office shown in its most recent annual report.

35 (c) The agency appointment is terminated, and the registered office discontinued
36 if so provided, on the 31st day after the date on which the statement was filed.

37 **"§ 55-5-04. Service on corporation.**

38 (a) A corporation's registered agent is an agent of the corporation for service of
39 process, notice or demand required or permitted by law to be served on the corporation.

40 (b) Whenever a corporation shall fail to appoint or maintain a registered agent in
41 this State, or whenever its registered agent cannot with due diligence be found at the
42 registered office, then the Secretary of State shall be an agent of such corporation upon
43 whom any such process, notice or demand may be served. Service on the Secretary of
44 State of any such process, notice or demand shall be made by delivering to and leaving

1 with him or with any clerk having charge of the corporation department of his office,
2 duplicate copies of such process, notice or demand. In the event any such process,
3 notice or demand is served on the Secretary of State, he shall immediately mail one of
4 the copies thereof, by registered or certified mail, return receipt requested, to the
5 corporation at its principal office shown in its most recent annual report or in any
6 subsequent communication received from the corporation stating the current mailing
7 address of its principal office or, if there is no mailing address for the principal office on
8 file, to the corporation at its registered office. Service on a corporation under this
9 subsection shall be effective for all purposes from and after the date of such service on
10 the Secretary of State.

11 (c) The Secretary of State shall keep a record of all processes, notices and
12 demands served upon him under this section and shall record therein the time of such
13 service and his action with reference thereto.

14 (d) Nothing herein contained shall limit or affect the right to serve any process,
15 notice or demand required or permitted by law to be served upon a corporation in any
16 other manner now or hereafter permitted by law.

17 **"ARTICLE 6.**

18 **"SHARES AND DISTRIBUTION.**

19 **"PART 1. SHARES.**

20 **"§ 55-6-01. Authorized shares.**

21 (a) The articles of incorporation must prescribe the classes of shares and the
22 number of shares of each class that the corporation is authorized to issue. If more than
23 one class of shares is authorized, the articles of incorporation must prescribe a
24 distinguishing designation for each class, and, prior to the issuance of shares of a class,
25 the preferences, limitations, and relative rights of that class must be described in the
26 articles of incorporation. All shares of a class must have preferences, limitations, and
27 relative rights identical with those of other shares of the same class unless the articles of
28 incorporation divide a class into series. If a class is divided into series, all the shares of
29 any one series must have preferences, limitations, and relative rights identical with those
30 of other shares of the same series. The requirement of identical rights within a class
31 shall not be construed to conflict with any special voting rights specified elsewhere in
32 this act.

33 (b) Each series of a class must be given a distinguishing designation.

34 (c) The articles of incorporation must authorize

35 (1) One or more classes of shares that together have unlimited voting
36 rights, and

37 (2) One or more classes of shares (which may be the same class or classes
38 as those with voting rights) that together are entitled to receive the net
39 assets of the corporation upon dissolution.

40 (d) The articles of incorporation may authorize one or more classes or series
41 within a class of shares that:

42 (1) Have special, conditional, or limited voting rights, or no right to vote,
43 except to the extent prohibited by this act;

- 1 (2) Are redeemable or convertible as specified in the articles of
2 incorporation (i) at the option of the corporation, the shareholder, or
3 another person or upon the occurrence of a designated event; (ii) for
4 cash, indebtedness, securities, or other property; (iii) in a designated
5 amount or in an amount determined in accordance with a designated
6 formula or by reference to extrinsic data or events;
- 7 (3) Entitle the holders to distributions calculated in any manner, including
8 dividends that may be cumulative, noncumulative, or partially
9 cumulative;
- 10 (4) Have preference over any other class or series within a class of shares
11 with respect to distributions, including dividends and distributions
12 upon the dissolution of the corporation.
- 13 (5) Notwithstanding the provisions of (d)(3) and (4) of this section,
14 noncumulative preferred shares of a class or series within a class out of
15 which shares were initially issued after June 30, 1957, and before
16 October 1, 1969, shall be entitled to a dividend credit, as defined in
17 this act, and until such dividend credit is fully discharged no dividend
18 shall be paid to any shares that are subordinate to such preferred shares
19 as to dividends.

20 (e) The description of the designations, preferences, limitations, and relative
21 rights in subsection (d) is not exhaustive.

22 **"§ 55-6-02. Terms of class or series determined by board of directors.**

23 (a) If the articles of incorporation so provide, the board of directors may
24 determine, in whole or part, the preferences, limitations, and relative rights (within the
25 limits set forth in G.S. 55-6-01) of (1) any class of shares before the issuance of any
26 shares of that class or (2) one or more series within a class before the issuance of any
27 shares of that series.

28 (b) Before issuing any shares of a class or series created under this section, the
29 corporation must deliver to the Secretary of State for filing articles of amendment,
30 which are effective without shareholder action, that set forth:

- 31 (1) The name of the corporation;
- 32 (2) The text of the amendment determining the terms of the class or series
33 of shares;
- 34 (3) The date it was adopted; and
- 35 (4) A statement that the amendment was duly adopted by the board of
36 directors.

37 **"§ 55-6-03. Issued and outstanding shares.**

38 (a) A corporation may issue the number of shares of each class or series
39 authorized by the articles of incorporation. Shares that are issued are outstanding shares
40 until they are reacquired, redeemed, converted, or cancelled.

41 (b) The reacquisition, redemption, or conversion of outstanding shares is subject
42 to the limitations of subsection (c) of this section and to G.S. 55-6-40.

43 (c) At all times that shares of the corporation are outstanding, there must be
44 outstanding one or more shares that together have unlimited voting rights and one or

1 more shares that together are entitled to receive the net assets of the corporation upon
2 dissolution.

3 **"§ 55-6-04. Fractional shares.**

4 (a) A corporation may:

- 5 (1) Issue fractions of a share or pay in money the value of fractions of a
6 share;
7 (2) Arrange for disposition of fractional shares by the shareholders;
8 (3) Issue scrip in registered or bearer form entitling the holder to receive a
9 full share upon surrendering enough scrip to equal a full share.

10 (b) Each certificate representing scrip must be conspicuously labeled 'scrip' and
11 must contain the information required by G.S. 55-6-25(b).

12 (c) The holder of a fractional share is entitled to exercise the rights of a
13 shareholder, including the right to vote, to receive dividends, and to participate in the
14 assets of the corporation upon liquidation. The holder of scrip is not entitled to any of
15 these rights unless the scrip provides for them.

16 (d) The board of directors may authorize the issuance of scrip subject to any
17 condition considered desirable, including:

- 18 (1) That the scrip will become void if not exchanged for full shares before
19 a specified date; and
20 (2) That the shares for which the scrip is exchangeable may be sold and
21 the proceeds paid to the scripholders.

22 **"PART 2. ISSUANCE OF SHARES.**

23 **"§ 55-6-20. Subscription for shares before incorporation.**

24 (a) A subscription for shares entered into before incorporation is irrevocable for
25 six months unless the subscription agreement provides a longer or shorter period or all
26 the subscribers agree to revocation.

27 (b) The board of directors may determine the payment terms of subscriptions for
28 shares that were entered into before incorporation, unless the subscription agreement
29 specifies them. A call for payment by the board of directors must be uniform so far as
30 practicable as to all shares of the same class or series, unless the subscription agreement
31 specifies otherwise.

32 (c) Shares issued pursuant to subscriptions entered into before incorporation are
33 fully paid and nonassessable when the corporation receives the consideration specified
34 in the subscription agreement.

35 (d) If a subscriber defaults in payment of money or property under a subscription
36 agreement entered into before incorporation, the corporation may collect the amount
37 owed as any other debt. Alternatively, unless the subscription agreement provides
38 otherwise, the corporation may rescind the agreement and may sell the shares if the debt
39 remains unpaid more than 20 days after the corporation sends written demand for
40 payment to the subscriber.

41 (e) A subscription agreement entered into after incorporation is a contract
42 between the subscriber and the corporation subject to G.S. 55-6-21.

43 **"§ 55-6-21. Issuance of shares.**

1 (a) The powers granted in this section to the board of directors may be reserved
2 to the shareholders by the articles of incorporation.

3 (b) The board of directors may authorize shares to be issued for consideration
4 consisting of any tangible or intangible property or benefit to the corporation, including
5 cash, promissory notes, services performed, contracts for services to be performed, or
6 other securities of the corporation.

7 (c) Before the corporation issues shares, the board of directors must determine
8 that the consideration received or to be received for shares to be issued is adequate. The
9 determination by the board of directors as to the adequacy of consideration is conclusive
10 as to whether the shares are validly issued, fully paid, and nonassessable.

11 (d) When the corporation receives the consideration for which the board of
12 directors authorized the issuance of shares, the shares issued therefor are fully paid and
13 nonassessable.

14 (e) The corporation may place in escrow shares issued for a contract for future
15 services or benefits or to a promissory note, or make other arrangements to restrict the
16 transfer of the shares, and may credit distributions in respect of the shares against their
17 purchase price, until the services are performed, the note is paid, or the benefit received.
18 If the services are not performed, the note is not paid, or the benefits are not received,
19 the shares escrowed or restricted and the distributions credited may be cancelled in
20 whole or part.

21 **"§ 55-6-22. Liability of shareholders.**

22 (a) A purchaser from a corporation of its own shares is not liable to the
23 corporation or its creditors with respect to the shares except to pay the consideration for
24 which the shares were authorized to be issued (G.S. 55-6-21) or specified in the
25 subscription agreement (G.S. 55-6-20).

26 (b) Unless otherwise provided in the articles of incorporation, a shareholder of a
27 corporation is not personally liable for the acts or debts of the corporation except that he
28 may become personally liable by reason of his own acts or conduct.

29 **"§ 55-6-23. Share dividends.**

30 (a) Unless the articles of incorporation provide otherwise, shares may be issued
31 pro rata and without consideration to the corporation's shareholders or to the
32 shareholders of one or more classes or series. An issuance of shares under this
33 subsection is a share dividend.

34 (b) Shares of one class or series may not be issued as a share dividend in respect
35 of shares of another class or series unless:

36 (1) The articles of incorporation so authorize,

37 (2) There are no outstanding shares of the class or series to be issued, or

38 (3) A majority of the votes entitled to be cast by the class or series to be
39 issued approve the issuance of not more than a stated number of shares
40 within a period of not more than one year after such authorization.

41 (c) If the board of directors does not fix the record date for determining
42 shareholders entitled to a share dividend, it is the date the board of directors authorizes
43 the share dividend.

44 **"§ 55-6-24. Rights, options, and warrants.**

1 (a) A corporation may issue rights, options, or warrants for the purchase of
2 shares of the corporation. The board of directors shall determine the terms upon which
3 the rights, options, or warrants are issued, their form and content, and the consideration
4 for which the shares are to be issued.

5 (b) In the case of a public corporation, the terms and conditions of such rights,
6 options or warrants may include, without limitation, restrictions or conditions that
7 preclude or limit the exercise, transfer or receipt of such rights, options or warrants by
8 the holder or holders or beneficial owner or owners of a specified number or percentage
9 of the outstanding voting shares of such public corporation or by any transferee of any
10 such holder or owner, or that invalidate or void such rights, options or warrants held by
11 any such holder or owner or by such transferee. Determinations by the board of
12 directors whether to impose, enforce, waive or otherwise render ineffective any such
13 restrictions or conditions may be judicially reviewed in an appropriate proceeding.

14 **"§ 55-6-25. Form and content of certificates.**

15 (a) Shares may but need not be represented by certificates. Unless this act or
16 another statute expressly provides otherwise, the rights and obligations of shareholders
17 are identical whether or not their shares are represented by certificates.

18 (b) At a minimum each share certificate must state on its face:

- 19 (1) The name of the issuing corporation and that it is organized under the
20 law of North Carolina;
- 21 (2) The name of the person to whom issued; and
- 22 (3) The number and class of shares and the designation of the series, if
23 any, the certificate represents.

24 (c) If the issuing corporation is authorized to issue different classes of shares or
25 different series within a class, the designations, relative rights, preferences, and
26 limitations applicable to each class and the variations in rights, preferences, and
27 limitations determined for each series (and the authority of the board of directors to
28 determine variations for future series) must be summarized on the front or back of each
29 certificate. Alternatively, each certificate may state conspicuously on its front or back
30 that the corporation will furnish the shareholder this information in writing and without
31 charge.

32 (d) Each share certificate (1) must be signed (either manually or in facsimile) by
33 two officers designated in the bylaws or by the board of directors and (2) may bear the
34 corporate seal or its facsimile.

35 (e) If the person who signed in any capacity (either manually or in facsimile) a
36 share certificate no longer holds office when the certificate is issued, the certificate is
37 nevertheless valid.

38 **"§ 55-6-26. Shares without certificate.**

39 (a) Unless the articles of incorporation or bylaws provide otherwise, the board of
40 directors of a corporation may authorize the issue of some or all of the shares of any or
41 all of its classes or series without certificates. The authorization does not affect shares
42 already represented by certificates until they are surrendered to the corporation.

43 (b) Within a reasonable time after the issue or transfer of shares without
44 certificates, the corporation shall send the shareholder a written statement of the

1 information required on certificates by G.S. 55-6-25(b) and (c), and if applicable, G.S.
2 55-6-27.

3 **"§ 55-6-27. Restriction on transfer of shares and other securities.**

4 (a) The articles of incorporation, bylaws, an agreement among shareholders, or
5 an agreement between shareholders and the corporation may impose restrictions on the
6 transfer or registration of transfer of shares of the corporation. A restriction does not
7 affect shares issued before the restriction was adopted unless the holders of the shares
8 are parties to the restriction agreement or voted in favor of the restriction.

9 (b) A restriction on the transfer or registration of transfer of shares is valid and
10 enforceable against the holder or a transferee of the holder if the restriction is authorized
11 by this section, it is not unconscionable under the circumstances, and its existence is
12 noted conspicuously on the front or back of the certificate or is contained in the
13 information statement required by G.S. 55-6-26(b). Unless so noted, a restriction is not
14 enforceable except against a person who receives actual written notice of the
15 restrictions.

16 (c) A restriction on the transfer or registration of transfer of shares is authorized:

- 17 (1) To maintain the corporation's status when it is dependent on the
18 number or identity of its shareholders;
- 19 (2) To preserve exemptions under federal or state securities law;
- 20 (3) For any other reasonable purpose.

21 (d) A restriction authorized by G.S. 55-6-27(c) may:

- 22 (1) Obligate the shareholder first to offer the corporation or other persons
23 (separately, consecutively, or simultaneously) an opportunity to
24 acquire the restricted shares;
- 25 (2) Obligate the corporation or other persons (separately, consecutively, or
26 simultaneously) to acquire the restricted shares;
- 27 (3) Require the corporation, the holders of any class of its shares, or
28 another person to approve the transfer of the restricted shares, if the
29 requirement is not manifestly unreasonable;
- 30 (4) Prohibit the transfer of the restricted shares to designated persons or
31 classes of persons, if the prohibition is not manifestly unreasonable;
- 32 (5) Contain any other provision reasonably related to an authorized
33 purpose.

34 (e) For purposes of this section, 'shares' includes a security convertible into or
35 carrying a right to subscribe for or acquire shares.

36 **"§ 55-6-28. Expense of issue.**

37 A corporation may pay the expenses of selling or underwriting its shares, and of
38 organizing or reorganizing the corporation, from the consideration received for shares.

39 **"PART 3. SUBSEQUENT ACQUISITION OF SHARES BY**
40 **SHAREHOLDERS AND CORPORATION.**

41 **"§ 55-6-30. Shareholders' preemptive rights.**

42 (a) The shareholders of a corporation do not have a preemptive right to acquire
43 the corporation's unissued shares except to the extent the articles of incorporation or
44 subsection (d) of this section so provide.

1 (b) A statement included in the articles of incorporation that 'the corporation
2 elects to have preemptive rights' (or words of similar import) means that the following
3 principles apply except to the extent the articles of incorporation expressly provide
4 otherwise:

- 5 (1) The shareholders of the corporation have a preemptive right, granted
6 on uniform terms and conditions prescribed by the board of directors,
7 to provide a fair and reasonable opportunity to exercise the right, to
8 acquire proportional amounts of the corporation's unissued shares upon
9 the decision of the board of directors to issue them.
- 10 (2) A shareholder may waive his preemptive right. A waiver evidenced
11 by a writing is irrevocable even though it is not supported by
12 consideration.
- 13 (3) There is no preemptive right with respect to (i) shares issued as
14 compensation to directors, officers, agents, or employees of the
15 corporation, its subsidiaries or affiliates; (ii) shares issued to satisfy
16 conversion or option rights created to provide compensation to
17 directors, officers, agents, or employees of the corporation, its
18 subsidiaries or affiliates; (iii) shares authorized in articles of
19 incorporation that are issued within six months from the effective date
20 of incorporation; (iv) shares issued for considerations, other than
21 money, deemed by the board of directors in good faith to be
22 advantageous to the corporation's business.
- 23 (4) Holders of a share of any class have no preemptive rights with respect
24 to shares of any other class.
- 25 (5) Reserved for future codification purposes.
- 26 (6) Shares subject to preemptive rights that are not acquired by
27 shareholders may be issued to any person during a period of one year
28 after being offered to shareholders at a consideration set by the board
29 of directors that is not lower than the consideration set for the exercise
30 of preemptive rights. An offer at a lower consideration or after the
31 expiration of one year is subject to the shareholders' preemptive rights.

32 (c) For purposes of this section, 'shares' includes a security convertible into or
33 carrying a right to subscribe for or acquire shares.

34 (d) Notwithstanding the foregoing provision of this section, shareholders of a
35 corporation incorporated prior to the effective date of this act shall have a preemptive
36 right to acquire the unissued shares of the corporation, to the extent provided in (and
37 subject to the limitations of) subdivisions (b)(1)-(6) and subsection (c) of this section,
38 except to the extent the articles of incorporation expressly provide otherwise.

39 **"§ 55-6-31. Corporation's acquisition of its own shares.**

40 (a) A corporation may acquire its own shares and shares so acquired constitute
41 authorized but unissued shares.

42 (b) If the articles of incorporation prohibit the reissue of acquired shares, the
43 number of authorized shares is reduced by the number of shares acquired, effective
44 upon amendment of the articles of incorporation.

1 (c) Articles of amendment required by subsection (b) may be adopted by the
2 board of directors without shareholder action and shall be delivered to the Secretary of
3 State for filing. The articles must set forth:

4 (1) The name of the corporation;

5 (2) The reduction in the number of authorized shares, itemized by class
6 and series; and

7 (3) The total number of authorized shares, itemized by class and series,
8 remaining after reduction of the shares.

9 **"PART 4. DISTRIBUTIONS.**

10 **"§ 55-6-40. Distributions to shareholders.**

11 (a) A board of directors may authorize and the corporation may make
12 distributions to its shareholders subject to restriction by the articles of incorporation and
13 the limitation in subsection (c).

14 (b) If the board of directors does not fix the record date for determining
15 shareholders entitled to a distribution (other than one involving a purchase, redemption,
16 or other acquisition of the corporation's shares), it is the date the board of directors
17 authorizes the distribution.

18 (c) No distribution may be made if, after giving it effect:

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

21 (2) The corporation's total assets would be less than the sum of its total
22 liabilities plus (unless the articles of incorporation permit otherwise)
23 the amount that would be needed, if the corporation were to be
24 dissolved at the time of the distribution, to satisfy the preferential
25 rights upon dissolution of shareholders whose preferential rights are
26 superior to those receiving the distribution.

27 (d) The board of directors may base a determination that a distribution is not
28 prohibited under subsection (c) on financial statements prepared on the basis of
29 accounting practices and principles that are reasonable in the circumstances, and may
30 determine asset values either on book values or on a fair valuation or other method that
31 is reasonable in the circumstances.

32 (e) Except as provided in subsection (g), the effect of a distribution under
33 subsection (c) is measured:

34 (1) In the case of distribution by purchase, redemption, or other
35 acquisition of the corporation's shares, as of the earlier of (i) the date
36 money or other property is transferred or debt incurred by the
37 corporation or (ii) the date the shareholder ceases to be a shareholder
38 with respect to the acquired shares;

39 (2) In the case of any other distribution of indebtedness, as of the date the
40 indebtedness is distributed;

41 (3) In all other cases, as of (i) the date the distribution is authorized if the
42 payment occurs within 120 days after the date of authorization or (ii)
43 the date the payment is made if it occurs more than 120 days after the
44 date of authorization.

1 (f) A corporation's indebtedness to a shareholder incurred by reason of a
2 distribution made in accordance with this section is at parity with the corporation's
3 indebtedness to its general, unsecured creditors except to the extent subordinated by
4 agreement.

5 (g) Indebtedness of a corporation, including indebtedness issued as a distribution,
6 is not considered a liability for purposes of determinations under subsection (c) if its
7 terms provide that payment of principal and interest are made only if and to the extent
8 that payment of a distribution to shareholders could then be made under this section. If
9 an indebtedness with such terms is issued as a distribution, each payment of principal or
10 interest is treated as a distribution the effect of which is measured on the date the
11 payment is actually made.

12 (h) Any action by a shareholder pursuant to subsection (i) and (j) of this section
13 may be brought against the directors, or against the corporation with or without joining
14 the directors as parties. The shareholder bringing such action shall be entitled, in the
15 event that the court orders the payment of a dividend, to recover from the corporation all
16 reasonable expenses, including attorney's fees, incurred in maintaining such action. If a
17 court orders the payment of a dividend, the amount ordered to be paid shall be a debt of
18 the corporation.

19 (i) As used in this subsection, net profits shall mean such net profits as can
20 lawfully be paid in dividends to a particular class of shares after making allowance for
21 the prior claims of shares, if any, entitled to preference in the payment of dividends. If
22 during its immediately preceding fiscal period a corporation having less than 25
23 shareholders on the final day of said period has not paid to any class of shares dividends
24 in cash or property amounting to at least one-third of the net profits of said period
25 allocable to that class, the holder or holders of twenty percent (20%) or more of the
26 shares of that class may, within four months after the close of said period, make written
27 demand upon the corporation for the payment of additional dividends for that period.
28 After a corporation has received such a demand, the directors shall, during the then
29 current fiscal period or within three months after the close thereof, either (i) cause
30 dividends in cash or property to be paid to the shareholders of that class in an amount
31 equal to the difference between the dividends paid in said preceding fiscal period to
32 shareholders of that class and one-third of the net profits of said period allocable to that
33 class, or in such lesser amount as may be demanded, or (ii) give notice pursuant to
34 subsection (j) of this section to all shareholders making such demand. Such corporation
35 shall not, however, be required to pay dividends pursuant to such demand insofar as (i)
36 such payment would exceed fifty percent (50%) of the net profits of the current fiscal
37 period in which such demand is made, or (ii) the net profits are being retained to
38 eliminate a deficit, or (iii) the payment of dividends would be a breach of a bona fide
39 agreement between the corporation and its creditors restricting the payment of
40 dividends, or (iv) the directors of the corporation can show that its earnings are being
41 retained to meet the reasonably anticipated needs of the business and that such retention
42 of earnings is not inequitable in light of all the circumstances. Upon receipt of such a
43 demand a corporation may elect to treat any dividend previously paid in the current
44 fiscal period as having been paid in the preceding fiscal period, in which event the

1 corporation shall so notify all shareholders. If a dividend is paid in satisfaction of a
2 demand made in accordance with this subsection it shall be deemed to have been paid in
3 the period for which it was demanded, and all shareholders shall be so informed
4 concurrently with such payment.

5 (j) Upon receipt of a demand from the holders of twenty percent (20%) or more
6 of the shares of any class of shares pursuant to subsection (i) of this section, the
7 corporation receiving such demand may, during the then fiscal period or within three
8 months after the close thereof, give written notice to each shareholder making such
9 written demand that the corporation elects to redeem all shares held by such shareholder
10 in lieu of the payment of dividends as provided in subsection (i) of this section and shall
11 pay to such shareholder the fair value of his shares as of the day preceding the mailing
12 or otherwise reasonably dispatching of the notice. A shareholder receiving such notice
13 shall thereafter be entitled to withdraw his dividend demand by giving written notice of
14 such withdrawal to the corporation within 10 days after receipt of the redemption notice
15 of the corporation or, if no such withdrawal is made, to receive the fair value of his
16 shares, subject only to the surrender by him of the certificate or certificates representing
17 his shares and to the provisions of G.S. 55-6-31, which value shall be determined and
18 paid as follows:

19 (1) If within 30 days after the date upon which a shareholder becomes
20 entitled to payment for his shares under this subsection, the value of
21 the shares is agreed upon between the shareholder and the corporation,
22 payment therefor shall be made within 60 days after the agreement,
23 upon surrender of the certificate representing the shares, whereupon
24 the shareholder shall cease to have any interest in such shares or in the
25 corporation.

26 (2) If within the such 30-day period the shareholder and the corporation do
27 not agree as to the value of the shares, the shareholder may, within 60
28 days after the expiration of the 30-day period, file a petition in the
29 superior court of the county of the registered office of the corporation
30 asking for the appointment by the clerk of three qualified and
31 disinterested appraisers to appraise the fair value of the shares. A
32 summons as in other cases of special proceedings, together with a copy
33 of the petition, shall be served on the corporation at least 10 days prior
34 to the hearing of the petition by the court. The award of appraisers, or
35 a majority of them, if no exceptions be filed thereto within 10 days
36 after the award shall have been filed in court, shall be confirmed by the
37 court, and when confirmed shall be final and conclusive, and the
38 shareholder upon depositing the proper share certificates in court, shall
39 be entitled to judgment against the corporation for the appraised value
40 thereof as of the date prescribed in this section, together with interest
41 thereon to the date of such confirmation. If either party files
42 exceptions to such award within 10 days after the award shall have
43 been filed in court, the case shall be transferred to the civil issue
44 docket of the superior court for trial during term and shall be there

1 tried in the same manner, as near as may be practicable, as is provided
2 in Chapter 40A for the trial of cases under the eminent domain law of
3 this State, and with the same right of appeal as is permitted in said
4 Chapter. The court shall assess the cost of said proceedings as it shall
5 deem equitable. Upon payment of the judgment the shareholder shall
6 cease to have any interest in the shares or in the corporation and the
7 corporation shall be entitled to have said share certificates surrendered
8 to it by the clerk of court for cancellation. Unless the shareholder shall
9 file such petition within the time herein prescribed, he and all persons
10 claiming under him shall have no right of payment hereunder but in
11 that event nothing herein shall impair his status as shareholder.

12 **"ARTICLE 7.**

13 **"SHAREHOLDERS.**

14 **"PART 1. MEETINGS.**

15 **"§ 55-7-01. Annual meeting.**

16 (a) A corporation shall hold a meeting of shareholders annually at a time stated
17 in or fixed in accordance with the bylaws.

18 (b) Annual shareholders' meetings may be held in or out of this State at the place
19 stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in
20 accordance with the bylaws, annual meetings shall be held at the corporation's principal
21 office.

22 (c) The failure to hold an annual meeting at the time stated in or fixed in
23 accordance with a corporation's bylaws does not affect the validity of any corporate
24 action. Upon such failure, whether from lack of quorum or otherwise, a substitute
25 annual meeting may be called in accordance with the provisions of G.S. 55-7-02 and
26 any meeting so called may be designated as the annual meeting.

27 (d) Any matter relating to the affairs of a corporation that is appropriate for
28 shareholder action is a proper subject for action at an annual meeting of shareholders,
29 and unless required by some provision of this act, the matter need not be specifically
30 stated in the notice of meeting.

31 **"§ 55-7-02. Special meeting.**

32 (a) A corporation shall hold a special meeting of shareholders:

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

35 (2) If the holders of at least ten percent (10%) of all the votes entitled to be
36 cast on any issue proposed to be considered at the proposed special
37 meeting sign, date, and deliver to the corporation's secretary one or
38 more written demands for the meeting describing the purpose or
39 purposes for which it is to be held; except however that, unless
40 otherwise provided in the articles of incorporation or bylaws, the call
41 of a special meeting by shareholders is not available to the
42 shareholders of a public corporation.

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

4 (c) Special shareholders' meetings may be held in or out of this State at the place
5 stated in or fixed in accordance with the bylaws. If no place is stated or fixed in
6 accordance with the bylaws, special meetings shall be held at the corporation's principal
7 office.

8 (d) Only business within the purpose or purposes described in the meeting notice
9 required by G.S. 55-7-05(c) may be conducted at a special shareholders' meeting.

10 **"§ 55-7-03. Court-ordered meeting.**

11 (a) The superior court of the county where a corporation's principal office (or, if
12 none in this State, its registered office) is located may, after notice is given to the
13 corporation, summarily order a meeting to be held:

14 (1) On application of any shareholder if an annual meeting of the
15 shareholders was not held within 15 months after the corporation's last
16 annual meeting; or

17 (2) On application of a shareholder who signed a demand for a special
18 meeting valid under G.S. 55-7-02, if (i) notice of the special meeting
19 was not given within 30 days after the date the demand was received
20 by the corporation's secretary; or (ii) the special meeting was not held
21 in accordance with the notice.

22 (b) The court may fix the time and place of the meeting, determine the shares
23 entitled to participate in the meeting, specify a record date for determining shareholders
24 entitled to notice of and to vote at the meeting, prescribe the form and content of the
25 meeting notice, fix the quorum required for specific matters to be considered at the
26 meeting (or direct that the votes represented at the meeting constitute a quorum for
27 action on those matters), enter other orders necessary to accomplish the purpose or
28 purposes of the meeting, and award such reasonable expenses, including attorneys' fees,
29 as it deems appropriate.

30 **"§ 55-7-04. Action without meeting.**

31 (a) Action required or permitted by this act to be taken at a shareholders' meeting
32 may be taken without a meeting if the action is taken by all the shareholders entitled to
33 vote on the action. The action must be evidenced by one or more written consents
34 signed by all the shareholders before or after such action, describing the action taken
35 and delivered to the corporation for inclusion in the minutes or filing with the corporate
36 records.

37 (b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for
38 determining shareholders entitled to take action without a meeting is the date the first
39 shareholder signs the consent under subsection (a).

40 (c) A consent signed under this section has the effect of a meeting vote and may
41 be described as such in any document.

42 (d) If this act requires that notice of proposed action be given to nonvoting
43 shareholders and the action is to be taken by unanimous consent of the voting
44 shareholders, the corporation must give its nonvoting shareholders written notice of the

1 proposed action at least 10 days before the action is taken. The notice must contain or
2 be accompanied by the same material that, under this act, would have been required to
3 be sent to nonvoting shareholders in a notice of meeting at which the proposed action
4 would have been submitted to the shareholders for action.

5 **"§ 55-7-05. Notice of meeting.**

6 (a) A corporation shall notify shareholders of the date, time, and place of each
7 annual and special shareholders' meeting no fewer than 10 nor more than 60 days before
8 the meeting date. Unless this act or the articles of incorporation require otherwise, the
9 corporation is required to give notice only to shareholders entitled to vote at the
10 meeting.

11 (b) Unless this act or the articles of incorporation require otherwise, notice of an
12 annual meeting need not include a description of the purpose or purposes for which the
13 meeting is called.

14 (c) Notice of a special meeting must include a description of the purpose or
15 purposes for which the meeting is called.

16 (d) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for
17 determining shareholders entitled to notice of and to vote at an annual or special
18 shareholders' meeting is the close of business on the day before the first notice is
19 delivered to shareholders.

20 (e) Unless the bylaws require otherwise, if an annual or special shareholders'
21 meeting is adjourned to a different date, time, or place, notice need not be given of the
22 new date, time, or place if the new date, time, or place is announced at the meeting
23 before adjournment. If a new record date for the adjourned meeting is or must be fixed
24 under G.S. 55-7-07, however, notice of the adjourned meeting must be given under this
25 section to persons who are shareholders as of the new record date.

26 **"§ 55-7-06. Waiver of notice.**

27 (a) A shareholder may waive any notice required by this act, the articles of
28 incorporation, or bylaws before or after the date and time stated in the notice. The
29 waiver must be in writing, be signed by the shareholder entitled to the notice, and be
30 delivered to the corporation for inclusion in the minutes or filing with the corporate
31 records.

32 (b) A shareholder's attendance at a meeting:

- 33 (1) Waives objection to lack of notice or defective notice of the meeting,
34 unless the shareholder at the beginning of the meeting objects to
35 holding the meeting or transacting business at the meeting;
- 36 (2) Waives objection to consideration of a particular matter at the meeting
37 that is not within the purpose or purposes described in the meeting
38 notice, unless the shareholder objects to considering the matter before
39 it is voted upon.

40 **"§ 55-7-07. Record date.**

41 (a) The bylaws may fix or provide the manner of fixing the record date for one or
42 more voting groups in order to determine the shareholders entitled to notice of a
43 shareholders' meeting, to demand a special meeting, to vote, or to take any other action.

1 If the bylaws do not fix or provide for fixing a record date, the board of directors of the
2 corporation may fix a future date as the record date.

3 (b) A record date fixed under this section may not be more than 70 days before
4 the meeting or action requiring a determination of shareholders.

5 (c) A determination of shareholders entitled to notice of or to vote at a
6 shareholders' meeting is effective for any adjournment of the meeting unless the board
7 of directors fixes a new record date, which it must do if the meeting is adjourned to a
8 date more than 120 days after the date fixed for the original meeting.

9 (d) If a court orders a meeting adjourned to a date more than 120 days after the
10 date fixed for the original meeting, it may provide that the original record date continues
11 in effect or it may fix a new record date.

12 "PART 2. VOTING.

13 "§ 55-7-20. Shareholders' list for meeting.

14 (a) After fixing a record date for a meeting, a corporation shall prepare an
15 alphabetical list of the names of all its shareholders who are entitled to notice of a
16 shareholders' meeting. The list must be arranged by voting group (and within each
17 voting group by class or series of shares) and show the address of and number of shares
18 held by each shareholder.

19 (b) The shareholders' list must be available for inspection by any shareholder,
20 beginning two business days after notice of the meeting is given for which the list was
21 prepared and continuing through the meeting, at the corporation's principal office or at a
22 place identified in the meeting notice in the city where the meeting will be held. A
23 shareholder, or his agent or attorney, is entitled on written demand to inspect and,
24 subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business
25 hours and at his expense, during the period it is available for inspection.

26 (c) The corporation shall make the shareholders' list available at the meeting, and
27 any shareholder, his agent, or attorney is entitled to inspect the list at any time during
28 the meeting or any adjournment.

29 (d) If the corporation refuses to allow a shareholder, his agent, or attorney to
30 inspect the shareholders' list before or at the meeting (or copy the list as permitted by
31 subsection (b)), the superior court of the county where a corporation's principal office
32 (or, if none in this State, its registered office) is located, on application of the
33 shareholder, after notice is given to the corporation, may summarily order the inspection
34 or copying at the corporation's expense and may postpone the meeting for which the list
35 was prepared until the inspection or copying is complete.

36 (e) Refusal or failure to prepare or make available the shareholders' list does not
37 affect the validity of action taken at the meeting.

38 "§ 55-7-21. Voting entitlement of shares.

39 (a) Except as provided in subsections (b) and (c) or unless the articles of
40 incorporation provide otherwise, each outstanding share, regardless of class, is entitled
41 to one vote on each matter voted on at a shareholders' meeting.

42 (b) Absent special circumstances, the shares of a corporation are not entitled to
43 vote if they are owned, directly or indirectly, by a second corporation, domestic or

1 foreign, and the first corporation owns, directly or indirectly, a majority of the shares
2 entitled to vote for directors of the second corporation.

3 (c) Subsection (b) does not limit the power of a corporation to vote any shares,
4 including its own shares, held by it in a fiduciary capacity.

5 (d) Redeemable shares are not entitled to vote after notice of redemption is given
6 to the holders and a sum sufficient to redeem the shares has been deposited with a bank,
7 trust company, or other financial institution under an irrevocable obligation to pay the
8 holders the redemption price on surrender of the shares.

9 **"§ 55-7-21.1. Rights of holders of debt securities.**

10 In addition to any rights otherwise lawfully conferred, the articles of incorporation
11 of the corporation may confer upon the holders of any bonds, debentures or other debt
12 obligations issued or to be issued by the corporation any one or more of the following
13 powers and rights upon such terms and conditions as may be prescribed in the articles of
14 incorporation:

- 15 (1) The power to vote on any matter either in conjunction with or to the
16 full or partial exclusion of its shareholders;
- 17 (2) The right to inspect the corporate books and records;
- 18 (3) Any other rights concerning the corporation which its shareholders
19 have or may have. Any such power or right shall not be diminished, as
20 to bonds, debentures or other obligations then outstanding, except by
21 an amendment of the articles of incorporation approved by the vote or
22 written consent of the holders of a majority in principal amount thereof
23 or such larger percentage as may be specified in the articles of
24 incorporation.

25 **"§ 55-7-22. Proxies.**

26 (a) A shareholder may vote his shares in person or by proxy.

27 (b) A shareholder may appoint a proxy to vote or otherwise act for him by
28 signing an appointment form, either personally or by his attorney-in-fact. A telegram,
29 telex, facsimile or other form of wire or wireless communication appearing to have been
30 transmitted by a shareholder, or a photocopy or equivalent reproduction of a writing
31 appointing one or more proxies, shall be deemed a valid appointment form within the
32 meaning of this section.

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

36 (d) An appointment of a proxy is revocable by the shareholder unless the
37 appointment form conspicuously states that it is irrevocable and the appointment is
38 coupled with an interest. Appointments coupled with an interest include the
39 appointment of:

- 40 (1) A pledgee;
- 41 (2) A person who purchased or agreed to purchase the shares;
- 42 (3) A creditor of the corporation who extended it credit under terms
43 requiring the appointment;

1 (4) An employee of the corporation whose employment contract requires
2 the appointment; or

3 (5) A party to a voting agreement created under G.S. 55-7-31.

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

8 (f) An appointment made irrevocable under subsection (d) shall be revocable
9 when the interest with which it is coupled is extinguished.

10 (g) A transferee for value of shares subject to an irrevocable appointment may
11 revoke the appointment if he did not know of its existence when he acquired the shares
12 and the existence of the irrevocable appointment was not noted conspicuously on the
13 certificate representing the shares or on the information statement for shares without
14 certificates.

15 (h) Subject to G.S. 55-7-24 and to any express limitation on the proxy's authority
16 appearing on the face of the appointment form, a corporation is entitled to accept the
17 proxy's vote or other action as that of the shareholder making the appointment.

18 **"§ 55-7-23. Shares held by nominees.**

19 (a) A corporation may establish a procedure by which the beneficial owner of
20 shares that are registered in the name of a nominee is recognized by the corporation as a
21 shareholder. The extent of this recognition may be determined in the procedure.

22 (b) The procedure may set forth:

23 (1) The types of nominees to which it applies;

24 (2) The rights or privileges that the corporation recognizes in a beneficial
25 owner;

26 (3) The manner in which the procedure is selected by the nominee;

27 (4) The information that must be provided when the procedure is selected;

28 (5) The period for which selection of the procedure is effective; and

29 (6) Other aspects of the rights and duties created.

30 **"§ 55-7-24. Corporation's acceptance of votes.**

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

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

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

41 (2) The name signed purports to be that of an administrator, executor,
42 guardian, or conservator representing the shareholder and, if the
43 corporation requests, evidence of fiduciary status acceptable to the

1 corporation has been presented with respect to the vote, consent,
2 waiver, or proxy appointment;

3 (3) The name signed purports to be that of a receiver or trustee in
4 bankruptcy of the shareholder and, if the corporation requests,
5 evidence of its status acceptable to the corporation has been presented
6 with respect to the vote, consent, waiver, or proxy appointment;

7 (4) The name signed purports to be that of a beneficial owner or attorney-
8 in-fact of the shareholder and, if the corporation requests, evidence
9 acceptable to the corporation of the signatory's authority to sign for the
10 shareholder has been presented with respect to the vote, consent,
11 waiver, or proxy appointment;

12 (5) Two or more persons are the shareholder as co-tenants or fiduciaries
13 and the name signed purports to be the name of at least one of the co-
14 owners and the person signing appears to be acting on behalf of all the
15 co-owners.

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

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

24 (e) Corporate action based on the acceptance or rejection of a vote, consent,
25 waiver, or proxy appointment under this section is valid unless a court of competent
26 jurisdiction determines otherwise.

27 **"§ 55-7-25. Quorum and voting requirements for voting groups.**

28 (a) Shares entitled to vote as a separate voting group may take action on a matter
29 at a meeting only if a quorum of those shares exists with respect to that matter, except
30 that, in the absence of a quorum at the opening of any meeting of shareholders, such
31 meeting may be adjourned from time to time by the vote of a majority of the shares
32 voting on the motion to adjourn. Unless the articles of incorporation, a bylaw adopted
33 by the shareholders, or this act provides otherwise, a majority of the votes entitled to be
34 cast on the matter by the voting group constitutes a quorum of that voting group for
35 action on that matter.

36 (b) Once a share is represented for any purpose at a meeting, it is deemed present
37 for quorum purposes for the remainder of the meeting and for any adjournment of that
38 meeting unless a new record date is or must be set for that adjourned meeting.

39 (c) If a quorum exists, action on a matter (other than the election of directors) by
40 a voting group is approved if the votes cast within the voting group favoring the action
41 exceed the votes cast opposing the action, unless the articles of incorporation, a bylaw
42 adopted by the shareholders, or this act requires a greater number of affirmative votes.

1 (d) An amendment of the articles of incorporation or bylaws adding, changing, or
2 deleting a quorum or voting requirement for a voting group greater than specified in
3 subsection (a) or (c) is governed by G.S. 55-7-27.

4 (e) The election of directors is governed by G.S. 55-7-28.

5 **"§ 55-7-26. Action by single and multiple voting groups.**

6 (a) If the articles of incorporation, a bylaw adopted by the shareholders, or this
7 act provides for voting by a single voting group on a matter, action on that matter is
8 taken when voted upon by that voting group as provided in G.S. 55-7-25.

9 (b) If the articles of incorporation, a bylaw adopted by the shareholders, or this
10 act provides for voting by two or more voting groups on a matter, action on that matter
11 is taken only when voted upon by each of those voting groups counted separately as
12 provided in G.S. 55-7-25. Action may be taken by one voting group on a matter even
13 though no action is taken at the same time by another voting group entitled to vote on
14 the matter.

15 **"§ 55-7-27. Greater quorum or voting requirements.**

16 (a) The articles of incorporation or a bylaw adopted by the shareholders may
17 provide for a greater quorum or voting requirement for shareholders (or voting groups
18 of shareholders) than is provided for by this act. Any such bylaw adopted by the
19 shareholders after the effective date of this section must be approved by a quorum and
20 vote sufficient to amend the articles of incorporation for that purpose.

21 (b) Any provision in the articles of incorporation or bylaws prescribing the
22 quorum or vote required for any purpose as permitted by this section may not itself be
23 amended by a quorum or vote less than the quorum or vote therein prescribed.

24 **"§ 55-7-28. Voting for directors; cumulative voting.**

25 (a) Unless otherwise provided in the articles of incorporation or in an agreement
26 valid under G.S. 55-7-31, directors are elected by a plurality of the votes cast by the
27 shares entitled to vote in the election at a meeting at which a quorum is present.

28 (b) Except as provided in subsection (e) of this section, shareholders do not have
29 a right to cumulate their votes for directors unless the articles of incorporation so
30 provide.

31 (c) A statement included in the articles of incorporation that '[all] [a designated
32 voting group of] shareholders are entitled to cumulate their votes for directors' (or words
33 of similar import) means that the shareholders designated are entitled to multiply the
34 number of votes they are entitled to cast by the number of directors for whom they are
35 entitled to vote and cast the product for a single candidate or distribute the product
36 among two or more candidates.

37 (d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively
38 at a particular meeting unless:

39 (1) The meeting notice or proxy statement accompanying the notice states
40 conspicuously that cumulative voting is authorized; or

41 (2) A shareholder or proxy who has the right to cumulate his votes
42 announces in open meeting, before voting for directors starts, his
43 intention to vote cumulatively; and if such announcement is made, the
44 chair shall declare that all shares entitled to vote have the right to vote

1 cumulatively and shall announce the number of shares present in
2 person and by proxy, and shall thereupon grant a recess of not less
3 than one hour nor more than four hours, as he shall determine, or of
4 such other period of time as is unanimously then agreed upon.

5 (e) Shareholders of a corporation incorporated in this State shall have the right to
6 cumulate their votes for directors if (i) the corporation was in existence prior to July 1,
7 1957, under a charter which does not grant the right of cumulative voting and at the
8 time of the election the stock transfer book of such corporation discloses, or it otherwise
9 appears, that there is at least one stockholder who owns or controls more than one-
10 fourth of the voting stock of such corporation. (Shares represented at a meeting by
11 revocable proxy relating to that meeting or adjourned meetings thereof shall not be
12 deemed shares 'controlled' within the meaning of this subsection.), or if (ii) the
13 corporation was incorporated on or after July 1, 1957, and before the effective date of
14 this act, unless, when the stock transfer books are closed or at the record date fixed to
15 determine the shareholders entitled to receive notice of and to vote at the meeting of
16 shareholders, shares of any class or series are listed on a national securities exchange or
17 are held of record by more than 2,000 shareholders. This right to vote cumulatively
18 may be denied or limited by amendment to the articles of incorporation, but no such
19 amendment shall be made when the number of shares voting against the amendment
20 would be sufficient to elect a director by cumulative voting if such shares are entitled to
21 be voted cumulatively for the election of directors.

22 **"PART 3. VOTING TRUSTS AND AGREEMENTS.**

23 **"§ 55-7-30. Voting trusts.**

24 (a) One or more shareholders may create a voting trust, conferring on a trustee
25 the right to vote or otherwise act for them, by signing an agreement setting out the
26 provisions of the trust (which may include anything consistent with its purpose) and
27 transferring their shares to the trustee. When a voting trust agreement is signed, the
28 trustee shall prepare a list of the names and addresses of all owners of beneficial
29 interests in the trust, together with the number and class of shares each transferred to the
30 trust, and deliver copies of the list and agreement to the corporation's principal office.

31 (b) A voting trust becomes effective on the date the first shares subject to the
32 trust are registered in the trustee's name. A voting trust is valid for not more than 10
33 years after its effective date unless extended under subsection (c).

34 (c) All or some of the parties to a voting trust may extend it for additional terms
35 of not more than 10 years each by signing an extension agreement and obtaining the
36 voting trustee's written consent to the extension. An extension is valid for not more
37 than 10 years from the date the first shareholder signs the extension agreement. The
38 voting trustee must deliver copies of the extension agreement and list of beneficial
39 owners to the corporation's principal office. An extension agreement binds only those
40 parties signing it.

41 **"§ 55-7-31. Shareholders' agreements.**

42 (a) An agreement between two or more shareholders, if in writing and signed by
43 the parties thereto, may provide that in the exercise of any voting rights of shares held
44 by the parties, including any vote with respect to directors, such shares shall be voted as

1 provided by the agreement, or as the parties may agree, or as determined in accordance
2 with any procedure (including arbitration) specified in the agreement. Such agreement
3 shall be valid as between the parties thereto for not more than 10 years from the date of
4 its execution. A voting agreement created under this section may be extended or
5 renewed in like manner as a voting trust may be extended or renewed as provided by
6 G.S. 55-7-30 (c), but is not otherwise subject to the provisions of G.S. 55-7-30.

7 (b) Except in the case of a public corporation, no written agreement to which all
8 of the shareholders have actually assented, whether embodied in the articles of
9 incorporation or bylaws or in any side agreement in writing and signed by all the parties
10 thereto, and which relates to any phase of the affairs of the corporation, whether to the
11 management of its business or division of its profits or otherwise, shall be invalid as
12 between the parties thereto, on the ground that it is an attempt by the parties thereto to
13 treat the corporation as if it were a partnership or to arrange their relationships in a
14 manner that would be appropriate between partners. A transferee of shares covered by
15 such agreement who acquires them with knowledge thereof is bound by its provisions.

16 (c) A written agreement between all or less than all of the shareholders, whether
17 solely between themselves or between one or more of them and a party who is not a
18 shareholder, is not invalid as between the parties thereto on the ground that it so relates
19 to the conduct of the affairs of the corporation as to interfere with the discretion of the
20 board of directors. The effect of any such agreement shall be to relieve the directors
21 and impose upon the shareholders who are parties to the agreement the liability for
22 managerial acts or omissions which is imposed on directors to the extent and so long as
23 the discretion or powers of the board in its management of corporate affairs is controlled
24 by such agreement.

25 **"PART 4. DERIVATIVE PROCEEDINGS.**

26 **"§ 55-7-40. Shareholders' derivative actions.**

27 (a) An action may be brought in the Superior Court of this State, which shall
28 have exclusive original jurisdiction over actions brought hereunder, in the right of any
29 domestic or foreign corporation by a shareholder or holder of a beneficial interest in
30 shares of such corporation; provided that the plaintiff or plaintiffs must comply with the
31 provisions of subsection (g) of this section, if applicable, and must allege, and it must
32 appear, that each plaintiff was a shareholder or holder of a beneficial interest in such
33 shares at the time of the transaction of which he complains or that his shares or
34 beneficial interest in such shares devolved upon him by operation of law from a person
35 who was a shareholder or holder of a beneficial interest in such shares at such time.

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

42 (c) Upon motion of the corporation, the court may appoint a committee
43 composed of two or more disinterested directors or other disinterested persons,
44 acceptable to the corporation, to determine whether it is in the best interests of the

1 corporation to pursue a particular legal right or remedy. The committee shall report its
2 findings to the court. After considering the report and any other relevant evidence, the
3 court shall determine whether the proceeding should be continued or not.

4 (d) Such action shall not be discontinued, dismissed, compromised or settled
5 without the approval of the court. If the court shall determine that the interest of the
6 shareholders or any class or classes thereof, or of the creditors of the corporation, will
7 be substantially affected by such discontinuance, dismissal, compromise or settlement,
8 the court, in its discretion, may direct that notice, by publication or otherwise, shall be
9 given to such shareholders or creditors whose interests it determines will be so affected.
10 If notice is so directed to be given, the court may determine which one or more of the
11 parties to the action shall bear the expense of giving the same, in such amount as the
12 court shall determine and find to be reasonable in the circumstances, and the amount of
13 such expense shall be awarded as costs of the action.

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

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

23 (g) In addition to all other provisions of this section, any action brought on behalf
24 of a corporation that is a public corporation at the time of such action against one or
25 more of its directors for monetary damages the plaintiff or plaintiffs must (i) allege, and
26 it must appear, that each plaintiff has been a shareholder or holder of a beneficial
27 interest in shares of the corporation for at least one year; (ii) bring the action within two
28 years of the date of the transaction of which he complains; and (iii) execute and deposit
29 with the clerk a written undertaking with sufficient surety, approved by the judge, in an
30 amount to be fixed by the judge to indemnify the corporation against any and all
31 expenses expected to be incurred by the corporation in connection with the proceeding,
32 including those arising by way of indemnity, if the court in its discretion so requires.

33 (h) In proceedings hereunder, no shareholder shall be entitled to obtain or have
34 access to any communication within the scope of the corporation's attorney-client
35 privilege which could not be obtained by or would not be accessible to a party in an
36 action other than on behalf of the corporation.

37 "ARTICLE 8.

38 "DIRECTORS AND OFFICERS.

39 "PART 1. BOARD OF DIRECTORS.

40 "§ 55-8-01. Requirement for and duties of board of directors.

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

43 (b) All corporate powers shall be exercised by or under the authority of, and the
44 business and affairs of the corporation managed under the direction of, its board of

1 directors, except as otherwise provided in the articles of incorporation or in an
2 agreement valid under G.S. 55-7-31(b).

3 (c) A corporation may dispense with or limit the authority of a board of directors
4 by describing in its articles of incorporation or in an agreement valid under G.S. 55-7-
5 31(b) who will perform some or all of the duties of a board of directors; but no such
6 limitation upon the authority which the board of directors would otherwise have shall be
7 effective against other persons without actual knowledge of such limitation.

8 (d) To the extent the articles of incorporation or an agreement valid under G.S.
9 55-7-31(b) vests authority of the board of directors in an individual or group other than
10 the board of directors, such individual or group in the exercise of such authority shall be
11 deemed to be acting as the board of directors for all purposes of this act.

12 **"§ 55-8-02. Qualifications of directors.**

13 The articles of incorporation or bylaws may prescribe qualifications for directors. A
14 director need not be a resident of this State or a shareholder of the corporation unless the
15 articles of incorporation or bylaws so prescribe.

16 **"§ 55-8-03. Number and election of directors.**

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

19 (b) The shareholders may from time to time increase or decrease the number of
20 directors by amendment to the articles of incorporation or the bylaws, but no such
21 decrease shall be made when the number of shares voting against the proposal for
22 decrease would be sufficient to elect a director by cumulative voting if such shares are
23 entitled to be voted cumulatively for the election of directors. If a board of directors has
24 power under the articles of incorporation or bylaws to fix or change the number of
25 directors and if the shareholders do not have the right to cumulate their votes for
26 directors, the board may increase or decrease the number of directors by not more than
27 thirty percent (30%) during any 12-month period.

28 (c) The articles of incorporation or bylaws may establish a variable range for the
29 size of the board of directors by fixing a minimum and maximum number of directors.
30 If a variable range is established, the number of directors may be fixed or changed from
31 time to time, within the minimum and maximum, by the shareholders or (unless the
32 articles of incorporation or an agreement valid under G.S. 55-7-31 shall otherwise
33 provide) the board of directors. After shares are issued, only the shareholders may
34 change the range for the size of the board or change from a fixed to a variable-range
35 size board or vice versa.

36 (d) Directors are elected at the first annual shareholders' meeting and at each
37 annual meeting thereafter unless their terms are staggered under G.S. 55-8-06.

38 **"§ 55-8-04. Election of directors by certain classes of shareholders.**

39 If the articles of incorporation authorize dividing the shares into classes, the articles
40 may also authorize the election of all or a specified number of directors by the holders
41 of one or more authorized classes of shares. A class (or classes) of shares entitled to
42 elect one or more directors is a separate voting group for purposes of the election of
43 directors.

44 **"§ 55-8-05. Terms of directors generally.**

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

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

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

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

9 (e) Despite the expiration of a director's term, he continues to serve until his
10 successor is elected and qualifies or until there is a decrease in the number of directors.

11 **"§ 55-8-06. Staggered terms for directors.**

12 If the number of directors is fixed at nine or more directors, the articles of
13 incorporation or bylaws adopted by the shareholders may provide for staggering their
14 terms by dividing the total number of directors into two or three groups, with each
15 group containing one-half or one-third of the total, as near as may be. In that event, the
16 terms of directors in the first group expire at the first annual shareholders' meeting after
17 their election, the terms of the second group expire at the second annual shareholders'
18 meeting after their election, and the terms of the third group, if any, expire at the third
19 annual shareholders' meeting after their election. At each annual shareholders' meeting
20 held thereafter, directors shall be chosen for a term of two years or three years, as the
21 case may be, to succeed those whose terms expire.

22 **"§ 55-8-07. Resignation of directors.**

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

25 (b) A resignation is effective when it is communicated unless it specifies in
26 writing a later effective date or subsequent event upon which it will become effective.

27 **"§ 55-8-08. Removal of directors by shareholders.**

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

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

33 (c) If cumulative voting is authorized, a director may not be removed if the
34 number of votes sufficient to elect him under cumulative voting is voted against his
35 removal. If cumulative voting is not authorized, a director may be removed only if the
36 number of votes cast to remove him exceeds the number of votes cast not to remove
37 him.

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

41 **"§ 55-8-09. Removal of directors by judicial proceeding.**

42 (a) The superior court of the county where a corporation's principal office (or, if
43 none in this State, its registered office) is located may remove a director of the
44 corporation from office in a proceeding commenced either by the corporation or by its

1 shareholders holding at least ten percent (10%) of the outstanding shares of any class if
2 the court finds that:

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

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

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

8 (c) If shareholders commence a proceeding under subsection (a), they shall make
9 the corporation a party defendant.

10 **"§ 55-8-10. Vacancy on board.**

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

15 (1) The shareholders may fill the vacancy;

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

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

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

24 (c) A vacancy that will occur at a specific later date (by reason of a resignation
25 effective at a later date under G.S. 55-8-07(b) or otherwise) may be filled before the
26 vacancy occurs but the new director may not take office until the vacancy occurs.

27 **"§ 55-8-11. Compensation of directors.**

28 Unless the articles of incorporation or bylaws provide otherwise, the board of
29 directors may fix the compensation of directors.

30 **"PART 2. MEETINGS AND ACTION OF THE BOARD.**

31 **"§ 55-8-20. Meetings.**

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

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

40 **"§ 55-8-21. Action without meeting.**

41 (a) Unless the articles of incorporation or bylaws provide otherwise, action
42 required or permitted by this act to be taken at a board of directors' meeting may be
43 taken without a meeting if the action is taken by all members of the board. The action
44 must be evidenced by one or more written consents signed by each director before or

1 after such action, describing the action taken, and included in the minutes or filed with
2 the corporate records.

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

5 (c) A consent signed under this section has the effect of a meeting vote and may
6 be described as such in any document.

7 **"§ 55-8-22. Notice of meeting.**

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

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

16 **"§ 55-8-23. Waiver of notice.**

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

21 (b) A director's attendance at or participation in a meeting waives any required
22 notice to him of the meeting unless the director at the beginning of the meeting (or
23 promptly upon his arrival) objects to holding the meeting or transacting business at the
24 meeting and does not thereafter vote for or assent to action taken at the meeting.

25 **"§ 55-8-24. Quorum and voting.**

26 (a) Unless the articles of incorporation or bylaws require a greater number, a
27 quorum of a board of directors consists of:

28 (1) A majority of the fixed number of directors if the corporation has a
29 fixed board size; or

30 (2) A majority of the number of directors prescribed, or if no number is
31 prescribed the number in office immediately before the meeting
32 begins, if the corporation has a variable-range size board.

33 (b) The articles of incorporation or a bylaw adopted by the shareholders may
34 authorize a quorum of a board of directors to consist of no fewer than one-third of the
35 fixed or prescribed number of directors determined under subsection (a).

36 (c) If a quorum is present when a vote is taken, the affirmative vote of a majority
37 of directors present is the act of the board of directors unless the articles of
38 incorporation or bylaws require the vote of a greater number of directors.

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

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

- 1 (2) His dissent or abstention from the action taken is entered in the
2 minutes of the meeting; or
3 (3) He files written notice of his dissent or abstention with the presiding
4 officer of the meeting before its adjournment or with the corporation
5 immediately after adjournment of the meeting. The right of dissent or
6 abstention is not available to a director who votes in favor of the action
7 taken.

8 **"§ 55-8-25. Committees.**

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

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

- 15 (1) A majority of all the directors in office when the action is taken; or
16 (2) The number of directors required by the articles of incorporation or
17 bylaws to take action under G.S. 55-8-24.

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

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

24 (e) A committee may not, however:

- 25 (1) Authorize distributions;
26 (2) Approve or propose to shareholders action that this act requires be
27 approved by shareholders;
28 (3) Fill vacancies on the board of directors or on any of its committees;
29 (4) Amend articles of incorporation pursuant to G.S. 55-10-02;
30 (5) Adopt, amend, or repeal bylaws;
31 (6) Approve a plan of merger not requiring shareholder approval;
32 (7) Authorize or approve reacquisition of shares, except according to a
33 formula or method prescribed by the board of directors; or
34 (8) Authorize or approve the issuance or sale or contract for sale of shares,
35 or determine the designation and relative rights, preferences, and
36 limitations of a class or series of shares, except that the board of
37 directors may authorize a committee (or a senior executive officer of
38 the corporation) to do so within limits specifically prescribed by the
39 board of directors.

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

43 **"PART 3. STANDARDS OF CONDUCT.**

44 **"§ 55-8-30. General standards for directors.**

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

3 (1) In good faith;

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

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

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

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

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

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

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

22 (d) A director is not liable for any action taken as a director, or any failure to take
23 any action, if he performed the duties of his office in compliance with this section.

24 (e) A director's personal liability for monetary damages for breach of a duty as a
25 director may be limited or eliminated only to the extent permitted in G.S. 55-2-02(b)(3),
26 and a director may be entitled to indemnification against liability and expenses pursuant
27 to Part 5 of Article 8 of this act.

28 **"§ 55-8-31. Director conflict of interest.**

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

33 (1) The material facts of the transaction and the director's interest were
34 disclosed or known to the board of directors or a committee of the
35 board of directors and the board of directors or committee authorized,
36 approved, or ratified the transaction;

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

40 (3) The transaction was fair to the corporation.

41 (b) For purposes of this section, a director of the corporation has an indirect
42 interest in a transaction if:

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

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

4 (c) For purposes of subsection (a)(1), a conflict of interest transaction is
5 authorized, approved, or ratified if it receives the affirmative vote of a majority of the
6 directors on the board of directors (or on the committee) who have no direct or indirect
7 interest in the transaction, but a transaction may not be authorized, approved, or ratified
8 under this section by a single director. If a majority of the directors who have no direct
9 or indirect interest in the transaction vote to authorize, approve, or ratify the transaction,
10 a quorum is present for the purpose of taking action under this section. The presence of,
11 or a vote cast by, a director with a direct or indirect interest in the transaction does not
12 affect the validity of any action taken under subsection (a)(1) if the transaction is
13 otherwise authorized, approved, or ratified as provided in that subsection.

14 (d) For purposes of subsection (a)(2), a conflict of interest transaction is
15 authorized, approved, or ratified if it receives the vote of a majority of the shares
16 entitled to be counted under this subsection. Shares owned by or voted under the
17 control of a director who has a direct or indirect interest in the transaction, and shares
18 owned by or voted under the control of an entity described in subsection (b)(1), may not
19 be counted in a vote of shareholders to determine whether to authorize, approve, or
20 ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares,
21 however, shall be counted in determining whether the transaction is approved under
22 other sections of this act. A majority of the shares that would if present be entitled to
23 be counted in a vote on the transaction under this subsection constitutes a quorum for
24 the purpose of taking action under this section.

25 **"§ 55-8-32. Loans to directors.**

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

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

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

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

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

40 (d) For purposes of this section, a loan or guarantee is made indirectly to or for a
41 director if such director has an indirect interest in the loan or guarantee as defined in
42 G.S. 55-8-31 (b).

43 **"§ 55-8-33. Liability for unlawful distributions.**

1 (a) A director who votes for or assents to a distribution made in violation of G.S.
2 55-6-40 or the articles of incorporation is personally liable to the corporation for the
3 amount of the distribution that exceeds what could have been distributed without
4 violating G.S. 55-6-40 or the articles of incorporation if it is established that he did not
5 perform his duties in compliance with G.S. 55-8-30. In any proceeding commenced
6 under this section, a director has all of the defenses ordinarily available to a director.

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

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

11 (2) Reimbursement from each shareholder for the amount the shareholder
12 accepted knowing the distribution was made in violation of G.S. 55-6-
13 40 or the articles of incorporation.

14 (c) A proceeding under subsection (a) is barred unless it is commenced within
15 three years after the date on which the effect of the distribution was measured under
16 G.S. 55-6-40(e) or (g).

17 "PART 4. OFFICERS.

18 "§ 55-8-40. Officers.

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

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

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

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

29 (e) Whenever a specific office is referred to in this act, it shall be deemed to
30 include any person who, individually or collectively with one or more other persons,
31 holds or occupies such office.

32 "§ 55-8-41. Duties of officers.

33 Each officer has the authority and duties set forth in the bylaws or, to the extent
34 consistent with the bylaws, the authority and duties prescribed by the board of directors
35 or by direction of an officer authorized by the board of directors to prescribe the
36 authority and duties of other officers.

37 "§ 55-8-42. Standards of conduct for officers.

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

40 (1) In good faith;

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

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

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

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

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

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

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

15 (e) An officer may be entitled to indemnification against liability and expenses
16 pursuant to Part 5 of Article 8 of this act.

17 **"§ 55-8-43. Resignation and removal of officers.**

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

24 (b) A board of directors may remove any officer at any time with or without
25 cause.

26 **"§ 55-8-44. Contract rights of officers.**

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

28 (b) An officer's removal does not itself affect the officer's contract rights, if any,
29 with the corporation. An officer's resignation does not affect the corporation's contract
30 rights, if any, with the officer.

31 **"PART 5. INDEMNIFICATION.**

32 **"§ 55-8-50. Policy statement and definitions.**

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

38 (b) Definitions in this Part:

39 (1) 'Corporation' includes any domestic or foreign predecessor entity of a
40 corporation in a merger or other transaction in which the predecessor's
41 existence ceased upon consummation of the transaction.

42 (2) 'Director' means an individual who is or was a director of a
43 corporation or an individual who, while a director of a corporation, is
44 or was serving at the corporation's request as a director, officer,

1 partner, trustee, employee, or agent of another foreign or domestic
2 corporation, partnership, joint venture, trust, employee benefit plan, or
3 other enterprise. A director is considered to be serving an employee
4 benefit plan at the corporation's request if his duties to the corporation
5 also impose duties on, or otherwise involve services by, him to the
6 plan or to participants in or beneficiaries of the plan. 'Director'
7 includes, unless the context requires otherwise, the estate or personal
8 representative of a director.

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

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

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

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

25 (7) 'Proceeding' means any threatened, pending, or completed action, suit,
26 or proceeding, whether civil, criminal, administrative, or investigative
27 and whether formal or informal.

28 **"§ 55-8-51. Authority to indemnify.**

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

32 (1) He conducted himself in good faith; and

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

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

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

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

- 1 (d) A corporation may not indemnify a director under this section:
2 (1) In connection with a proceeding by or in the right of the corporation in
3 which the director was adjudged liable to the corporation; or
4 (2) In connection with any other proceeding charging improper personal
5 benefit to him, whether or not involving action in his official capacity,
6 in which he was adjudged liable on the basis that personal benefit was
7 improperly received by him.
- 8 (e) Indemnification permitted under this section in connection with a proceeding
9 by or in the right of the corporation that is concluded without a final adjudication on the
10 issue of liability is limited to reasonable expenses incurred in connection with the
11 proceeding.
- 12 (f) The authorization, approval or favorable recommendation by the board of
13 directors of a corporation of indemnification, as permitted by this section, shall not be
14 deemed an act or corporate transaction in which a director has a conflict of interest, and
15 no such indemnification shall be void or voidable on such ground.

16 **"§ 55-8-52. Mandatory indemnification.**

17 Unless limited by its articles of incorporation, a corporation shall indemnify a
18 director who was wholly successful, on the merits or otherwise, in the defense of any
19 proceeding to which he was a party because he is or was a director of the corporation
20 against reasonable expenses incurred by him in connection with the proceeding.

21 **"§ 55-8-53. Advance for expenses.**

22 Expenses incurred by a director in defending a proceeding may be paid by the
23 corporation in advance of the final disposition of such proceeding as authorized by the
24 board of directors in the specific case or as authorized or required under any provision
25 in the articles of incorporation or bylaws or by any applicable resolution or contract
26 upon receipt of an undertaking by or on behalf of the director to repay such amount
27 unless it shall ultimately be determined that he is entitled to be indemnified by the
28 corporation against such expenses.

29 **"§ 55-8-54. Court-ordered indemnification.**

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

- 35 (1) The director is entitled to mandatory indemnification under G.S. 55-8-
36 52, in which case the court shall also order the corporation to pay the
37 director's reasonable expenses incurred to obtain court-ordered
38 indemnification; or
39 (2) The director is fairly and reasonably entitled to indemnification in
40 view of all the relevant circumstances, whether or not he met the
41 standard of conduct set forth in G.S. 55-8-51 or was adjudged liable as
42 described in G.S. 55-8-51(d), but if he was adjudged so liable his
43 indemnification is limited to reasonable expenses incurred.

44 **"§ 55-8-55. Determination and authorization of indemnification.**

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

5 (b) The determination shall be made:

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

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

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

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

22 (c) Authorization of indemnification and evaluation as to reasonableness of
23 expenses shall be made in the same manner as the determination that indemnification is
24 permissible, except that if the determination is made by special legal counsel,
25 authorization of indemnification and evaluation as to reasonableness of expenses shall
26 be made by those entitled under subsection (b)(3) to select counsel.

27 **"§ 55-8-56. Indemnification of officers, employees, and agents.**

28 Unless a corporation's articles of incorporation provide otherwise:

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

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

36 (3) A corporation may also indemnify and advance expenses to an officer,
37 employee, or agent who is not a director to the extent, consistent with
38 public policy, that may be provided by its articles of incorporation,
39 bylaws, general or specific action of its board of directors, or contract.

40 **"§ 55-8-57. Additional indemnification and insurance.**

41 (a) In addition to and separate and apart from the indemnification provided for in
42 G.S. 55-8-51, 55-8-52, 55-8-54, 55-8-55 and 55-8-56, a corporation may in its articles
43 of incorporation or bylaws or by contract or resolution indemnify or agree to indemnify
44 any one or more of its directors, officers, employees, or agents against liability and

1 expenses in any proceeding (including without limitation a proceeding brought by or on
2 behalf of the corporation itself) arising out of their status as such or their activities in
3 any of the foregoing capacities; provided, however, that a corporation may not
4 indemnify or agree to indemnify a person against liability or expenses he may incur on
5 account of his activities which were at the time taken known or believed by him to be
6 clearly in conflict with the best interests of the corporation. A corporation may likewise
7 and to the same extent indemnify or agree to indemnify any person who, at the request
8 of the corporation, is or was serving as a director, officer, partner, trustee, employee, or
9 agent of another foreign or domestic corporation, partnership, joint venture, trust or
10 other enterprise or as a trustee or administrator under an employee benefit plan. Any
11 provision in any articles of incorporation, bylaw, contract, or resolution permitted under
12 this section may include provisions for recovery from the corporation of reasonable
13 costs, expenses, and attorneys' fees in connection with the enforcement of rights to
14 indemnification granted therein and may further include provisions establishing
15 reasonable procedures for determining and enforcing the rights granted therein.

16 (b) The authorization, adoption, approval, or favorable recommendation by the
17 board of directors of a public corporation of any provision in any articles of
18 incorporation, bylaw, contract or resolution, as permitted in this section, shall not be
19 deemed an act or corporate transaction in which a director has a conflict of interest, and
20 no such articles of incorporation or bylaw provision or contract or resolution shall be
21 void or voidable on such grounds. The authorization, adoption, approval, or favorable
22 recommendation by the board of directors of a nonpublic corporation of any provision
23 in any articles of incorporation, bylaw, contract or resolution, as permitted in this
24 section, which occurred on or prior to the effective date of this act, shall not be deemed
25 an act or corporate transaction in which a director has a conflict of interest, and no such
26 articles of incorporation, bylaw provision, contract or resolution shall be void or
27 voidable on such grounds. Except as permitted in G.S. 55-8-31, no such bylaw,
28 contract, or resolution not adopted, authorized, approved or ratified by shareholders
29 shall be effective as to claims made or liabilities asserted against any director prior to its
30 adoption, authorization, or approval by the board of directors.

31 (c) A corporation may purchase and maintain insurance on behalf of an
32 individual who is or was a director, officer, employee, or agent of the corporation, or
33 who, while a director, officer, employee, or agent of the corporation, is or was serving at
34 the request of the corporation as a director, officer, partner, trustee, employee, or agent
35 of another foreign or domestic corporation, partnership, joint venture, trust, employee
36 benefit plan, or other enterprise, against liability asserted against or incurred by him in
37 that capacity or arising from his status as a director, officer, employee, or agent, whether
38 or not the corporation would have power to indemnify him against the same liability
39 under any provision of this act.

40 **"§ 55-8-58. Application of Part.**

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

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

4 (c) This Part shall not affect rights or liabilities arising out of acts or omissions
5 occurring before the effective date of this act.

6 **"ARTICLE 9.**

7 **"SHAREHOLDER PROTECTION ACT.**

8 **"§ 55-9-01. Short title and definitions.**

9 (a) The provisions of this Article shall be known and may be cited as The North
10 Carolina Shareholder Protection Act.

11 (b) In this Article:

- 12 (1) 'Business combination' includes any merger or consolidation of a
13 corporation with or into any other corporation, or the sale or lease of
14 all or any substantial part of the corporation's assets to, or any
15 payment, sale or lease to the corporation or any subsidiary thereof in
16 exchange for securities of the corporation of any assets (except assets
17 having an aggregate fair market value of less than five million dollars
18 (\$5,000,000)) of any other entity.
- 19 (2) 'Common stock' means the shares of capital stock of the corporation
20 that were not entitled to preference over any other shares, either in
21 payment of dividends or in dissolution, at the time that the other entity
22 acquired in excess of ten percent (10%) of the voting shares.
- 23 (3) 'Continuing director' means a person who was a member of the board
24 of directors of the corporation elected by the public shareholders prior
25 to the time that the other entity acquired in excess of ten percent (10%)
26 of the voting shares of the corporation, or a person recommended to
27 succeed a continuing director by a majority of the continuing directors.
- 28 (4) 'Exchange Act' means the Act of Congress known as the Securities
29 Exchange Act of 1934, as the same has been or hereafter may be
30 amended from time to time.
- 31 (5) 'Other consideration to be received' means, for the purposes of G.S.
32 55-9-03(1) and G.S. 55-9-03(2), the corporation's common stock
33 retained by its existing public shareholders in the event of a business
34 combination with the other entity in which the corporation is the
35 surviving corporation.
- 36 (6) 'Other entity' includes any domestic or foreign corporation, person or
37 other form of entity and any such entity with which it or its 'affiliate'
38 or 'associate' has an agreement, arrangement or understanding, directly
39 or indirectly, for the purpose of acquiring, holding, voting or disposing
40 of capital stock of the corporation, or which is its 'affiliate' or
41 'associate', as those terms are defined in the General Rules and
42 Regulations under the Exchange Act, together with the successors and
43 assigns of such persons in any transaction or series of transactions not

1 involving a public offering of the corporation's capital stock within the
2 meaning of the Securities Act of 1933, as amended.

- 3 (7) 'Voting shares' means shares of the corporation's capital stock entitled
4 to vote in the election of directors.

5 **"§ 55-9-02. Voting requirement.**

6 Notwithstanding any other provisions of the North Carolina Business Corporation
7 Act, the affirmative vote of the holders of ninety-five percent (95%) of the voting shares
8 of a corporation, considered for the purposes of this section as one class, shall be
9 required for the adoption or authorization of a business combination with any other
10 entity if, as of the record date for the determination of shareholders entitled to notice
11 thereof and to vote thereon, the other entity is the beneficial owner, directly or
12 indirectly, of more than twenty percent (20%) of the voting shares of the corporation,
13 considered for the purposes of this section as one class.

14 **"§ 55-9-03. Exception to voting requirement.**

15 The voting requirement of G.S. 55-9-02 shall not be applicable to a business
16 combination if each of the following conditions is met:

- 17 (1) The cash, or fair market value of other consideration, to be received
18 per share by the holders of the corporation's common stock in such
19 business combination bears the same or a greater percentage
20 relationship to the market price of the corporation's common stock
21 immediately prior to the announcement of such business combination
22 by the corporation as the highest per share price (including brokerage
23 commissions and/or soliciting dealers' fees) which such other entity
24 has theretofore paid for any of the shares of the corporation's common
25 stock already owned by it bears to the market price of the corporation's
26 common stock immediately prior to the commencement of acquisition
27 of the corporation's common stock by such other entity, directly or
28 indirectly;
- 29 (2) The cash, or fair market value of other consideration, to be received
30 per share by holders of the corporation's common stock in such
31 business combination (i) is not less than the highest per share price
32 (including brokerage commissions and/or soliciting dealers' fees) paid
33 by such other entity in acquiring any of its holdings of the shares of the
34 corporation's common stock and (ii) is not less than the earnings per
35 share of the corporation's common stock for the four full consecutive
36 fiscal quarters immediately preceding the record date for the
37 solicitation of votes on such business combination, multiplied by the
38 then price/earnings multiple, if any, of such other entity as customarily
39 computed and reported in the financial community;
- 40 (3) After the other entity has acquired a twenty percent (20%) interest and
41 prior to the consummation of such business combination: (i) the other
42 entity shall have taken steps to ensure that the corporation's board of
43 directors included at all times representation by continuing directors
44 proportionate to the outstanding shares of the corporation's common

1 stock held by persons not affiliated with the other entity (with a
2 continuing director to occupy any resulting fractional board position);
3 (ii) there shall have been no reduction in the rate of dividends payable
4 on the corporation's common stock, except as may have been approved
5 by a unanimous vote of its directors; (iii) the other entity shall have not
6 acquired any newly issued shares of the corporation's capital stock,
7 directly or indirectly, from the corporation, except upon conversion of
8 any convertible securities acquired by the other entity prior to
9 obtaining a twenty percent (20%) interest or as a result of a pro rata
10 stock dividend or stock split; and (iv) the other entity shall not have
11 acquired any additional shares of the corporation's outstanding
12 common stock, or securities convertible into common stock, except as
13 part of the transaction which resulted in the other entity acquiring its
14 twenty percent (20%) interest;

15 (4) The other entity shall not have (i) received the benefit, directly or
16 indirectly, except proportionately with other shareholders, of any
17 loans, advances, guarantees, pledges, or other financial assistance or
18 tax credits provided by the corporation or (ii) made any major change
19 in the corporation's business or equity capital structure unless by a
20 unanimous vote of the directors, in either case prior to the
21 consummation of the business combination; and

22 (5) A proxy statement responsive to the requirements of the Exchange Act
23 shall be mailed to the public shareholders of the corporation for the
24 purpose of soliciting shareholder approval of the business combination
25 and shall contain prominently in the forepart thereof any
26 recommendations as to the advisability or inadvisability of the
27 business combination which the continuing directors, or any of them,
28 may choose to state and, if deemed advisable by a majority of the
29 continuing directors, an opinion of a reputable investment banking
30 firm as to the fairness (or not) of the terms of the business combination
31 to the remaining public shareholders of the corporation, which
32 investment banking firm shall be selected by a majority of the
33 continuing directors and shall be paid by the corporation a reasonable
34 fee for its services upon receipt of such opinion.

35 **"§ 55-9-04. General.**

36 (a) The provisions of this Article shall also apply to a business combination with
37 an other entity which at any time has been the beneficial owner, directly or indirectly, of
38 more than twenty percent (20%) of the outstanding voting shares, considered for the
39 purposes of this section as one class, notwithstanding that the other entity has reduced
40 its percentage of shares below twenty percent (20%) if, as of the record date for the
41 determination of shareholders entitled to notice of and to vote on the business
42 combination, the other entity is an 'affiliate' of the corporation.

43 (b) For the purposes of the Article, an other entity shall be deemed the beneficial
44 owner of any shares of the corporation's capital stock which the other entity has the

1 right to acquire pursuant to any agreement, or upon exercise of any conversion rights,
2 warrants or options, or otherwise (whether the right to acquire shares is exercisable
3 immediately or only after the passage of time); and, further, the outstanding shares of
4 any class of capital stock of the corporation shall include shares deemed beneficially
5 owned through the application of the foregoing, but shall not include any other shares
6 which may be issuable pursuant to any agreement, or upon exercise of any conversion
7 rights, warrants or options, or otherwise.

8 (c) A majority of the continuing directors shall have the power and duty to
9 determine for the purposes of this Article on the basis of information known to them
10 whether (i) an other entity beneficially owns more than twenty percent (20%) of the
11 voting shares; (ii) an other entity is an 'affiliate' or 'associate' of another; (iii) an other
12 entity has an agreement, arrangement or understanding with another; and (iv) the assets
13 to be acquired by the corporation, or any subsidiary thereof, have an aggregate fair
14 market value of less than five million dollars (\$5,000,000).

15 (d) Nothing contained in this Article shall be construed to relieve any other entity
16 from any fiduciary obligation imposed by law. This Article shall be broadly construed
17 so as to be applicable to any transaction reasonably calculated to avoid the application
18 of the provisions hereof including, without limitation, any merger or other
19 recapitalization, initiated by or for the benefit of an other entity that owns more than
20 twenty percent (20%) of the voting shares, which would reincorporate a corporation
21 under the laws of another state.

22 **"§ 55-9-05. Exemptions.**

23 The provisions of G.S. 55-9-02 shall not be applicable to any corporation that shall
24 be made the subject of a business combination by an other entity if: (i) the
25 corporation was not a public corporation (as defined in G.S. 55-1-40 (18a)) at the time
26 such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on or
27 before September 30, 1990 (or such earlier date as may be irrevocably established by
28 resolution of the board of directors), the board of directors of a corporation to which
29 G.S. 55-76 was not applicable on the effective date of this act (other than a corporation
30 described in G.S. 55-9-05 (iii)) adopted a bylaw stating that the provisions of this
31 Article shall not be applicable to the corporation; (iii) in the case of a corporation to
32 which G.S. 55-76 was not applicable on the effective date of this act as the result of
33 adoption by its board of directors under G.S. 55-79(ii) of a bylaw providing that G.S.
34 55-76 not apply to such corporation, the board of directors of such corporation shall not
35 have rescinded such bylaw on or before September 30, 1990 (or such earlier date as may
36 be irrevocably established by resolution of the board of directors); (iv) in the case of
37 corporation (including its predecessors) which becomes a public corporation for the first
38 time after the effective date of this act, such corporation adopts a bylaw within 90 days
39 of becoming a public corporation stating that the provisions of this Article shall not be
40 applicable to it; (v) in the case of a newly formed corporation after April 23, 1987, the
41 initial articles of incorporation of the corporation shall provide that the provisions of
42 this Article shall not be applicable; or (vi) such business combination was the subject of
43 an existing agreement of the corporation on April 23, 1987. Neither the adoption or
44 failure to adopt a bylaw of the type set forth in G.S. 55-9-05(ii) or (iv) nor the rescission

1 or failure to rescind a bylaw of the type referred to in G.S. 55-9-05(iii) shall constitute
2 grounds for any cause of action, at law or in equity, against the corporation or any of its
3 directors.

4 **"ARTICLE 9A.**

5 **"CONTROL SHARE ACQUISITIONS.**

6 **"§ 55-9A-01. Short title and definitions.**

7 (a) The provisions of this Article shall be known and may be cited as The North
8 Carolina Control Share Acquisition Act.

9 (b) In this Article:

10 (1) 'Beneficial ownership' of shares means the sole or shared ownership of
11 any shares or the sole or shared power to vote any shares or to direct
12 the exercise of voting power of any shares, whether such ownership or
13 power is direct or indirect or through any contract, arrangement,
14 understanding, relationship or otherwise, and includes shares
15 beneficially owned by any person acting in concert with such
16 beneficial owner pursuant to any contract, arrangement, understanding,
17 relationship or otherwise. Notwithstanding the foregoing, beneficial
18 ownership does not include shares acquired in the ordinary course of
19 business for the benefit of others in good faith and not for the purpose
20 of circumventing this Article, unless the acquiror of such shares may
21 exercise or direct the exercise of voting of such shares without
22 instruction from others.

23 (2) 'Control shares' means shares of a covered corporation that when
24 added to all other shares of the corporation beneficially owned by a
25 person would entitle (except for this Article) that person to voting
26 power in the election of directors that is equal to or greater than any of
27 the following levels of voting power:
28 a. One-fifth of all voting power.
29 b. One-third of all voting power.
30 c. A majority of all voting power.

31 (3) 'Control share acquisition' means the acquisition by any person of
32 beneficial ownership of control shares, except that the acquisition of
33 beneficial ownership of any shares of a covered corporation does not
34 constitute a control share acquisition if the acquisition is consummated
35 in any of the following circumstances:

- 36 a. Before April 30, 1987.
37 b. Pursuant to a contract existing before April 30, 1987, with
38 either:
39 (i) The covered corporation; or
40 (ii) A seller of such shares who owned such shares before
41 April 30, 1987.
42 c. Pursuant to the laws of descent and distribution.

- 1 d. Pursuant to the satisfaction of a pledge or other security interest
2 created in good faith and not for the purpose of circumventing
3 this Article.
- 4 e. Pursuant to a merger or share exchange effected in compliance
5 with applicable law, but only if pursuant to an agreement of
6 merger or share exchange to which the covered corporation is a
7 party.
- 8 f. Pursuant to the sale of such shares by the covered corporation
9 or its parent or subsidiary corporation, provided that in such
10 case a written agreement relating to such sale to which the
11 covered corporation is a party may permit the purchasers of
12 such shares as a group also to purchase in any other manner
13 within 90 days before or after such sale up to the same
14 aggregate number of shares as were sold by the covered
15 corporation or its parent or subsidiary corporation without any
16 such purchases being a 'control share acquisition'.
- 17 g. Pursuant to a written agreement to which the covered
18 corporation is a party that permits the purchasers of shares from
19 the covered corporation or its parent or subsidiary corporation
20 also to purchase in any manner within 90 days before or after
21 the purchase from the covered corporation or its parent or
22 subsidiary up to the same aggregate number of shares as were
23 sold by the covered corporation or its parent or subsidiary
24 corporation.
- 25 h. By an employee benefit plan established by the covered
26 corporation.
- 27 i. Before the corporation became a covered corporation.
28 For purposes of this definition, shares acquired within any consecutive
29 90-day period or shares acquired pursuant to a plan to make a control
30 share acquisition are considered to have been acquired in the same
31 acquisition.
- 32 (4) 'Interested shares' means the shares of a covered corporation
33 beneficially owned by any of the following persons:
- 34 a. Any person who has acquired or proposes to acquire control
35 shares in a control share acquisition.
- 36 b. Any officer of the covered corporation.
- 37 c. Any employee of the covered corporation who is also a director
38 of the corporation.
- 39 (5) 'Covered corporation' means a corporation that:
- 40 a. Is incorporated under the laws of North Carolina and has
41 substantial assets within North Carolina;
- 42 b. Has a class of shares registered under Section 12 of the
43 Securities Exchange Act of 1934;

- 1 c. Has its principal place of business or principal office within
2 North Carolina; and
3 d. Has either:
4 (i) More than ten percent (10%) of its shareholders resident
5 in North Carolina; or
6 (ii) More than ten percent (10%) of its shares owned by
7 North Carolina residents.

8 (6) The residence of a shareholder is presumed to be the address appearing
9 in the records of the corporation.

10 (7) For purposes of calculating the percentages or numbers described in
11 subsection (b) (5) of this section, any shares held in trust or by a
12 nominee shall be deemed to be held by the beneficiaries of such trust
13 or by the beneficiaries of such shares held by such nominee.

14 **"§ 55-9A-02. Acquiring person statement.**

15 Any person who has made a control share acquisition or who has made a bona fide
16 written offer to make a control share acquisition may at the person's election deliver an
17 acquiring person statement to the covered corporation at the covered corporation's
18 principal office. The acquiring person statement must set forth all of the following:

- 19 (1) The identity of the acquiring person and each other beneficial owner of
20 shares that are beneficially owned by the acquiring person.
21 (2) A statement that the acquiring person statement is given pursuant to
22 this Article.
23 (3) The number of shares of the covered corporation beneficially owned
24 by the acquiring person and each other beneficial owner named under
25 subdivision (1) of this section.
26 (4) The level of voting power above which the control share acquisition
27 falls or would, if consummated, fall.
28 (5) If the control share acquisition has not taken place:
29 a. A description in reasonable detail of the terms of the proposed
30 control share acquisition; and
31 b. Representations of the acquiring person, together with a
32 statement in reasonable detail of the facts upon which they are
33 based, that the proposed control share acquisition, if
34 consummated, will not be contrary to law, and that the
35 acquiring person has the financial capacity to make the
36 proposed control share acquisition.

37 **"§ 55-9A-03. Meeting of shareholders.**

38 (a) If the acquiring person so requests at the time of delivery of an acquiring
39 person statement and gives an undertaking to pay the covered corporation's expenses of
40 a special meeting, within 10 days after delivery of such request the directors of the
41 covered corporation shall call a special meeting of shareholders of the covered
42 corporation for the purpose of considering the voting rights to be accorded the control
43 shares acquired or to be acquired in the control share acquisition.

1 (b) Unless the acquiring person agrees in writing to another date, the special
2 meeting of shareholders shall be held within 50 days after the receipt by the covered
3 corporation of the request.

4 (c) If no request is made, the voting rights to be accorded the control shares
5 acquired in the control share acquisition shall be considered at the next special or annual
6 meeting of shareholders.

7 (d) If the acquiring person so requests in writing at the time of delivery of the
8 acquiring person statement, the special meeting must not be held sooner than 30 days
9 after receipt by the covered corporation of the acquiring person statement.

10 **"§ 55-9A-04. Notice.**

11 If a special meeting is requested pursuant to G.S. 55-9A-03, notice of the special
12 meeting of shareholders shall be given as promptly as reasonably practicable by the
13 covered corporation. Notice of any special or annual meeting at which the voting rights
14 of control shares are to be considered shall be given to all shareholders who are entitled
15 to vote at the meeting and who are shareholders of record as of the record date set for
16 the meeting, and to all holders of interested shares, and such notice must include or be
17 accompanied by each of the following:

18 (1) A copy of the acquiring person statement delivered to the covered
19 corporation pursuant to this Article.

20 (2) A statement by the board of directors of the covered corporation,
21 authorized by a majority of its directors, of its position or
22 recommendation, or that it is taking no position or making no
23 recommendation, with respect to granting voting rights to the control
24 shares acquired or proposed to be acquired in the control share
25 acquisition.

26 (3) If the shareholders would have a right of redemption under G.S. 55-
27 9A-06, a statement, displayed with reasonable prominence, describing
28 such right and advising the shareholders that it will be available only
29 to those who give the written notice required by G.S. 55-9A-06(b).

30 **"§ 55-9A-05. Voting rights.**

31 (a) Control shares acquired in a control share acquisition shall not have voting
32 rights unless such rights are granted by resolution adopted by the shareholders of the
33 covered corporation.

34 (b) To be approved under this section, the resolution must be adopted by the
35 affirmative vote of the holders of at least a majority of all the outstanding shares of the
36 covered corporation (not including interested shares) entitled to vote for the election of
37 directors; provided that if applicable law or an articles of incorporation or bylaw
38 provision adopted by the shareholders before the occurrence of the control share
39 acquisition that is the subject of the vote prescribes voting by separate classes of shares,
40 the resolution must also be adopted by the affirmative vote of the holders of at least a
41 majority of each such class (but excluding in any such case all interested shares); and
42 provided further that if applicable law or an articles of incorporation or bylaw provision
43 adopted by the shareholders before the occurrence of the control share acquisition that is
44 the subject of the vote prescribes voting by shares that would not otherwise be entitled

1 to vote, such shares shall be treated solely for purposes of this section as shares entitled
2 to vote for directors (but excluding in any such case all interested shares).

3 **"§ 55-9A-06. Right of redemption by shareholders.**

4 (a) Unless otherwise provided in the articles of incorporation or a bylaw of the
5 covered corporation adopted by the shareholders before a control share acquisition has
6 occurred and subject to G.S. 55-6-40, if control shares acquired in a control share
7 acquisition are accorded voting rights and the holders of the control shares have a
8 majority of all voting power for the election of directors, all shareholders of the covered
9 corporation (other than holders of control shares) have rights as prescribed in this
10 section to have their shares redeemed by the corporation at the fair value of those shares
11 as of the day prior to the date on which the vote was taken under G.S. 55-9A-05.

12 (b) If the notice of meeting at which voting rights are accorded to control shares
13 contains the statement required by G.S. 55-9A-04(3), a shareholder will not have any
14 right of redemption under this section unless he gives to the corporation, prior to or at
15 the meeting of shareholders at which the voting rights to be accorded to control shares
16 are considered, written notice that if voting rights are accorded to such shares he may
17 ask for the redemption of his shares hereunder.

18 (c) As soon as practicable after control shares held by persons having a majority
19 of all voting power for the election of directors have been accorded voting rights, the
20 board of directors shall cause a notice to be sent to all shareholders of the corporation
21 advising them of the facts and that if they gave the notice required by subsection (b) of
22 this section they may have rights to have their shares redeemed at the fair value of those
23 shares pursuant to this section.

24 (d) Within 30 days after the date on which a shareholder receives such notice,
25 such shareholder may make written demand on the corporation for payment of the fair
26 value of his shares, and after such demand, if such shareholder has complied with the
27 notice requirement in subsection (b) of this section, the corporation shall redeem his
28 shares at their fair value within 30 days after the date on which the corporation receives
29 such shareholder's written demand for payment.

30 (e) As used in this section, 'fair value' means a value not less than the highest
31 price paid per share by the acquiring person in the control share acquisition.

32 **"§ 55-9A-07. Severability.**

33 If any provision or clause of this Article or application thereof to any person or
34 circumstance is held invalid, such invalidity shall not affect other provisions or
35 applications of this Article that can be given effect without the invalid provision or
36 application, and to this end the provisions of this Article are declared to be severable.

37 **"§ 55-9A-08. Construction.**

38 The provisions of this Article shall apply notwithstanding any provisions of Article 7
39 of this Chapter and in the event of any conflict between this Article and Article 7, the
40 provisions of this Article shall control.

41 **"§ 55-9A-09. Exemptions.**

42 The provisions of this Article shall not be applicable to any corporation if, on or
43 before September 30, 1990, or such earlier date as may be irrevocably established by
44 resolution of the board of directors, or at any time before the corporation becomes, or

1 after it ceases to be, a covered corporation, the board of directors adopts a bylaw stating
2 that the provisions of this Article shall not be applicable to the corporation; or, in the
3 case of a corporation formed after August 12, 1987, its initial articles of incorporation
4 provide that this Article shall not be applicable to the corporation. Neither adoption nor
5 failure to adopt such a bylaw or provision shall constitute grounds for any cause of
6 action against the corporation, or any officer or director of the corporation.

7 **"ARTICLE 10.**

8 **"AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.**

9 **"PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.**

10 **"§ 55-10-01. Authority to amend.**

11 (a) A corporation may amend its articles of incorporation at any time to add or
12 change a provision that is required or permitted in the articles of incorporation or to
13 delete a provision not required in the articles of incorporation. Whether a provision is
14 required or permitted in the articles of incorporation is determined as of the effective
15 date of the amendment.

16 (b) A shareholder of the corporation does not have a vested property right
17 resulting from any provision in the articles of incorporation, including provisions
18 relating to management, control, capital structure, dividend entitlement, or purpose or
19 duration of the corporation.

20 **"§ 55-10-02. Amendment by board of directors.**

21 Unless the articles of incorporation provide otherwise, a corporation's board of
22 directors may adopt one or more amendments to the corporation's articles of
23 incorporation without shareholder action:

- 24 (1) Reserved for future codification purposes;
- 25 (2) To delete the names and addresses of the initial directors;
- 26 (3) To delete the name and address of the initial registered agent or
27 registered office, if a statement of change is on file with the Secretary
28 of State;
- 29 (4) To change each issued and unissued authorized share of an outstanding
30 class into a greater number of whole shares if the corporation has only
31 shares of that class outstanding;
- 32 (5) To change the corporate name by substituting the word 'corporation',
33 'incorporated', 'company', 'limited', or the abbreviation 'corp.', 'inc.',
34 'co.', or 'ltd.', for a similar word or abbreviation in the name, or by
35 adding, deleting, or changing a geographical attribution for the name;
36 or
- 37 (6) To make any other change expressly permitted by this act to be made
38 without shareholder action.

39 **"§ 55-10-03. Amendment by board of directors and shareholders.**

40 (a) A corporation's board of directors may propose one or more amendments to
41 the articles of incorporation for submission to the shareholders.

42 (b) For the amendment to be adopted:

- 43 (1) The board of directors must recommend the amendment to the
44 shareholders unless the board of directors determines that because of

1 conflict of interest or other special circumstances it should make no
2 recommendation, in which event the board of directors must
3 communicate the basis for its lack of a recommendation to the
4 shareholders with the amendment; and

5 (2) The shareholders entitled to vote on the amendment must approve the
6 amendment as provided in subsection (e).

7 (c) The board of directors may condition its submission of the proposed
8 amendment on any basis.

9 (d) The corporation shall notify each shareholder entitled to vote of the proposed
10 shareholders' meeting in accordance with G.S. 55-7-05. The notice of meeting must
11 state that the purpose, or one of the purposes, of the meeting is to consider the proposed
12 amendment and contain or be accompanied by a copy or summary of the amendment.

13 (e) Unless this act, the articles of incorporation, or the board of directors (acting
14 pursuant to subsection (c)) require a greater vote or a vote by voting groups, the
15 amendment to be adopted must be approved by:

16 (1) A majority of the votes entitled to be cast on the amendment by any
17 voting group with respect to which the amendment would create
18 dissenters' rights; and

19 (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other
20 voting group entitled to vote on the amendment.

21 **"§ 55-10-04. Voting on amendments by voting groups.**

22 (a) The holders of the outstanding shares of a class are entitled to vote as a
23 separate voting group (if shareholder voting is otherwise required by this act) on a
24 proposed amendment if the amendment would:

25 (1) Increase or decrease the aggregate number of authorized shares of the
26 class;

27 (2) Effect an exchange or reclassification of all or part of the shares of the
28 class into shares of another class;

29 (3) Effect an exchange or reclassification, or create the right of exchange,
30 of all or part of the shares of another class into shares of the class;

31 (4) Change the designation, rights, preferences, or limitations of all or part
32 of the shares of the class;

33 (5) Change the shares of all or part of the class into a different number of
34 shares of the same class;

35 (6) Create a new class of shares having rights or preferences with respect
36 to distributions or to dissolution that are prior, superior, or
37 substantially equal to the shares of the class;

38 (7) Increase the rights, preferences, or number of authorized shares of any
39 class that, after giving effect to the amendment, have rights or
40 preferences with respect to distributions or to dissolution that are prior,
41 superior, or substantially equal to the shares of the class;

42 (8) Limit or deny an existing preemptive right of all or part of the shares
43 of the class;

1 (9) Cancel or otherwise affect rights to distributions or dividends that have
2 accumulated but not yet been declared on all or part of the shares of
3 the class; or

4 (10) Change the corporation into a nonprofit corporation or a cooperative
5 organization.

6 (b) If a proposed amendment would affect a series of a class of shares in one or
7 more of the ways described in subsection (a), the shares of that series are entitled to vote
8 as a separate voting group on the proposed amendment.

9 (c) If a proposed amendment that entitles two or more series of shares to vote as
10 separate voting groups under this section would affect those two or more series in the
11 same or a substantially similar way, the shares of all the series so affected must vote
12 together as a single voting group on the proposed amendment.

13 (d) A class or series of shares is entitled to the voting rights granted by this
14 section although the articles of incorporation provide that the shares are nonvoting
15 shares.

16 **"§ 55-10-05. Amendment before issuance of shares.**

17 If a corporation has not yet issued shares, its incorporators or board of directors may
18 adopt one or more amendments to the corporation's articles of incorporation.

19 **"§ 55-10-06. Articles of amendment.**

20 A corporation amending its articles of incorporation shall deliver to the Secretary of
21 State for filing articles of amendment setting forth:

22 (1) The name of the corporation;

23 (2) The text of each amendment adopted;

24 (3) If an amendment provides for an exchange, reclassification,
25 or cancellation of issued shares, provisions for implementing the
26 amendment if not contained in the amendment itself;

27 (4) The date of each amendment's adoption;

28 (5) If an amendment was adopted by the incorporators or board of
29 directors without shareholder action, a statement to that effect and that
30 shareholder action was not required;

31 (6) If an amendment was approved by the shareholders (i) the designation,
32 number of outstanding shares, number of votes entitled to be cast by
33 each voting group entitled to vote separately on the amendment, and
34 number of votes of each voting group indisputably represented at the
35 meeting (ii) either the total number of votes cast for and against the
36 amendment by each voting group entitled to vote separately on the
37 amendment or the total number of undisputed votes cast for the
38 amendment by each voting group and a statement that the number cast
39 for the amendment by each voting group was sufficient for approval by
40 that voting group.

41 **"§ 55-10-07. Restated articles of incorporation.**

42 (a) A corporation's board of directors may restate its articles of incorporation at
43 any time with or without shareholder action.

1 (b) The restated articles of incorporation may include one or more amendments
2 to the articles. If the restated articles of incorporation include an amendment requiring
3 shareholder approval, it must be adopted as provided in G.S. 55-10-03.

4 (c) If the board of directors submits restated articles of incorporation for
5 shareholder action, the corporation shall notify each shareholder entitled to vote, of the
6 proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also

7 (i) state that the purpose, or one of the purposes, of the meeting is to consider the
8 proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of
9 the proposed restated articles of incorporation, and (iii) identify any amendment or other
10 change they would make in the articles.

11 (d) A corporation restating its articles of incorporation shall deliver to the
12 Secretary of State for filing articles of restatement which shall:

13 (1) Set forth the name of the corporation;

14 (2) Attach as an exhibit thereto the text of the restated articles of
15 incorporation;

16 (3) State whether the restated articles of incorporation contain an
17 amendment to the articles requiring shareholder approval and, if they
18 do not, that the board of directors adopted the restated articles of
19 incorporation; and

20 (4) If the restated articles of incorporation contain an amendment to the
21 articles requiring shareholder approval, set forth the information
22 required by G.S. 55-10-06.

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

25 (f) The Secretary of State may certify restated articles of incorporation, as the
26 articles of incorporation currently in effect, without including the other information
27 required by subsection (d).

28 **"§ 55-10-08. Reserved for future codification purposes.**

29 **"§ 55-10-09. Effect of amendment.**

30 An amendment to articles of incorporation does not affect a cause of action existing
31 against or in favor of the corporation, a proceeding to which the corporation is a party,
32 or the existing rights of persons other than shareholders of the corporation. An
33 amendment changing a corporation's name does not abate a proceeding brought by or
34 against the corporation in its former name.

35 **"PART 2. AMENDMENT OF BYLAWS.**

36 **"§ 55-10-20. Amendment by board of directors or shareholders.**

37 (a) A corporation's board of directors may amend or repeal the corporation's
38 bylaws, except to the extent otherwise provided in the articles of incorporation or a
39 bylaw adopted by the shareholders or this act, and except that a bylaw adopted,
40 amended or repealed by the shareholders may not be readopted, amended or repealed by
41 the board of directors if neither the articles of incorporation nor a bylaw adopted by the
42 shareholders authorizes the board of directors to adopt, amend or repeal that particular
43 bylaw or the bylaws generally.

1 (b) A corporation's shareholders may amend or repeal the corporation's bylaws
2 even though the bylaws may also be amended or repealed by its board of directors.

3 **"§ 55-10-21. Reserved for future codification purposes.**

4 **"§ 55-10-22. Bylaw increasing quorum or voting requirement for directors.**

5 (a) A bylaw that fixes a greater quorum or voting requirement for the board of
6 directors may be amended or repealed:

7 (1) If originally adopted by the shareholders, only by the shareholders,
8 unless amendment or repeal by the board of directors is permitted
9 pursuant to subsection (b);

10 (2) If originally adopted by the board of directors, either by the
11 shareholders or by the board of directors.

12 (b) A bylaw adopted or amended by the shareholders that fixes a greater quorum
13 or voting requirement for the board of directors may provide that it may be amended or
14 repealed only by a specified vote of either the shareholders or the board of directors.

15 (c) A bylaw referred to in subsection (a):

16 (1) May not be adopted by the board of directors by a vote less than a
17 majority of the directors then in office, and

18 (2) May not itself be amended by a quorum or vote of the directors less
19 than the quorum or vote therein prescribed or prescribed by the
20 shareholders pursuant to subsection (b).

21 **"ARTICLE 11.**

22 **"MERGER AND SHARE EXCHANGE.**

23 **"§ 55-11-01. Merger.**

24 (a) One or more corporations may merge into another corporation if the board of
25 directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03)
26 approve a plan of merger.

27 (b) The plan of merger must set forth:

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

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

32 (3) The manner and basis of converting the shares of each corporation into
33 shares, obligations, or other securities of the surviving or any other
34 corporation or into cash or other property in whole or part.

35 (c) The plan of merger may set forth:

36 (1) Amendments to the articles of incorporation of the surviving
37 corporation; and

38 (2) Other provisions relating to the merger.

39 **"§ 55-11-02. Share Exchange.**

40 (a) A corporation may acquire all of the outstanding shares of one or more
41 classes or series of another corporation if the board of directors of each corporation
42 adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

43 (b) The plan of exchange must set forth:

- 1 (1) The name of the corporation whose shares will be acquired and the
2 name of the acquiring corporation;
3 (2) The terms and conditions of the exchange;
4 (3) The manner and basis of exchanging the shares to be acquired for
5 shares, obligations, or other securities of the acquiring or any other
6 corporation or for cash or other property in whole or part.

7 (c) The plan of exchange may set forth other provisions relating to the exchange.

8 (d) This section does not limit the power of a corporation to acquire all or part of
9 the shares of one or more classes or series of another corporation through a voluntary
10 exchange or otherwise.

11 **"§ 55-11-03. Action on plan.**

12 (a) After adopting a plan of merger or share exchange, the board of directors of
13 each corporation party to the merger, and the board of directors of the corporation
14 whose shares will be acquired in the share exchange, shall submit the plan of merger
15 (except as provided in subsection (g)) or share exchange for approval by its
16 shareholders.

17 (b) For a plan of merger or share exchange to be approved:

18 (1) The board of directors must recommend the plan of merger or share
19 exchange to the shareholders, unless the board of directors determines
20 that because of conflict of interest or other special circumstances it
21 should make no recommendation, in which event the board of directors
22 must communicate the basis for its lack of a recommendation to the
23 shareholders with the plan; and

24 (2) The shareholders entitled to vote must approve the plan.

25 (c) The board of directors may condition its submission of the proposed merger
26 or share exchange on any basis.

27 (d) The corporation shall notify each shareholder, whether or not entitled to vote,
28 of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice
29 must state that the purpose, or one of the purposes, of the meeting is to consider the plan
30 of merger or share exchange and contain or be accompanied by a copy or summary of
31 the plan.

32 (e) Unless this act, the articles of incorporation, a bylaw adopted by the
33 shareholders or the board of directors (acting pursuant to subsection (c)) require a
34 greater vote or a vote by voting groups, the plan of merger or share exchange to be
35 authorized must be approved by each voting group entitled to vote separately on the
36 plan by a majority of all the votes entitled to be cast on the plan by that voting group
37 and, for the purpose of Article 9 or any provision in the articles of incorporation or
38 bylaws adopted prior to the effective date of this act, a merger shall be deemed to
39 include a share exchange.

40 (f) Separate voting by voting groups is required:

41 (1) On a plan of merger if the plan contains a provision that, if contained
42 in a proposed amendment to articles of incorporation, would require
43 action by one or more separate voting groups on the proposed
44 amendment under G.S. 55-10-04, except where the consideration to be

1 received in exchange for the shares of that group consists solely of
2 cash;

3 (2) On a plan of share exchange by each class or series of shares included
4 in the exchange, with each class or series constituting a separate voting
5 group.

6 (g) Action by the shareholders of the surviving corporation on a plan of merger is
7 not required if:

8 (1) The articles of incorporation of the surviving corporation will not
9 differ (except for amendments enumerated in G.S. 55-10-02) from its
10 articles before the merger;

11 (2) Each shareholder of the surviving corporation whose shares were
12 outstanding immediately before the effective date of the merger will
13 hold the same number of shares, with identical designations,
14 preferences, limitations, and relative rights, immediately after the
15 effective date of the merger;

16 (3) The number of voting shares outstanding immediately after the
17 merger, plus the number of voting shares issuable as a result of the
18 merger (either by the conversion of securities issued pursuant to the
19 merger or the exercise of rights and warrants issued pursuant to the
20 merger), will not exceed by more than 20 percent (20%) the total
21 number of voting shares of the surviving corporation outstanding
22 immediately before the merger; and

23 (4) The number of participating shares outstanding immediately after the
24 merger, plus the number of participating shares issuable as a result of
25 the merger (either by the conversion of securities issued pursuant to
26 the merger or the exercise of rights and warrants issued pursuant to the
27 merger), will not exceed by more than 20 percent (20%) the total
28 number of participating shares outstanding immediately before the
29 merger.

30 (h) As used in subsection (g):

31 (1) 'Participating shares' means shares that entitle their holders to
32 participate without limitation in distributions.

33 (2) 'Voting shares' means shares that entitle their holders to vote
34 unconditionally in elections of directors.

35 (i) After a merger or share exchange is authorized, and at any time before
36 articles of merger or share exchange are filed, the planned merger or share exchange
37 may be abandoned (subject to any contractual rights), without further shareholder
38 action, in accordance with the procedure set forth in the plan of merger or share
39 exchange or, if none is set forth, in the manner determined by the board of directors.

40 **"§ 55-11-04. Merger of subsidiary.**

41 (a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of
42 the outstanding shares of each class of a subsidiary corporation may merge the
43 subsidiary into itself without approval of the shareholders of the parent or subsidiary.

1 (b) The board of directors of the parent shall adopt a plan of merger that sets
2 forth:

3 (1) The names of the parent and subsidiary; and

4 (2) The manner and basis of converting the shares of the subsidiary into
5 shares, obligations, or other securities of the parent or any other
6 corporation or into cash or other property in whole or part.

7 (c) The parent shall mail a copy or summary of the plan of merger to each
8 shareholder of the subsidiary who does not waive the mailing requirement in writing.

9 (d) The parent may not deliver articles of merger to the Secretary of State for
10 filing until at least 30 days after the date it mailed a copy or summary of the plan of
11 merger to each shareholder of the subsidiary who did not waive the mailing
12 requirement.

13 (e) Articles of merger under this section may not contain amendments to the
14 articles of incorporation of the parent corporation (except for amendments enumerated
15 in G.S. 55-10-02).

16 **"§ 55-11-05. Articles of merger or share exchange.**

17 (a) After a plan of merger or share exchange is approved by the shareholders, or
18 adopted by the board of directors if shareholder approval is not required, the surviving
19 or acquiring corporation shall deliver to the Secretary of State for filing articles of
20 merger or share exchange setting forth:

21 (1) The plan of merger or share exchange;

22 (2) If shareholder approval was not required, a statement to that effect;

23 (3) If approval of the shareholders of one or more corporations party to the
24 merger or share exchange was required (i) the designation, number of
25 outstanding shares, and number of votes entitled to be cast by each
26 voting group entitled to vote separately on the plan as to each
27 corporation; and (ii) either the total number of votes cast for and
28 against the plan by each voting group entitled to vote separately on the
29 plan or the total number of undisputed votes cast for the plan
30 separately by each voting group and a statement that the number cast
31 for the plan by each voting group was sufficient for approval by that
32 voting group.

33 (b) A merger or share exchange takes effect upon the effective date of the articles
34 of merger or share exchange.

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

36 **"§ 55-11-06. Effect of merger or share exchange.**

37 (a) When a merger takes effect:

38 (1) Every other corporation party to the merger merges into the surviving
39 corporation and the separate existence of every corporation except the
40 surviving corporation ceases;

41 (2) The title to all real estate and other property owned by each
42 corporation party to the merger is vested in the surviving corporation
43 without reversion or impairment;

- 1 (3) The surviving corporation has all liabilities of each corporation party
2 to the merger;
- 3 (4) A proceeding pending against any corporation party to the merger may
4 be continued as if the merger did not occur or the surviving
5 corporation may be substituted in the proceeding for the corporation
6 whose existence ceased;
- 7 (5) The articles of incorporation of the surviving corporation are amended
8 to the extent provided in the plan of merger; and
- 9 (6) The shares of each corporation party to the merger that are to be
10 converted into shares, obligations, or other securities of the surviving
11 or any other corporation or into the right to receive cash or other
12 property are thereupon converted, and the former holders of the shares
13 are entitled only to the rights provided in the articles of merger or to
14 their rights under Article 13.

15 (b) When a share exchange takes effect, the shares of each acquired corporation
16 are exchanged as provided in the plan, and the former holders of the shares are entitled
17 only to the exchange rights provided in the articles of share exchange or to their rights
18 under Article 13.

19 **"§ 55-11-07. Merger or share exchange with foreign corporation.**

20 (a) One or more foreign corporations may merge or enter into a share exchange
21 with one or more domestic corporations if:

- 22 (1) In a merger, the merger is permitted by the law of the state or country
23 under whose law each foreign corporation is incorporated and each
24 foreign corporation complies with that law in effecting the merger;
- 25 (2) In a share exchange, the corporation whose shares will be acquired is a
26 domestic corporation, whether or not a share exchange is permitted by
27 the law of the state or country under whose law the acquiring
28 corporation is incorporated;
- 29 (3) The foreign corporation complies with G.S. 55-11-05 if it is the
30 surviving corporation of the merger or acquiring corporation of the
31 share exchange; and
- 32 (4) Each domestic corporation complies with the applicable provisions of
33 G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving
34 corporation of the merger or acquiring corporation of the share
35 exchange, with G.S. 55-11-05.

36 (b) Upon the merger or share exchange taking effect, the surviving foreign
37 corporation of a merger and the acquiring foreign corporation of a share exchange is
38 deemed:

- 39 (1) To appoint the Secretary of State as its agent for service of process in a
40 proceeding to enforce any obligation or the rights of dissenting
41 shareholders of each domestic corporation party to the merger or share
42 exchange; and

1 (2) To agree that it will promptly pay to the dissenting shareholders of
2 each domestic corporation party to the merger or share exchange the
3 amount, if any, to which they are entitled under Article 13.

4 (c) This section does not limit the power of a foreign corporation to acquire all or
5 part of the shares of one or more classes or series of a domestic corporation through a
6 voluntary exchange or otherwise.

7 **"§ 55-11-08. Article 9 to control.**

8 Nothing in this Article shall be construed to modify in any manner the provisions or
9 applicability of Article 9.

10 **"ARTICLE 12.**

11 **"TRANSFER OF ASSETS.**

12 **"§ 55-12-01. Sale of assets in regular course of business and mortgage of assets.**

13 (a) A mortgage of or other security interest in all or any part of the property of a
14 corporation may be made by authority of the board of directors without approval of the
15 shareholders, unless otherwise provided in the articles of incorporation or in bylaws
16 adopted by the shareholders.

17 (b) Unless otherwise provided in the articles of incorporation or in bylaws
18 adopted by the shareholders, a corporation may, on the terms and conditions and for the
19 consideration determined by the board of directors, and without approval by the
20 shareholders:

- 21 (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all,
22 of its property in the usual and regular course of business; or
23 (2) Transfer any or all of its property to a corporation all the shares of
24 which are owned by the corporation.

25 **"§ 55-12-02. Sale of assets other than in regular course of business.**

26 (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or
27 substantially all, of its property, otherwise than in the usual and regular course of
28 business, on the terms and conditions and for the consideration determined by the
29 corporation's board of directors, if the board of directors proposes and its shareholders
30 approve the proposed transaction.

31 (b) For a transaction to be authorized:

- 32 (1) The board of directors must recommend the proposed transaction to
33 the shareholders unless the board of directors determines that because
34 of conflict of interest or other special circumstances it should make no
35 recommendation, in which event the board of directors must
36 communicate the basis for its lack of a recommendation to the
37 shareholders with the submission of the proposed transaction; and
38 (2) The shareholders entitled to vote must approve the transaction.

39 (c) The board of directors may condition its submission of the proposed
40 transaction on any basis.

41 (d) The corporation shall notify each shareholder, whether or not entitled to vote,
42 of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice
43 must also state that the purpose, or one of the purposes, of the meeting is to consider the

1 sale, lease, exchange, or other disposition of all, or substantially all, the property of the
2 corporation and contain or be accompanied by a description of the transaction.

3 (e) Unless the articles of incorporation, a bylaw adopted by the shareholders,
4 Article 9 or the board of directors (acting pursuant to subsection (c)) require a greater
5 vote or a vote by voting groups, the transaction to be authorized must be approved by a
6 majority of all the votes entitled to be cast on the transaction.

7 (f) After a sale, lease, exchange, or other disposition of property is authorized,
8 the transaction may be abandoned (subject to any contractual rights) without further
9 shareholder action.

10 (g) A transaction that constitutes a distribution is governed by G.S. 55-6-40 and
11 not by this section.

12 **"§ 55-12-03. Article 9 to control.**

13 Nothing in this Article shall be construed to modify in any manner the provisions or
14 applicability of Article 9.

15 **"ARTICLE 13.**

16 **"DISSENTERS' RIGHTS.**

17 **"PART 1. RIGHT TO DISSENT AND OBTAIN PAYMENT FOR SHARES.**

18 **"§ 55-13-01. Definitions.**

19 In this Article:

- 20 (1) 'Corporation' means the issuer of the shares held by a dissenter before
21 the corporate action, or the surviving or acquiring corporation by
22 merger or share exchange of that issuer.
- 23 (2) 'Dissenter' means a shareholder who is entitled to dissent from
24 corporate action under G.S. 55-13-02 and who exercises that right
25 when and in the manner required by G.S. 55-13-20 through 55-13-28.
- 26 (3) 'Fair value', with respect to a dissenter's shares, means the value of the
27 shares immediately before the effectuation of the corporate action to
28 which the dissenter objects, excluding any appreciation or depreciation
29 in anticipation of the corporate action unless exclusion would be
30 inequitable.
- 31 (4) 'Interest' means interest from the effective date of the corporate action
32 until the date of payment, at a rate that is fair and equitable under all
33 the circumstances, giving due consideration to the rate currently paid
34 by the corporation on its principal bank loans, if any, but not less than
35 the rate provided in G.S. 24-1.
- 36 (5) 'Record shareholder' means the person in whose name shares are
37 registered in the records of a corporation or the beneficial owner of
38 shares to the extent of the rights granted by a nominee certificate on
39 file with a corporation.
- 40 (6) 'Beneficial shareholder' means the person who is a beneficial owner of
41 shares held in a voting trust or by a nominee as the record shareholder.
- 42 (7) 'Shareholder' means the record shareholder or the beneficial
43 shareholder.

44 **"§ 55-13-02. Right to dissent.**

1 (a) In addition to any rights granted under Article 9, a shareholder is entitled to
2 dissent from, and obtain payment of the fair value of his shares in the event of, any of
3 the following corporate actions:

- 4 (1) Consummation of a plan of merger to which the corporation is a party
5 unless (i) approval by the shareholders of that corporation is not
6 required under G.S. 55-11-03(g) or (ii) such shares are then
7 redeemable by the corporation at a price not greater than the cash to be
8 received in exchange for such shares;
- 9 (2) Consummation of a plan of share exchange to which the corporation is
10 a party as the corporation whose shares will be acquired, unless such
11 shares are then redeemable by the corporation at a price not greater
12 than the cash to be received in exchange for such shares;
- 13 (3) Consummation of a sale or exchange of all, or substantially all, of the
14 property of the corporation other than in the usual and regular course
15 of business, including a sale in dissolution, but not including a sale
16 pursuant to court order or a sale pursuant to a plan by which all or
17 substantially all of the net proceeds of the sale will be distributed in
18 cash to the shareholders within one year after the date of sale;
- 19 (4) An amendment of the articles of incorporation that materially and
20 adversely affects rights in respect of a dissenter's shares because it (i)
21 alters or abolishes a preferential right of the shares; (ii) creates, alters,
22 or abolishes a right in respect of redemption, including a provision
23 respecting a sinking fund for the redemption or repurchase, of the
24 shares; (iii) alters or abolishes a preemptive right of the holder of the
25 shares to acquire shares or other securities; (iv) excludes or limits the
26 right of the shares to vote on any matter, or to cumulate votes; (v)
27 reduces the number of shares owned by the shareholder to a fraction of
28 a share if the fractional share so created is to be acquired for cash
29 under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit
30 corporation or cooperative organization;
- 31 (5) Any corporate action taken pursuant to a shareholder vote to the extent
32 the articles of incorporation, bylaws, or a resolution of the board of
33 directors provides that voting or nonvoting shareholders are entitled to
34 dissent and obtain payment for their shares.

35 (b) A shareholder entitled to dissent and obtain payment for his shares under this
36 Article may not challenge the corporate action creating his entitlement, including
37 without limitation a merger solely or partly in exchange for cash or other property,
38 unless the action is unlawful or fraudulent with respect to the shareholder or the
39 corporation.

40 **"§ 55-13-03. Dissent by nominees and beneficial owners.**

41 (a) A record shareholder may assert dissenters' rights as to fewer than all the
42 shares registered in his name only if he dissents with respect to all shares beneficially
43 owned by any one person and notifies the corporation in writing of the name and
44 address of each person on whose behalf he asserts dissenters' rights. The rights of a

1 partial dissenter under this subsection are determined as if the shares as to which he
2 dissents and his other shares were registered in the names of different shareholders.

3 (b) A beneficial shareholder may assert dissenters' rights as to shares held on his
4 behalf only if:

5 (1) He submits to the corporation the record shareholder's written consent
6 to the dissent not later than the time the beneficial shareholder asserts
7 dissenters' rights; and

8 (2) He does so with respect to all shares of which he is the beneficial
9 shareholder.

10 **"PART 2. PROCEDURE FOR EXERCISE OF DISSENTERS' RIGHTS.**

11 **"§ 55-13-20. Notice of dissenters' rights.**

12 (a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is
13 submitted to a vote at a shareholders' meeting, the meeting notice must state that
14 shareholders are or may be entitled to assert dissenters' rights under this Article and be
15 accompanied by a copy of this Article.

16 (b) If corporate action creating dissenters' rights under G.S. 55-13-02 is taken
17 without a vote of shareholders, the corporation shall no later than 10 days thereafter
18 notify in writing all shareholders entitled to assert dissenters' rights that the action was
19 taken and send them the dissenters' notice described in G.S. 55-13-22.

20 (c) If a corporation fails to comply with the requirements of this section, such
21 failure shall not invalidate any corporate action taken; but any shareholder may recover
22 from the corporation any damage which he suffered from such failure in a civil action
23 brought in his own name within three years after the taking of the corporate action
24 creating dissenters' rights under G.S. 55-13-02 unless he voted for such corporate
25 action.

26 **"§ 55-13-21. Notice of intent to demand payment.**

27 (a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is
28 submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert
29 dissenters' rights:

30 (1) Must give to the corporation, and the corporation must actually
31 receive, before the vote is taken written notice of his intent to demand
32 payment for his shares if the proposed action is effectuated; and

33 (2) Must not vote his shares in favor of the proposed action.

34 (b) A shareholder who does not satisfy the requirements of subsection (a) is not
35 entitled to payment for his shares under this Article.

36 **"§ 55-13-22. Dissenters' notice.**

37 (a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is
38 authorized at a shareholders' meeting, the corporation shall mail by registered or
39 certified mail, return receipt requested, a written dissenters' notice to all shareholders
40 who satisfied the requirements of G.S. 55-13-21.

41 (b) The dissenters' notice must be sent no later than 10 days after the corporate
42 action was taken, and must:

43 (1) State where the payment demand must be sent and where and when
44 certificates for certificated shares must be deposited;

- 1 (2) Inform holders of uncertificated shares to what extent transfer of the
- 2 shares will be restricted after the payment demand is received;
- 3 (3) Supply a form for demanding payment;
- 4 (4) Set a date by which the corporation must receive the payment demand,
- 5 which date may not be fewer than 30 nor more than 60 days after the
- 6 date the subsection (a) notice is mailed; and
- 7 (5) Be accompanied by a copy of this Article.

8 **"§ 55-13-23. Duty to demand payment.**

9 (a) A shareholder sent a dissenters' notice described in G.S. 55-13-22 must
10 demand payment and deposit his share certificates in accordance with the terms of the
11 notice.

12 (b) The shareholder who demands payment and deposits his share certificates
13 under subsection (a) retains all other rights of a shareholder until these rights are
14 cancelled or modified by the taking of the proposed corporate action.

15 (c) A shareholder who does not demand payment or deposit his share certificates
16 where required, each by the date set in the dissenters' notice, is not entitled to payment
17 for his shares under this Article.

18 **"§ 55-13-24. Share restrictions.**

19 (a) The corporation may restrict the transfer of uncertificated shares from the
20 date the demand for their payment is received until the proposed corporate action is
21 taken or the restrictions released under G.S. 55-13-26.

22 (b) The person for whom dissenters' rights are asserted as to uncertificated shares
23 retains all other rights of a shareholder until these rights are cancelled or modified by
24 the taking of the proposed corporate action.

25 **"§ 55-13-25. Offer of payment.**

26 (a) As soon as the proposed corporate action is taken, or upon receipt of a
27 payment demand, the corporation shall offer to pay each dissenter who complied with
28 G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares,
29 plus interest accrued to the date of payment, and shall pay this amount to each dissenter
30 who agrees in writing to accept it in full satisfaction of his demand.

31 (b) The offer of payment must be accompanied by:

32 (1) The corporation's most recent available balance sheet as of the end of a
33 fiscal year ending not more than 16 months before the date of offer of
34 payment, an income statement for that year, a statement of changes in
35 shareholders' equity for that year, and the latest available interim
36 financial statements, if any;

37 (2) A statement of the corporation's estimate of the fair value of the
38 shares;

39 (3) An explanation of how the interest was calculated;

40 (4) A statement of the dissenter's right to demand payment under G.S. 55-
41 13-28; and

42 (5) A copy of this Article.

43 **"§ 55-13-26. Failure to take action.**

1 (a) If the corporation does not take the proposed action within 60 days after the
2 date set for demanding payment and depositing share certificates, the corporation shall
3 return the deposited certificates and release the transfer restrictions imposed on
4 uncertificated shares.

5 (b) If after returning deposited certificates and releasing transfer restrictions, the
6 corporation takes the proposed action, it must send a new dissenters' notice under G.S.
7 55-13-22 and repeat the payment demand procedure.

8 **"§ 55-13-27. Reserved for future codification purposes.**

9 **"§ 55-13-28. Procedure if shareholder dissatisfied with corporation's offer or
10 failure to perform.**

11 (a) A dissenter may notify the corporation in writing of his own estimate of the
12 fair value of his shares and amount of interest due, and demand payment of his estimate
13 or reject the corporation's offer under G.S. 55-13-25 and demand payment of the fair
14 value of his shares and interest due, if:

15 (1) The dissenter believes that the amount offered under G.S. 55-13-25 is
16 less than the fair value of his shares or that the interest due is
17 incorrectly calculated;

18 (2) The corporation fails to make payment to a dissenter who accepts the
19 corporation's offer under G.S. 55-13-25 within 30 days after the
20 dissenter's acceptance; or

21 (3) The corporation, having failed to take the proposed action, does not
22 return the deposited certificates or release the transfer restrictions
23 imposed on uncertificated shares within 60 days after the date set for
24 demanding payment.

25 (b) A dissenter waives his right to demand payment under this section unless he
26 notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30
27 days after the corporation offered payment for his shares or (ii) under subdivisions
28 (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A
29 dissenter who fails to notify the corporation of his demand under subsection (a) within
30 such 30-day period shall be deemed to have withdrawn his dissent and demand for
31 payment.

32 **"PART 3. JUDICIAL APPRAISAL OF SHARES.**

33 **"§ 55-13-30. Court action.**

34 (a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter
35 may commence a proceeding within 60 days after the date of his payment demand under
36 G.S. 55-13-28 and petition the court to determine the fair value of the shares and
37 accrued interest. Upon service upon it of the petition filed with the court, the
38 corporation shall pay to the dissenter the amount offered by the corporation under G.S.
39 55-13-25.

40 (a1) If the dissenter does not commence the proceeding within the 60-day period,
41 the dissenter shall have an additional 30 days to either (i) accept in writing the amount
42 offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay
43 such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his
44 demand for payment and resume the status of a nondissenting shareholder. A dissenter

1 who takes no action within such 30-day period shall be deemed to have withdrawn his
2 dissent and demand for payment.

3 (b) Reserved for future codification purposes.

4 (c) The court shall have the discretion to make all dissenters (whether or not
5 residents of this State) whose demands remain unsettled parties to the proceeding as in
6 an action against their shares and all parties must be served with a copy of the petition.
7 Nonresidents may be served by registered or certified mail or by publication as provided
8 by law.

9 (d) The jurisdiction of the court in which the proceeding is commenced under
10 subsection (b) is plenary and exclusive. The court may appoint one or more persons as
11 appraisers to receive evidence and recommend decision on the question of fair value.
12 The appraisers have the powers described in the order appointing them, or in any
13 amendment to it. The parties are entitled to the same discovery rights as parties in other
14 civil proceedings. However, in a proceeding by a dissenter in a public corporation,
15 there is no right to a trial by jury.

16 (e) Each dissenter made a party to the proceeding is entitled to judgment for the
17 amount, if any, by which the court finds the fair value of his shares, plus interest,
18 exceeds the amount paid by the corporation.

19 **"§ 55-13-31. Court costs and counsel fees.**

20 (a) The court in an appraisal proceeding commenced under G.S. 55-13-30 shall
21 determine all costs of the proceeding, including the reasonable compensation and
22 expenses of appraisers appointed by the court, and shall assess the costs as it finds
23 equitable.

24 (b) The court may also assess the fees and expenses of counsel and experts for
25 the respective parties, in amounts the court finds equitable:

- 26 (1) Against the corporation and in favor of any or all dissenters if the court
27 finds the corporation did not substantially comply with the
28 requirements of G.S. 55-13-20 through 55-13-28; or
29 (2) Against either the corporation or a dissenter, in favor of either or any
30 other party, if the court finds that the party against whom the fees and
31 expenses are assessed acted arbitrarily, vexatiously, or not in good
32 faith with respect to the rights provided by this Article.

33 (c) If the court finds that the services of counsel for any dissenter were of
34 substantial benefit to other dissenters similarly situated, and that the fees for those
35 services should not be assessed against the corporation, the court may award to these
36 counsel reasonable fees to be paid out of the amounts awarded the dissenters who were
37 benefited.

38 "ARTICLE 14.

39 "DISSOLUTION.

40 "PART 1. VOLUNTARY DISSOLUTION.

41 **"§ 55-14-01. Dissolution by incorporators or initial directors.**

42 (a) The board of directors or, if the corporation has no directors, a majority of the
43 incorporators of a corporation that has not issued shares may dissolve the corporation by
44 delivering to the Secretary of State for filing articles of dissolution that set forth:

- 1 (1) The name of the corporation;
- 2 (1a) The names and addresses of its officers, if any;
- 3 (1b) The names and addresses of its directors, if any, or if none, the names
- 4 and addresses of its incorporators;
- 5 (2) The date of its incorporation;
- 6 (3) That none of the corporation's shares has been issued;
- 7 (4) That no debt of the corporation remains unpaid;
- 8 (5) Reserved for future codification purposes; and
- 9 (6) That a majority of the incorporators or initial directors authorized the
- 10 dissolution.

11 (b) A corporation is dissolved upon the effective date of its articles of
12 dissolution.

13 **"§ 55-14-02. Dissolution by board of directors and shareholders.**

14 (a) A corporation's board of directors may propose dissolution for submission to
15 the shareholders.

16 (b) For a proposal to dissolve to be adopted:

17 (1) The board of directors must recommend dissolution to the shareholders
18 unless the board of directors determines that because of conflict of
19 interest or other special circumstances it should make no
20 recommendation, in which event the board of directors must
21 communicate the proposal and the basis for its lack of a
22 recommendation to the shareholders; and

23 (2) The shareholders entitled to vote must approve the proposal to dissolve
24 as provided in subsection (e).

25 (c) The board of directors may condition its submission of the proposal for
26 dissolution on any basis.

27 (d) The corporation shall notify each shareholder, whether or not entitled to vote,
28 of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice
29 must also state that the purpose, or one of the purposes, of the meeting is to consider
30 dissolving the corporation.

31 (e) Unless the articles of incorporation, a bylaw adopted by the shareholders, or
32 the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote
33 by voting groups, the proposal to dissolve to be adopted must be approved by a majority
34 of all the votes entitled to be cast on that proposal.

35 **"§ 55-14-03. Articles of dissolution.**

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

39 (1) The name of the corporation;

40 (1a) The names and addresses of its officers;

41 (1b) The names and addresses of its directors;

42 (2) The date dissolution was authorized;

43 (3) With respect to the shareholders (i) the number of votes entitled to be
44 cast on the proposal to dissolve; and (ii) either the total number of

1 votes cast for and against dissolution or the total number of undisputed
2 votes cast for dissolution and a statement that the number cast for
3 dissolution was sufficient for approval.

4 (4) If voting by voting groups was required, the information required by
5 subparagraph (3) must be separately provided for each voting group
6 entitled to vote separately on the plan to dissolve.

7 (b) A corporation is dissolved upon the effective date of its articles of
8 dissolution.

9 **"§ 55-14-04. Revocation of dissolution.**

10 (a) A corporation may revoke its dissolution within 120 days after its effective
11 date.

12 (b) Revocation of dissolution must be authorized in the same manner as the
13 dissolution was authorized unless an authorization under G.S. 55-14-02 permitted
14 revocation by action of the board of directors alone, in which event the board of
15 directors may revoke the dissolution without shareholder action.

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

19 (1) The name of the corporation;

20 (2) The effective date of the dissolution that was revoked;

21 (3) The date that the revocation of dissolution was authorized;

22 (4) If the corporation's board of directors (or incorporators) revoked the
23 dissolution, a statement to that effect;

24 (5) If the corporation's board of directors revoked a dissolution authorized
25 by the shareholders, a statement that revocation was permitted by
26 action by the board of directors alone pursuant to that authorization;
27 and

28 (6) If shareholder action was required to revoke the dissolution, the
29 information required by G.S. 55-14-03(a)(3) or (4) with respect to the
30 revocation.

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

33 (e) When the revocation of dissolution is effective, it relates back to and takes
34 effect as of the effective date of the dissolution and the corporation resumes carrying on
35 its business as if dissolution had never occurred, subject to the rights of any person who
36 reasonably relied to his prejudice upon the filing of the articles of dissolution.

37 **"§ 55-14-05. Effect of dissolution.**

38 (a) A dissolved corporation continues its corporate existence but may not carry
39 on any business except that appropriate to wind up and liquidate its business and affairs,
40 including:

41 (1) Collecting its assets;

42 (2) Disposing of its properties that will not be distributed in kind to its
43 shareholders;

44 (3) Discharging or making provision for discharging its liabilities;

- 1 (4) Distributing its remaining property among its shareholders according
2 to their interests; and
- 3 (5) Doing every other act necessary to wind up and liquidate its business
4 and affairs.
- 5 (b) Dissolution of a corporation does not:
- 6 (1) Transfer title to the corporation's property;
- 7 (2) Prevent transfer of its shares or securities, although the authorization to
8 dissolve may provide for closing the corporation's share transfer
9 records;
- 10 (3) Subject its directors or officers to standards of conduct different from
11 those prescribed in Article 8;
- 12 (4) Change quorum or voting requirements for its board of directors or
13 shareholders; change provisions for selection, resignation, or removal
14 of its directors or officers or both; or change provisions for amending
15 its bylaws;
- 16 (5) Prevent commencement of a proceeding by or against the corporation
17 in its corporate name;
- 18 (6) Abate or suspend a proceeding pending by or against the corporation
19 on the effective date of dissolution; or
- 20 (7) Terminate the authority of the registered agent of the corporation.

21 (c) After the end of the tax year in which dissolution occurs, a dissolved
22 corporation is not subject to the annual franchise tax unless it engages in business
23 activities not appropriate to winding up and liquidating its business and affairs as
24 permitted by subsection (a).

25 **"§ 55-14-06. Known claims against dissolved corporation.**

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

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

- 30 (1) Describe information that must be included in a claim;
- 31 (2) Provide a mailing address where a claim may be sent;
- 32 (3) State the deadline, which may not be fewer than 120 days from the
33 effective date of the written notice, by which the dissolved corporation
34 must receive the claim; and
- 35 (4) State that the claim will be barred if not received by the deadline.

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

- 37 (1) If the corporation does not receive the claim by the deadline from a
38 claimant who received written notice under subsection (b); or
- 39 (2) If a claimant whose claim was rejected by written notice from the
40 dissolved corporation does not commence a proceeding to enforce the
41 claim within 90 days from the date of receipt of the rejection notice.

42 (d) For purposes of this section, 'claim' does not include a contingent liability or
43 a claim based on an event occurring after the effective date of dissolution.

44 **"§ 55-14-07. Unknown and certain other claims against dissolved corporation.**

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

4 (b) The notice must:

- 5 (1) Be published one time in a newspaper of general circulation in the
6 county where the dissolved corporation's principal office (or, if none in
7 this State, its registered office) is or was last located;
- 8 (2) Describe the information that must be included in a claim and provide
9 a mailing address where the claim may be sent; and
- 10 (3) State that a claim against the corporation will be barred unless a
11 proceeding to enforce the claim is commenced within five years after
12 the publication of the notice.

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

- 17 (1) A claimant who did not receive written notice under G.S. 55-14-06;
- 18 (2) A claimant whose claim was timely sent to the dissolved corporation
19 but not acted on;
- 20 (3) A claimant whose claim is contingent or based on an event occurring
21 after the effective date of dissolution.

22 **"§ 55-14-08. Enforcement of claims.**

23 (a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

- 24 (1) Against the dissolved corporation, to the extent of its undistributed
25 assets, including coverage under any applicable insurance policy, or
- 26 (2) If the assets have been distributed in liquidation, against a shareholder
27 of the dissolved corporation to the extent of his pro rata share of the
28 claim or the corporate assets distributed to him in liquidation,
29 whichever is less, but a shareholder's total liability for all claims under
30 this section may not exceed the total amount of assets distributed to
31 him.

32 (b) Nothing in G.S. 55-14-06 or G.S. 55-14-07 shall extend any applicable period
33 of limitation.

34 **"PART 2. ADMINISTRATIVE DISSOLUTION.**

35 **"§ 55-14-20. Grounds for administrative dissolution.**

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

- 38 (1) The corporation does not pay within 60 days after they are due any
39 penalties, fees, or other payments due under this act;
- 40 (2) The corporation does not deliver its annual report to the Secretary of
41 State within 60 days after it is due;
- 42 (3) The corporation is without a registered agent or registered office in this
43 State for 60 days or more;

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

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

7 **"§ 55-14-21. Procedure for and effect of administrative dissolution.**

8 (a) If the Secretary of State determines that one or more grounds exist under G.S.
9 55-14-20 for dissolving a corporation, he shall mail the corporation written notice of his
10 determination.

11 (b) If the corporation does not correct each ground for dissolution or demonstrate
12 to the reasonable satisfaction of the Secretary of State that each ground determined by
13 the Secretary of State does not exist within 60 days after notice is mailed, the Secretary
14 of State shall administratively dissolve the corporation by signing a certificate of
15 dissolution that recites the ground or grounds for dissolution and its effective date. The
16 Secretary of State shall file the original of the certificate and mail a copy to the
17 corporation.

18 (c) The provisions of G.S. 55-14-05, 55-14-06, and 55-14-07 apply to a
19 corporation administratively dissolved.

20 (d) The administrative dissolution of a corporation does not terminate the
21 authority of its registered agent.

22 **"§ 55-14-22. Reinstatement following administrative dissolution.**

23 (a) A corporation administratively dissolved under G.S. 55-14-21 may apply to
24 the Secretary of State for reinstatement within two years after the effective date of
25 dissolution. The application must:

- 26 (1) Recite the name of the corporation and the effective date of its
27 administrative dissolution;
- 28 (2) State that the ground or grounds for dissolution either did not exist or
29 have been eliminated;
- 30 (3) Reserved for future codification purposes; and
- 31 (4) Contain a certificate from the Department of Revenue reciting that all
32 taxes owed by the corporation have been paid.

33 (b) If the Secretary of State determines that the application contains the
34 information required by subsection (a) and that the information is correct, he shall
35 cancel the certificate of dissolution and prepare a certificate of reinstatement that recites
36 his determination and the effective date of reinstatement, file the original of the
37 certificate, and mail a copy to the corporation.

38 (c) When the reinstatement is effective, it relates back to and takes effect as of
39 the effective date of the administrative dissolution and the corporation resumes carrying
40 on its business as if the administrative dissolution had never occurred, subject to the
41 rights of any person who reasonably relied to his prejudice upon the certificate of
42 dissolution.

43 **"§ 55-14-23. Appeal from denial of reinstatement.**

1 (a) If the Secretary of State denies a corporation's application for reinstatement
2 following administrative dissolution, he shall serve the corporation under G.S. 55-5-04
3 with a written notice that explains the reason or reasons for denial.

4 (b) The corporation may appeal the denial of reinstatement to the Superior Court
5 of Wake County within 30 days after service of the notice of denial is perfected. The
6 appeal is commenced by filing a petition with the court and with the Secretary of State
7 requesting the court to set aside the dissolution. The petition shall have attached to it
8 copies of the Secretary of State's certificate of dissolution, the corporation's application
9 for reinstatement, and the Secretary of State's notice of denial. The appeal to the
10 superior court shall be determined upon such further evidence, notice and opportunity to
11 be heard, if any, as the court may deem appropriate under the circumstances. The
12 corporation shall have the burden of establishing that it is entitled to reinstatement.

13 (c) Upon consideration of the petition and any response made by the Secretary of
14 State, the court may, prior to entering final judgment, order the Secretary of State to
15 reinstate the dissolved corporation or may take other action the court considers
16 appropriate.

17 (d) The court's final decision may be appealed as in other civil proceedings.

18 **"§ 55-14-24. Inapplicability of Administrative Procedure Act.**

19 The Administrative Procedure Act shall not apply to any proceeding or appeal
20 provided for in G.S. 55-14-20 through 55-14-23.

21 **"PART 3. JUDICIAL DISSOLUTION.**

22 **"§ 55-14-30. Grounds for judicial dissolution.**

23 The superior court may dissolve a corporation:

- 24 (1) In a proceeding by the Attorney General if it is established that (i) the
25 corporation obtained its articles of incorporation through fraud; or (ii)
26 the corporation has, after written notice by the Attorney General given
27 at least 20 days prior thereto, continued to exceed or abuse the
28 authority conferred upon it by law;
- 29 (2) In a proceeding by a shareholder if it is established that (i) the directors
30 or those in control of the corporation are deadlocked in the
31 management of the corporate affairs, the shareholders are unable to
32 break the deadlock, and irreparable injury to the corporation is
33 threatened or being suffered, or the business and affairs of the
34 corporation can no longer be conducted to the advantage of the
35 shareholders generally, because of the deadlock; (ii) liquidation is
36 reasonably necessary for the protection of the rights or interests of the
37 complaining shareholder; (iii) the shareholders are deadlocked in
38 voting power and have failed, for a period that includes at least two
39 consecutive annual meeting dates, to elect successors to directors
40 whose terms have expired; (iv) the corporate assets are being
41 misapplied or wasted; or (v) a written agreement, whether embodied in
42 the articles of incorporation or separate therefrom, entitles the
43 complaining shareholder to liquidation or dissolution of the
44 corporation at will or upon the occurrence of some event which has

1 subsequently occurred, and all present shareholders, and all
2 subscribers and transferees of shares, either are parties to such
3 agreement or became a shareholder, subscriber or transferee with
4 actual notice thereof;

5 (3) In a proceeding by a creditor if it is established that (i) the creditor's
6 claim has been reduced to judgment and the execution on the judgment
7 returned unsatisfied; or (ii) the corporation has admitted in writing that
8 the creditor's claim is due and owing and the corporation is insolvent;
9 or

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

12 **"§ 55-14-31. Procedure for judicial dissolution.**

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

16 (b) It is not necessary to make shareholders parties to a proceeding to dissolve a
17 corporation unless relief is sought against them individually.

18 (c) A court in a proceeding brought to dissolve a corporation may issue
19 injunctions, appoint a receiver with all powers and duties the court directs, take other
20 action required to preserve the corporate assets wherever located, and carry on the
21 business of the corporation.

22 (d) In any proceeding brought by a shareholder under G.S. 55-14-30(2)(ii) in
23 which the court determines that dissolution would be appropriate, the court shall not
24 order dissolution if, after such determination, the corporation elects to purchase the
25 shares of the complaining shareholder at their fair value, as determined in accordance
26 with such procedures as the court may provide.

27 **"§ 55-14-32. Receivership.**

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

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

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

40 (1) To dispose of all or any part of the assets of the corporation wherever
41 located, at a public or private sale, if authorized by the court;

42 (1a) To sue and defend in his own name as receiver of the corporation in all
43 courts of this State; and

1 (2) To exercise all of the powers of the corporation, through or in place of
2 its board of directors or officers, to the extent necessary to manage the
3 affairs of the corporation in the best interests of its shareholders and
4 creditors.

5 (d) Reserved for future codification purposes.

6 (e) The court from time to time during the receivership may order compensation
7 paid and expense disbursements or reimbursements made to the receiver and his counsel
8 from the assets of the corporation or proceeds from the sale of the assets.

9 **"§ 55-14-33. Decree of dissolution.**

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

15 (b) After entering the decree of dissolution, the court shall direct the winding up
16 and liquidation of the corporation's business and affairs in accordance with G.S. 55-14-
17 05 and the notification of claimants in accordance with G.S. 55-14-06 and G.S. 55-14-
18 07.

19 **"PART 4. MISCELLANEOUS.**

20 **"§ 55-14-40. Disposition of amounts due to unavailable shareholders and creditors.**

21 Upon liquidation of a corporation, the portion of the assets distributable to a creditor
22 or shareholder who is unknown or cannot be found shall be disposed of in accordance
23 with Chapter 116B.

24 **"ARTICLE 14A.**

25 **"REORGANIZATION.**

26 **"§ 55-14A-01. Fundamental changes in reorganization proceedings.**

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

39 (1) Amend its articles of incorporation or bylaws, or both, so long as the
40 articles of incorporation and bylaws as amended contain only such
41 provisions as might be lawfully contained therein at the time of
42 making such amendment;

43 (2) Constitute or reconstitute and classify or reclassify its board of
44 directors, and name, constitute or appoint directors and officers in

- 1 place of or in addition to all or any of the directors or officers then in
2 office;
- 3 (3) Make any change in its capital accounts or in any or all of its
4 outstanding shares or other securities, or cancel any or all of such
5 outstanding shares or other securities;
- 6 (4) Dissolve and liquidate;
- 7 (5) Effect a merger or share exchange;
- 8 (6) Transfer all or part of its assets;
- 9 (7) Change its registered office or registered agent, or both;
- 10 (8) Authorize the issuance of bonds, debentures or other obligations of the
11 corporation, whether or not convertible into shares of any class or
12 bearing warrants or other evidences of optional rights to purchase or
13 subscribe for shares of any class, and fix the terms and conditions
14 thereof.

15 (b) Any articles of amendment, statement of change of registered office or
16 registered agent, certificate of reduction of capital, restated articles of incorporation,
17 articles of merger or share exchange, articles of dissolution, or any other document
18 appropriate to complete any action permitted by this section shall be executed and filed
19 in accordance with the provisions of this act on behalf of the corporation by such person
20 or persons as may be authorized to take such action pursuant to subsection (a).

21 (c) No action taken under this section shall give rise to any dissenters' rights,
22 except as provided in the plan of reorganization.

23 (d) This section does not apply after entry of a final decree in the reorganization
24 proceeding even though the court retains jurisdiction of the proceeding for limited
25 purposes unrelated to consummation of the reorganization plan.

26 **"ARTICLE 15.**

27 **"FOREIGN CORPORATIONS.**

28 **"PART 1. CERTIFICATE OF AUTHORITY.**

29 **"§ 55-15-01. Authority to transact business required.**

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

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

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

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

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

- 1 (4) Maintaining offices or agencies for the transfer, exchange, and
2 registration of its securities, or appointing and maintaining trustees or
3 depositories with relation to its securities;
- 4 (5) Soliciting or procuring orders, whether by mail or through employees
5 or agents or otherwise, where such orders require acceptance without
6 this State before becoming binding contracts;
- 7 (6) Making or investing in loans with or without security including
8 servicing of mortgages or deeds of trust through independent agencies
9 within the State, the conducting of foreclosure proceedings and sale,
10 the acquiring of property at foreclosure sale and the management and
11 rental of such property for a reasonable time while liquidating its
12 investment, provided no office or agency therefor is maintained in this
13 State;
- 14 (7) Taking security for or collecting debts due to it or enforcing any rights
15 in property securing the same;
- 16 (8) Transacting business in interstate commerce;
- 17 (9) Conducting an isolated transaction completed within a period of six
18 months and not in the course of a number of repeated transactions of
19 like nature;
- 20 (10) Selling through independent contractors;
- 21 (11) Owning, without more, real or personal property.
- 22 (c) Reserved for future codification purposes.
- 23 (d) Foreign insurance companies that are licensed by the Commissioner of

24 Insurance are not required to obtain a certificate of authority from the Secretary of State.

25 **"§ 55-15-02. Consequences of transacting business without authority.**

26 (a) No foreign corporation transacting business in this State without permission
27 obtained through a certificate of authority under this act or through domestication under
28 prior acts shall be permitted to maintain any action or proceeding in any court of this
29 State unless such corporation shall have obtained a certificate of authority prior to trial;
30 nor shall any action or proceeding be maintained in any court of this State by any
31 successor or assignee of such corporation on any cause of action arising out of the
32 transaction of business by such corporation in this State until:

- 33 (1) A certificate of authority shall have been obtained by such corporation
34 or by a foreign corporation which has acquired substantially all of its
35 assets, or
- 36 (2) Substantially all of its assets have been acquired by a domestic
37 corporation or one or more individuals.

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

40 (b) Reserved for future codification purposes.

41 (c) Reserved for future codification purposes.

42 (d) A foreign corporation failing to obtain a certificate of authority as required by
43 this act or by prior acts then applicable shall be liable to the State for the years or parts
44 thereof during which it transacted business in this State without a certificate of authority

1 in an amount equal to all fees and taxes which would have been imposed by law upon
2 such corporation had it duly applied for and received such permission, plus interest and
3 all penalties imposed by law for failure to pay such fees and taxes. In addition, the
4 foreign corporation shall be liable for a civil penalty of ten dollars (\$10.00) for each
5 day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part
6 thereof, it transacts business in this State without a certificate of authority. The
7 Attorney General may bring actions to recover all amounts due the State under the
8 provisions of this subsection.

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

12 (f) The Secretary of State is hereby directed to require that every foreign
13 corporation transacting business in this State comply with the provisions of this act.
14 The Secretary of State is authorized to employ such assistants as shall be deemed
15 necessary in his office for the purpose of enforcing the provisions of this Article and for
16 making such investigations as shall be necessary to ascertain foreign corporations now
17 transacting business in this State which may have failed to comply with the provisions
18 of this act.

19 **"§ 55-15-03. Application for certificate of authority.**

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

- 23 (1) The name of the foreign corporation or, if its name is unavailable for
24 use in this State, a corporate name that satisfies the requirements of
25 G.S. 55-15-06;
- 26 (2) The name of the state or country under whose law it is incorporated;
- 27 (3) Its date of incorporation and period of duration;
- 28 (4) The street address, and the mailing address if different from the street
29 address, of its principal office;
- 30 (5) The street address, and the mailing address if different from the street
31 address, of its registered office in this State and the name of its
32 registered agent at that office; and
- 33 (6) The names and usual business addresses of its current officers.

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

38 (c) If the Secretary of State finds that the application conforms to law he shall,
39 when all taxes and fees have been tendered as prescribed in this act:

- 40 (1) Endorse on the application and an exact or conformed copy thereof the
41 word 'filed' and the hour, day, month, and year of the filing thereof;
- 42 (2) File in his office the application and the certificate of existence (or
43 document of similar import as described in subsection (b) of this
44 section);

- 1 (3) Issue a certificate of authority to transact business in this State to
2 which he shall affix the exact or conformed copy of the application;
3 and
4 (4) Send to the foreign corporation or its representative the certificate of
5 authority, together with the exact or conformed copy of the application
6 affixed thereto.

7 **"§ 55-15-04. Amended certificate of authority.**

8 (a) A foreign corporation authorized to transact business in this State must obtain
9 an amended certificate of authority from the Secretary of State if it changes:

- 10 (1) Its corporate name;
11 (2) The period of its duration; or
12 (3) The state or country of its incorporation.

13 (b) The requirements of G.S. 55-15-03 for obtaining an original certificate of
14 authority apply to obtaining an amended certificate under this section.

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

16 (a) A certificate of authority authorizes the foreign corporation to which it is
17 issued to transact business in this State subject, however, to the right of the State to
18 revoke the certificate as provided in this act. A foreign corporation, however, is not
19 eligible or entitled to qualify in this State as executor, administrator, or guardian, or as
20 trustee under the will of any person domiciled in this State at the time of his death,
21 except that a foreign corporation chartered under the banking laws of Georgia, South
22 Carolina, Tennessee or Virginia or as a national banking association in any said states
23 may act as testamentary trustee, or executor in this State if:

- 24 (1) It has a bona fide capital of at least two hundred and fifty thousand
25 dollars (\$250,000) actually paid in;
26 (2) It is authorized to act in such fiduciary capacity in the state in which it
27 is incorporated or if such foreign corporation be a national banking
28 association in the state in which it has its principal place of business;
29 and
30 (3) Any bank or other corporation organized under the laws of this State
31 or a national banking association having its principal place of business
32 in this State is permitted by law to act in such fiduciary capacity in the
33 state in which such foreign corporation seeking to act in this State is
34 organized or in which it has its principal place of business if it is a
35 national banking association without further showing or qualification
36 other than that it is authorized to act in such fiduciary capacity in this
37 State and upon compliance with the laws of such other state, if any,
38 concerning service of process on nonresident fiduciaries.

39 Unless assets of the estate are to be removed from within the State of North Carolina,
40 such foreign corporations seeking to act as testamentary trustee, or executor in this
41 State, upon qualifying to act in such fiduciary capacity, shall not be required by law to
42 give bond except as required of a resident corporate fiduciary in like circumstances. No
43 officer, employee or agent of any such foreign corporation shall be eligible or entitled to
44 serve as testamentary trustee, or executor in this State whether such officer, employee,

1 or agent is a resident or nonresident of this State if such officer, employee or agent is
2 acting as testamentary trustee or executor on behalf of any such foreign corporation
3 except when such foreign corporation itself shall be eligible to so serve.

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

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

11 (c) Reserved for future codification purposes.

12 **"§ 55-15-06. Corporate name of foreign corporation.**

13 (a) If the corporate name of a foreign corporation does not satisfy the
14 requirements of G.S. 55-4-01, the foreign corporation to obtain or maintain a certificate
15 of authority to transact business in this State:

16 (1) May add the word 'corporation,' 'incorporated,' 'company,' or
17 'limited,' or the abbreviation 'corp.,' 'inc.,' 'co.,' or 'ltd.,' to its
18 corporate name for use in this State; or

19 (2) May use a fictitious name, which includes one or more of the words or
20 abbreviations in subdivision (1) of this subsection, to transact business
21 in this State if its real name is unavailable and it delivers to the
22 Secretary of State for filing a copy of the resolution of its board of
23 directors, certified by its secretary, adopting the fictitious name.

24 (b) Except as authorized by subsection (c), the corporate name (including a
25 fictitious name) of a foreign corporation must be distinguishable upon the records of the
26 Secretary of State from:

27 (1) The corporate name of a corporation incorporated or authorized to
28 transact business in this State;

29 (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S.
30 55-4-03;

31 (3) The fictitious name of another foreign corporation authorized to
32 transact business in this State; and

33 (4) The corporate name of a nonprofit corporation incorporated or
34 authorized to transact business in this State.

35 (c) A foreign corporation may apply to the Secretary of State for authorization to
36 use in this State a name that is not distinguishable upon his records from the name of
37 another corporation (incorporated or authorized to transact business in this State.) The
38 Secretary of State shall authorize use of the name applied for if:

39 (1) The other corporation consents to the use in writing and submits an
40 undertaking in form satisfactory to the Secretary of State to change its
41 name to a name that is distinguishable upon the records of the
42 Secretary of State from the name of the applying corporation; or

1 (2) The applicant delivers to the Secretary of State a certified copy of a
2 final judgment of a court of competent jurisdiction establishing the
3 applicant's right to use the name applied for in this State.

4 (d) Reserved for future codification purposes.

5 (e) If a foreign corporation authorized to transact business in this State changes
6 its corporate name to one that does not satisfy the requirements of G.S. 55-4-01, it may
7 not transact business in this State under the changed name until it adopts a name
8 satisfying the requirements of G.S. 55-4-01 and obtains an amended certificate of
9 authority under G.S. 55-15-04.

10 (f) The use of assumed names or fictitious names, as provided for in Chapter 66,
11 is not affected by this act.

12 (g) Neither the reservation or registration of a corporate name nor the issuance of
13 a certificate of authority to a foreign corporation shall authorize the use in this State of a
14 corporate name in violation of the rights of any third party under the federal trademark
15 act, the trademark act of this State, or other statutory or common law, or be a defense to
16 an action for violation of any such rights.

17 **"§ 55-15-07. Registered office and registered agent of foreign corporation.**

18 (a) Each foreign corporation authorized to transact business in this State must
19 continuously maintain in this State:

20 (1) A registered office that may be the same as any of its places of
21 business; and

22 (2) A registered agent, who shall be (i) an individual who resides in this
23 State and whose business office is identical with the registered office;
24 (ii) a domestic corporation or nonprofit domestic corporation whose
25 business office is identical with the registered office; or (iii) a foreign
26 corporation or foreign nonprofit corporation authorized to transact
27 business in this State whose business office is identical with the
28 registered office.

29 (b) The sole duty of the registered agent to the foreign corporation is to forward
30 to the corporation at its last known address any notice, process, or demand that is served
31 on the registered agent.

32 **"§ 55-15-08. Change of registered office or registered agent of foreign corporation.**

33 (a) A foreign corporation authorized to transact business in this State may change
34 its registered office or registered agent by delivering to the Secretary of State for filing a
35 statement of change that sets forth:

36 (1) Its name;

37 (2) The street address, and the mailing address if different from the street
38 address, of the corporation's current registered office, and the county in
39 which it is located;

40 (3) If the address of the corporation's registered office is to be changed,
41 the street address, and the mailing address if different from the street
42 address, of the new registered office, and the county in which it is
43 located;

44 (4) The name of its current registered agent;

1 (5) If the current registered agent is to be changed, the name of its new
2 registered agent and the new agent's written consent (either on the
3 statement or attached to it) to the appointment; and

4 (6) That after the change or changes are made, the addresses of its
5 registered office and the business office of its registered agent will be
6 identical.

7 (b) If a registered agent changes the address of his business office, he may
8 change the address of the registered office of any foreign corporation for which he is the
9 registered agent by notifying the corporation in writing of the change and signing (either
10 manually or in facsimile) and delivering to the Secretary of State for filing a statement
11 of change that complies with the requirements of subsection (a) and recites that the
12 corporation has been notified of the change.

13 **"§ 55-15-09. Resignation of registered agent of foreign corporation.**

14 (a) The registered agent of a foreign corporation may resign his agency
15 appointment by signing and filing with the Secretary of State the signed original and
16 two exact or conformed copies of a statement of resignation, which may include a
17 statement that the registered office is also discontinued. The statement must be
18 accompanied by a certification from the registered agent that he has mailed or delivered
19 to the corporation at its last known address written notice of this resignation. Such
20 certification shall include the name and title of the officer notified, if any, and the
21 address to which the notice was mailed or delivered.

22 (b) After filing the statement, the Secretary of State shall mail one copy to the
23 registered office (if not discontinued) and the other copy to the foreign corporation at
24 its principal office shown in its most recent annual report.

25 (c) The agency appointment is terminated, and the registered office discontinued
26 if so provided, on the 31st day after the date on which the statement was filed.

27 **"§ 55-15-10. Service on foreign corporation.**

28 (a) The registered agent of a foreign corporation authorized to transact business
29 in this State is an agent of the corporation for service of process, notice or demand
30 required or permitted by law to be served on the corporation.

31 (b) Whenever a foreign corporation authorized to transact business in this State
32 shall fail to appoint or maintain a registered agent in this State, or whenever its
33 registered agent cannot with due diligence be found at the registered office, or whenever
34 its certificate of authority shall have been revoked under G.S. 55-15-31, then the
35 Secretary of State shall be an agent of such corporation upon whom any such process,
36 notice or demand may be served. Service on the Secretary of State of any such process,
37 notice or demand shall be made by delivering to and leaving with him or with any clerk
38 having charge of the corporation department of his office, duplicate copies of such
39 process, notice or demand. In the event any such process, notice or demand is served on
40 the Secretary of State, he shall immediately mail one of the copies thereof, by registered
41 or certified mail, return receipt requested, to the corporation at its principal office shown
42 in its most recent annual report or in any subsequent communication received from the
43 corporation stating the current mailing address of its principal office or, if there is no
44 mailing address for the principal office on file, to the corporation at its registered office.

1 Service on a foreign corporation under this subsection shall be effective for all purposes
2 from and after the date of such service on the Secretary of State.

3 (c) The Secretary of State shall keep a record of all processes, notices and
4 demands served upon him under this section and shall record therein the time of such
5 service and his action with reference thereto.

6 (d) Nothing herein contained shall limit or affect the right to serve any process,
7 notice or demand required or permitted by law to be served upon a foreign corporation
8 in any other manner now or hereafter permitted by law.

9 **"PART 2. WITHDRAWAL.**

10 **"§ 55-15-20. Withdrawal of foreign corporation.**

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

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

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

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

21 (3) That the corporation revokes the authority of its registered agent to
22 accept service of process and consents that service of process in any
23 action or proceeding based upon any cause of action arising in this
24 State, or arising out of business transacted in this State, during the time
25 the corporation was authorized to transact business in this State may
26 thereafter be made on such corporation by service thereof on the
27 Secretary of State;

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

30 (5) A commitment to notify the Secretary of State in the future of any
31 change in its mailing address.

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

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

35 (2) File the application in his office; and

36 (3) Issue a certificate of withdrawal to which he shall affix the exact or
37 conformed copy of the application.

38 (c) After the withdrawal of the corporation is effective, service of process on the
39 Secretary of State in accordance with subsection (b)(3) of this section is service on the
40 foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of
41 the process to the foreign corporation at the mailing address set forth under subsection
42 (b).

43 **"PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.**

44 **"§ 55-15-30. Grounds for revocation.**

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

- 4 (1) The foreign corporation does not deliver its annual report to the
5 Secretary of State within 60 days after it is due;
- 6 (2) The foreign corporation does not pay within 60 days after they are due
7 any penalties, fees, or other payments due under this act;
- 8 (3) The foreign corporation is without a registered agent or registered
9 office in this State for 60 days or more;
- 10 (4) The foreign corporation does not inform the Secretary of State under
11 G.S. 55-15-08 or G.S. 55-15-09 that its registered agent or registered
12 office has changed, that its registered agent has resigned, or that its
13 registered office has been discontinued within 60 days of the change,
14 resignation, or discontinuance;
- 15 (5) An incorporator, director, officer, or agent of the foreign corporation
16 signed a document he knew was false in any material respect with
17 intent that the document be delivered to the Secretary of State for
18 filing;
- 19 (6) The Secretary of State receives a duly authenticated certificate from
20 the secretary of state or other official having custody of corporate
21 records in the state or country under whose law the foreign corporation
22 is incorporated stating that it has been dissolved or disappeared as the
23 result of a merger;
- 24 (7) The corporation is exceeding the authority conferred upon it by this
25 act.

26 (b) Nothing herein shall be deemed to repeal or modify any provision of the
27 Revenue Act relating to the suspension of the certificate of authority of foreign
28 corporations for failure to comply with the provisions thereof.

29 **"§ 55-15-31. Procedure for and effect of revocation.**

30 (a) If the Secretary of State determines that one or more grounds exist under G.S.
31 55-15-30 for revocation of a certificate of authority, he shall mail to the foreign
32 corporation written notice of his determination.

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

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

42 (d) The Secretary of State's revocation of a foreign corporation's certificate of
43 authority appoints the Secretary of State the foreign corporation's agent for service of
44 process in any proceeding based on a cause of action arising in this State or arising out

1 of business transacted in this State during the time the foreign corporation was
2 authorized to transact business in this State. The Secretary of State shall then proceed in
3 accordance with G.S. 55-15-10.

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

6 **"§ 55-15-32. Appeal from revocation.**

7 (a) A foreign corporation may appeal the Secretary of State's revocation of its
8 certificate of authority to the superior court of Wake County within 30 days after
9 service of the certificate of revocation is mailed. The appeal is commenced by filing a
10 petition with the court and with the Secretary of State requesting the court to set aside
11 the revocation. The petition shall have attached to it copies of the corporation's
12 certificate of authority and the Secretary of State's certificate of revocation. The appeal
13 to the superior court shall be determined upon such further evidence, notice and
14 opportunity to be heard, if any, as the court may deem appropriate under the
15 circumstances. The foreign corporation shall have the burden of establishing that it is
16 entitled to have the revocation set aside.

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

20 (c) The court's final decision may be appealed as in other civil proceedings.

21 **"§ 55-15-33. Inapplicability of Administrative Procedure Act.**

22 The Administrative Procedure Act shall not apply to any proceeding or appeal
23 provided for in G.S. 55-15-30 through 55-15-32.

24 **"ARTICLE 16.**

25 **"RECORDS AND REPORTS.**

26 **"PART L. RECORDS.**

27 **"§ 55-16-01. Corporate records.**

28 (a) A corporation shall keep as permanent records minutes of all meetings of its
29 incorporators, shareholders and board of directors, a record of all actions taken by the
30 shareholders or board of directors without a meeting, and a record of all actions taken
31 by a committee of the board of directors in place of the board of directors on behalf of
32 the corporation.

33 (b) A corporation shall maintain appropriate accounting records.

34 (c) A corporation or its agent shall maintain a record of its shareholders, in a
35 form that permits preparation of a list of the names and addresses of all shareholders, in
36 alphabetical order by class of shares showing the number and class of shares held by
37 each.

38 (d) A corporation shall maintain its records in written form or in another form
39 capable of conversion into written form within a reasonable time.

40 (e) A corporation shall keep a copy of the following records at its principal
41 office:

42 (1) Its articles or restated articles of incorporation and all amendments to
43 them currently in effect;

- 1 (2) Its bylaws or restated bylaws and all amendments to them currently in
2 effect;
- 3 (3) Resolutions adopted by its board of directors creating one or more
4 classes or series of shares, and fixing their relative rights, preferences,
5 and limitations, if shares issued pursuant to those resolutions are
6 outstanding;
- 7 (4) The minutes of all shareholders' meetings, and records of all action
8 taken by shareholders without a meeting, for the past three years;
- 9 (5) All written communications to shareholders generally within the past
10 three years and the financial statements required to be made available
11 to the shareholders for the past three years under G.S. 55-16-20;
- 12 (6) A list of the names and business addresses of its current directors and
13 officers; and
- 14 (7) Its most recent annual report delivered to the Secretary of State under
15 G.S. 55-16-22.

16 **"§ 55-16-02. Inspection of records by shareholders.**

17 (a) A qualified shareholder of a corporation is entitled to inspect and copy,
18 during regular business hours at the corporation's principal office, any of the records of
19 the corporation described in G.S. 55-16-01(e) if he gives the corporation written notice
20 of his demand at least five business days before the date on which he wishes to inspect
21 and copy.

22 (b) A qualified shareholder of a corporation is entitled to inspect and copy,
23 during regular business hours at a reasonable location specified by the corporation, any
24 of the following records of the corporation if the shareholder meets the requirements of
25 subsection (c) and gives the corporation written notice of his demand at least five
26 business days before the date on which he wishes to inspect and copy:

- 27 (1) Records of any final action taken by the board of directors, or by a
28 committee of the board of directors while acting in place of the board
29 of directors on behalf of the corporation, minutes of any meeting of the
30 shareholders, and records of action taken by the shareholders or board
31 of directors without a meeting, to the extent not subject to inspection
32 under G.S. 55-16-02 (a);
- 33 (2) Accounting records of the corporation; and
- 34 (3) The record of shareholders;

35 provided that a shareholder of a public corporation shall not be entitled to inspect or
36 copy any accounting records of the corporation or any records of the corporation with
37 respect to any matter which the corporation determines in good faith may, if disclosed,
38 adversely affect the corporation in the conduct of its business or may constitute material
39 nonpublic information at the time the shareholder's notice of demand to inspect and
40 copy is received by the corporation.

41 (c) A qualified shareholder may inspect and copy the records described in
42 subsection (b) only if:

- 43 (1) His demand is made in good faith and for a proper purpose;

- 1 (2) He describes with reasonable particularity his purpose and the records
2 he desires to inspect; and
- 3 (3) The records are directly connected with his purpose.
- 4 (d) The right of inspection granted by this section may not be abolished or
5 limited by a corporation's articles of incorporation or bylaws.
- 6 (e) This section does not affect:
- 7 (1) The right of a shareholder to inspect records under G.S. 55-7-20 or, if
8 the shareholder is in litigation with the corporation, to inspect the
9 records to the same extent as any other litigant;
- 10 (2) The power of a court, independently of this act, to compel the
11 production of corporate records for examination.
- 12 (f) For purposes of this section, 'shareholder' includes a beneficial owner whose
13 shares are held in a voting trust or by a nominee on his behalf and whose beneficial
14 ownership is certified to the corporation by that voting trust or nominee.
- 15 (g) For purposes of this section a 'qualified shareholder' of a corporation is a
16 person who shall have been a shareholder in the corporation for at least six months
17 immediately preceding his demand or who shall be the holder of at least five percent
18 (5%) of the corporation's outstanding shares of any class.

19 **"§ 55-16-03. Scope of inspection right.**

- 20 (a) A shareholder's agent or attorney has the same inspection and copying rights
21 as the shareholder he represents.
- 22 (b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the
23 right to receive copies made by photographic, xerographic, or other means.
- 24 (c) The corporation may impose a reasonable charge, covering the costs of labor
25 and material, for producing for inspection or copying any records provided to the
26 shareholder. The charge may not exceed the estimated cost of production or
27 reproduction of the records.
- 28 (d) The corporation may comply with a shareholder's demand to inspect the
29 record of shareholders under G.S. 55-16-02(b)(3) by providing him with a list of its
30 shareholders that was compiled no earlier than the date of the shareholder's demand.

31 **"§ 55-16-04. Court-ordered inspection.**

- 32 (a) If a corporation does not allow a shareholder who complies with G.S. 55-16-
33 02(a) to inspect and copy any records required by that subsection to be available for
34 inspection, the superior court of the county where the corporation's principal office (or,
35 if none in this State, its registered office) is located may, upon application of the
36 shareholder, summarily order inspection and copying of the records demanded at the
37 corporation's expense.
- 38 (b) If a corporation does not within a reasonable time allow a shareholder to
39 inspect and copy any other record, the shareholder who complies with G.S. 55-16-02(b)
40 and (c) may apply to the superior court in the county where the corporation's principal
41 office (or, if none in this State, its registered office) is located for an order to permit
42 inspection and copying of the records demanded. The court shall dispose of an
43 application under this subsection on an expedited basis.

1 (c) If the court orders inspection and copying of the records demanded, it shall
2 also order the corporation to pay the shareholder's costs (including reasonable attorneys'
3 fees) incurred to obtain the order unless the corporation proves that it refused inspection
4 in good faith because it had a reasonable basis for doubt about the right of the
5 shareholder to inspect the records demanded.

6 (d) If the court orders inspection and copying of the records demanded, it may
7 impose reasonable restrictions on the use or distribution of the records by the
8 demanding shareholder.

9 **"PART 2. REPORTS.**

10 **"§ 55-16-20. Financial statements for shareholders.**

11 (a) A corporation shall make available to its shareholders annual financial
12 statements, which may be consolidated or combined statements of the corporation and
13 one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end
14 of the fiscal year, an income statement for that year, and a statement of cash flows for
15 the year unless that information appears elsewhere in the financial statements. If
16 financial statements are prepared for the corporation on the basis of generally accepted
17 accounting principles, the annual financial statements must also be prepared on that
18 basis.

19 (b) If the annual financial statements are reported upon by a public accountant,
20 his report must accompany them. If not, the statements must be accompanied by a
21 statement of the president or the person responsible for the corporation's accounting
22 records:

- 23 (1) Stating his reasonable belief whether the statements were prepared on
24 the basis of generally accepted accounting principles and, if not,
25 describing the basis of preparation; and
- 26 (2) Describing any respects in which the statements were not prepared on
27 a basis of accounting consistent with the statements prepared for the
28 preceding year.

29 (c) A corporation shall mail the annual financial statements, or a written notice of
30 their availability, to each shareholder within 120 days after the close of each fiscal year;
31 provided that the failure of the corporation to comply with this requirement shall not
32 constitute the basis for any claim of damages by any shareholder unless such failure was
33 in bad faith. Thereafter, on written request from a shareholder who was not mailed the
34 statements, the corporation shall mail him the latest financial statements.

35 **"§ 55-16-21. Other reports to shareholders.**

36 (a) If a corporation other than a public corporation indemnifies or advances
37 expenses to a director under G.S. 55-8-51, 55-8-52, 55-8-53, 55-8-54, or 55-8-57 in
38 connection with a proceeding by or in the right of the corporation, the corporation shall
39 report the indemnification or advance in writing to the shareholders with or before the
40 notice of the next shareholders' meeting.

41 (b) If a corporation other than a public corporation issues or authorizes the
42 issuance of shares for promissory notes or for promises to render services in the future,
43 other than in a transaction or pursuant to a plan previously approved by a majority of the
44 shares entitled to vote thereon, the corporation shall report in writing to the shareholders

1 the number of shares authorized or issued, and the consideration received by the
2 corporation, with or before the notice of the next shareholders' meeting.

3 **"§ 55-16-22. Annual report for Secretary of State.**

4 (a) Each domestic corporation except those governed by Chapter 55B, and each
5 foreign corporation authorized to transact business in this State, shall deliver to the
6 Secretary of State for filing an annual report that sets forth:

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

9 (2) The street address, and the mailing address if different from the street
10 address, of the registered office, the county in which its registered
11 office is located, and the name of its registered agent at that office in
12 this State, and a statement of any change of such registered office or
13 registered agent, or both;

14 (3) The address of its principal office;

15 (4) The names, titles, and business addresses of its principal officers;

16 (4a) The names and business addresses of its directors; and

17 (5) A brief description of the nature of its business.

18 (b) Information in the annual report must be current as of the date the annual
19 report is executed on behalf of the corporation.

20 (c) The annual report shall be delivered to the Secretary of State each year within
21 60 days immediately following the last day of the month in which the domestic
22 corporation was incorporated or the foreign corporation received a certificate of
23 authority in this State. Forms required for the filing of the annual report shall be mailed
24 by the Secretary of State to the domestic or foreign corporation at its registered office
25 for the first annual report, then to its principal office for subsequent annual reports.

26 (d) If an annual report does not contain the information required by this section,
27 the Secretary of State shall promptly notify the reporting domestic or foreign
28 corporation in writing and return the report to it for correction. If the report is corrected
29 to contain the information required by this section and delivered to the Secretary of
30 State within 30 days after the effective date of notice, it is deemed to be timely filed.

31 (e) Amendments to any previously filed annual report may be filed at any time
32 for the purpose of correcting, updating, or augmenting the information contained in such
33 annual report.

34 **"ARTICLE 17.**

35 **"TRANSITION AND CURATIVE PROVISIONS.**

36 **"§ 55-17-01. Applicability of act.**

37 (a) The provisions of this act shall apply to every corporation for profit, and, so
38 far as appropriate, to every corporation not for profit having a capital stock, now
39 existing or hereafter formed, and to the outstanding and future securities thereof, except
40 to the extent the corporation is expressly excepted by this act from its operation or
41 except to the extent that there is other specific statutory provision particularly applicable
42 to the corporation or inconsistent with some provisions of this act, in which case that
43 other provision prevails.

1 (b) Notwithstanding the provisions of subsection (a) of this section, no
2 corporation not for profit having a capital stock and formed for religious, charitable,
3 nonprofit, social, or literary purposes shall hereafter be formed under this act.

4 **"§ 55-17-02. Application to qualified foreign corporations.**

5 A foreign corporation authorized to transact business in this State on the effective
6 date of this act is subject to this act but is not required to obtain a new certificate of
7 authority to transact business under this act.

8 **"§ 55-17-03. Saving provisions.**

9 (a) The existence of corporations formed before the effective date of this act shall
10 not be impaired by the enactment of this act nor by any change made by this act in the
11 requirements for the formation of corporations nor by any amendment or repeal by this
12 act of the laws under which they were formed or created, and, except as otherwise
13 expressly provided in this act, the repeal of a prior act by this act shall not affect any
14 liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

15 (b) Any proceeding or corporate action commenced prior to the effective date of
16 this act may be completed in accordance with the law then in effect.

17 **"§ 55-17-04. Severability.**

18 If any provision of this act or its application to any person or circumstance is held
19 invalid by a court of competent jurisdiction, the invalidity does not affect other
20 provisions or applications of the act that can be given effect without the invalid
21 provision or application, and to this end the provisions of the act are severable.

22 **"§ 55-17-05. Curative statute.**

23 All deeds, conveyances and other instruments executed prior to the effective date of
24 this act and validated by the curative provisions of former G.S. 55-36.1 and former
25 Article 12 of Chapter 55 as they were immediately prior to such effective date shall be
26 valid and effective to the same extent as if those provisions had not been amended or
27 repealed."

28 Sec. 2. The Revisor of Statutes shall cause to be printed along with this act
29 all relevant portions of the Official Comments to the 1984 Revised Model Business
30 Corporation Act and all explanatory comments of the drafters of this act as the Revisor
31 may deem appropriate.

32 Sec. 3. This act shall become effective July 1, 1990.