

GENERAL ASSEMBLY OF NORTH CAROLINA  
1997 SESSION

SESSION LAW 1997-485  
SENATE BILL 157

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT THIRTY DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE, TO INCREASE THE FEES FOR THE FILING OF CERTAIN DOCUMENTS.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.
- (3) Reserved.
- (4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

## PART II. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 4. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken~~, shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

- (1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
- (2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
- (3) Supply a form for demanding payment;
- (4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and
- (5) Be accompanied by a copy of this Article."

Section 5. G.S. 55-13-30 reads as rewritten:

### "§ 55-13-30. Court action.

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court by~~ filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5.1. G.S. 55-13-30(a), as amended by Section 5 of this act, reads as rewritten:

"(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the petition filed with the court, complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25."

### PART III. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 6. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

**"§ 55-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

**"§ 55A-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 8. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

**"§ 57C-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 9. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

**"§ 59-206.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 10. G.S. 55-1-22(a) reads as rewritten:

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

	Document	Fee
(1)	Articles of incorporation	\$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation with amendment of articles	10.00 50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	<del>25.00</del> <u>100.00</u>
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	<del>10.00.</del> <u>10.00</u>
(27)	<u>Advisory review of a document</u>	<u>200.00."</u>

Section 11. G.S. 55A-1-22(a) reads as rewritten:

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

	Document	Fee
(1)	Articles of incorporation	\$50.00
(2)	Application for reserved name	\$10.00
(3)	Notice of transfer of reserved name	\$10.00
(4)	Application for registered name	\$10.00
(5)	Application for renewal of registered name	\$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	\$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	\$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	\$ 5.00
(10)	Amendment of articles of incorporation	\$25.00
(11)	Restated articles of incorporation without amendment of articles	\$10.00
(12)	Restated articles of incorporation with amendment of articles	\$25.00
(13)	Articles of merger	\$25.00
(14)	Articles of dissolution	\$15.00
(15)	Articles of revocation of dissolution	\$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	<del>\$25.00</del> -\$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	\$100.00
(21)	Application for amended certificate of authority	\$25.00
(22)	Application for certificate of withdrawal	\$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	\$5.00
(24a)	Designation of Principal Office Address	\$5.00
(25)	Articles of correction	\$10.00
(26)	Application for certificate of existence or authorization	\$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	<del>\$10.00</del> \$10.00
(28)	<u>Advisory review of a document</u>	<u>\$200.00."</u>

Section 12. G.S. 57C-1-22(a) reads as rewritten:

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

	<u>Document</u>	<u>Fee</u>
(1)	Articles of organization	\$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	<u>Application for reinstatement following administrative dissolution</u>	<u>100.00</u>
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	<del>10.00.</del> <u>10.00</u>
(27)	<u>Advisory review of a document</u>	<u>200.00."</u>

Section 13. G.S. 59-1106 reads as rewritten:

**"§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

- |      |  |   |
|------|--|---|
| (1)  | For filing a certificate of limited partnership<br>(G.S. 59-201)   | \$50.00   |
| (2)  | For filing a certificate of amendment<br>(G.S. 59-202; 59-905)   | 25.00   |
| (3)  | For filing a certificate of cancellation<br>(G.S. 59-203; 59-906)  | 25.00   |
| (4)  | For filing an application for reservation of name<br>(G.S. 59-104(a))  | 10.00   |
| (5)  | For filing a transfer of name<br>(G.S. 59-104(d))  | 10.00   |
| (6)  | For filing an application for registration<br>as foreign limited partnership<br>(G.S. 59-502)  | 50.00   |
| (7)  | For preparing and furnishing a copy of any<br>document, instrument or paper filed or recorded<br>relating to a limited partnership (G.S. 59-206(c))<br>For each page | 1.00  |
|      | For affixing <del>his</del> <u>the</u> certificate and official seal thereto   | 5.00  |
| (8)  | For comparing a copy furnished to him of any<br>document, instrument or paper filed or recorded<br>relating to a limited partnership<br>For each page                | 1.00  |
| (9)  | For filing any other document not herein specifically<br>provided for  | 10.00   |
| (10) | For the expedited filing by the end of the same<br>business day of a document received in good order<br>by 12:00 noon Eastern Standard Time                          | 200.00<br>additional fee                                      |
| (11) | For the expedited filing of a document received in<br>good order within 24 hours after receipt, excluding<br>weekends and holidays                                   | 100.00<br><del>additional fee.</del><br><u>additional fee</u> |
|      | (12) <u>Advisory review of a document</u>  | <u>200.00.</u>  |

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the



required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

#### PART IV. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 14. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 15. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 16. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 17. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

#### PART V. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 18. Article 2 of Chapter 57C of the General Statutes is amended by adding a new section to read:

**"§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

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

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

## PART VI. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 19. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

### **"§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The articles of cancellation shall set forth:

- (1) The name of the limited liability company;
- (2) The date of the event of withdrawal described in the articles of dissolution;
- (3) The date of filing of the company's articles of dissolution;
- (4) A statement that within 90 days after the event of withdrawal all remaining members have agreed in writing that the business of the limited liability company may be continued; and
- (5) Any other information the members or managers filing the articles of cancellation determine."

Section 20. G.S. 57C-1-22(a) reads as rewritten:

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

	<u>Document</u>	<u>Fee</u>
(1)	Articles of organization	\$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited	

	liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	<del>Articles</del> Cancellation of articles of <del>revocation of</del> dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

PART VII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 21. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

- (1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or
- (2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability

company's period of duration stated in its articles of organization or written operating agreement has not expired,  
unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

#### PART VIII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 22. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

#### PART IX. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 23. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is that:~~

- (1) Is incorporated under a law other than the law of this State-State;
- (2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6) G.S. 55B-2(6); and that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.
- (3) Has as its shareholders only individuals who:
  - a. Qualify to hold shares of a corporation organized under this Chapter;
  - b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

- c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

#### PART X. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 24. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the time effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case, if~~ there has been substantial compliance with the requirements of this section."

Section 25. G.S. 59-203 reads as rewritten:

#### **"§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

- (1) The name of the limited partnership;
- (2) The date of filing of its certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation;
- (4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the partners filing the certificate determine."

#### PART XI. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 26. G.S. 59-206(a)(2) reads as rewritten:

- "(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~If the Secretary finds that it ~~does not conform to law, satisfies the requirements of this Article,~~ the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the

document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 27. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law~~ he satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

- (1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;
- (2) File in ~~his~~ the office the application;
- (3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and
- (4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

## PART XII. SINGLE MEMBER LIMITED LIABILITY COMPANIES.

Section 28. G.S. 57C-2-20(a) reads as rewritten:

"(a) ~~Two~~ One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing."

## PART XIII. CORPORATE MERGERS.

Section 29. G.S. 55-11-04 reads as rewritten:

**"§ 55-11-04. Merger ~~of~~ with subsidiary.**

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

subsidiary without approval of the shareholders of the subsidiary if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and G.S. 55-11-03.

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

- (1) The names of the parent and subsidiary; and
- (2) The manner and basis of converting the shares of ~~the subsidiary~~ each corporation into shares, obligations, or other securities of the ~~parent~~ surviving or any other corporation or into cash or other property in whole or part.

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

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.

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

(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

#### PART XIV. EFFECTIVE DATES.

Section 30. Section 1 of this act becomes effective July 1, 1998. Sections 2 and 3 of this act become effective July 1, 1997. Sections 14 through 17, 23, 26, 27, and 30 of this act are effective when the act becomes law. The amendments to G.S. 55-1-22(a)(16) and G.S. 55A-1-22(a)(17), made by Sections 10 and 11 of this act, become effective September 1, 1997. G.S. 57C-1-22(a)(16a), as enacted by Section 12 of this act, becomes effective September 1, 1997. Except as otherwise provided, the remainder of this act becomes effective October 1, 1997. Section 4 of this act applies to dissenters' rights created pursuant to G.S. 55-13-02 on or after October 1, 1997. Section 5 of this act applies to proceedings commenced on or after October 1, 1997. Section 5.1 of this act applies to proceedings commenced on or after October 1, 1997, by dissenters to corporate actions that occurred before October 1, 1997. Sections 6 through 13 of this act apply to requests for review of documents on or after that date.

In the General Assembly read three times and ratified this the 26th day of August, 1997.

s/ Dennis A. Wicker  
President of the Senate

s/ Harold J. Brubaker

Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 11:04 a.m. this 10th day of September, 1997