

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 842

Short Title: Business Entity Changes.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA
BUSINESS CORPORATION ACT, THE NORTH CAROLINA NONPROFIT
CORPORATION ACT, THE NORTH CAROLINA LIMITED LIABILITY
COMPANY ACT, AND THE LAW GOVERNING PARTNERSHIPS.

The General Assembly of North Carolina enacts:

**PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS
CORPORATION ACT.**

SECTION 1. G.S. 55-1-20(f) reads as rewritten:

"(f) A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

- (1) By the chairman of the board of directors, by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

SECTION 2. G.S. 55-1-22(b) is amended by adding the following new subdivision to read:

"(12a) Articles of conversion (other than articles
of conversion included as part of another document) 50.00".

1 **SECTION 3.** G.S. 55-1-40 is amended by adding the following new
2 subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

3 **"§ 55-1-40. Chapter definitions.**

4 In this Chapter unless otherwise specifically provided:

5 ...

6 (2a) 'Business entity,' as used in G.S. 55-11-10 and Article 11A of this
7 Chapter, means a domestic corporation (including a professional
8 corporation as defined in G.S. 55B-2), a foreign corporation, a
9 domestic or foreign nonprofit corporation, a domestic or foreign
10 limited liability company, a domestic or foreign limited partnership as
11 defined in G.S. 59-102, a registered limited liability partnership or
12 foreign limited liability partnership as defined in G.S. 59-32, or any
13 other partnership as defined in G.S. 59-36 whether or not formed under
14 the laws of this State.

15 ...

16 (6b) 'Domestic limited liability company' has the same meaning as in G.S.
17 57C-1-03.

18 (6c) 'Domestic limited partnership' has the same meaning as in G.S. 59-
19 103.

20 (6d) 'Domestic nonprofit corporation' means a corporation as defined in
21 G.S. 55A-1-40.

22 (6e) 'Electronic' has the same meaning as in G.S. 66-312.

23 (6f) 'Electronic record' has the same meaning as in G.S. 66-312.

24 (6g) 'Electronic signature' has the same meaning as in G.S. 66-312.

25 ...

26 (10a) 'Foreign limited liability company' has the same meaning as in G.S.
27 57C-1-03.

28 (10b) 'Foreign limited partnership' has the same meaning as in G.S. 59-107.

29 (10c) 'Foreign nonprofit corporation' means a foreign corporation as defined
30 in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S.
31 55A-1-40.

32 "

33 **SECTION 4.** G.S. 55-1-40(17) reads as rewritten:

34 "(17) 'Principal office' means the office (in or out of this State) ~~so designated~~
35 ~~in the annual report~~ where the principal executive offices of a domestic
36 or foreign corporation are ~~located~~ located, as designated in its most
37 recent annual report filed with the Secretary of State or, in the case of a
38 domestic or foreign corporation that has not yet filed an annual report,
39 in its articles of incorporation or application for a certificate of
40 authority, respectively."

41 **SECTION 5.** G.S. 55-1-40(24a) reads as rewritten:

42 "(24a) 'Unincorporated entity' means a domestic or foreign limited liability
43 ~~company company, as defined in G.S. 57C-1-03,~~ a domestic or foreign
44 ~~limited partnership partnership, as defined in G.S. 59-102,~~ a registered

1 limited liability partnership or foreign limited liability partnership as
2 defined in G.S. 59-32, or any other partnership as defined in G.S.
3 59-36, whether or not formed under the laws of this State, ~~including a~~
4 ~~registered limited liability partnership as defined in G.S. 59-32 and any~~
5 ~~other limited liability partnership formed under a law other than the~~
6 ~~laws of this State."~~

7 **SECTION 6.** G.S. 55-1-41 reads as rewritten:

8 **"§ 55-1-41. Notice.**

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

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

20 (c) Written notice by a domestic or foreign corporation to its shareholder is
21 effective when deposited in the United States mail with postage thereon prepaid and
22 correctly addressed to the shareholder's address shown in the corporation's current
23 record of shareholders. To the extent the corporation pursuant to G.S. 55-1-50 and the
24 shareholder have agreed, notice by a domestic corporation to its shareholder in the form
25 of an electronic record sent by electronic means is effective when it is sent as provided
26 in G.S. 66-325. A shareholder may terminate any such agreement at any time on a
27 prospective basis effective upon written notice of termination to the corporation or upon
28 such later date as may be specified in the notice.

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

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

- 37 (1) When received;
- 38 (2) Five days after its deposit in the United States mail, as evidenced by
39 the postmark or otherwise, if mailed with at least first-class postage
40 thereon prepaid and correctly addressed;
- 41 (3) On the date shown on the return receipt, if sent by registered or
42 certified mail, return receipt requested, and the receipt is signed by or
43 on behalf of the addressee.

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

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

5 (g) If this Chapter prescribes notice requirements for particular circumstances,
6 those requirements govern. If articles of incorporation or bylaws prescribe notice
7 requirements not inconsistent with this section or other provisions of this Chapter, those
8 requirements govern."

9 **SECTION 7.** Article 1 of Chapter 55 is amended by adding a new Part to
10 read:

11 "Part 5. Miscellaneous.

12 "**§ 55-1-50. Electronic transactions.**

13 For purposes of applying Article 40 of Chapter 66 to transactions under this Chapter,
14 a corporation may agree to conduct a transaction by electronic means through provision
15 in its articles of incorporation or bylaws or by action of its board of directors."

16 **SECTION 8.** G.S. 55-2-02(a) reads as rewritten:

17 "(a) The articles of incorporation must set forth:

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

29 **SECTION 9.** G.S. 55-2-02 is amended by adding the following new
30 subsection to read:

31 "(d) Articles of incorporation filed to effect the conversion of another business entity
32 pursuant to Article 11A of this Chapter shall also include the statements required by
33 G.S. 55-11A-03(a)."

34 **SECTION 10.** G.S. 55-2-03(a) reads as rewritten:

35 "(a) ~~Unless a delayed effective date is specified, the corporate~~ Corporate existence
36 begins when the articles of incorporation ~~are filed.~~ become effective."

37 **SECTION 11.** G.S. 55-7-04 reads as rewritten:

38 "**§ 55-7-04. Action without meeting.**

39 (a) Action required or permitted by this Chapter to be taken at a shareholders'
40 meeting may be taken without a ~~meeting~~ meeting, without prior notice except as
41 required by subsection (d) of this section, if the action is taken by all the shareholders
42 entitled to vote on the action or, if so provided in the articles of incorporation of a
43 corporation that is not a public corporation at the time the action is taken, by
44 shareholders having not less than the minimum number of votes that would be

1 necessary to take the action at a meeting at which all shareholders entitled to vote were
2 present and voted. The action must be evidenced by one or more written consents
3 bearing the date of signature and signed by all the number of shareholders sufficient to
4 take the action without a meeting, before or after such action, describing the action
5 taken and delivered to the corporation for inclusion in the minutes or filing with the
6 corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a
7 shareholder's consent to action taken without meeting may be in electronic form and
8 delivered by electronic means.

9 (b) If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for
10 determining shareholders entitled to take action without a meeting is the date the first
11 shareholder signs the consent under subsection (a). No written consent shall be effective
12 to evidence the action referred to therein unless, within 60 days after the earliest date
13 appearing on a written consent delivered to the corporation in the manner required by
14 this section, the corporation receives written consents signed by shareholders sufficient
15 to take the action without a meeting.

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

18 (d) ~~If this Chapter requires that notice of proposed action be given to nonvoting~~
19 ~~shareholders and the action is to be taken by unanimous consent of the voting~~
20 ~~shareholders, the corporation must give its nonvoting shareholders written notice of the~~
21 ~~proposed action at least 10 days before the action is taken. Unless the articles of~~
22 ~~incorporation otherwise provide, if shareholder approval is required by this Chapter for~~
23 ~~an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, a~~
24 ~~plan of merger, conversion, or share exchange pursuant to Article 11 of this Chapter, the~~
25 ~~sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's~~
26 ~~property pursuant to Article 12 of this Chapter, or a proposal for dissolution pursuant to~~
27 ~~Article 14 of this Chapter, and the approval is to be obtained through action without~~
28 ~~meeting, the corporation must give its shareholders, other than shareholders who~~
29 ~~consent to the action, written notice of the proposed action at least 10 days before the~~
30 ~~action is taken.~~ The notice ~~must~~ shall contain or be accompanied by the same material
31 that, under this Chapter, would have been required to be sent to ~~nonvoting~~ shareholders
32 not entitled to vote on the action in a notice of meeting at which the proposed action
33 would have been submitted to the shareholders for action.

34 (e) If action is taken without a meeting by less than all shareholders entitled to
35 vote on the action, the corporation shall give written notice to all shareholders who have
36 not consented to the action and who, if the action had been taken at a meeting, would
37 have been entitled to notice of the meeting with the same record date as the action taken
38 without a meeting, within 10 days after the action is taken. The notice shall describe the
39 proposed action and indicate that the action has been taken without a meeting of
40 shareholders. Failure to comply with the requirements of this subsection shall not
41 invalidate any action taken that otherwise complies with this section."

42 **SECTION 12.** Article 7 of Chapter 55 is amended by adding a new section
43 to read:

44 "**§ 55-7-08. Attendance.**

1 To the extent authorized by a corporation's board of directors, a shareholder or the
2 shareholder's proxy not physically present at a meeting of shareholders may attend the
3 meeting by electronic or other means of remote communication that allows the
4 shareholder or proxy (i) to read or to hear the meeting proceedings substantially
5 concurrently as the proceedings occur, (ii) to be read or to be heard substantially
6 concurrently as the shareholder or proxy communicates, and (iii) to vote on matters to
7 which the shareholder or proxy is entitled to vote."

8 **SECTION 13.** G.S. 55-7-20(c) reads as rewritten:

9 "(c) The corporation shall make the shareholders' list available at the meeting, and
10 any shareholder, personally or by or with his representative, is entitled to inspect the list
11 at any time during the meeting or any adjournment. The corporation is not required to
12 make the list available through electronic or other means of remote communication to a
13 shareholder or proxy attending the meeting by remote communication pursuant to G.S.
14 55-7-08."

15 **SECTION 14.** G.S. 55-7-22(b) reads as rewritten:

16 "(b) A shareholder may appoint one or more proxies to vote or otherwise act for ~~him~~
17 the shareholder by signing an appointment form, either personally or by ~~his~~ the
18 shareholder's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile~~
19 ~~transmission, or equivalent reproduction of a writing appointing one or more~~
20 ~~proxies.~~ Without limiting G.S. 55-1-50, an appointment in the form of an electronic
21 record that bears the shareholder's electronic signature and that may be directly
22 reproduced in paper form by an automated process shall be deemed a valid appointment
23 form within the meaning of this section. In addition, if and to the extent permitted by the
24 ~~corporation, a public corporation may permit~~ a shareholder ~~may to~~ appoint one or more
25 proxies (i) ~~by an electronic mail message or other form of electronic, wire, or wireless~~
26 ~~communication that provides a written statement appearing to have been sent by the~~
27 ~~shareholder, or (ii) in the case of a public corporation, by any kind of electronic or~~
28 telephonic transmission, even if not accompanied by written communication, under
29 circumstances or together with information from which the corporation can reasonably
30 assume that the appointment was made or authorized by the shareholder."

31 **SECTION 15.** G.S. 55-8-21(a) reads as rewritten:

32 "(a) Unless the articles of incorporation or bylaws provide otherwise, action
33 required or permitted by this Chapter to be taken at a board of directors' meeting may be
34 taken without a meeting if the action is taken by all members of the board. The action
35 must be evidenced by one or more written consents signed by each director before or
36 after such action, describing the action taken, and included in the minutes or filed with
37 the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-
38 50, a director's consent to action taken without meeting may be in electronic form and
39 delivered by electronic means."

40 **SECTION 16.** G.S. 55-9-01(b)(1) reads as rewritten:

41 "(1) 'Business combination' includes any ~~merger or consolidation merger,~~
42 consolidation, or conversion of a corporation with or into any other
43 corporation or any unincorporated entity, or the sale or lease of all or
44 any substantial part of the corporation's assets to, or any payment, sale

1 or lease to the corporation or any subsidiary thereof in exchange for
2 securities of the corporation of any assets (except assets having an
3 aggregate fair market value of less than five million dollars
4 (\$5,000,000)) of any other entity."

5 **SECTION 17.** Chapter 55 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 11A.

8 "Conversions.

9 "Part 1. Conversion to Corporation.

10 **"§ 55-11A-01. Conversion.**

11 A business entity, other than a domestic corporation, may convert to a domestic
12 corporation if:

- 13 (1) The conversion is permitted by the laws of the state or country
14 governing the organization and internal affairs of the converting
15 business entity; and
16 (2) The converting business entity complies with the requirements of this
17 Part and, to the extent applicable, the laws referred to in subdivision
18 (1) of this section.

19 **"§ 55-11A-02. Plan of conversion.**

20 (a) The converting business entity shall approve a written plan of conversion
21 containing:

- 22 (1) The name of the converting business entity, its type of business entity,
23 and the state or country whose laws govern its organization and
24 internal affairs;
25 (2) The name of the resulting domestic corporation into which the
26 converting business entity shall convert;
27 (3) The terms and conditions of the conversion; and
28 (4) The manner and basis for converting the interests in the converting
29 business entity into shares, obligations, or other securities of the
30 resulting domestic corporation or into cash or other property in whole
31 or in part.

32 The plan of conversion may contain other provisions relating to the conversion.

33 (b) The plan of conversion shall be approved in accordance with the laws of the
34 state or country governing the organization and internal affairs of the converting
35 business entity.

36 (c) After a plan of conversion has been approved as provided in subsection (b) of
37 this section, but before articles of incorporation for the resulting domestic corporation
38 become effective, the plan of conversion may be amended or abandoned to the extent
39 permitted by the laws that govern the organization and internal affairs of the converting
40 business entity.

41 **"§ 55-11A-03. Filing of articles of incorporation by converting entity.**

42 (a) After a plan of conversion has been approved by the converting business
43 entity as provided in G.S. 55-11A-02, the converting business entity shall deliver
44 articles of incorporation to the Secretary of State for filing. In addition to the matters

1 required or permitted by G.S. 55-2-02, the articles of incorporation shall contain articles
2 of conversion stating:

- 3 (1) That the corporation is being formed pursuant to a conversion of a
4 business entity;
5 (2) The name of the converting business entity, its type of business entity,
6 and the state or country whose laws govern its organization and
7 internal affairs; and
8 (3) That a plan of conversion has been approved by the converting
9 business entity as required by law.

10 (b) If the plan of conversion is abandoned after the articles of incorporation have
11 been filed with the Secretary of State but before the articles of incorporation become
12 effective, the converting business entity shall deliver to the Secretary of State for filing
13 prior to the time the articles of incorporation become effective an amendment to the
14 articles of incorporation withdrawing the articles of incorporation.

15 (c) The conversion takes effect when the articles of incorporation become
16 effective.

17 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

18 **"§ 55-11A-04. Effects of conversion.**

19 When the conversion takes effect:

- 20 (1) The converting business entity ceases its prior form of organization
21 and continues in existence as the resulting domestic corporation;
22 (2) The title to all real estate and other property owned by the converting
23 business entity continues vested in the resulting domestic corporation
24 without reversion or impairment;
25 (3) All liabilities of the converting business entity continue as liabilities of
26 the resulting domestic corporation;
27 (4) A proceeding pending by or against the converting business entity may
28 be continued as if the conversion did not occur; and
29 (5) The interests in the converting business entity that are to be converted
30 into shares, obligations, or other securities of the resulting domestic
31 corporation or into the right to receive cash or other property are
32 thereupon so converted, and the former holders of interests in the
33 converting business entity are entitled only to the rights provided in the
34 plan of conversion.

35 The conversion shall not affect the liability or absence of liability of any holder of an
36 interest in the converting business entity for any acts, omissions, or obligations of the
37 converting business entity made or incurred prior to the effectiveness of the conversion.
38 The cessation of the existence of the converting business entity in its prior form of
39 organization in the conversion shall not constitute a dissolution or termination of the
40 converting business entity.

41 "Part 2. Conversion of Corporation.

42 **"§ 55-11A-10. Conversion.**

43 A domestic corporation may convert to a different type of business entity if:

1 (1) The conversion is permitted by the laws of the state or country
2 governing the organization and internal affairs of such other type of
3 business entity; and

4 (2) The converting domestic corporation complies with the requirements
5 of this Part and, to the extent applicable, the laws referred to in
6 subdivision (1) of this section.

7 **"§ 55-11A-11. Plan of conversion.**

8 (a) The converting domestic corporation shall approve a written plan of
9 conversion containing:

10 (1) The name of the converting domestic corporation;

11 (2) The name of the resulting business entity into which the domestic
12 corporation shall convert, its type of business entity, and the state or
13 country whose laws govern its organization and internal affairs;

14 (3) The terms and conditions of the conversion; and

15 (4) The manner and basis for converting the shares of the domestic
16 corporation into interests, obligations, or securities of the resulting
17 business entity or into cash or other property in whole or in part.

18 The plan of conversion may contain other provisions relating to the conversion.

19 (b) For a plan of conversion to be approved:

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

26 (2) The shareholders entitled to vote shall approve the plan.

27 (c) The board of directors may condition its submission of the proposed
28 conversion on any basis.

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

33 (e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the
34 shareholders or the board of directors, acting pursuant to subsection (c) of this section,
35 require a greater vote or a vote by voting groups, the plan of conversion to be authorized
36 shall be approved by each voting group entitled to vote separately on the plan by a
37 majority of all the votes entitled to be cast on the plan by that voting group and, for the
38 purpose of Article 9 of this Chapter or any provision in the articles of incorporation or
39 bylaws adopted prior to October 1, 2001, a conversion shall be deemed to be included
40 within the term "merger". If any shareholder of the converting domestic corporation has
41 or will have personal liability for any existing or future obligation of the resulting
42 business entity solely as a result of holding an interest in the resulting business entity,
43 then in addition to the requirements of the preceding sentence, approval of the plan of

1 conversion by the domestic corporation shall require the affirmative vote or written
2 consent of that shareholder.

3 (f) Separate voting by voting groups is required on a plan of conversion if the
4 plan contains a provision that, if contained in a proposed amendment to articles of
5 incorporation, would require action by one or more separate voting groups on the
6 proposed amendment under G.S. 55-10-04, except where the consideration to be
7 received in exchange for the shares of that group consists solely of cash.

8 (g) After a plan of conversion has been approved by a domestic corporation but
9 before the articles of conversion become effective, the plan of conversion (i) may be
10 amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any
11 contractual rights, as provided in the plan of conversion or, if there is no such provision,
12 as determined by the board of directors without further shareholder action.

13 **"§ 55-11A-12. Articles of conversion.**

14 (a) After a plan of conversion has been approved by the converting domestic
15 corporation as provided in G.S. 55-11A-11, the converting domestic corporation shall
16 deliver articles of conversion to the Secretary of State for filing. The articles of
17 conversion shall state:

18 (1) The name of the converting domestic corporation;

19 (2) The name of the resulting business entity, its type of business entity,
20 the state or country whose laws govern its organization and internal
21 affairs, and, if the resulting business entity is not authorized to transact
22 business or conduct affairs in this State, a designation of its mailing
23 address and a commitment to file with the Secretary of State a
24 statement of any subsequent change in its mailing address; and

25 (3) That a plan of conversion has been approved by the domestic
26 corporation as required by law.

27 If the domestic corporation is converting to a business entity whose formation or
28 status requires the filing of a document with the Secretary of State, then the articles of
29 conversion shall be included as part of the document in addition to the matters otherwise
30 required or permitted by law.

31 If the plan of conversion is abandoned after the articles of conversion have been
32 filed with the Secretary of State but before the articles of conversion become effective,
33 the converting domestic corporation promptly shall deliver to the Secretary of State for
34 filing prior to the time the articles of conversion become effective an amendment to the
35 articles of conversion withdrawing the articles of conversion.

36 (b) The conversion takes effect when the articles of conversion become effective.

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

38 **"§ 55-11A-13. Effects of conversion.**

39 (a) When the conversion takes effect:

40 (1) The converting domestic corporation ceases its prior form of
41 organization and continues in existence as the resulting business entity;

42 (2) The title to all real estate and other property owned by the converting
43 domestic corporation continues vested in the resulting business entity
44 without reversion or impairment;

- 1 (3) All liabilities of the converting domestic corporation continue as
2 liabilities of the resulting business entity;
- 3 (4) A proceeding pending by or against the converting domestic
4 corporation may be continued as if the conversion did not occur;
- 5 (5) The shares in the converting domestic corporation that are to be
6 converted into interests, obligations, or securities of the resulting
7 business entity or into the right to receive cash or other property are
8 thereupon so converted, and the former shareholders of the converting
9 domestic corporation are entitled only to the rights provided in the plan
10 of conversion or any rights they may have under Article 13 of this
11 Chapter; and
- 12 (6) The resulting business entity is deemed to agree that it will promptly
13 pay to the dissenting former shareholders of the converting domestic
14 corporation the amount, if any, to which they are entitled under Article
15 13 of this Chapter and otherwise to comply with the requirements of
16 Article 13 as if it were a domestic corporation.

17 The conversion shall not affect the liability or absence of liability of any shareholder
18 of the converting domestic corporation for any acts, omissions, or obligations of the
19 converting domestic corporation made or incurred prior to the effectiveness of the
20 conversion. The cessation of the existence of the converting domestic corporation in its
21 form of organization as a domestic corporation in the conversion shall not constitute a
22 dissolution or termination of the converting domestic corporation.

23 (b) If the resulting business entity is not a domestic limited liability company or a
24 domestic limited partnership, when the conversion takes effect the resulting business
25 entity is deemed:

- 26 (1) To agree that it may be served with process in this State for
27 enforcement of (i) any obligation of the converting domestic
28 corporation, (ii) the rights of dissenting shareholders of the converting
29 domestic corporation under Article 13 of this Chapter, and (iii) any
30 obligation of the resulting business entity arising from the conversion;
31 and
- 32 (2) To have appointed the Secretary of State as its agent for service of
33 process in any proceeding described in subdivision (1) of this
34 subsection. Service on the Secretary of State of process authorized by
35 this subdivision shall be made by delivering to and leaving with the
36 Secretary of State, or with any clerk authorized by the Secretary of
37 State to accept service of process, duplicate copies of the process and
38 the fee required by G.S. 55-1-22(b). Upon receipt of service of process
39 on behalf of a resulting business entity in the manner provided for in
40 this section, the Secretary of State shall immediately mail a copy of the
41 process by registered or certified mail, return receipt requested, to the
42 resulting business entity. If the resulting business entity is authorized
43 to transact business or conduct affairs in this State, the address for
44 mailing shall be its principal office designated in the latest document

1 filed with the Secretary of State that is authorized by law to designate
2 the principal office or, if there is no principal office on file, its
3 registered office. If the resulting business entity is not authorized to
4 transact business or conduct affairs in this State, the address for
5 mailing shall be the mailing address designated pursuant to G.S. 55-
6 11A-12(a)(2)."

7 **SECTION 18.** G.S. 55-11-07(a) reads as rewritten:

8 "(a) One or more foreign corporations may merge or enter into a share exchange
9 with one or more domestic corporations if:

- 10 (1) In a merger, the merger is permitted by the law of the state or country
11 under whose law each foreign corporation is incorporated and each
12 foreign corporation complies with that law in effecting the merger;
13 (2) In a share exchange, the corporation whose shares will be acquired is a
14 domestic corporation, whether or not a share exchange is permitted by
15 the law of the state or country under whose law the acquiring
16 corporation is incorporated;
17 (3) The foreign corporation complies with G.S. 55-11-05 if it is the
18 surviving corporation of the merger or acquiring corporation of the
19 share ~~exchange~~; exchange and, if the foreign corporation is not
20 authorized to transact business in this State, includes in the articles of
21 merger or articles of share exchange filed pursuant to G.S. 55-11-05 a
22 designation of the foreign corporation's mailing address and a
23 commitment to file with the Secretary of State a statement of any
24 subsequent change in its mailing address; and
25 (4) Each domestic corporation complies with the applicable provisions of
26 G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving
27 corporation of the merger or acquiring corporation of the share
28 exchange, with G.S. 55-11-05."

29 **SECTION 19.** G.S. 55-11-07(b) reads as rewritten:

30 "(b) Upon the merger or share exchange taking effect, the surviving foreign
31 corporation of a merger and the acquiring foreign corporation of a share exchange is
32 deemed:

- 33 (1) To appoint the Secretary of State as its agent for service of process in a
34 proceeding to enforce any obligation or the rights of dissenting
35 shareholders of each domestic corporation party to the merger or share
36 exchange; and
37 (2) To agree that it will promptly pay to the dissenting shareholders of
38 each domestic corporation party to the merger or share exchange the
39 amount, if any, to which they are entitled under Article 13.

40 Service on the Secretary of State of any process authorized by this subsection shall
41 be made by delivering to and leaving with the Secretary of State, or with any clerk
42 authorized by the Secretary of State to accept service of process, duplicate copies of the
43 process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in
44 the manner provided in this subsection, the Secretary of State shall immediately mail a

copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section."

SECTION 20. G.S. 55-11-09(a) reads as rewritten:

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

- (1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;
- (2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated and each foreign nonprofit corporation complies with that law in effecting the merger;
- (3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving ~~corporation~~; corporation and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
- (4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05."

SECTION 21. G.S. 55-11-09(b) reads as rewritten:

"(b) Upon the merger taking effect, if ~~the domestic or a~~ foreign nonprofit corporation is the surviving corporation, then it is deemed:

- (1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and
- (2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.

Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office

1 on file, its registered office. If the foreign nonprofit corporation is not authorized to
2 conduct affairs in this State, the address for mailing shall be the mailing address
3 designated pursuant to subdivision (3) of subsection (a) of this section."

4 **SECTION 22.** G.S. 55-11-10(a) is repealed.

5 **SECTION 23.** G.S. 55-11-10(c) reads as rewritten:

6 "(c) Each merging domestic corporation and each other merging business entity
7 shall approve a written plan of merger containing:

- 8 (1) For each merging business entity, its name, type of business entity, and
9 the state or country whose laws govern its organization and internal
10 affairs;
- 11 (2) The name of the merging business entity that shall survive the merger;
- 12 (3) The terms and conditions of the merger;
- 13 (4) The manner and basis for converting the interests in each merging
14 business entity into interests, obligations, or securities of the surviving
15 business entity or into cash or other property in whole or in part; and
- 16 (5) If the surviving business entity is a domestic corporation, any
17 amendments to its articles of incorporation that are to be made in
18 connection with the merger.

19 The plan of merger may contain other provisions relating to the merger.

20 In the case of a domestic corporation, approval of the plan of merger requires that
21 the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03
22 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03,
23 be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a
24 merging domestic corporation has or will have personal liability for any existing or
25 future obligation of the surviving business entity solely as a result of holding an interest
26 in the surviving business entity, then in addition to the requirements of the preceding
27 sentence, approval of the plan of merger by the domestic corporation shall require the
28 affirmative vote or written consent of that shareholder. In the case of each other
29 merging business entity, the plan of merger must be approved in accordance with the
30 laws of the state or country governing the organization and internal affairs of that
31 merging business entity.

32 After a plan of merger has been approved by a domestic corporation but before the
33 articles of merger become effective, the plan of merger (i) may be amended as provided
34 in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as
35 provided in the plan of merger or, if there is no such provision, as determined by the
36 board of directors without further shareholder action."

37 **SECTION 24.** G.S. 55-11-10(e1)(2) reads as rewritten:

- 38 "(2) To have appointed the Secretary of State as its agent for service of
39 process in any such proceeding. Service on the Secretary of State of
40 any such process shall be made by delivering to and leaving with the
41 Secretary of ~~State~~ State, or with any clerk authorized by the Secretary
42 of State to accept service of process, duplicate copies of such process
43 and the fee required by G.S. 55-1-22(b). Upon receipt of service of
44 process on behalf of a surviving business entity in the manner provided

1 for in this section, the Secretary of State shall immediately mail a copy
2 of the process by registered or certified mail, return receipt requested,
3 to the surviving business entity. If the surviving business entity is
4 authorized to transact business or conduct affairs in this State, the
5 address for mailing shall be its principal office designated in the latest
6 document filed with the Secretary of State that is authorized by law to
7 designate the principal office or, if there is no principal office on file,
8 its registered office. If the surviving business entity is not authorized to
9 transact business or conduct affairs in this State, the address for
10 mailing shall be the mailing address designated pursuant to
11 subdivision (3) of subsection (d) of this section."

12 **SECTION 25.** G.S. 55-11-10(d) reads as rewritten:

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

- 17 (1) The plan of merger;
- 18 (2) For each merging business entity, its name, type of business entity, and
19 the state or country whose laws govern its organization and internal
20 affairs;
- 21 (3) The name and address of the surviving business entity; entity and, if
22 the surviving business entity is not authorized to transact business or
23 conduct affairs in this State, a designation of its mailing address and a
24 commitment to file with the Secretary of State a statement of any
25 subsequent change in its mailing address;
- 26 (4) A statement that the plan of merger has been approved by each
27 merging business entity in the manner required by law; and
- 28 (5) The effective date and time of merger if it is not to be effective at the
29 time of filing of the articles of merger.

30 If the plan of merger is amended or abandoned after the articles of merger have been
31 filed but before the articles of merger become effective, the surviving business entity
32 promptly shall deliver to the Secretary of State for filing prior to the time the articles of
33 merger become effective an amendment to the articles of merger reflecting the
34 amendment or abandonment of the plan of merger.

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

36 **SECTION 26.** G.S. 55-13-02(a) is amended by addition of the following
37 new subdivision to read:

38 "(2a) Consummation of a plan of conversion pursuant to Part 2 of Article
39 11A of this Chapter;".

40 **SECTION 27.** G.S. 55-13-22(a) reads as rewritten:

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

1 dissenters' rights under G.S. 55-13-02 is approved by shareholder action without
2 meeting pursuant to G.S. 55-7-04, the corporation shall mail by registered or certified
3 mail, return receipt requested, a written dissenters' notice to each shareholder entitled to
4 assert dissenters' rights. A shareholder who consents to such action taken without
5 meeting pursuant to G.S. 55-7-04 approving a proposed corporate action is not entitled
6 to payment for the shareholder's shares under this Article with respect to that corporate
7 action."

8 **SECTION 28.** G.S. 55-15-10(b) reads as rewritten:

9 "(b) Whenever a foreign corporation authorized to transact business in this State
10 shall fail to appoint or maintain a registered agent in this State, or whenever its
11 registered agent cannot with due diligence be found at the registered office, or whenever
12 its certificate of authority shall have been revoked under G.S. 55-15-31, then the
13 Secretary of State shall be an agent of such corporation upon whom any such process,
14 notice or demand may be served. Service on the Secretary of State of any such process,
15 notice or demand shall be made by delivering to and leaving with ~~him~~ the Secretary of
16 State or with any clerk ~~having charge of the corporation department of his office,~~
17 authorized by the Secretary of State to accept service of process, duplicate copies of
18 such process, notice or ~~demand~~ and the fee required by G.S. 55-1-22(b). In the
19 event any such process, notice or demand is served on the Secretary of State, ~~he~~ the State in
20 the manner provided in this subsection, the Secretary of State shall immediately mail
21 one of the copies thereof, by registered or certified mail, return receipt requested, to the
22 corporation at its principal office shown in its most recent annual report or in any
23 subsequent communication received from the corporation stating the current mailing
24 address of its principal office or, if there is no mailing address for the principal office on
25 file, to the corporation at its registered office. Service on a foreign corporation under
26 this subsection shall be effective for all purposes from and after the date of such
27 service on the Secretary of State."

28 **SECTION 29.** G.S. 55-15-20(b) reads as rewritten:

29 "(b) A foreign corporation authorized to transact business in this State may apply
30 for a certificate of withdrawal by delivering an application to the Secretary of State for
31 filing. The application must set forth:

- 32 (1) The name of the foreign corporation and the name of the state or
33 country under whose law it is incorporated;
- 34 (2) That it is not transacting business in this State and that it surrenders its
35 authority to transact business in this State;
- 36 (3) That the corporation revokes the authority of its registered agent to
37 accept service of process and consents that service of process in any
38 action or proceeding based upon any cause of action arising in this
39 State, or arising out of business transacted in this State, during the time
40 the corporation was authorized to transact business in this State may
41 thereafter be made on such corporation by service thereof on the
42 Secretary of State;

1 (4) A mailing address to which the Secretary of State may mail a copy of
2 any process served on ~~him~~ the Secretary of State under subdivision (3);
3 and

4 (5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a
5 statement of any subsequent change in its mailing address."

6 **SECTION 30.** G.S. 55-15-20(c) reads as rewritten:

7 "(c) After the withdrawal of the foreign corporation is effective, service of process
8 on the Secretary of State in accordance with subsection ~~(b)(3)~~ (b) of this section ~~is~~
9 ~~service on the foreign corporation. shall be made by delivering to and leaving with the~~
10 Secretary of State or any clerk authorized by the Secretary of State to accept service of
11 process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon
12 receipt of ~~process,~~ process in the manner provided in this subsection, the Secretary of
13 State shall immediately mail a copy of the process by registered or certified mail, return
14 receipt requested, to the foreign corporation at the mailing address ~~set forth under~~
15 designated pursuant to subsection ~~(b)~~ (b) of this section."

16 **SECTION 31.** G.S. 55-15-21 reads as rewritten:

17 "**§ 55-15-21. Withdrawal of foreign corporation by reason of a merger,**
18 **consolidation, or conversion.**

19 (a) Whenever a foreign corporation authorized to transact business in this State
20 ceases its separate existence as a result of a statutory merger or consolidation permitted
21 by the laws of the state or country under which it was incorporated, or converts into
22 another entity as permitted by those laws, the surviving or resulting entity shall apply
23 for a certificate of withdrawal for the foreign corporation by delivering to the Secretary
24 of State for filing a copy of the articles of merger, consolidation, or conversion or a
25 certificate reciting the facts of the merger, consolidation, or conversion, duly
26 authenticated by the Secretary of State or other official having custody of corporate
27 records in the state or country under the laws of which such foreign corporation was
28 incorporated. If the surviving or resulting entity is not authorized to transact business in
29 this State the articles or certificate must be accompanied by an application which must
30 set forth:

31 (1) The name of the foreign corporation authorized to transact business in
32 this State, the type of entity and name of the surviving or resulting
33 entity, and a statement that the surviving or resulting entity is not
34 authorized to transact business in this State;

35 (2) A statement that the surviving or resulting entity consents that service
36 of process based upon any cause of action arising in this State, or
37 arising out of business transacted in this State, during the time the
38 foreign corporation was authorized to transact business in this State
39 may thereafter be made by service thereof on the Secretary of State;

40 (3) A mailing address to which the Secretary of State may mail a copy of
41 any process served on ~~him~~ the Secretary of State under subdivision
42 (a)(2); and

43 (4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a
44 statement of any subsequent change in its mailing address.

1 (b) If the Secretary of State finds that the articles or certificate and the application
2 for withdrawal, if required, conform to law the Secretary of State shall:

- 3 (1) Endorse on the articles or certificate and the application for
4 withdrawal, if required, the word "filed" and the hour, day, month and
5 year of the filing thereof;
6 (2) File the articles or certificate and the application, if required;
7 (3) Issue a certificate of withdrawal; and
8 (4) Send to the surviving or resulting entity or its representative the
9 certificate of withdrawal, together with the exact or conformed copy of
10 the application, if required, affixed thereto.

11 (c) After the withdrawal of the foreign corporation is effective, service of process
12 on the Secretary of State in accordance with subsection (a) of this section shall be made
13 by delivering to and leaving with the Secretary of State, or any clerk authorized by the
14 Secretary of State to accept service of process, duplicate copies of the process and the
15 fee required by G.S. 55-1-22(b). Upon receipt of process in the manner provided in this
16 subsection, the Secretary of State shall immediately mail a copy of the process by
17 registered or certified mail, return receipt requested, to the surviving or resulting entity
18 at the mailing address designated pursuant to subsection (a) of this section."

19
20 **PART II. AMENDMENTS TO THE NORTH CAROLINA NONPROFIT**
21 **CORPORATION ACT.**

22 **SECTION 32.** G.S. 55A-1-20(f) reads as rewritten:

23 "(f) A document submitted by a domestic or foreign corporation or business
24 corporation shall be executed:

- 25 (1) By the presiding officer of the board of directors by its president, or by
26 another of its officers;
27 (2) If directors have not been selected or the corporation has not been
28 formed, by an incorporator; or
29 (3) If the corporation is in the hands of a receiver, trustee, or other
30 court-appointed fiduciary, by that fiduciary.

31 A document submitted by an unincorporated entity must be executed by a person
32 authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated
33 entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if
34 the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to
35 ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the unincorporated entity is any other
36 partnership as defined in G.S. 59-36 whether or not formed under the laws of this
37 State."

38 **SECTION 33.** G.S. 55A-1-40(20) reads as rewritten:

39 "(20) 'Principal office' means the office (in or out of this State) so designated
40 in the articles of incorporation, the Designation of Principal Office
41 Address form, or in any subsequent Corporation's Statement of Change
42 of Principal Office Address form filed with the Secretary of State
43 where the principal offices of a domestic or foreign corporation are
44 ~~located.~~ located, as most recently designated by the domestic or

1 foreign corporation in its articles of incorporation, a Designation of
2 Principal Office Address form, a Statement of Change of Principal
3 Office form, or in the case of a foreign corporation, its application for
4 a certificate of authority."

5 **SECTION 34.** G.S. 55A-1-40 is amended by adding the following new
6 subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

7 **"§ 55A-1-40. Chapter definitions.**

8 In this Chapter unless otherwise specifically provided:

9 ...

10 (3a) 'Business corporation' or 'domestic business corporation' means a
11 corporation as defined in G.S. 55-1-40.

12 ...

13 (8a) 'Domestic limited liability company' has the same meaning as in G.S.
14 57C-1-03.

15 (8b) 'Domestic liability partnership' has the same meaning as in G.S. 59-
16 103.

17 ...

18 (10a) 'Foreign business corporation' means a foreign corporation as defined
19 in G.S. 55-1-40.

20 ...

21 (11a) 'Foreign limited liability company' has the same meaning as in G.S.
22 57C-1-03.

23 (11b) 'Foreign limited partnership' has the same meaning as in G.S. 59-103.

24"

25 **SECTION 35.** G.S. 55A-1-40(24a) reads as rewritten:

26 "(24a) 'Unincorporated entity' means a domestic or foreign limited liability
27 ~~company as defined in G.S. 57C-1-03, company,~~ a domestic or foreign
28 limited partnership as defined in G.S. 59-102, a registered limited
29 liability partnership or foreign limited liability partnership as defined
30 in G.S. 59-32, or any other partnership as defined in G.S. 59-36,
31 whether or not formed under the laws of this State, ~~including a~~
32 ~~registered limited liability partnership as defined in G.S. 59-32 and any~~
33 ~~other limited liability partnership formed under a law other than the~~
34 ~~laws of this State.~~State."

35 **SECTION 36.** G.S. 55A-11-06(a) reads as rewritten:

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

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

41 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the
42 surviving corporation of the ~~merger; merger and,~~ if the foreign
43 corporation is not authorized to conduct affairs in this State, includes
44 in the articles of merger filed with the Secretary of State pursuant to

1 G.S. 55A-11-04 a designation of the foreign corporation's mailing
2 address and a commitment to file with the Secretary of State a
3 statement of any subsequent change in its mailing address; and

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

7 **SECTION 37.** G.S. 55A-11-06(b) reads as rewritten:

8 "(b) Upon the merger taking effect, ~~if the surviving corporation, if it does not have~~
9 ~~a registered agent in this State, corporation is a foreign corporation, it shall be deemed~~
10 ~~to have appointed the Secretary of State as its registered agent for service of process in a~~
11 ~~proceeding to enforce any obligation of a domestic corporation party to the merger, until~~
12 ~~such time as it appoints a registered agent in this State merger. Service on the Secretary~~
13 ~~of State of any process authorized by this subsection shall be made by delivering to and~~
14 ~~leaving with the Secretary of State, or with any clerk authorized by the Secretary of~~
15 ~~State to accept service of process, duplicate copies of the process and the fee required~~
16 ~~by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this~~
17 ~~subsection, the Secretary of State shall immediately mail a copy of the process by~~
18 ~~registered or certified mail, return receipt requested, to the foreign nonprofit~~
19 ~~corporation. If the foreign corporation is authorized to conduct affairs in this State, the~~
20 ~~address for mailing shall be its principal office or, if there is no mailing address for the~~
21 ~~principal office on file, its registered office. If the foreign corporation is not authorized~~
22 ~~to conduct affairs in this State, the address for mailing shall be the mailing address~~
23 ~~designated pursuant to subdivision (2) of subsection (a) of this section."~~

24 **SECTION 38.** G.S. 55A-11-08(a) reads as rewritten:

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

- 27 (1) Each domestic business corporation complies with the applicable
28 provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;
29 (2) In a merger involving one or more foreign business corporations, the
30 merger is permitted by the law of the state or country under whose law
31 each foreign business corporation is incorporated and each foreign
32 business corporation complies with that law in effecting the merger;
33 (3) The domestic or foreign business corporation complies with G.S.
34 55A-11-04 if it is the surviving ~~corporation; corporation and, in the~~
35 ~~case of a foreign business corporation not authorized to transact~~
36 ~~business in this State, includes in the articles of merger filed pursuant~~
37 ~~to G.S. 55A-11-04 a designation of the foreign business corporation's~~
38 ~~mailing address and a commitment to file with the Secretary of State a~~
39 ~~statement of any subsequent change in its mailing address; and~~
40 (4) Each domestic nonprofit corporation complies with the applicable
41 provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the
42 surviving corporation, with G.S. 55A-11-04."

43 **SECTION 39.** G.S. 55A-11-08(b) reads as rewritten:

1 "(b) Upon the merger taking effect, if the surviving corporation ~~does not have a~~
2 ~~registered agent in this State, is a foreign business corporation,~~ it shall be deemed to
3 have appointed the Secretary of State as its ~~registered agent~~ for service of process in a
4 proceeding to enforce any obligation of a domestic nonprofit corporation party to the
5 ~~merger, until such time as it appoints a registered agent in this State.~~ merger. Service on
6 the Secretary of State of any process authorized by this subsection shall be made by
7 delivering to and leaving with the Secretary of State, or with any clerk authorized by the
8 Secretary of State to accept service of process, duplicate copies of the process and the
9 fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner
10 provided in this subsection, the Secretary of State shall immediately mail a copy of the
11 process by registered or certified mail, return receipt requested, to the foreign business
12 corporation. If the foreign business corporation is authorized to transact business in this
13 State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17)
14 or, if there is no mailing address for the principal office on file, its registered office. If
15 the foreign business corporation is not authorized to transact business in this State, the
16 address for mailing shall be the mailing address designated pursuant to subdivision (3)
17 of subsection (a) of this section."

18 **SECTION 40.** G.S. 55A-11-09(a) reads as rewritten:

19 "(a) As used in this section, 'business entity' means a domestic business
20 corporation as defined in G.S. 55-1-40 (including a professional corporation as defined
21 in G.S. 55B-2), a foreign business corporation as defined in G.S. 55-1-40 (including a
22 foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign
23 ~~nonprofit corporation as defined in G.S. 55A-1-40,~~ corporation, a domestic or foreign
24 limited liability ~~company~~ company, as defined in G.S. 57C-1-03, a domestic or foreign
25 limited ~~partnership~~ partnership, as defined in G.S. 59-102, a registered limited liability
26 partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other
27 partnership as defined in G.S. 59-36 whether or not formed under the laws of this
28 State."

29 **SECTION 41.** G.S. 55A-11-09(d) reads as rewritten:

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

- 34 (1) The plan of merger;
- 35 (2) For each merging business entity, its name, type of business entity, and
36 the state or country whose laws govern its organization and internal
37 affairs;
- 38 (3) The name of the surviving business entity and, if the surviving
39 business entity is not authorized to transact business or conduct affairs
40 in this State, a designation of its mailing address and a commitment to
41 file with the Secretary of State a statement of any subsequent change
42 in its mailing address;
- 43 (4) A statement that the plan of merger has been approved by each
44 merging business entity in the manner required by law; and

1 (5) The effective date and time of merger if it is not to be effective at the
2 time of filing of the articles of merger.

3 If the plan of merger is amended or abandoned after the articles of merger have been
4 filed but before the articles of merger become effective, the surviving business entity
5 ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of
6 merger become effective an amendment to the articles of merger reflecting the
7 amendment or abandonment of the plan of merger.

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

9 **SECTION 42.** G.S. 55A-11-09(e1)(2) reads as rewritten:

10 "(2) To have appointed the Secretary of State as its agent for service of
11 process in any such proceeding. Service on the Secretary of State of
12 any such process shall be made by delivering to and leaving with the
13 Secretary of ~~State~~ State, or with any clerk authorized by the Secretary
14 of State to accept service of process, duplicate copies of such process
15 and the fee required by G.S. 55A-1-22(b). Upon receipt of service of
16 process on behalf of a surviving business entity in the manner provided
17 ~~by for in~~ this section, the Secretary of State shall immediately mail a
18 copy of the process by registered or certified mail, return receipt
19 requested, to the surviving business entity. If the surviving business
20 entity is authorized to transact business or conduct affairs in this State,
21 the address for mailing shall be its principal office designated in the
22 latest document filed with the Secretary of State that is authorized by
23 law to designate the principal office or, if there is no principal office
24 on file, its registered office. If the surviving business entity is not
25 authorized to transact business or conduct affairs in this State, the
26 address for mailing shall be the mailing address designated pursuant to
27 subdivision (3) of subsection (d) of this section."

28 **SECTION 43.** G.S. 55A-15-10(b) reads as rewritten:

29 "(b) When a foreign corporation authorized to conduct affairs in this State fails to
30 appoint or maintain a registered agent in this State, or when its registered agent cannot
31 with due diligence be found at the registered office, or when its certificate of authority
32 shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent
33 of such corporation upon whom any process, notice, or demand may be served. Service
34 on the Secretary of State of any process, notice, or demand shall be made by delivering
35 to and leaving with the Secretary of State or with any clerk ~~having charge of the~~
36 ~~corporation department of the Secretary of State's office,~~ authorized by the Secretary of
37 State to accept service of process, duplicate copies of such process, notice, or ~~demand.~~
38 demand and the fee required by G.S. 55A-1-22(b). In the event any process, notice, or
39 demand is served on the Secretary of ~~State,~~ State in the manner provided for in this
40 subsection, ~~he~~ the Secretary of State shall immediately mail one of the copies thereof,
41 by registered or certified mail, return receipt requested, to the corporation at its principal
42 office ~~shown in its most recent annual report, if applicable, the articles of incorporation,~~
43 ~~the Designation of Principal Office Address form, in any subsequent Corporation's~~
44 ~~Statement of Change of Principal Office Address form, or in any subsequent~~

1 ~~communication received from the corporation stating the current mailing address of its~~
2 ~~principal office~~ or, if there is no mailing address for the principal office on file, to the
3 corporation at its registered office. Service on a foreign corporation under this
4 subsection shall be effective for all purposes from and after the date of ~~such~~ the service
5 on the Secretary of State."

6 **SECTION 44.** G.S. 55A-15-20(b)(5) reads as rewritten:

7 "(5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a
8 statement of any subsequent change in its mailing address."

9 **SECTION 45.** G.S. 55A-15-20(d) reads as rewritten:

10 "(d) After the withdrawal of the foreign corporation is effective, service of process
11 on the Secretary of State in accordance with ~~subdivision (b)(3)~~ subsection (b) of this
12 section ~~is service on the foreign corporation~~ shall be made by delivering to and leaving
13 with the Secretary of State or any clerk authorized by the Secretary of State to accept
14 service of process, duplicate copies of the process and the fee required by G.S. 55A-1-
15 22(b). Upon receipt of ~~process~~ process in the manner provided in this subsection, the
16 Secretary of State shall immediately mail a copy of the process by registered or certified
17 mail, return receipt requested, to the foreign corporation at the mailing address ~~set forth~~
18 under designated pursuant to subsection (b) of this section."

19 **SECTION 46.** G.S. 55A-15-21(a) reads as rewritten:

20 "(a) Whenever a foreign corporation authorized to conduct affairs in this State
21 ceases its separate existence as a result of a statutory merger or consolidation permitted
22 by the laws of the state or country under which it was incorporated, or converts into
23 another entity as permitted by those laws, the surviving or resulting entity shall apply
24 for a certificate of withdrawal for the foreign corporation by delivering to the Secretary
25 of State for filing a copy of the articles of merger, consolidation, or conversion or a
26 certificate reciting the facts of the merger, consolidation, or conversion duly
27 authenticated by the secretary of state or other official having custody of corporate
28 records in the state or country under the laws of which the foreign corporation was
29 incorporated. If the surviving or resulting entity is not authorized to conduct affairs in
30 this State, the articles or certificate shall be accompanied by an application which must
31 set forth:

- 32 (1) The name of the foreign corporation authorized to conduct affairs in
33 this State, the type of entity and the name of the surviving or resulting
34 entity, and a statement that the surviving or resulting entity is not
35 authorized to conduct affairs in this State;
- 36 (2) A statement that the surviving or resulting entity consents that service
37 of process based upon any cause of action arising in this State, or
38 arising out of affairs conducted in this State, during the time the
39 foreign corporation was authorized to conduct affairs in this State may
40 thereafter be made by service thereof on the Secretary of State;
- 41 (3) A mailing address to which the Secretary of State may mail a copy of
42 any process served on ~~him~~ the Secretary of State under subdivision
43 (a)(2) of this section; and

1 (4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future a~~
2 statement of any subsequent change in its mailing address."

3 **SECTION 47.** G.S. 55A-15-21 is amended by adding a new subsection to
4 read:

5 "(c) After the withdrawal of the foreign corporation is effective, service of process
6 on the Secretary of State in accordance with subsection (b) of this section shall be made
7 by delivering to and leaving with the Secretary of State, or any clerk authorized by the
8 Secretary of State to accept service of process, duplicate copies of the process and the
9 fee required by G.S. 55A-1-22(b). Upon receipt of process in the manner provided in
10 this subsection, the Secretary of State shall immediately mail a copy of the process by
11 registered or certified mail, return receipt requested, to the foreign corporation at the
12 mailing address designated pursuant to subsection (a) of this section."

13
14 **PART III. AMENDMENTS TO THE NORTH CAROLINA LIMITED**
15 **LIABILITY COMPANY ACT.**

16 **SECTION 48.** G.S. 57C-1-03 is amended by adding the following new
17 subdivisions, to be placed by the Revisor of Statutes in the appropriate order, to read:

18 "**§ 57C-1-03. Definitions.**

19 The following definitions apply in this Chapter, unless otherwise specifically
20 provided:

21 ...

22 (5a) Director. – For any limited liability company the management of
23 whose affairs is vested in whole or in part in persons other than its
24 managers pursuant to G.S. 57C-3-20(b), any person who is so vested
25 with, or is one of a group of persons so vested with, the authority to
26 direct the management of the limited liability company's affairs.

27 ...

28 (6a) Domestic nonprofit corporation. – A corporation as defined in G.S.
29 55A-1-40(5).

30 (6b) Executive. – For any limited liability company the management of
31 whose affairs is vested in whole or in part in persons other than its
32 managers pursuant to G.S. 57C-3-20(b), any person who is so vested
33 with authority to participate in the management of the limited liability
34 company's affairs under the direction of the limited liability company's
35 managers or directors.

36 ...

37 (9a) Foreign nonprofit corporation. – A foreign corporation as defined in
38 G.S. 55A-1-40(11) that is a nonprofit corporation as defined in G.S.
39 55A-1-40(17).

40 ...

41 (12a) Management of the affairs. – In respect of an entity, unless the context
42 indicates otherwise, the authority to direct and participate in the
43 management of the entity.

44 ...

1 (17a) Principal office. – The office, in or out of this State, where the
2 principal executive offices of a domestic or foreign limited liability
3 company are located, as designated in its most recent annual report
4 filed with the Secretary of State or, in the case of a domestic or foreign
5 limited liability company that has not yet filed an annual report, in its
6 articles of organization or application for a certificate of authority,
7 respectively.

8 "

9 **SECTION 49.** G.S. 57C-1-03(3a) reads as rewritten:

10 "(3a) Business entity. – A corporation (including a professional corporation
11 as defined in G.S. 55B-2), a foreign corporation (including a foreign
12 professional corporation defined in G.S. 55B-16), a domestic or
13 foreign nonprofit ~~corporation~~ corporation, as defined in G.S. 55A 1-
14 40, a domestic or foreign limited liability company, a domestic or
15 foreign limited ~~partnership~~ partnership, as defined in G.S. 59-102, a
16 registered limited liability partnership or foreign limited liability
17 partnership as defined in G.S. 59-32, or any other partnership as
18 defined in G.S. 59-36 whether or not formed under the laws of this
19 State ~~(including a registered limited liability partnership as defined in~~
20 ~~G.S. 59-32 and any other limited liability partnership formed under a~~
21 ~~law other than the laws of this State).~~ State."

22 **SECTION 50.** G.S. 57C-1-03(4) reads as rewritten:

23 "(4) ~~Corporation.~~ Corporation or domestic corporation. – Has the same
24 meaning as in G.S. 55-1-40(4)."

25 **SECTION 51.** G.S. 57C-1-03(13) reads as rewritten:

26 "(13) Manager. – Has the following meanings: (i) with respect to a domestic
27 limited liability company that has set forth in its articles of
28 organization that it is to be or may be managed by persons other than
29 members, company, any person designated in, or in accordance with
30 with, G.S. 57C-3-20(a), (ii) with respect to any other limited liability
31 company, its members, and ~~(iii)~~ (ii) with respect to a foreign limited
32 liability company, any person authorized to act for and bind the
33 foreign limited liability company."

34 **SECTION 52.** G.S. 57C-1-03(15) reads as rewritten:

35 "(15) Membership interest or interest. – In the context of a member of a
36 limited liability company, the terms mean all of a member's rights in
37 the limited liability company, including ~~without limitation the~~
38 ~~member's~~ any share of the profits and losses of the limited liability
39 company, ~~the~~ any right to receive distributions of the limited liability
40 company assets, any right to ~~vote,~~ vote on matters relating to the
41 limited liability company, and any right to participate in the
42 ~~management.~~ management of the limited liability company's affairs."

43 **SECTION 53.** G.S. 57C-1-20(f) reads as rewritten:

1 "(f) A document submitted by a domestic or foreign limited liability company
2 must be executed:

- 3 (1) By a manager of the limited liability company;
4 ~~(2) If managers have not been selected, or if the limited liability company~~
5 ~~does not have a manager other than a member, by any member;~~
6 (3) If the limited liability company has not been formed or if no initial
7 members of the limited liability company have been identified in the
8 manner provided in this Chapter, by an organizer; or
9 (4) If the limited liability company is in the hands of a receiver, trustee, or
10 other court-appointed fiduciary, by that fiduciary.

11 A document submitted by a business entity other than a domestic or foreign limited
12 liability company must be executed by a person authorized to execute documents (i)
13 pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation,
14 (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit
15 corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign
16 limited partnership, or (iv) pursuant to ~~G.S. 59-73.7(a)(4)~~ G.S. 59-35.1(a)(4) if the
17 business entity is any other partnership as defined in G.S. 59-36 whether or not formed
18 under the laws of this State."

19 **SECTION 54.** G.S. 57C-1-22(a) is amended by adding the following new
20 subdivision to read:

21 "(12a) Articles of conversion (other than articles of
22 conversion included as part of another document) 50.00".

23 **SECTION 55.** G.S. 57C-2-01 reads as rewritten:

24 "**§ 57C-2-01. Purposes.**

25 (a) Every limited liability company ~~organized~~ formed under this Chapter has the
26 purpose of engaging in any lawful business unless a more limited lawful purpose is set
27 forth in its articles of organization.

28 (b) A domestic or foreign limited liability company engaging in a business that is
29 subject to regulation under another statute of this State may be formed or authorized to
30 transact business under this Chapter only if permitted by and subject to all limitations of
31 the other statute giving effect to subsection (c) of this section.

32 (c) Subsections (a) and (b) of this section to the contrary notwithstanding and
33 except as set forth in this subsection, a domestic or foreign limited liability company
34 shall engage in rendering professional services only to the extent that a professional
35 corporation acting pursuant to Chapter 55B of the General Statutes or a corporation
36 acting pursuant to Chapter 55 of the General Statutes may engage in rendering
37 professional services under the conditions and limitations imposed by an applicable
38 licensing statute. Chapter 55B of the General Statutes and each applicable licensing
39 statute are deemed amended to provide that professionals licensed under the applicable
40 licensing statute may render professional services through a domestic or foreign limited
41 liability company. For purposes of applying the provisions, conditions, and limitations
42 of Chapter 55B of the General Statutes and the applicable licensing statute to domestic
43 and foreign limited liability companies that engage in rendering professional services,
44 (i) unless the context clearly requires otherwise, references to Chapter 55 of the General

1 Statutes (the North Carolina Business Corporation Act) shall be treated as references to
2 this Chapter, and references to a "corporation" or "foreign corporation" shall be treated
3 as references to a limited liability company or foreign limited liability company,
4 respectively, (ii) members shall be treated in the same manner as shareholders of a
5 professional corporation, (iii) managers and directors shall be treated in the same
6 manner as directors of a professional corporation, (iv) the persons signing the articles of
7 organization of a limited liability company shall be treated in the same manner as the
8 incorporators of a professional corporation, and (v) the name of a domestic or foreign
9 limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S.
10 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation
11 "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute"
12 shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

13 Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter
14 the law in this State applicable to the professional relationship and liabilities between
15 the individual furnishing the professional services and the person receiving the
16 professional services, the standards of professional conduct applicable to the rendering
17 of the services, or any responsibilities, obligations, or sanctions imposed under
18 applicable licensing statutes. A ~~member or member, manager-manager, director, or~~
19 executive of a professional limited liability company is not individually liable, directly
20 or indirectly, including by indemnification, contribution, assessment, or otherwise, for
21 debts, obligations, and liabilities of, or chargeable to, the professional limited liability
22 company that arise from errors, omissions, negligence, malpractice, incompetence, or
23 malfeasance committed by another member, manager, director, executive, employee,
24 agent, or other representative of the professional limited liability company; provided,
25 however, nothing in this Chapter shall affect the liability of a ~~member or member,~~
26 manager-manager, director, or executive of a professional limited liability company for
27 his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance
28 committed in the rendering of professional services."

29 **SECTION 56.** G.S. 57C-2-02 reads as rewritten:

30 **"§ 57C-2-02. Powers of the limited liability company.**

31 Unless its articles of organization or this Chapter provide otherwise, each limited
32 liability company has the same powers as an individual to do all things necessary or
33 convenient to carry out its business and affairs, including, without limitation, power:

- 34 (1) To sue and be sued, complain, and defend in its own name;
- 35 (2) To make and amend operating agreements, not inconsistent with its
36 articles of organization or with the laws of this State, for managing the
37 business and regulating the affairs of the limited liability company;
- 38 (3) To purchase, receive, lease, or otherwise acquire, and own, hold,
39 improve, use, and otherwise deal with, real or personal property, or
40 any legal or equitable interest in property, wherever located;
- 41 (4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
42 dispose of all or any part of its property;
- 43 (5) To purchase, receive, subscribe for, or otherwise acquire; own, hold,
44 vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and

- 1 deal in and with shares or other interests in, or obligations of, any other
2 entity;
- 3 (6) To make contracts and guarantees, incur liabilities, borrow money,
4 issue its notes, bonds, and other obligations (which may be convertible
5 into or include the option to purchase other interests in the limited
6 liability company), and secure any of its obligations by mortgage or
7 pledge of any of its property, franchises, or income;
- 8 (7) To lend money, invest and reinvest its funds, and receive and hold real
9 and personal property as security for repayment;
- 10 (8) To be a promoter, partner, member, associate, or manager of any
11 partnership, joint venture, trust, or other entity;
- 12 (9) To conduct its business, locate offices, and exercise the powers
13 granted by this Chapter within or without this State;
- 14 (10) To elect or appoint managers, directors, executives, officers,
15 employees, and agents of the limited liability company, define their
16 duties, fix their compensation, and lend them money and credit;
- 17 (11) To pay pensions and establish pension plans, pension trusts,
18 profit-sharing plans, and other benefit or incentive plans for any or all
19 of its current or former managers, directors, executives, officers,
20 employees, and agents;
- 21 (12) To make donations for the public welfare or for charitable, religious,
22 cultural, scientific, or educational purposes;
- 23 (13) To transact any lawful business that will aid governmental policy;
- 24 (14) To make payments or donations, or do any other act, not inconsistent
25 with law, that furthers the business and affairs of the limited liability
26 company;
- 27 (15) To provide insurance for its benefit on the life or physical or mental
28 ability of any of its managers, directors, executives, officers, or
29 employees or on the life or physical or mental ability of any owner of
30 any interest in the limited liability company for the purpose of
31 acquiring the interest owned by him at the time of his death or
32 disability, and for these purposes the limited liability company is
33 deemed to have an insurable interest in its managers, directors,
34 executives, officers, employees, or members and other interest owners;
35 and to provide insurance for its benefit on the life or physical or mental
36 ability of any other person in whom it has an insurable interest; and
- 37 (16) To render professional services, subject to G.S. 57C-2-01(c)."

38 **SECTION 57.** G.S. 57C-2-20(c) reads as rewritten:

39 "(c) Organization of a limited liability company requires one or more initial
40 members and any further action determined by the initial member or members. If initial
41 members are not identified in the articles of organization of a limited liability company
42 in the manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more
43 meetings at the call of a majority of the organizers to identify the initial members of the
44 limited liability company. Unless otherwise provided in this Chapter or in the articles of

1 organization of the limited liability company, all decisions to be made by the organizers
2 at such meetings shall require the approval, consent, agreement, or ratification of a
3 majority of the organizers. Unless otherwise provided in the articles of organization, the
4 organizers may, in lieu of a meeting, take action as described in this subsection by
5 written consent signed by all of the organizers. The written consent may be incorporated
6 in, or otherwise made part of, the initial written operating agreement of the limited
7 liability company."

8 **SECTION 58.** G.S. 57C-2-21(a) reads as rewritten:

9 "(a) The articles of organization must set forth:

- 10 (1) A name for the limited liability company that satisfies the provisions
11 of G.S. 57C-2-30;
- 12 (2) If the limited liability company is to dissolve by a specific date, the
13 latest date on which the limited liability company is to dissolve. If no
14 date for dissolution is specified, there shall be no limit on the duration
15 of the limited liability company;
- 16 (3) The name and address of each person executing the articles of
17 organization and whether the person is executing the articles of
18 organization in the capacity of a member or an organizer;
- 19 (4) The street address, and the mailing address if different from the street
20 address, of the limited liability company's initial registered office, the
21 county in which the initial registered office is located, and the name of
22 the limited liability company's initial registered agent at that address;
23 ~~and~~
- 24 (4a) The street address, and the mailing address, if different from the street
25 address, of the limited liability company's principal office, if any; and
- 26 (5) Unless all of the members by virtue of their status as members shall be
27 managers of the limited liability company, a statement that, except as
28 provided in G.S. 57C-3-20(a), the members shall not be managers by
29 virtue of their status as members."

30 **SECTION 59.** G.S. 57C-2-23(a) reads as rewritten:

31 "(a) Each domestic limited liability company other than a professional limited
32 liability company governed by G.S. 57C-2-01(c) and each foreign limited liability
33 company authorized to transact business in this State, shall deliver to the Secretary of
34 State for filing an annual report, in a form jointly prescribed by the Secretary of
35 Revenue and Secretary of State, that sets forth all of the following:

- 36 (1) The name of the limited liability or foreign limited liability company
37 and the state or country under whose law it is ~~organized~~ formed.
- 38 (2) The street address, and the mailing address if different from the street
39 address, of the registered office, the county in which the registered
40 office is located, and the name of its registered agent at that office in
41 this State, and a statement of any change of the registered office or
42 registered agent, or both.
- 43 (3) The address and telephone number of its principal office.

1 (4) The names and business addresses of its ~~managers~~managers or if the
2 limited liability company has never had members, its organizers.

3 (5) A brief description of the nature of its business.

4 If the information contained in the most recently filed annual report has not changed, a
5 certification to that effect may be made instead of setting forth the information required
6 by subdivisions (2) through (5) of this subsection. The Secretary of State shall make
7 available the form required to file an annual report."

8 **SECTION 60.** G.S. 57C-2-30(a)(2) reads as rewritten:

9 "(2) ~~May~~ Shall not contain language stating or implying that the limited
10 liability company is ~~organized~~formed for a purpose other than that
11 permitted by G.S. 57C-2-01 and its articles of organization; and".

12 **SECTION 61.** G.S. 57C-2-32(b) reads as rewritten:

13 "(b) A foreign limited liability company registers its name, or its name with any
14 required addition, by filing with the Secretary of State an application:

15 (1) Setting forth its name, or its name with any required addition, the state
16 or country and date of its ~~organization~~formation, and a brief
17 description of the nature of the business in which it is engaged; and

18 (2) Accompanied by a certificate of existence (or a document of a similar
19 import) from the state or country of ~~organization~~formation."

20 **SECTION 62.** G.S. 57C-2-32(e) reads as rewritten:

21 "(e) A foreign limited liability company whose registration is effective may
22 thereafter qualify as a foreign limited liability company under that name or consent in
23 writing to the use of that name by a limited liability company thereafter ~~organized~~
24 formed under this Chapter or by another foreign limited liability company thereafter
25 authorized to transact business in this State. The registration terminates when the
26 domestic limited liability company is ~~organized~~formed or the foreign limited liability
27 company qualifies or consents to the qualification of another foreign limited liability
28 company under the registered name."

29 **SECTION 63.** G.S. 57C-2-34(b) reads as rewritten:

30 "(b) The Secretary of State shall adopt uniform certificates to be furnished for
31 registration in accordance with this section. In the case of a foreign limited liability
32 company, a similar certificate by any competent authority of the jurisdiction of
33 ~~organization~~formation may be registered in accordance with this section."

34 **SECTION 64.** G.S. 57C-3-01 is amended by adding the following new
35 subsection to read:

36 "(c) Nothing in this Chapter precludes a person from being a member of a limited
37 liability company because that person has not made, and has no obligation to make, any
38 contributions to the limited liability company and has no right to receive any
39 distributions from the limited liability company or share in any profits or losses of the
40 limited liability company."

41 **SECTION 65.** G.S. 57C-3-02(3)e. reads as rewritten:

42 "e. Seeking, consenting to, or acquiescing in, the appointment of a
43 trustee or receiver for, or liquidation of the ~~member person~~ or of
44 all or any substantial part of ~~his~~that person's properties; or".

1 **SECTION 66.** G.S. 57C-3-04(e) reads as rewritten:

2 "(e) The managers or directors shall have the right to keep confidential from
3 members who are not ~~managers~~, managers or directors, for such period of time as the
4 managers or directors deem reasonable, any information which the managers or
5 directors reasonably believe to be in the nature of trade secrets or other information the
6 disclosure of which the managers or directors in good faith believe is not in the best
7 interest of the limited liability company."

8 **SECTION 67.** G.S. 57C-3-20(a) reads as rewritten:

9 "(a) Unless the articles of organization provide otherwise, all members by virtue
10 of their status as members shall be managers of the limited liability company, together
11 with any other persons that may be designated as managers ~~in~~ in, or in accordance with,
12 the articles of organization or a written operating agreement. If the articles of
13 organization provide that all members are not necessarily managers by virtue of their
14 status as members, then those persons designated as managers ~~in~~ in, or in accordance
15 with the articles of organization or a written operating agreement shall be managers, but
16 for any period during which no such designation has been made or is in effect, all
17 members shall be managers."

18 **SECTION 68.** G. S. 57C-3-22 is amended by adding a new subsection to
19 read:

20 "(f) Except to the extent otherwise provided in the articles of organization or a
21 written operating agreement, each director and executive shall be subject to the same
22 requirements and afforded the same rights as are provided in this section for a manager
23 when the director or executive exercises authority in the management of a limited
24 liability company's affairs that would otherwise be vested in the managers pursuant to
25 G.S. 57C-3-20(b)."

26 **SECTION 69.** G.S. 57C-3-30 reads as rewritten:

27 "**§ 57C-3-30. Liability to third parties of members and managers; parties to**
28 **actions; governing law.**

29 (a) A person who is a ~~member or manager, or both,~~ member, manager, director,
30 executive, or any combination thereof, of a limited liability company is not liable for the
31 obligations of a limited liability company solely by reason of being a ~~member or~~
32 ~~manager or both,~~ member, manager, director, or executive, and does not become so by
33 participating, in whatever capacity, in the management or control of the business. A
34 ~~member or manager~~ member, manager, director, or executive may, however, become
35 personally liable by reason of his that person's own acts or conduct.

36 (b) A member of a limited liability company is not a proper party to proceedings
37 by or against a limited liability company, except where the object of the proceeding is to
38 enforce a member's right against or liability to the limited liability company.

39 (c) The liability of ~~members and managers~~ members, managers, directors, and
40 executives of a limited liability company organized and existing under this Chapter shall
41 at all times be determined solely and exclusively by this Chapter and the laws of this
42 State.

43 (d) If a conflict arises between the laws of this State and the laws of any other
44 jurisdiction with regard to the liability of a member or manager of a limited liability

1 company organized and existing under this Chapter for the debts, obligations, and
2 liabilities of the limited liability company, this Chapter and the laws of this State shall
3 govern in determining the liability."

4 **SECTION 70.** G.S. 57C-3-31 reads as rewritten:

5 "**§ 57C-3-31. Mandatory indemnification of managers and members.**

6 (a) ~~A~~Unless otherwise provided in the articles of organization or a written
7 operating agreement, a limited liability company must indemnify every ~~manager~~
8 manager, director, and executive in respect of payments made and personal liabilities
9 reasonably incurred by the ~~manager~~ manager, director, and executive in the authorized
10 conduct of its business or for the preservation of its business or property.

11 (b) ~~Unless limited by its~~Unless otherwise provided in the articles of
12 organization, organization or a written operating agreement, a limited liability company
13 shall indemnify a ~~member or manager~~ member, manager, director, or executive who is
14 wholly successful, on the merits or otherwise, in the defense of any proceeding to which
15 he was a party because he is or was a ~~member or manager~~ member, manager, director,
16 or executive of the limited liability company against reasonable expenses incurred by
17 him in connection with the proceeding."

18 **SECTION 71.** G.S. 57C-3-32 reads as rewritten:

19 "**§ 57C-3-32. Limitation of liability of ~~managers~~ managers, directors, executives,**
20 **and members and permissive indemnification of ~~managers~~ managers,**
21 **directors, executives, and members; insurance.**

22 (a) Subject to subsection (b) of this section, the articles of organization or a
23 written operating agreement may:

24 (1) Eliminate or limit the personal liability of a ~~manager~~ manager,
25 director, or executive for monetary damages for breach of any duty
26 provided for in G.S. 57C-3-22 (other than liability under G.S.
27 57C-4-07); and

28 (2) Provide for indemnification of a ~~manager or member~~ manager,
29 member, director, or executive for judgments, settlements, penalties,
30 fines, or expenses incurred in a proceeding to which the ~~member or~~
31 ~~manager~~ member, manager, director, or executive is a party because he
32 is or was a ~~manager or member~~ manager, member, director, or
33 executive. For purposes of this subdivision, the words "expenses",
34 "proceeding", and "party" shall have the meanings set forth in G.S.
35 55-8-50(b).

36 (b) No provision permitted under subsection (a) of this section shall limit,
37 eliminate, or indemnify against the liability of a ~~manager~~ manager, director, or
38 executive for (i) acts or omissions that the ~~manager~~ manager, director, or executive
39 knew at the time of the acts or omissions were clearly in conflict with the interests of
40 the limited liability company, (ii) any transaction from which the ~~manager~~ manager,
41 director, or executive derived an improper personal benefit, or (iii) acts or omissions
42 occurring prior to the date the provision became effective, except that indemnification
43 pursuant to subdivision (2) of subsection (a) of this section may be provided if approved
44 by all the members. As used in this subsection, "improper personal benefit" does not

1 include reasonable compensation or other reasonable incidental benefit for or on
2 account of service as a manager, ~~an~~ director, executive, officer, ~~an~~ employee, ~~an~~
3 independent contractor, ~~an~~ attorney, or a consultant of the limited liability company.

4 (c) A limited liability company may purchase and maintain insurance on behalf
5 of an individual who is or was a manager, ~~an~~ director, executive, officer, employee, or
6 ~~an~~ agent of the limited liability company, or who, while a manager, ~~an~~ director,
7 executive, officer, employee, or ~~an~~ agent of the limited liability company is or was
8 serving at the request of the limited liability company as a director, ~~an~~ executive,
9 officer, a partner, a member, manager, a trustee, ~~an~~ employee, or ~~an~~ agent of a person,
10 against liability asserted against or incurred by him in that capacity or arising from his
11 status as a member, manager, ~~an~~ employee, or ~~an~~ agent, whether or not the limited
12 liability company would have the power to indemnify him against the same liability
13 under any provision of this Chapter."

14 **SECTION 72.** G.S. 57C-4-07 reads as rewritten:

15 "**§ 57C-4-07. Liability upon wrongful distribution.**

16 (a) A manager or director who votes for or assents to a distribution in violation of
17 G.S. 57C-4-06 or a written operating agreement is personally liable to the limited
18 liability company for the amount of the distribution that exceeds what could have been
19 distributed without violating G.S. 57C-4-06 or the operating agreement if it is
20 established that the manager or director did not act in compliance with G.S. 57C-3-22.

21 (b) Each manager or director held liable under subsection (a) of this section for a
22 wrongful distribution is entitled to:

23 (1) Contribution from each other manager or director who could be held
24 liable under subsection (a) of this section for the wrongful distribution;
25 and

26 (2) Reimbursement from each member for the amount the member
27 received knowing that the distribution was made in violation of G.S.
28 57C-4-06 or the operating agreement.

29 (c) A proceeding under this section is barred unless it is commenced within three
30 years after the date on which the effect of the distribution is measured under G.S.
31 57C-4-06(c)."

32 **SECTION 73.** G.S. 57C-6-02(2) reads as rewritten:

33 "(2) A member if it is established that (i) the ~~managers or those~~ managers,
34 directors, or any other persons in control of the limited liability
35 company are deadlocked in the management of the affairs of the
36 limited liability company, the members are unable to break the
37 deadlock, and irreparable injury to the limited liability company is
38 threatened or being suffered, or the business and affairs of the limited
39 liability company can no longer be conducted to the advantage of the
40 members generally, because of the deadlock; (ii) liquidation is
41 reasonably necessary for the protection of the rights or interests of the
42 complaining member, (iii) the assets of the limited liability company
43 are being misapplied or wasted; or (iv) the articles of organization or a

1 written operating agreement entitles the complaining member to
2 dissolution of the limited liability company; or".

3 **SECTION 74.** G.S. 57C-6-03(c) reads as rewritten:

4 "(c) A limited liability company administratively dissolved under this section may
5 apply to the Secretary of State for reinstatement not later than five years after the
6 effective date of the administrative dissolution. The procedures for reinstatement and for
7 the appeal of any denial of the limited liability company's application for reinstatement
8 shall be the same procedures applicable to business corporations under G.S. 55-14-22,
9 55-14-23, and 55-14-24. The effect of reinstatement of a limited liability company shall
10 be the same as for a business corporation under G.S. 55-14-22."

11 **SECTION 75.** G.S. 57C-6-04(a) reads as rewritten:

12 "(a) Except as otherwise provided in this Chapter, the articles of organization, or a
13 written operating agreement, the managers shall wind up the limited liability company's
14 affairs following its dissolution. If the dissolved limited liability company has no
15 manages, managers, and provision is not otherwise made in the articles of organization
16 or a written operating agreement, the legal representative of or successor to the ~~member~~
17 ~~whose event of withdrawal has resulted in the dissolution may wind up~~ last remaining
18 member may wind up the limited liability company's affairs. The court may wind up the
19 limited liability company's affairs, or appoint a person to wind up its affairs, on
20 application of any member, his legal representative, or assignee."

21 **SECTION 76.** G.S. 57C-6-06(5) reads as rewritten:

22 "(5) Any other information the ~~members or~~ managers filing the articles of
23 dissolution determine."

24 **SECTION 77.** G.S. 57C-6-06.1(5) reads as rewritten:

25 "(5) Any other information the ~~members or~~ managers filing the articles of
26 cancellation determine."

27 **SECTION 78.** G.S. 57C-7-01 reads as rewritten:

28 "**§ 57C-7-01. Law governing.**

29 The laws of the state or other jurisdiction under which a foreign limited liability
30 company is ~~organized~~ formed shall govern its formation, organization and internal
31 affairs and the liability of its managers and members, regardless of whether the foreign
32 limited liability company procured or should have procured a certificate of authority
33 under this Chapter, and a foreign limited liability company ~~may~~ shall not be denied a
34 certificate of authority by reason of any difference between the laws under which it is
35 ~~organized~~ formed and the laws of this State. A foreign limited liability company with a
36 valid certificate of authority has the same but no greater rights and has the same but no
37 greater privileges as, and is subject to the same duties, restrictions, penalties, and
38 liabilities now or later imposed on, a domestic limited liability company of like
39 character."

40 **SECTION 79.** G.S. 57C-7-04(a)(2), (3), and (4) read as rewritten:

41 "(a) A foreign limited liability company may apply for a certificate of authority to
42 transact business in this State by delivering an application to the Secretary of State for
43 filing. The application must set forth:

- 1 (1) The name of the foreign limited liability company or, if its name is
2 unavailable for use in this State, a name that satisfies the requirements
3 of G.S. 57C-7-06;
- 4 (2) The name of the state or country under whose law it is ~~organized;~~
5 formed;
- 6 (3) Its date of ~~organization~~ formation and period of duration;
- 7 (4) The street address, and the mailing address if different from the street
8 address, of its principal office in the state or country under whose law
9 it is ~~organized;~~ formed;
- 10 (5) The street address, and the mailing address if different from the street
11 address, of its registered office in this State and the name of its
12 registered agent at that office; and
- 13 (6) The names and usual business addresses of its current managers."

14 **SECTION 80.** G.S. 57C-7-04(b) reads as rewritten:

15 "(b) The foreign limited liability company shall deliver with the completed
16 application a certificate of existence (or a document of similar import) duly
17 authenticated by the Secretary of State or other official having custody of limited
18 liability company records in the state or country under whose law it is ~~organized-~~
19 formed."

20 **SECTION 81.** G.S. 57C-7-05(a)(3) reads as rewritten:

21 "(3) The state or country of its ~~organization-~~ formation."

22 **SECTION 82.** G.S. 57C-7-05(b)(2) reads as rewritten:

23 "(2) The name of the state or country under whose law it is ~~organized;~~
24 formed;".

25 **SECTION 83.** G.S. 57C-7-06(b)(1) reads as rewritten:

26 "(1) The name of a corporation, limited partnership, or limited liability
27 company ~~organized~~ formed in this State, or a foreign corporation,
28 foreign limited partnership, or foreign limited liability company
29 authorized to transact business in this State;".

30 **SECTION 84.** G.S. 57C-7-06(c) reads as rewritten:

31 "(c) A foreign limited liability company may apply to the Secretary of State for
32 authorization to use in this State a name that is not distinguishable upon the Secretary of
33 State's records from the name of another limited liability company (~~organized~~ (formed
34 or authorized to transact business in this State). The Secretary of State shall authorize
35 use of the name applied for if:

- 36 (1) The other person who has or uses the name or who has reserved or
37 registered the name consents to the use in writing and submits an
38 undertaking in form satisfactory to the Secretary of State to change its
39 name to a name that is distinguishable upon the records of the
40 Secretary of State from the name of the applying limited liability
41 company; or
- 42 (2) The applicant delivers to the Secretary of State a certified copy of a
43 final judgment of a court of competent jurisdiction establishing the
44 applicant's right to use the name applied for in this State."

1 **SECTION 85.** G.S. 57C-7-10(b) reads as rewritten:

2 "(b) Whenever a foreign limited liability company authorized to transact business
3 in this State shall fail to appoint or maintain a registered agent in this State, or whenever
4 its registered agent cannot with due diligence be found at the registered office, then the
5 Secretary of State shall be an agent of the foreign limited liability company upon whom
6 any such process, notice, or demand may be served. Service on the Secretary of State of
7 any such process, notice, or demand shall be made by delivering to and leaving with the
8 Secretary of State or with any clerk ~~having charge of the limited liability company~~
9 ~~department of the Secretary of State's office,~~ authorized by the Secretary of State to
10 accept service of process, duplicate copies of the process, notice, or ~~demand.~~ demand
11 and the fee required by G.S. 57C-1-22(b). In the event any such process, notice, or
12 demand is served on the Secretary of ~~State,~~ State in the manner provided in this
13 subsection, the Secretary of State shall immediately mail one of the copies thereof, by
14 registered or certified mail, return receipt requested, to the foreign limited liability
15 company at its principal office ~~shown in its application for certificate of authority or~~
16 ~~amended certificate of authority or at the address indicated in the latest communication~~
17 ~~received by the Secretary of State from the foreign limited liability company stating the~~
18 ~~current mailing address of its principal office~~ or, if there is no mailing address for the
19 principal office on file, to the foreign limited liability company at its registered office.
20 Service on a foreign limited liability company under this subsection shall be effective
21 for all purposes from and after the date of the service on the Secretary of State."

22 **SECTION 86.** G.S. 57C-7-11(b) reads as rewritten:

23 "(b) A foreign limited liability company authorized to transact business in this
24 State may apply for a certificate of withdrawal by delivering an application to the
25 Secretary of State for filing. The application must set forth:

- 26 (1) The name of the foreign limited liability company and the name of the
27 state or country under whose law it is ~~organized;~~ formed;
28 (2) That it is not transacting business in this State and that it surrenders its
29 authority to transact business in this State;
30 (3) That the foreign limited liability company revokes the authority of its
31 registered agent to accept service of process and consents that service
32 of process in any action or proceeding based upon any cause of action
33 arising in this State, or arising out of business transacted in this State,
34 during the time the foreign limited liability company was authorized to
35 transact business in this State, may thereafter be made on such foreign
36 limited liability company by service thereof on the Secretary of State;
37 (4) A mailing address to which the Secretary of State may mail a copy of
38 any process served on ~~him~~ the Secretary of State under subdivision (3)
39 of this subsection; and
40 (5) A commitment to ~~notify~~ file with the Secretary of State ~~in the future a~~
41 statement of any subsequent change in its mailing address."

42 **SECTION 87.** G.S. 57C-7-11(d) reads as rewritten:

43 "(d) After the withdrawal of the foreign limited liability company is effective,
44 service of process on the Secretary of State in accordance with ~~subdivision (b)(3)~~

1 subsection (b) of this section is service on the foreign limited liability company. shall be
2 made by delivering to and leaving with the Secretary of State or any clerk authorized by
3 the Secretary of State to accept service of process, duplicate copies of that process and
4 the fee required by G.S. 57C-1-22(b). Upon receipt of process, process in the manner
5 provided in this subsection, the Secretary of State shall mail a copy of the process by
6 registered or certified mail, return receipt requested, to the foreign limited liability
7 company at the mailing address set forth under designated pursuant to subsection (b) of
8 this section."

9 **SECTION 88.** G.S. 57C-7-12(a) reads as rewritten:

10 "(a) Whenever a foreign limited liability company authorized to transact business
11 in this State ceases its separate existence as a result of a statutory merger, consolidation,
12 or conversion permitted by the laws of the state or country under which it was
13 ~~organized,~~ formed, or converts into another type of entity as permitted by those laws,
14 the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign
15 limited liability company by delivering to the Secretary of State for filing a copy of the
16 articles of merger, consolidation, or conversion or a certificate reciting the facts of the
17 merger, consolidation, or conversion, duly authenticated by the Secretary of State or
18 other official having custody of limited liability company records in the state or country
19 under the laws of which the foreign limited liability company was ~~organized.~~ formed. If
20 the surviving or resulting entity is not authorized to transact business in this State, the
21 articles or certificate must be accompanied by an application which must set forth:

- 22 (1) The name of the foreign limited liability company authorized to
23 transact business in this State, the type of entity and name of the
24 surviving or resulting entity, and a statement that the surviving or
25 resulting entity is not authorized to transact business in this State;
- 26 (2) A statement that the surviving or resulting entity consents that service
27 of process based upon any cause of action arising in this State, or
28 arising out of business transacted in this State, during the time the
29 foreign limited liability company was authorized to transact business
30 in this State, may thereafter be made by service thereof on the
31 Secretary of State;
- 32 (3) A mailing address to which the Secretary of State may mail a copy of
33 any process served on ~~him~~ the Secretary of State under subdivision
34 (a)(2) of this section; and
- 35 (4) A commitment to file with the Secretary of State a statement of any
36 subsequent change in its subsequent mailing address."

37 **SECTION 89.** G.S. 57C-7-12 is amended by adding a new subsection (c) to
38 read:

39 "(c) After the withdrawal of the foreign limited liability company is effective,
40 service of process on the Secretary of State in accordance with subsection (a) of this
41 section shall be made by delivering to and leaving with the Secretary of State or any
42 clerk authorized by the Secretary of State to accept service of process, duplicate copies
43 of process, and the fee required by G.S. 57C-1-22(b). Upon receipt of process in the
44 manner provided in this subsection, the Secretary of State shall immediately mail a copy

1 of the process by registered or certified mail, return receipt requested, to the surviving
2 or resulting entity at the mailing address designated pursuant to subsection (a) of this
3 section."

4 **SECTION 90.** G.S. 57C-8-01(b) reads as rewritten:

5 "(b) The complaint shall allege with particularity the efforts, if any, made by the
6 plaintiff to obtain the action the plaintiff desires from the ~~managers or comparable~~
7 managers, directors, or other applicable authority and the reasons for the plaintiff's
8 failure to obtain the action, or for not making the effort. Whether or not a demand for
9 action was made, if the limited liability company commences an investigation of the
10 charges made in the demand or complaint, the court may stay any proceeding until the
11 investigation is completed."

12 **SECTION 91.** G.S. 57C-8-01(c) reads as rewritten:

13 "(c) Upon motion of the limited liability company, the court may appoint a
14 committee composed of two or more disinterested ~~managers~~ managers, directors, or
15 other disinterested persons, acceptable to the limited liability company, to determine
16 whether it is in the best interest of the limited liability company to pursue a particular
17 legal right or remedy. The committee shall report its findings to the court. After
18 considering the report and any other relevant evidence, the court shall determine
19 whether the proceeding should be continued or not."

20 **SECTION 92.** The heading of Part 1 of Article 9A of Chapter 57C of the
21 General Statutes reads as rewritten:

22 "Part 1. ~~Conversions.~~ Conversion to Limited Liability Company."

23 **SECTION 93.** G.S. 57C-9A-01 reads as rewritten:

24 "**§ 57C-9A-01. Conversion.**

25 (a) ~~A domestic limited liability company may convert to a domestic limited~~
26 ~~partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.~~

27 (b) ~~A foreign limited liability company, a domestic or foreign limited partnership~~
28 ~~as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or~~
29 ~~not formed under the laws of this State (including a registered limited liability~~
30 ~~partnership as defined in G.S. 59-32 and any other limited liability partnership formed~~
31 ~~under a law other than the laws of this State) may convert to a domestic limited liability~~
32 ~~company if:~~

33 (1) ~~The converting business entity complies with the requirements of this~~
34 ~~Part; and~~

35 (2) ~~If the converting business entity is a foreign limited liability company,~~
36 ~~a foreign limited partnership, or other partnership as defined in G.S.~~
37 ~~59-36 whose organization and internal affairs are governed by a law~~
38 ~~other than the laws of this State, the conversion is permitted by the~~
39 ~~laws of the state or country governing the organization and internal~~
40 ~~affairs of the converting business entity and the converting business~~
41 ~~entity complies with those laws.~~

42 A business entity other than a domestic limited liability company may convert to a
43 domestic limited liability company if:

1 (1) The conversion is permitted by the laws of the state or country
2 governing the organization and internal affairs of the converting
3 business entity; and

4 (2) The converting business entity complies with the requirements of this
5 Part and, to the extent applicable, the laws referred to in subdivision
6 (1) of this section."

7 **SECTION 94.** G.S. 57C-9A-02 reads as rewritten:

8 "**§ 57C-9A-02. Plan of conversion.**

9 (a) ~~The holders of the interests in the~~ converting business entity shall approve a
10 written plan of conversion containing:

11 (1) The name of the resulting domestic limited liability company into
12 which the converting business entity shall convert;

13 (1a) The name of the converting business entity, its type of business entity,
14 and the state or country whose laws govern its organization and
15 internal affairs;

16 (2) The terms and conditions of the conversion; and

17 (3) The manner and basis for converting the interests in the converting
18 business entity into interests, obligations, or securities of the resulting
19 domestic limited liability company or into cash or other property in
20 whole or in part.

21 The plan of conversion may also contain other provisions relating to the conversion.

22 (b) ~~In the case of a domestic limited partnership or other partnership as defined in~~
23 ~~G.S. 59-36 whose organization and internal affairs are governed by the laws of this~~
24 ~~State, the plan of conversion must be approved in the manner provided for the approval~~
25 ~~of such a conversion in a written partnership agreement that is binding on all the~~
26 ~~partners or, if there is no such provision, by the unanimous consent of all the partners.~~
27 ~~In the case of a foreign limited liability company, a foreign limited partnership, or other~~
28 ~~partnership as defined in G.S. 59-36 whose organization and internal affairs are~~
29 ~~governed by a law other than the laws of this State, the~~ The plan of conversion must be
30 approved in accordance with the laws of the state or country governing the organization
31 and internal affairs of the converting business entity.

32 (c) After a plan of conversion has been approved as provided in subsection (b) of
33 this section, but before articles of organization for the resulting domestic limited
34 liability company become effective, the plan of conversion may be amended or
35 abandoned to the extent ~~provided in the plan of conversion~~ permitted by the laws that
36 govern the organization and internal affairs of the converting business entity."

37 **SECTION 95.** G.S. 57C-9A-03 reads as rewritten:

38 "**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

39 (a) After a plan of conversion has been approved by the converting business
40 entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver
41 articles of organization to the Secretary of State for filing. In addition to the matters
42 required or permitted by G.S. 57C-2-21, the articles of organization shall ~~state:~~ contain
43 articles of conversion stating:

- 1 (1) That the domestic limited liability company is being formed pursuant
2 to a conversion of another business entity;
- 3 (2) The name of the converting business entity, its type of business entity,
4 and the state or country whose laws govern its organization and
5 internal affairs; and
- 6 (3) That a plan of conversion has been approved by the converting
7 business entity as required by law.

8 If the plan of conversion is abandoned after the articles of organization have been
9 filed with the Secretary of State but before the articles of organization become effective,
10 the converting business entity ~~promptly~~ shall deliver to the Secretary of State for filing
11 prior to the time the articles of organization become effective an amendment to the
12 articles of organization reflecting the abandonment of the plan of conversion.
13 withdrawing the articles of organization.

14 (b) The conversion takes effect when the articles of organization become
15 effective.

16 ~~(c) The converting business entity shall furnish a copy of the plan of conversion,~~
17 ~~on request and without cost, to any member or partner (whether general or limited) of~~
18 ~~the converting business entity.~~

19 (d) Certificates of conversion shall also be registered as provided in G.S.
20 47-18.1."

21 **SECTION 96.** A new Part 1A is added to Article 9A of Chapter 57C of the
22 General Statutes to read:

23 "Part 1A. Conversion of Limited Liability Company.

24 "**§ 57C-9A-10. Conversion.**

25 A domestic limited liability company may convert to a different type of business
26 entity if:

- 27 (1) The conversion is permitted by the laws of the state or country
28 governing the organization and internal affairs of such other type of
29 business entity; and
- 30 (2) The converting domestic limited liability company complies with the
31 requirements of this Part and, to the extent applicable, the laws
32 referred to in subdivision (1) of this section.

33 "**§ 57C-9A-11. Plan of conversion.**

34 (a) The converting domestic limited liability company shall approve a written
35 plan of conversion containing:

- 36 (1) The name of the converting domestic limited liability company;
- 37 (2) The name of the resulting business entity into which the domestic
38 limited liability company shall convert, its type of business entity, and
39 the state or country whose laws govern its organization and internal
40 affairs;
- 41 (3) The terms and conditions of the conversion; and
- 42 (4) The manner and basis for converting the interests in the domestic
43 limited liability company into interests, obligations, or securities of the

1 resulting business entity or into cash or other property in whole or in
2 part.

3 The plan of conversion may contain other provisions relating to the conversion.

4 (b) The converting domestic limited liability company shall provide a copy of the
5 plan of conversion to each member of the converting domestic limited liability
6 company. The plan of conversion shall be approved by the domestic limited liability
7 company in the manner provided for the approval of such conversion in its articles of
8 organization or a written operating agreement or, if there is no such provision, by the
9 unanimous consent of its members. If any member of the converting domestic limited
10 liability company has or will have personal liability for any existing or future obligation
11 of the resulting business entity solely as a result of holding an interest in the resulting
12 business entity, then in addition to the requirements of the preceding sentence, approval
13 of the plan of conversion by the domestic limited liability company shall require the
14 consent of that member.

15 (c) After a plan of conversion has been approved by a domestic limited liability
16 company but before the articles of conversion become effective, the plan of conversion
17 (i) may be amended as provided in the plan of conversion or (ii) may be abandoned,
18 subject to any contractual rights, as provided in the plan of conversion, articles of
19 organization, or written operating agreement or, if not so provided, as determined by the
20 managers of the domestic limited liability company in accordance with G.S. 57C-3-
21 20(b).

22 **"§ 57C-9A-12. Articles of conversion.**

23 (a) After a plan of conversion has been approved by the converting domestic
24 limited liability company as provided in G.S. 57C-9A-11, the converting domestic
25 limited liability company shall deliver articles of conversion to the Secretary of State for
26 filing. The articles of conversion shall state:

- 27 (1) The name of the converting domestic limited liability company;
- 28 (2) The name of the resulting business entity, its type of business entity,
29 the state or country whose laws govern its organization and internal
30 affairs, and, if the resulting business entity is not authorized to transact
31 business or conduct affairs in this State, a designation of its mailing
32 address and a commitment to file with the Secretary of State a
33 statement of any subsequent change in its mailing address; and
- 34 (3) That a plan of conversion has been approved by the domestic limited
35 liability company as required by law.

36 If the domestic limited liability company is converting to a business entity whose
37 formation or status requires the filing of a document with the Secretary of State, then the
38 articles of conversion shall be included as part of that document in addition to the
39 matters otherwise required or permitted by law.

40 If the plan of conversion is abandoned after the articles of conversion have been
41 filed with the Secretary of State but before the articles of conversion become effective,
42 the converting domestic limited liability company shall deliver to the Secretary of State
43 for filing prior to the time the articles of conversion become effective an amendment of
44 the articles of conversion withdrawing the articles of conversion.

1 **(b)** The conversion takes effect when the articles of conversion become
2 effective.

3 **(c)** Certificates of conversion shall also be registered as provided in G.S.
4 47-18.1.

5 "**§ 57C-9A-13. Effects of conversion.**

6 **(a)** When the conversion takes effect:

7 **(1)** The converting domestic limited liability company ceases its prior
8 form of organization and continues in existence as the resulting
9 business entity;

10 **(2)** The title to all real estate and other property owned by the converting
11 domestic limited liability company continues vested in the resulting
12 business entity without reversion or impairment;

13 **(3)** All liabilities of the converting domestic limited liability company
14 continue as liabilities of the resulting business entity;

15 **(4)** A proceeding pending by or against the converting domestic limited
16 liability company may be continued as if the conversion did not occur;
17 and

18 **(5)** The interests in the converting domestic limited liability company that
19 are to be converted into interests, obligations, or securities of the
20 resulting business entity or into the right to receive cash or other
21 property are thereupon so converted, and the former holders of
22 interests in the converting domestic limited liability company are
23 entitled only to the rights provided in the plan of conversion.

24 The conversion shall not affect the liability or absence of liability of any holder of an
25 interest in the converting domestic limited liability company for any acts, omissions, or
26 obligations of the converting domestic limited liability company made or incurred prior
27 to the effectiveness of the conversion. The cessation of the existence of the converting
28 domestic limited liability company in its form of organization as a domestic limited
29 liability company in the conversion shall not constitute a dissolution or termination of
30 the converting domestic limited liability company.

31 **(b)** If the resulting business entity is not a domestic corporation or a domestic
32 limited partnership when the conversion takes effect, the resulting business entity is
33 deemed:

34 **(1)** To agree that it may be served with process in this State for
35 enforcement of (i) any obligation of the converting domestic limited
36 liability company and (ii) any obligation of the resulting business
37 entity arising from the conversion; and

38 **(2)** To have appointed the Secretary of State as its agent for service of
39 process in any such proceeding. Service on the Secretary of State of
40 any process shall be made by delivering to and leaving with the
41 Secretary of State, or with any clerk authorized by the Secretary of
42 State to accept service of process, duplicate copies of the process and
43 the fee required by G.S. 57C-1-22(b). Upon receipt of service of
44 process on behalf of a resulting business entity in the manner provided

1 for in this section, the Secretary of State shall immediately mail a copy
2 of the process by registered or certified mail, return receipt requested,
3 to the resulting business entity. If the resulting business entity is
4 authorized to transact business or conduct affairs in this State, the
5 address for mailing shall be its principal office designated in the latest
6 document filed with the Secretary of State that is authorized by law to
7 designate the principal office or, if there is no principal office on file,
8 its registered office. If the resulting business entity is not authorized to
9 transact business or conduct affairs in this State, the address for
10 mailing shall be the mailing address designated pursuant to G.S. 57C-
11 9A-12(a)(2)."

12 **SECTION 97.** G.S. 57C-9A-21(b) reads as rewritten:

13 "(b) In the case of a merging domestic limited liability company, the plan of
14 merger must be approved in the manner provided in its articles of organization or a
15 written operating agreement for approval of a merger with the type of business entity
16 contemplated in the plan of merger, or, if there is no provision, by the unanimous
17 consent of its members. If any member of a merging domestic limited liability company
18 will have personal liability for any existing or future obligation of the surviving
19 business entity solely as a result of holding an interest in the surviving business entity,
20 then in addition to the requirements of the preceding sentence, approval of the plan of
21 merger by the domestic limited liability company shall require the consent of each such
22 member. In the case of each other merging business entity, the plan of merger must be
23 approved in accordance with the laws of the state or country governing the organization
24 and internal affairs of the merging business entity."

25 **SECTION 98.** G.S. 57C-9A-22(a) reads as rewritten:

26 "(a) After a plan of merger has been approved by each merging domestic limited
27 liability company and each other merging business entity as provided in G.S.
28 57C-9A-21, the surviving business entity shall deliver articles of merger to the
29 Secretary of State for filing. The articles of merger shall set forth:

- 30 (1) The plan of merger;
- 31 (2) For each merging business entity, its name, type of business entity, and
32 the state or country whose laws govern its organization and internal
33 affairs;
- 34 (3) The name ~~and address~~ of the surviving business entity; entity and, if
35 the surviving business entity is not authorized to transact business or
36 conduct affairs in this State, a designation of its mailing address and a
37 commitment to file with the Secretary of State a statement of any
38 subsequent change in its mailing address;
- 39 (4) A statement that the plan of merger has been approved by each
40 merging business entity in the manner required by law; and
- 41 (5) The effective date and time of the merger if it is not to be effective at
42 the time of filing of the articles of merger.

43 If the plan of merger is amended or abandoned after the articles of merger have been
44 filed but before the articles of merger become effective, the surviving business entity

1 promptly shall deliver to the Secretary of State for filing prior to the time the articles of
2 merger become effective an amendment to the articles of merger reflecting the
3 amendment or abandonment of the plan of merger."

4 **SECTION 99.** G.S. 57C-9A-23(b) reads as rewritten:

5 "(b) If the surviving business entity is not a domestic limited liability company, a
6 domestic corporation, a domestic nonprofit corporation, or a domestic limited
7 partnership partnership, when the merger takes ~~effect~~, effect the surviving business
8 entity is deemed:

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

18 (2) To have appointed the Secretary of State as its registered agent for
19 service of process in any such proceeding. Service on the Secretary of
20 State of any such process shall be made by delivering to and leaving
21 with the Secretary of State or with any clerk authorized by the
22 Secretary of State to accept service of process, duplicate copies of such
23 process and the fee required by G.S. 57C-1-22(b). Upon receipt of
24 service of process on behalf of a surviving business entity in the
25 manner provided for in this section, the Secretary of State shall
26 immediately mail a copy of the process by registered or certified mail,
27 return receipt requested, to the surviving business entity. If the
28 surviving business entity is authorized to transact business or conduct
29 affairs in this State, the address for mailing shall be its principal office
30 designated in the latest document filed with the Secretary of State that
31 is authorized by law to designate the principal office or, if there is no
32 principal office on file, its registered office. If the surviving business
33 entity is not authorized to transact business or conduct affairs in this
34 State, the address for mailing shall be the mailing address designated
35 pursuant to ~~subdivision (3) of subsection (d) of this section.~~ G.S. 57C-
36 9A-22(a)(3)."

37 **SECTION 100.** G.S. 57C-10-02 reads as rewritten:

38 "**§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

39 The provisions of this Chapter shall apply to determine the rights and obligations of
40 a limited liability company ~~organized~~ formed hereunder in commerce with foreign
41 nations and among the several states, except as prohibited by law."

42 **SECTION 101.** G.S. 57C-10-06 reads as rewritten:

43 "**§ 57C-10-06. Income taxation.**

1 A limited liability company, a foreign limited liability company authorized to
2 transact business in this State, and a member of one of these companies are subject to
3 taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their
4 classification for federal income tax purposes. Accordingly, if a limited liability
5 company or a foreign limited liability company authorized to transact business in this
6 State is classified for federal income tax purposes as a ~~corporation, the company is C~~
7 corporation, as defined in G.S. 105-131(b)(2), or an S corporation, as defined in G.S.
8 105-131(b)(8), the company and its members are subject to tax under Article 4 of
9 Chapter 105 to the same extent as a ~~corporation. C corporation or an S corporation, as~~
10 the case may be, and its shareholders. If a limited liability company or a foreign limited
11 liability company authorized to transact business in this State is classified for federal
12 income tax purposes as a partnership, the company and its members are subject to tax
13 under Article 4 of Chapter 105 to the same extent as a partnership and its members. If a
14 limited liability company or a foreign limited liability company authorized to transact
15 business in this State is classified for federal income tax purposes as other than a
16 corporation or a partnership, the company and its members are subject to tax under
17 Article 4 of Chapter 105 of the General Statutes in a manner consistent with that
18 classification. This section does not require a limited liability company or a foreign
19 limited liability company to obtain an administrative ruling from the Internal Revenue
20 Service on its classification under the Internal Revenue Code."

21 **SECTION 102.** G.S. 57C-10-07 reads as rewritten:

22 "**§ 57C-10-07. Intent.**

23 It is the intent of the General Assembly that the legal existence of limited liability
24 companies ~~organized~~ formed under this Chapter be recognized outside the boundaries of
25 this State and that, subject to any reasonable requirement of registration, a domestic
26 limited liability company transacting business outside this State be granted full faith and
27 credit under Section 1 of Article IV of the Constitution of the United States."
28

29 **PART IV. AMENDMENTS TO THE LAW GOVERNING PARTNERSHIPS.**

30 **SECTION 103.(a)** Chapter 59 of the General Statutes is amended by
31 recodifying Part 7 of Article 2 as a separate new Article to read:

32 "Article 2A.

33 "Conversion and Merger."

34 **SECTION 103.(b)** G.S. 59-32 reads as rewritten:

35 "**§ 59-32. Definition of terms.**

36 As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for
37 purposes of that Article, unless the context otherwise requires:

- 38 (01) "Act" means the North Carolina Uniform Partnership Act and refers to
39 all provisions therein.
40 (1) "Bankrupt" means bankrupt under the Federal Bankruptcy Act or
41 insolvent under any State insolvent act.
42 (2) "Business" means every trade, occupation, or profession.
43 (3) "Conveyance" means every assignment, lease, mortgage, or
44 encumbrance.

- 1 (4) "Court" means every court and judge having jurisdiction in the case.
2 (4a) 'Domestic corporation' has the same meaning as in G.S. 55-1-40.
3 (4b) 'Domestic limited liability company' has the same meaning as in G.S.
4 57C-1-03.
5 (4c) 'Domestic limited partnership' has the same meaning as in G.S. 59-
6 103.
7 (4d) 'Domestic nonprofit corporation' means a corporation as defined in
8 G.S. 55A-1-40.
9 (4e) 'Foreign corporation' has the same meaning as in G.S. 55-1-40.
10 (4f) 'Foreign limited liability company' has the same meaning as in G.S.
11 57C-1-03.
12 (4a)(4g) "Foreign limited liability partnership" means a partnership that (i)
13 is formed under laws other than the laws of this State, and (ii) has the
14 status of a limited liability partnership or registered limited liability
15 partnership under those laws.
16 (4h) 'Foreign limited partnership' has the same meaning as in G.S. 59-103.
17 (4i) 'Foreign nonprofit corporation' means a foreign corporation as defined
18 in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S.
19 55A-1-40.
20 (5) "Person" means individuals, partnerships, corporations, limited
21 liability companies, and other associations.
22 (5a) 'Principal office' means the office (in or out of this State) where the
23 principal executive offices of a registered limited liability partnership
24 or a foreign limited liability partnership are located, as designated in
25 its most recent annual report filed with the Secretary of State or, if no
26 annual report has yet been filed, in its application for registration as a
27 registered limited liability partnership or foreign limited liability
28 partnership.
29 (6) "Real property" means land and any interest or estate in land.
30 (7) "Registered limited liability partnership" means a partnership that is
31 registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

32 **SECTION 104.** Part 1 of Article 2 of Chapter 59 of the General Statutes is
33 amended by adding a new section to read:

34 **"§ 59-35.1. Filing of documents.**

35 (a) To be entitled to filing by the Secretary of State, a document submitted
36 pursuant to this Article shall meet all of the following requirements:

- 37 (1) The document shall contain the information required by this Article. It
38 may contain other information as well.
39 (2) The document shall be typewritten or printed.
40 (3) The document shall be in the English language.
41 (4) A document submitted by a partnership other than a domestic or
42 foreign limited partnership shall be executed by a general partner of
43 the partnership. A document submitted by any other type of entity
44 other than a partnership shall be executed by a person authorized to

1 execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity
2 is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f)
3 if the entity is a domestic or foreign nonprofit corporation, (iii)
4 pursuant to G.S. 57C-1-20(f) if the entity is a domestic or foreign
5 limited liability company, or (iv) pursuant to G.S. 59-204 if the entity
6 is a domestic or foreign limited partnership.

7 (5) The person executing the document shall sign it and state beneath or
8 opposite the person's signature the person's name and the capacity in
9 which the person signs. Any signature on the document may be a
10 facsimile. The document may, but need not, contain an
11 acknowledgment, verification, or proof.

12 (6) The document shall be delivered to the Office of the Secretary of State
13 for filing and shall be accompanied by one exact or conformed copy
14 and by the required filing fee.

15 (b) A partnership may correct a document filed by the Secretary of State pursuant
16 to this Article if the document (i) contains a statement that is incorrect and was incorrect
17 when the document was filed or (ii) was defectively executed, attested, sealed, verified,
18 or acknowledged.

19 A document is corrected by:

20 (1) Preparing articles of correction that (i) describe the document,
21 including its filing date, or have attached to them a copy of the
22 document, (ii) specify the incorrect statement and the reason it is
23 incorrect or the manner in which the execution was defective, and (iii)
24 correct the incorrect statement or defective execution; and

25 (2) Delivering the articles of correction to the Secretary of State for filing,
26 accompanied by one exact or conformed copy and the required filing
27 fee.

28 Articles of correction are effective on the effective date of the document that is
29 corrected except as to persons relying on the uncorrected document and adversely
30 affected by the correction. As to those persons, articles of correction are effective when
31 filed.

32 (c) The Secretary of State may adopt and furnish on request forms for:

33 (1) An application for registration as a registered limited liability
34 partnership;

35 (2) Cancellation of registration as a registered limited liability partnership;

36 (3) Application for a registration as a foreign limited liability partnership;
37 and

38 (4) Cancellation of registration as a foreign limited liability partnership.

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

40 (d) The Secretary of State may adopt and furnish on request forms for other
41 documents required or permitted to be filed by this Act but their use is not mandatory.

42 (e) The Secretary of State shall collect the following fees when the documents
43 described in this subsection are submitted by a partnership to the Secretary of State for
44 filing:

| | <u>Document</u> | <u>Fee</u> |
|----|---|---------------|
| 1 | | |
| 2 | | |
| 3 | (1) <u>Registered limited liability partnership's or</u> | <u>\$5.00</u> |
| 4 | <u>foreign limited liability partnership's statement</u> | |
| 5 | <u>of change of registered agent or registered office</u> | |
| 6 | <u>or both</u> | |
| 7 | (2) <u>Agent's statement of change of registered</u> | <u>5.00</u> |
| 8 | <u>office for each affected registered limited</u> | |
| 9 | <u>liability partnership or foreign limited</u> | |
| 10 | <u>liability partnership</u> | |
| 11 | (3) <u>Agent's statement of resignation</u> | <u>No Fee</u> |
| 12 | (4) <u>Designation of registered agent or</u> | <u>5.00</u> |
| 13 | <u>registered office or both</u> | |
| 14 | (5) <u>Articles of conversion (other than articles</u> | <u>50.00</u> |
| 15 | <u>of conversion included as part of another</u> | |
| 16 | <u>document)</u> | |
| 17 | (6) <u>Articles of merger</u> | <u>50.00</u> |
| 18 | (7) <u>Application for registration as a</u> | <u>125.00</u> |
| 19 | <u>registered limited liability partnership</u> | |
| 20 | (8) <u>Certificate of amendment of registration</u> | <u>25.00</u> |
| 21 | <u>as a registered limited liability partnership</u> | |
| 22 | (9) <u>Cancellation of registration as a registered</u> | <u>25.00</u> |
| 23 | <u>limited liability partnership</u> | |
| 24 | (10) <u>Application for registration as a foreign</u> | <u>125.00</u> |
| 25 | <u>limited liability partnership</u> | |
| 26 | (11) <u>Certificate of amendment of registration</u> | <u>25.00</u> |
| 27 | <u>as a foreign limited liability partnership</u> | |
| 28 | (12) <u>Cancellation of registration as a foreign</u> | <u>25.00</u> |
| 29 | <u>limited liability partnership</u> | |
| 30 | (13) <u>Application for certificate of withdrawal</u> | <u>10.00</u> |
| 31 | <u>by reason of merger, consolidation, or</u> | |
| 32 | <u>conversion</u> | |
| 33 | (14) <u>Annual report</u> | <u>200.00</u> |
| 34 | (15) <u>Articles of correction</u> | <u>10.00</u> |
| 35 | (16) <u>Any other document required or permitted</u> | <u>10.00</u> |
| 36 | <u>to be filed pursuant to this Article</u> | |
| 37 | (17) <u>Advisory review of a document</u> | <u>200.00</u> |

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

(g) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed pursuant to this Article:

1 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
2 original; and

3 (2) Five dollars (\$5.00) for the certificate.

4 (h) The Secretary of State shall guarantee the expedited filing of a document
5 upon receipt of the document in proper form and the payment of the required filing fee.
6 The Secretary of State may collect the following additional fees for the expedited filing
7 of a document received in good form:

8 (1) Two hundred dollars (\$200.00) for the filing by the end of the same
9 business day of a document received by 12:00 noon Eastern Standard
10 Time; and

11 (2) One hundred dollars (\$100.00) for the filing of a document within 24
12 hours after receipt, excluding weekends and holidays.

13 The Secretary of State shall not collect the fees allowed in this subsection unless the
14 person submitting the document for filing requests an expedited filing and is informed
15 by the Secretary of State of the fees prior to the filing of the document.

16 (i) Upon request, the Secretary of State shall provide for the review of a
17 document prior to its submission for filing to determine whether it satisfies the
18 requirements of this Article. Submission of a document for review shall be accompanied
19 by the proper fee and shall be in accordance with procedures adopted by rule by the
20 Secretary of State. The advisory review shall be completed within 24 hours after
21 submission, excluding weekends and holidays, unless the person submitting the
22 document is otherwise notified in accordance with procedures adopted by rule by the
23 Secretary of State fixing priority between submissions under this subsection and filings
24 under subsection (h) of this section. Upon completion of the advisory review, the
25 Secretary of State shall notify the person submitting the document of any deficiencies in
26 the document that would prevent its filing.

27 (j) Except as provided in this subsection and in subsection (b) of this section, a
28 document accepted for filing is effective:

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

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

34 A document may specify a delayed effective time and date, and if it does so the
35 document becomes effective at the time and date specified. If a delayed effective date
36 but no time is specified, the document is effective at 11:59:59 P.M. on that date. A
37 delayed effective date for a document shall not be later than the 90th day after the date it
38 is filed.

39 The fact that a document has become effective under this subsection does not
40 determine its validity or invalidity or the correctness or incorrectness of the information
41 contained in the document.

42 (k) If a document delivered to the Office of the Secretary of State for filing
43 satisfies the requirements of this Article, the Secretary of State shall file it. Documents
44 filed with the Secretary of State pursuant to this Article may be maintained by the

1 Secretary either in their original form or in photographic, microfilm, optical disk media,
2 or other reproduced form. The Secretary may make reproductions of documents filed
3 under this Article, or under any predecessor act, by photographic, microfilm, optical
4 disk media, or other means of reproduction and may destroy the originals of those
5 documents reproduced.

6 The Secretary of State files a document by stamping or otherwise endorsing 'Filed',
7 together with the Secretary of State's name and official title and the date and time of
8 filing, on both the original and the document copy. After filing a document, the
9 Secretary of State shall deliver the document copy to the submitting business entity or
10 its representative.

11 If the Secretary of State refuses to file a document, the Secretary of State shall return
12 it to the submitting business entity or its representative within five days after the
13 document was received, together with a brief, written explanation of the reason for
14 refusal. The Secretary of State may correct apparent errors and omissions on a
15 document submitted for filing if authorized to make the corrections by the person
16 submitting the document for filing. Prior to making the correction, the Secretary shall
17 confirm the authorization to make the corrections according to procedures adopted by
18 rule.

19 The Secretary of State's duty is to review and file documents that satisfy the
20 requirements of this Article. The Secretary of State's filing or refusing to file a
21 document does not:

- 22 (1) Affect the validity or invalidity of the document in whole or part;
- 23 (2) Relate to the correctness or incorrectness of information contained in
24 the document; or
- 25 (3) Create a presumption that the document is valid or invalid or that
26 information contained in the document is correct or incorrect.

27 (1) If the Secretary of State refuses to file a document delivered to the Secretary
28 of State's office for filing, the person tendering the document for filing may, within 30
29 days after the refusal, appeal the refusal to the Superior Court of Wake County. The
30 appeal is commenced by filing a petition with the court and with the Secretary of State
31 requesting the court to compel the Secretary of State to file the document. The petition
32 shall have attached to it the document to be filed and the Secretary of State's explanation
33 for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B
34 of the General Statutes, the Administrative Procedure Act, and the court shall
35 determine, based upon what is appropriate under the circumstances, any further notice
36 and opportunity to be heard.

37 Upon consideration of the petition and any response made by the Secretary of State,
38 the court may, prior to entering final judgment, order the Secretary of State to file the
39 document or take other action the court considers appropriate.

40 The court's final decision may be appealed as in other civil proceedings.

41 (m) A certificate attached to a copy of a document filed by the Secretary of State,
42 bearing the Secretary of State's signature, which may be in facsimile, and the seal of
43 office and certifying that the copy is a true copy of the document, is conclusive evidence
44 that the original document is on file with the Secretary of State. A photographic,

1 microfilm, optical disk media, or other reproduced copy of a document filed pursuant to
2 this Article or any predecessor act, when certified by the Secretary, shall be considered
3 an original for all purposes and is admissible in evidence in like manner as an original.

4 (n) A person commits an offense if the person signs a document the person
5 knows is false in any material respect with intent that the document be delivered to the
6 Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

7 (o) Whenever title to real property in this State held by a partnership is vested by
8 operation of law in another entity upon merger, consolidation, or conversion of the
9 partnership, a certificate reciting the merger, consolidation, or conversion shall be
10 recorded in the office of the register of deeds of the county where the property is
11 located, or if the property is located in more than one county, then in each county where
12 any portion of the property is located.

13 The Secretary of State shall adopt uniform certificates to be furnished for
14 registration in accordance with this subsection. In the case of a partnership formed
15 under a law other than the laws of this State, a similar certificate by any competent
16 authority of the jurisdiction of organization may be registered in accordance with this
17 subsection.

18 The certificate required by this subsection shall be recorded by the register of deeds
19 in the same manner as deeds, and for the same fees, but no formalities as to
20 acknowledgment, probate, or approval by any other officer shall be required. The
21 former name of the partnership holding title to the real property before the merger,
22 consolidation, or conversion shall appear in the "Grantor" index and the name of the
23 other entity holding title to the real property by virtue of the merger, consolidation, or
24 conversion shall appear in the "Grantee" index."

25 **SECTION 105.(a)** Chapter 59 of the General Statutes is amended by
26 recodifying Part 7 of Article 2 as a separate new Article to read:

27 "Article 2A.

28 "Conversion and Merger."

29 **SECTION 105.(b)** G.S. 59-73.2, 59-73.3, 59-73.4, 59-73.5, and 59-73.6 are
30 recodified as G.S. 59-73.10, 59-73.20, 59-73.21, 59-73.22, and 59-73.23, respectively,
31 in Article 2A of Chapter 59 of the General Statutes, as enacted by this act.

32 **SECTION 105.(c)** G.S. 59-73.7 is repealed.

33 **SECTION 106.** Article 2A of Chapter 59 of the General Statutes, as enacted
34 by this act, is amended by adding a new Part to read as follows and to include current
35 G.S. 59-73.1 in Part 1:

36 "Part 1. General Provisions."

37 **SECTION 107.** G.S. 59-73.1 reads as rewritten:

38 **"§ 59-73.1. Definitions.**

39 As used in this ~~Part~~ Article:

- 40 (1) "Business entity" means a domestic corporation ~~as defined in G.S. 55-~~
41 ~~1-40~~ (including a professional corporation as defined in G.S. 55B-2), a
42 foreign corporation ~~as defined in G.S. 55-1-40~~ (including a foreign
43 professional corporation as defined in G.S. 55B-16), a domestic or
44 foreign nonprofit ~~corporation~~ corporation, ~~as defined in G.S. 55A-1-~~

1 40, a domestic or foreign limited liability company as defined in G.S.
2 57C-1-03, a domestic or foreign limited partnership partnership, as
3 defined in G.S. 59-102, a domestic partnership, or any other
4 partnership as defined in G.S. 59-36 formed under a law other than the
5 laws of this State (including a limited liability partnership). partnership.

6 (2) "Domestic partnership" means a partnership as defined in G.S. 59-36
7 that is formed under the laws of this State, including a registered
8 limited liability partnership partnership, as defined in G.S. 59-32, but
9 excluding a domestic limited partnership as defined in G.S. 59-
10 102. partnership.

11 (3) "Partnership" means a partnership as defined in G.S. 59-36 whether or
12 not formed under the laws of this State including a registered limited
13 liability partnership and any other a foreign limited liability
14 partnership formed under a law other than the laws of this State
15 partnership, but excluding a domestic limited partnership as defined in
16 G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-
17 102. partnership."

18 **SECTION 108.** Article 2A of Chapter 59 of the General Statutes, as enacted
19 by this act, is amended by adding a new Part to read:

20 "Part 2. Conversion to Domestic Partnership.

21 "**§ 59-73.5. Conversion.**

22 A business entity other than a domestic partnership may convert to a domestic
23 partnership if:

- 24 (1) The conversion is permitted by the laws of the state or country
25 governing the organization and internal affairs of the converting
26 business entity; and
27 (2) The converting business entity complies with the requirements of this
28 Part and, to the extent applicable, the laws referred to in subdivision
29 (1) of this section.

30 "**§ 59-73.6. Plan of conversion.**

31 (a) The converting business entity shall approve a written plan of conversion
32 containing:

- 33 (1) The name of the converting business entity, its type of business entity,
34 and the state or country whose laws govern its organization and
35 internal affairs;
36 (2) The name of the resulting domestic partnership into which the
37 converting business entity shall convert;
38 (3) The terms and conditions of the conversion; and
39 (4) The manner and basis for converting the interests in the converting
40 business entity into interests, obligations, or securities of the resulting
41 domestic partnership or into cash or other property in whole or in part.

42 The plan of conversion may contain other provisions relating to the conversion.

1 **(b)** The plan of conversion shall be approved in accordance with the laws of the
2 state or country governing the organization and internal affairs of the converting
3 business entity.

4 **(c)** After a plan of conversion has been approved as provided in subsection (b) of
5 this section, but before the articles of conversion to domestic partnership for the
6 resulting domestic partnership become effective, the plan of conversion may be
7 amended or abandoned as permitted by the laws that govern the organization and
8 internal affairs of the converting business entity.

9 **§ 59-73.7. Filing of articles of conversion by converting business entity.**

10 **(a)** After a plan of conversion has been approved by the converting business
11 entity as provided in G.S. 59-73.6, the converting business entity shall deliver articles of
12 conversion to the Secretary of State for filing. The articles of conversion partnership
13 shall state:

14 **(1)** That the domestic partnership is being formed pursuant to a conversion
15 of another business entity;

16 **(2)** The name of the resulting domestic partnership, a designation of its
17 mailing address, and a commitment to file with the Secretary of State a
18 statement of any subsequent change in its mailing address;

19 **(3)** The name of the converting business entity, its type of business entity,
20 and the state or country whose laws govern its organization and
21 internal affairs; and

22 **(4)** That a plan of conversion has been approved by the converting
23 business entity in the manner required by law.

24 If the plan of conversion is abandoned after the articles of conversion have been
25 filed with the Secretary of State but before the articles of conversion become effective,
26 the converting business entity shall deliver to the Secretary of State for filing prior to
27 the time the articles of conversion become effective an amendment to the articles of
28 conversion withdrawing the articles of conversion to domestic partnership.

29 **(b)** The conversion takes effect when the articles of conversion become effective.

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

31 **§ 59-73.8. Effects of conversion.**

32 **(a)** When the conversion takes effect:

33 **(1)** The converting business entity ceases its prior form of organization
34 and continues in existence as the resulting domestic partnership;

35 **(2)** The title to all real estate and other property owned by the converting
36 business entity continues vested in the resulting domestic partnership
37 without reversion or impairment;

38 **(3)** All liabilities of the converting business entity continue as liabilities of
39 the resulting domestic partnership;

40 **(4)** A proceeding pending by or against the converting business entity may
41 be continued as if the conversion did not occur; and

42 **(5)** The interests in the converting business entity that are to be converted
43 into interests, obligations, or securities of the resulting domestic
44 partnership or into the right to receive cash or other property are

1 thereupon so converted, and the former holders of interests in the
2 converting business entity are entitled only to the rights provided in the
3 plan of conversion.

4 The conversion shall not affect the liability or absence of liability of any holder of an
5 interest in the converting business entity for any acts, omissions, or obligations of the
6 converting business entity made or incurred prior to the effectiveness of the conversion.
7 The cessation of the existence of the converting business entity in its prior form of
8 organization in the conversion shall not constitute a dissolution or termination of the
9 converting business entity.

10 (b) When the conversion takes effect, the resulting domestic partnership is
11 deemed:

12 (1) To agree that it may be served with process in this State for
13 enforcement of (i) any obligation of the converting business entity and;
14 (ii) any obligation of the resulting domestic partnership arising from
15 the conversion; and

16 (2) To have appointed the Secretary of State as its agent for service of
17 process in any such proceeding. Service on the Secretary of State of
18 any the process shall be made by delivering to and leaving with the
19 Secretary of State, or with any clerk authorized by the Secretary of
20 State to accept service of process, duplicate copies of the process, and
21 the fee required by G.S. 59-35.1(f). Upon receipt of service of process
22 on behalf of a resulting domestic partnership in the manner provided
23 for in this section, the Secretary of State shall immediately mail a copy
24 of the process by registered or certified mail, return receipt requested,
25 to the resulting domestic partnership. If the resulting domestic
26 partnership is a registered limited liability partnership, the address for
27 mailing shall be its principal office designated in the latest document
28 filed with the Secretary of State that is authorized by law to designate
29 the principal office or, if there is no principal office on file, its
30 registered office. If the resulting domestic partnership is not a
31 registered limited liability partnership, the address for mailing shall be
32 the mailing address designated pursuant to G.S. 59-73.7(a)(2)."

33 **SECTION 109.** Article 2A of Chapter 59 of the General Statutes, as enacted
34 by this act, is amended by adding a new Part to read as follows and to include G.S.
35 59-73.10, as recodified in Section 105 of this act, as the first section in Part 3:

36 "Part 3. Conversion of Domestic Partnership."

37 **SECTION 110.** G.S. 59-73.10, as recodified in Section 105 of this act, reads
38 as rewritten:

39 "**§ 59-73.10. Conversion of domestic partnership.**

40 A domestic partnership may convert to a ~~domestic limited liability company~~
41 ~~pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic~~
42 ~~limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General~~
43 ~~Statutes.~~ different type of business entity if:

1 (1) The conversion is permitted by the laws of the state or country
2 governing the organization and internal affairs of such other type of
3 business entity; and

4 (2) The converting domestic partnership complies with the requirements
5 of this Part and, to the extent applicable, the laws referred to in
6 subdivision (1) of this section."

7 **SECTION 111.** Part 3 of Article 2A of Chapter 59 of the General Statutes,
8 as created by Section 109 of this act, is amended by adding new sections to read:

9 **"§ 59-73.11. Plan of conversion.**

10 (a) The converting domestic partnership shall approve a written plan of
11 conversion containing:

12 (1) The name of the converting domestic partnership;

13 (2) The name of the resulting business entity into which the domestic
14 partnership shall convert, its type of business entity, and the state or
15 country whose laws govern its organization and internal affairs;

16 (3) The terms and conditions of the conversion; and

17 (4) The manner and basis for converting the interests in the domestic
18 partnership into interests, obligations, or securities of the resulting
19 business entity or into cash or other property in whole or in part.

20 The plan of conversion may contain other provisions relating to the conversion.

21 (b) The converting domestic partnership shall provide a copy of the plan of
22 conversion to each partner of the converting domestic partnership. The plan of
23 conversion shall be approved by the domestic partnership in the manner provided for
24 the approval of the conversion in a written partnership agreement or, if there is no such
25 provision, by the unanimous consent of its partners. If any partner of the converting
26 domestic partnership has or will have personal liability for any existing or future
27 obligation of the resulting business entity solely as a result of holding an interest in the
28 resulting business entity, then in addition to the requirements of the preceding sentence,
29 approval of the plan of conversion by the domestic partnership shall require the consent
30 of that partner.

31 (c) After a plan of conversion has been approved by a domestic partnership but
32 before the articles of conversion become effective, the plan of conversion (i) may be
33 amended as provided in the plan of conversion or; (ii) may be abandoned, subject to any
34 contractual rights, as provided in the plan of conversion or written partnership
35 agreement or, if not so provided, as determined in the manner necessary for approval of
36 the plan of conversion.

37 **"§ 59-73.12. Articles of conversion.**

38 (a) After a plan of conversion has been approved by the converting domestic
39 partnership as provided in G.S. 59-73.11, the converting domestic partnership shall
40 deliver articles of conversion to the Secretary of State for filing. The articles of
41 conversion shall state:

42 (1) The name of the converting domestic partnership;

43 (2) The name of the resulting business entity, its type of business entity,
44 the state or country whose laws govern its organization and internal

1 affairs, and, if the resulting business entity is not authorized to transact
2 business or conduct affairs in this State, a designation of its mailing
3 address and a commitment to file with the Secretary of State a
4 statement of any subsequent change in its mailing address; and

5 (3) That a plan of conversion has been approved by the domestic
6 partnership as required by law.

7 If the domestic partnership is converting to a business entity whose formation or
8 status requires the filing of a document with the Secretary of State, then the articles of
9 conversion shall be included as part of that document in addition to the matters
10 otherwise required or permitted by law.

11 If the plan of conversion is abandoned after the articles of conversion have been
12 filed with the Secretary of State but before the articles of conversion become effective,
13 the converting domestic partnership shall deliver to the Secretary of State for filing prior
14 to the time the articles of conversion become effective an amendment of the articles of
15 conversion withdrawing the articles of conversion.

16 (b) The conversion takes effect when the articles of conversion become effective.

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

18 **"§ 59-73.13. Effects of conversion.**

19 (a) When the conversion takes effect:

20 (1) The converting domestic partnership ceases its prior form of
21 organization and continues in existence as the resulting business entity;

22 (2) The title to all real estate and other property owned by the converting
23 domestic partnership continues vested in the resulting business entity
24 without reversion or impairment;

25 (3) All liabilities of the converting domestic partnership continue as
26 liabilities of the resulting business entity;

27 (4) A proceeding pending by or against the converting domestic
28 partnership may be continued as if the conversion did not occur; and

29 (5) The interests in the converting domestic partnership that are to be
30 converted into interests, obligations, or securities of the resulting
31 business entity or into the right to receive cash or other property are
32 thereupon so converted, and the former holders of interests in the
33 converting domestic partnership are entitled only to the rights provided
34 in the plan of conversion.

35 The conversion shall not affect the liability or absence of liability of any holder of an
36 interest in the converting domestic partnership for any acts, omissions, or obligations of
37 the converting domestic partnership made or incurred prior to the effectiveness of the
38 conversion. The cessation of the existence of the converting domestic partnership in its
39 form of organization as a domestic partnership in the conversion shall not constitute a
40 dissolution or termination of the converting domestic partnership.

41 (b) If the resulting business entity is not a domestic corporation, a domestic
42 limited partnership, or a domestic limited liability company, when the conversion takes
43 effect the resulting business entity is deemed:

1 59-73.21, the surviving business entity shall deliver articles of merger to the Secretary
2 of State for filing. The articles of merger shall set forth:

- 3 (1) The plan of merger;
- 4 (2) For each merging business entity, its name, type of business entity, and
5 the state or country whose laws govern its organization and internal
6 affairs;
- 7 (3) The name ~~and address~~ of the surviving business ~~entity~~; entity and, if
8 the surviving business entity is not authorized to transact business or
9 conduct affairs in this State, a designation of its mailing address and a
10 commitment to file with the Secretary of State a statement of any
11 subsequent change in its mailing address;
- 12 (4) A statement that the plan of merger has been approved by each
13 merging business entity in the manner required by law; and
- 14 (5) The effective date and time of the merger if it is not to be effective at
15 the time of filing of the articles of merger.

16 If the plan of merger is amended or abandoned after the articles of merger have been
17 filed, but before the articles of merger become effective, the surviving business entity
18 ~~promptly~~ shall deliver to the Secretary of State for filing prior to the time the articles of
19 merger become effective an amendment to the articles of merger reflecting the
20 amendment or abandonment of the plan of merger."

21 **SECTION 115.** G.S. 59-73.23(b), as recodified by Section 105 of this act,
22 reads as rewritten:

23 "(b) If the surviving business entity is not a domestic limited liability company, a
24 domestic corporation, a domestic nonprofit corporation, or a domestic limited
25 ~~partnership~~ partnership, when the merger takes ~~effect~~, effect the surviving business
26 entity is deemed:

- 27 (1) To agree that it may be served with process in this State in any
28 proceeding for enforcement of (i) any obligation of any merging
29 domestic limited liability company, domestic corporation, domestic
30 nonprofit corporation, domestic limited partnership, or other
31 partnership as defined in G.S. 59-36 that is formed under the laws of
32 this State, (ii) the rights of dissenting shareholders of any merging
33 domestic corporation under Article 13 of Chapter 55 of the General
34 Statutes, and (iii) any obligation of the surviving business entity
35 arising from the merger; and
- 36 (2) To have appointed the Secretary of State as its registered agent for
37 service of process in any such proceeding. Service on the Secretary of
38 State of any such process shall be made by delivering to and leaving
39 with the Secretary of ~~State~~ State, or with any clerk authorized by the
40 Secretary of State to accept service of process, duplicate copies of such
41 process and the ~~fees~~ fee required by ~~G.S. 59-73.7(e)~~. G.S. 59-35.1(f).
42 Upon receipt of service of process on behalf of a surviving business
43 entity in the manner provided for in this section, the Secretary of State
44 shall immediately mail a copy of the process by registered or certified

1 mail, return receipt requested, to the surviving business entity. If the
2 surviving business entity is authorized to transact business or conduct
3 affairs in this State, the address for mailing shall be its principal office
4 designated in the latest document filed with the Secretary of State that
5 is authorized by law to designate the principal office or, if there is no
6 principal office on file, its registered office. If the surviving business
7 entity is not authorized to transact business or conduct affairs in this
8 State, the address for mailing shall be the mailing address designated
9 pursuant to ~~subdivision (3) of subsection (d) of this section.~~ G.S. 59-
10 73.22(a)(3)."

11 **SECTION 116.** G.S. 59-77 reads as rewritten:

12 **"§ 59-77. When personal representative may take inventory; receiver.**

13 If the surviving partner should neglect or refuse to have such inventory made, the
14 personal representative of the deceased partner may have the same made in accordance
15 with the provisions of G.S. 59-76. Should any surviving partner fail to take such an
16 inventory or refuse to allow the personal representative of the deceased partner's estate
17 to do so, such personal representative of the deceased partner's estate may forthwith
18 apply to a court of competent jurisdiction for the appointment of a receiver for such
19 partnership, who shall thereupon proceed to wind up the same and dispose of the assets
20 thereof in accordance with law."

21 **SECTION 117.** G.S. 59-84.1 reads as rewritten:

22 **"§ 59-84.1. Partnership to comply with "assumed name" statute, statute; income**
23 **taxation.**

24 (a) Every partnership other than a limited partnership shall comply with, and be
25 subject to, the provisions of Articles 14 and 15 of Chapter 66 of the General Statutes in
26 all cases in which the same are applicable.

27 (b) A partnership, including a registered limited liability partnership and foreign
28 limited liability partnership, and a partner of one of these partnerships are subject to
29 taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their
30 classification for federal income tax purposes. Accordingly, if any such partnership is
31 classified for federal income tax purposes as a C corporation as defined in G.S. 105-
32 131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its
33 partners are subject to tax under Article 4 of Chapter 105 to the same extent as a C
34 corporation or an S corporation, as the case may be, and its shareholders. If any such
35 partnership is classified for federal income tax purposes as a partnership, the partnership
36 and its partners are subject to tax under Article 4 of Chapter 105 accordingly. If any
37 such partnership is classified for federal income tax purposes as other than a corporation
38 or a partnership, the partnership and its partners are subject to tax under Article 4 of
39 Chapter 105 in a manner consistent with that classification. This section does not
40 require a partnership, including any registered limited liability partnership or foreign
41 limited liability partnership authorized to transact business in this State, to obtain an
42 administrative ruling from the Internal Revenue Service on its classification under the
43 Internal Revenue Code."

44 **SECTION 118.** G.S. 59-84.2 reads as rewritten:

1 **"§ 59-84.2. Registered limited liability partnerships.**

2 (a) ~~To become a registered limited liability partnership, a partnership must file A~~
3 ~~partnership whose internal affairs are governed by the laws of this State, other than a~~
4 ~~limited partnership, may become a registered limited liability partnership by filing with~~
5 ~~the Secretary of State an application ~~stating~~ stating all of the following:~~

6 (1) The name of the partnership.

7 (2) The street ~~address~~ address, and the mailing address if different from
8 ~~the street address~~, of its principal office.

9 (3) The name and street address, and the mailing address if different from
10 the street address, ~~for~~ of the partnership's registered agent and
11 registered office for service of process.

12 (4) The county in this State in which the registered office is located.

13 (5) ~~A brief statement of the business in which the partnership engages.~~

14 (6) ~~A deferred effective date, if any.~~

15 (7) The fiscal year end of the partnership.

16 (a1) The terms and conditions on which a partnership becomes a limited liability
17 partnership must be approved ~~by the vote necessary in the manner provided in to amend~~
18 ~~the partnership agreement except agreement; provided, however, if the partnership~~
19 ~~agreement does not contain any such provision, the terms and conditions must be~~
20 ~~approved (i) in the case of a partnership having a partnership agreement that expressly~~
21 ~~considers obligations to contribute to the partnership, the vote in the manner necessary~~
22 ~~to amend those provisions provisions, or (ii) in any other case, in the manner necessary~~
23 ~~to amend the partnership agreement.~~

24 (b) ~~An application for registration as a registered limited liability partnership~~
25 ~~must be executed by one or more partners.~~

26 (c) ~~An application for registration as a registered limited liability partnership~~
27 ~~must be accompanied by a fee of one hundred twenty five dollars (\$125.00).~~

28 (d) ~~The Secretary of State shall register a partnership that submits a completed~~
29 ~~application with the required fee.~~

30 (e) ~~A registration is effective on the later of the date the registration is filed or the~~
31 ~~date specified in the application for registration, unless it is voluntarily withdrawn by~~
32 ~~filing with the Secretary of State a written withdrawal notice executed by one or more~~
33 ~~of the partners, or is revoked pursuant to G.S. 59-84.4(f).~~

34 (f) ~~The Secretary of State may provide forms for applications for registration.~~

35 (g) The status of a registered limited liability partnership and the liability of its
36 partners is not affected by errors or later changes in the information required to be
37 contained in the application for registration.

38 (h) A partnership becomes a registered limited liability partnership when its
39 application for registration becomes effective.

40 (i) A partnership shall promptly amend its registration to reflect any change in
41 the information contained in its application for registration, other than changes in its
42 registered agent, registered office, or principal office. A registration is amended by
43 filing a certificate of amendment with the Secretary of State. The certificate of
44 amendment shall set forth;

1 (1) The name of the partnership as reflected on the application for
2 registration;

3 (2) The date of filing of the application for registration; and

4 (3) The amendment to the application for registration.

5 (j) A partnership may cancel its registration by filing a certificate of cancellation
6 with the Secretary of State. The certificate of cancellation shall set forth:

7 (1) The name of the partnership as reflected on the application for
8 registration;

9 (2) The date of filing of the application for registration;

10 (3) A mailing address to which the Secretary of State may mail a copy of
11 any process served on the Secretary of State under this subsection;

12 (4) A commitment to file with the Secretary of State a statement of any
13 subsequent change in its mailing address; and

14 (5) The effective date and time of cancellation if it is not to be effective at
15 the time of filing the certificate.

16 Cancellation of registration terminates the authority of the partnership's registered
17 agent to accept service of process, notice, or demand, and appoints the Secretary of
18 State as agent to accept service on behalf of the partnership with respect to any action or
19 proceeding based upon any cause of action arising in this State, or arising out of
20 business transacted in this State, during the time the partnership was registered as a
21 registered limited liability partnership. Service on the Secretary of State of any process
22 shall be made by delivering to and leaving with the Secretary of State or any clerk
23 authorized by the Secretary of State to accept service of process, duplicate copies of
24 such process, and the fee required by G.S. 59-35.1(f). Upon receipt of process in the
25 manner provided in this section, the Secretary of State shall immediately mail a copy of
26 the process by registered or certified mail, return receipt requested, to the partnership at
27 the mailing address designated pursuant to this subsection.

28 (k) Each registered limited liability partnership shall continuously maintain in
29 this State:

30 (1) A registered office that may be the same as any of its places of
31 business; and

32 (2) A registered agent who shall be (i) an individual who is a resident of
33 this State and whose business office is identical with the registered
34 office; (ii) a domestic corporation, nonprofit corporation, or limited
35 liability company whose business office is identical with the registered
36 office; or (iii) a foreign corporation, nonprofit corporation, or limited
37 liability company authorized to transact business or conduct affairs in
38 this State whose business office is identical with the registered office.
39 The sole duty of the registered agent to the registered limited liability
40 partnership is to forward to the registered limited liability partnership
41 at its last known address any notice, process, or demand that is served
42 on the registered agent.

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

4 (1) The name of the registered limited liability partnership;

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

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

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

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

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

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

26 A registered limited liability partnership may change its registered office or
27 registered agent by including in its annual report required by G.S. 59-84.4 the
28 information and any written consent required by this subsection.

29 (m) The following provisions shall apply for the resignation of a registered agent:

30 (1) A registered agent may resign his agency appointment by signing and
31 filing with the Secretary of State the signed original and two exact or
32 conformed copies of a statement of resignation which may include a
33 statement that the registered office is also discontinued. The statement
34 must include or be accompanied by a certification from the registered
35 agent that he has mailed or delivered to the registered limited liability
36 partnership at its last known address written notice of his resignation.
37 Such certification shall include the name and title of the partner
38 notified, if any, and the address to which the notice was mailed or
39 delivered.

40 (2) After filing the statement, the Secretary of State shall mail one copy to
41 the registered office (if not discontinued) and the other copy to the
42 registered limited liability partnership at its principal office.

1 (3) The agency appointment is terminated, and the registered office
2 discontinued if so provided, on the thirty-first day after the date on
3 which the statement was filed.

4 (n) The registered agent of a registered limited liability is an agent of the
5 registered limited liability partnership for service of process, notice, or demand required
6 or permitted by law to be served on the registered limited liability partnership.

7 (o) Whenever a registered limited liability partnership shall fail to appoint or
8 maintain a registered agent in this State, or whenever its registered agent cannot with
9 due diligence be found at the registered office, then the Secretary of State shall be an
10 agent of the registered limited liability partnership upon whom any process, notice, or
11 demand may be served. Service on the Secretary of State of any process, notice, or
12 demand shall be made by delivering to and leaving with the Secretary of State or with
13 any clerk authorized by the Secretary of State to accept service of process, duplicate
14 copies of the process, notice, or demand, and the fee required by G.S. 59-35.1(f). In the
15 event any such process, notice, or demand is served on the Secretary of State in the
16 manner provided in this subsection, the Secretary of State shall immediately mail one of
17 the copies thereof, by registered or certified mail, return receipt requested, to the
18 registered limited liability partnership at its principal office or, if there is no mailing
19 address for the principal office on file, to the registered limited liability partnership at its
20 registered office. Service on a registered limited liability partnership under this
21 subsection shall be effective for all purposes from and after the date of the service on
22 the Secretary of State.

23 (p) The Secretary of State shall keep a record of all processes, notices, and
24 demands served upon the Secretary of State under this section and shall record therein
25 the time of such service and the Secretary of State's action with reference thereto.

26 (q) Nothing herein contained shall limit or affect the right to serve any process,
27 notice, or demand required or permitted by law to be served upon a registered limited
28 liability partnership in any other manner now or hereafter permitted by law."

29 **SECTION 119.** G.S. 59-84.4(c) reads as rewritten:

30 "(c) The annual report shall be delivered to the Secretary of State by the fifteenth
31 day of the fourth month following the close of the registered or foreign limited liability
32 partnership's fiscal year. ~~The annual report must be accompanied by a fee of two~~
33 ~~hundred dollars (\$200.00)."~~

34 **SECTION 120.** G.S. 59-91 reads as rewritten:

35 "**§ 59-91. Statement of foreign registration.**

36 (a) Before transacting business in this State, a foreign limited liability partnership
37 must file an application for registration as a foreign limited liability partnership. The
38 application must contain:

39 (1) The name of the foreign limited liability partnership that satisfies the
40 requirements of the State or other jurisdiction under whose law it is
41 formed and ends with the words "registered limited liability
42 partnership" or "limited liability partnership" or the abbreviation
43 "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

- 1 (2) ~~The street address~~address, and the mailing address if different from
2 ~~the street address~~, of the partnership's principal office.
- 3 (3) The name and street address, and the mailing address if different from
4 the street address, for the partnership's registered agent and registered
5 office for service of process, and the county in which the registered
6 office is located.
- 7 (4) ~~A brief statement of the business in which the partnership is engaged.~~
- 8 (5) ~~A deferred effective date, if any.~~
- 9 (6) The fiscal year end of the partnership.

10 The foreign limited liability partnership shall deliver with the completed application
11 a certificate of existence, or a document with similar import, duly authenticated by the
12 ~~secretary of state~~ Secretary of State or other official having custody of the records of
13 registered limited liability partnerships in the state or country under whose law it is
14 registered.

15 ~~(b) The registered agent of a foreign limited liability partnership for service of
16 process must be (i) an individual who is a resident of this State and whose business
17 office is identical with the registered office; (ii) a domestic corporation, nonprofit
18 corporation, or limited liability company whose business office is identical with the
19 registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability
20 company authorized to transact business in this State whose business office is identical
21 with the registered office. The sole duty of the registered agent to the foreign limited
22 liability partnership is to forward to the foreign limited liability partnership at its last
23 known address any notice, process, or demand that is served on the registered agent.~~

24 ~~(c) An application for registration as a foreign limited liability partnership must
25 be accompanied by a fee of one hundred twenty five dollars (\$125.00).~~

26 ~~(d) The Secretary of State shall register a partnership that submits a completed
27 application for registration as a foreign limited liability partnership with the required
28 fee.~~

29 ~~(e) The status of a partnership as a foreign limited liability partnership is
30 effective on the later of the date the registration is filed or a date specified in the
31 statement. The status remains effective, regardless of changes in the partnership, until it
32 is voluntarily withdrawn by filing with the Secretary of State a written withdrawal
33 notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).~~

34 ~~(f) A registration is amended by filing a certificate of amendment thereto in the
35 office of the Secretary of State. The certificate shall set forth the following:~~

- 36 ~~(1) The name of the partnership.~~
- 37 ~~(2) The date of filing of the registration.~~
- 38 ~~(3) The amendment to the registration.~~

39 ~~(g) An application for registration as a foreign limited liability partnership must
40 be executed by one or more partners.~~

41 (h) A foreign limited liability partnership authorized to transact business in this
42 State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and
43 revocation of registration.

1 (i) A foreign limited liability partnership becomes registered as a foreign limited
2 liability partnership when its application for registration becomes effective.

3 (j) A foreign limited liability partnership shall promptly amend its registration to
4 reflect any change in the information contained in its application for registration, other
5 than changes in its registered agent, registered office, or principal office. A registration
6 is amended by filing a certificate of amendment with the Secretary of State. The
7 certificate of amendment shall set forth:

8 (1) The name of the foreign limited liability partnership under which it is
9 registered in this State;

10 (2) The date of filing of the application for registration; and

11 (3) The amendment to the application for registration.

12 (j) A foreign limited liability partnership may cancel its registration by filing a
13 certificate of cancellation with the Secretary of State. The certificate of cancellation
14 shall set forth:

15 (1) The name of the foreign limited liability partnership under which it is
16 registered in this State;

17 (2) The date of filing of the application for registration;

18 (3) A mailing address to which the Secretary of State may mail a copy of
19 any process served on the Secretary of State under this subsection;

20 (4) A commitment to file with Secretary of State a statement of any
21 subsequent change in its mailing address; and

22 (5) The effective date and time of cancellation if it is not to be effective at
23 the time of filing the certificate.

24 Cancellation of registration terminates the authority of the foreign limited liability
25 partnership's registered agent to accept service of process, notice, or demand and
26 appoints the Secretary of State as agent to accept such service on behalf of the foreign
27 limited liability partnership with respect to any action or proceeding based upon any
28 cause of action arising in this State, or arising out of business transacted in this State,
29 during the time the foreign limited liability partnership was registered in this State.
30 Service on the Secretary of State of any such process shall be made by delivering to and
31 leaving with the Secretary of State or with any clerk authorized by the Secretary of State
32 to accept service of process, duplicate copies of such process, and the fee required by
33 G.S. 59-35.1(f). Upon receipt of process in the manner herein provided, the Secretary of
34 State shall immediately mail a copy of the process by registered or certified mail, return
35 receipt requested, to the foreign limited liability partnership at the mailing address
36 designated pursuant to this subsection.

37 (k) Each foreign limited liability partnership registered in this State must
38 continuously maintain in this State:

39 (1) A registered office that may be the same as any of its places of
40 business; and

41 (2) A registered agent who shall be (i) an individual who is a resident of
42 this State and whose business office is identical with the registered
43 office; (ii) a domestic corporation, nonprofit corporation, or limited
44 liability company whose business office is identical with the registered

1 office; or (iii) a foreign corporation, nonprofit corporation, or limited
2 liability company authorized to transact business or conduct affairs in
3 this State whose business office is identical with the registered office.

4 The sole duty of the registered agent to the foreign limited liability partnership is to
5 forward to the foreign limited liability partnership at its last known address any notice,
6 process, or demand that is served on the registered agent.

7 (1) A foreign limited liability partnership may change its registered office or
8 registered agent by delivering to the Secretary of State for filing a statement of change
9 that sets forth:

10 (1) The name of the foreign limited liability partnership;

11 (2) The street address, and the mailing address if different from the street
12 address, of the foreign limited liability partnership's current registered
13 office and the county in which it is located;

14 (3) If the address of the foreign limited liability partnership's registered
15 office is to be changed, the street address, and the mailing address if
16 different from the street address, of the new registered office and the
17 county in which it is located;

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

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

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

25 If a registered agent changes the address of the registered agent's business office, the
26 registered agent may change the address of the registered office of any foreign limited
27 liability partnership for which he is the registered agent by notifying the foreign limited
28 liability partnership in writing of the change and signing (either manually or in
29 facsimile) and delivering to the Secretary of State for filing a statement that complies
30 with the requirements of this subsection and recites that the foreign limited liability
31 partnership has been notified of the change.

32 A foreign limited liability partnership may change its registered office or registered
33 agent by including in its annual report required by G.S. 59-84.4 the information and any
34 written consent required by this subsection.

35 (m) The following provisions shall apply for the resignation of a registered agent:

36 (1) A registered agent may resign the agent's appointment by signing and
37 filing with the Secretary of State the signed original and two exact or
38 conformed copies of a statement of resignation which may include a
39 statement that the registered office is also discontinued. The statement
40 must include or be accompanied by a certification from the registered
41 agent that the agent has mailed or delivered to the foreign limited
42 liability partnership at its last known address written notice of the
43 agent's resignation. Such certification shall include the name and title

1 of the partner notified, if any, and the address to which the notice was
2 mailed or delivered.

3 (2) After filing the statement, the Secretary of State shall mail one copy to
4 the registered office (if not discontinued) and the other copy to the
5 foreign limited liability partnership at its principal office.

6 (3) The agency appointment is terminated, and the registered office
7 discontinued if so provided, on the thirty-first day after the date on
8 which the statement was filed.

9 (n) The registered agent of a foreign limited liability partnership registered in the
10 State is an agent of the foreign limited liability partnership for service of process, notice,
11 or demand required or permitted by law to be served on the foreign limited liability
12 partnership.

13 (o) Whenever a foreign limited liability partnership registered in this State shall
14 fail to appoint or maintain a registered agent in this State, or whenever its registered
15 agent cannot with due diligence be found at the registered office, then the Secretary of
16 State shall be an agent of the foreign limited liability partnership upon whom any such
17 process, notice, or demand may be served. Service on the Secretary of State of any such
18 process, notice, or demand shall be made by delivering to and leaving with the Secretary
19 of State, or with any clerk authorized by the Secretary of State to accept service of
20 process, duplicate copies of the process, notice, or demand and the fee required by G.S.
21 59-35.1(f). In the event any process, notice, or demand is served on the Secretary of
22 State in the manner provided in this subsection, the Secretary of State shall immediately
23 mail one of the copies thereof, by registered or certified mail, return receipt requested,
24 to the foreign limited liability partnership at its principal office or, if there is no mailing
25 address for the principal office on file, to the foreign limited liability partnership at its
26 registered office. Service on a foreign limited liability partnership under this subsection
27 shall be effective for all purposes from and after the date of the service on the Secretary
28 of State.

29 (p) The Secretary of State shall keep a record of all processes, notices, and
30 demands served upon the Secretary of State under this section and shall record therein
31 the time of service and the Secretary of State's action with reference thereto.

32 (q) Nothing herein contained shall limit or affect the right to serve any process,
33 notice, or demand required or permitted by law to be served upon a foreign limited
34 liability partnership in any other manner now or hereafter permitted by law.

35 (r) Whenever a foreign limited liability partnership authorized to transact
36 business in this State ceases its separate existence as a result of a statutory merger or
37 consolidation permitted by the laws of the state or country under which it was
38 organized, or converts into another type of entity as permitted by those laws, the
39 surviving or resulting entity shall apply for a certificate of withdrawal for the foreign
40 limited liability partnership by delivering to the Secretary of State for filing a copy of
41 the articles of merger, consolidation, or conversion or a certificate reciting the facts of
42 the merger, consolidation, or conversion, duly authenticated by the Secretary of State or
43 other official having custody of limited liability partnership records in the state or
44 country under the laws of which the foreign limited liability partnership was organized.

If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

- (1) The name of the foreign liability limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;
- (2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and
- (4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(s) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

- (1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;
- (2) File the articles or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(t) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (s) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.1(f). Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (s) of this section."

SECTION 121. G.S. 59-102 reads as rewritten:

"§ 59-102. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) "Business" means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.
- (1a) "Business entity" means a domestic corporation ~~as defined in G.S. 55-1-40 (including, without limitation,~~ (including a professional

1 corporation as defined in G.S. 55B-2), a foreign corporation as defined
2 in G.S. 55-1-40 (including, without limitation, (including a foreign
3 professional corporation as defined in G.S. 55B-16), a domestic or
4 foreign nonprofit corporation as defined in G.S. 55A-1-40,
5 corporation, a domestic limited liability company as defined in G.S.
6 57C-1-03, a or foreign limited liability company as defined in G.S.
7 57C-1-03, company, a domestic limited partnership, a foreign limited
8 partnership, a registered limited liability partnership, a foreign limited
9 liability partnership, or any other partnership as defined in G.S. 59-36
10 whether or not formed under the laws of this State (including a
11 registered limited liability partnership as defined in G.S. 59-32 and any
12 other limited liability partnership formed under a law other than the
13 laws of this State). State.

- 14 (1b) "Certificate of limited partnership" means the certificate referred to in
15 G.S. 59-201, and the certificate as amended.
- 16 (2) "Conformed copy" shall include a photostatic or other photographic
17 copy of the original document.
- 18 (3) "Contribution" means any cash, property, services rendered, or a
19 promissory note or other binding obligation to contribute cash or
20 property or to perform services, which a partner contributes to a
21 limited partnership in his capacity as a partner.
- 22 (3a) 'Domestic corporation' has the same meaning as in G.S. 55-1-40 and
23 includes a professional corporation as defined in G.S. 55B-2.
- 24 (3b) 'Domestic limited liability company' has the same meaning as in G.S.
25 57C-1-03.
- 26 (3c) 'Domestic nonprofit corporation' means a corporation as defined in
27 G.S. 55A-1-40.
- 28 (4) "Event of withdrawal of a general partner" means an event that causes
29 a person to cease to be a general partner as provided in G.S. 59-402.
- 30 (4a) 'Foreign corporation' has the same meaning as in G.S. 55-1-40 and
31 includes a foreign professional corporation as defined in G.S. 55B-16.
- 32 (4b) 'Foreign limited liability company' has the same meaning as in G.S.
33 57C-1-03.
- 34 (5) "Foreign limited partnership" means a partnership formed under the
35 laws of any state, province, country, or other jurisdiction other than
36 this State and having as partners one or more general partners and one
37 or more limited partners. partners, and includes, for all purposes of the
38 laws of the State of North Carolina, a limited partnership having the
39 status of a limited liability limited partnership under the laws of its
40 jurisdiction of formation.
- 41 (5a) 'Foreign nonprofit corporation' means a foreign corporation as defined
42 in G.S. 55A-1-40 that is a nonprofit corporation as defined in G.S.
43 55A-1-40.

- 1 (6) "General partner" means a person who has been admitted to a limited
2 partnership as a general partner in accordance with the partnership
3 agreement and named in the certificate of limited partnership as a
4 general partner.
- 5 (6a) 'Limited liability limited partnership' and 'registered limited liability
6 limited partnership' mean a limited partnership that is registered under
7 and complies with G.S. 59-210.
- 8 (7) "Limited partner" means a person who has been admitted to a limited
9 partnership as a limited partner in accordance with the partnership
10 agreement.
- 11 (8) "Limited partnership" and "domestic limited partnership" mean a
12 partnership formed by two or more persons under the laws of this State
13 and having one or more general partners and one or more limited
14 ~~partners.~~ partners, and includes, for all purposes of the laws of the
15 State of North Carolina, a registered limited liability limited
16 partnership.
- 17 (9) "Partner" means a limited or general partner.
- 18 (10) "Partnership agreement" means any valid agreement of the partners as
19 to the affairs of a limited partnership, the conduct of its business, and
20 the responsibilities and rights of its partners. The term "partnership
21 agreement" includes any written or oral agreement, whether or not the
22 agreement is set forth in a document referred to by the partners as a
23 "partnership agreement", and includes any amendment agreed upon by
24 the partners unanimously or in accordance with the terms of the
25 agreement. The term also includes any agreement of the partners to
26 waive or revise the terms of the partnership agreement in one or more
27 specific instances and not necessarily on an ongoing or permanent
28 basis.
- 29 (11) "Partnership interest" means a partner's share of the allocations of
30 income, gain, loss, deduction or credit of a limited partnership and the
31 right to receive distributions of cash or other partnership assets.
- 32 (12) "Person" means a natural person, domestic or foreign partnership,
33 domestic or foreign limited partnership ~~(domestic or~~
34 ~~foreign), partnership, domestic or foreign limited liability company,~~
35 trust, estate, unincorporated association, or corporation. domestic or
36 foreign corporation, or another entity.
- 37 (13) "State" means a state, territory, or possession of the United States, the
38 District of Columbia, or the Commonwealth of Puerto Rico."

39 **SECTION 122.** G.S. 59-103 reads as rewritten:

40 **"§ 59-103. Name.**

41 (a) The name of the limited partnership shall contain ~~without abbreviation~~ the
42 words ~~"limited partnership";~~ "limited partnership" or have the abbreviated 'L.P.' or 'LP'
43 as the last letters of its name, except that in the case of a limited liability limited
44 partnership, its name shall comply with the provisions of G.S. 59-210(a)(1).

1 (b) The limited partnership name shall not contain the name of a limited partner
2 unless (i) it is also the name of a general partner or the corporate name of a corporate
3 general partner, or (ii) the business of the limited partnership has been carried on under
4 that name before the admission of that limited ~~partner;~~partner.

5 (c) The limited partnership name shall not contain any word or phrase ~~which that~~
6 is likely to mislead the public ~~or which indicates or implies that it is organized for any~~
7 ~~purpose other than one or more of the purposes contained in its certificate of limited~~
8 ~~partnership;~~public."

9 **SECTION 123.** G.S. 59-105 reads as rewritten:

10 **"§ 59-105. Registered office and registered agent.**

11 (a) Each limited partnership shall have and continuously maintain in this State:

- 12 (1) A registered office that may be the same as any of its places of
13 business;
- 14 (2) A registered agent, who shall be (i) an individual resident of this State
15 whose business office is identical with such registered office; (ii) a
16 domestic corporation, nonprofit corporation, or limited liability
17 company whose business office is identical with such registered office;
18 or (iii) a foreign corporation, nonprofit corporation, or limited liability
19 company authorized to transact business or conduct affairs in this
20 State, whose business office is identical with such registered office.

21 The sole duty of the registered agent to the limited partnership is to forward to the
22 limited partnership at its last known address any notice, process, or demand that is
23 served on the registered agent.

24 (b) Limited partnerships formed prior to October 1, 1986, shall file a certificate
25 of limited partnership with the Office of the Secretary of State pursuant to G.S.
26 59-201(a) designating the address of the registered office of the limited partnership and
27 the identity of the registered agent at such address.

28 (b1) Any process, notice or demand, which is required or permitted by law to be
29 served upon a limited partnership, may be served upon the duly appointed registered
30 agent of the limited partnership. Such service upon the registered agent is deemed to
31 have been made on the limited partnership itself.

32 (b1) A limited partnership may change its registered office or registered agent by
33 delivering to the Secretary of State for filing a statement of change that sets forth:

- 34 (1) The name of the limited partnership;
35 (2) The street address, and the mailing address if different from the street
36 address, of the limited partnership's current registered office and the
37 county in which it is located;
38 (3) If the address of the limited partnership's registered office is to be
39 changed, the street address, and the mailing address if different from
40 the street address, of the new registered office and the county in which
41 it is located;
42 (4) The name of its current registered agent;

1 (5) If the current registered agent is to be changed, the name of the new
2 registered agent and the new registered agent's written consent (either
3 on the 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 (b2) If a registered agent changes the address of the agent's business office, the
8 agent may change the address of the registered office of any limited partnership for
9 which the agent is the registered agent by notifying the limited partnership in writing of
10 the change and signing (either manually or in facsimile) and delivering to the Secretary
11 of State for filing a statement that complies with the requirements of subsection (b1) of
12 this section and that recites that the limited partnership has been notified of the change.

13 (c) Whenever a limited partnership shall fail to appoint or maintain a registered
14 agent in this State, or whenever its registered agent cannot with due diligence be found
15 at the registered office, then the Secretary of State shall be an agent of such limited
16 partnership upon whom any such process, notice, or demand may be served. Service on
17 the Secretary of State of any such process, notice, or demand shall be made by
18 delivering to and leaving with ~~him,~~ the Secretary of State, or with any clerk ~~having~~
19 ~~charge of the limited partnership department of his office,~~ authorized by the Secretary of
20 State to accept service of process, duplicate copies of such the process, notice-notice, or
21 ~~demand.~~ demand and the fee required by G.S. 59-1106(b). In the event any such
22 process, ~~notice-notice,~~ or demand is served on the Secretary of State, ~~he~~ the Secretary of
23 State shall immediately cause one of the copies thereof to be forwarded by registered or
24 certified mail, addressed to the limited partnership at its registered office. ~~Any such~~
25 Service on a limited partnership so served under this subsection shall be in court
26 effective for all purposes from and after the date of such service on the Secretary of
27 State.

28 (d) The Secretary of State shall keep a record of all processes, ~~notices-notices,~~
29 and demands served upon ~~him~~ the Secretary of State under this ~~section,~~ section and
30 shall record therein the time of such service and ~~his~~ the Secretary of State's action with
31 reference thereto.

32 (e) Nothing herein contained shall limit or affect the right to serve any process,
33 ~~notice-notice,~~ or demand required or permitted by law to be served upon a limited
34 partnership in any other manner now or hereafter permitted by law.

35 (f) The following provisions shall apply for the resignation of a registered agent:

36 (1) A registered agent may resign the agent's appointment by signing and
37 filing with the Secretary of State the signed original and two exact or
38 conformed copies of a statement of resignation which may include a
39 statement that the registered office is also discontinued. The statement
40 shall include or be accompanied by a certification from the registered
41 agent that the agent has mailed or delivered to the limited partnership
42 at its last known address written notice of the agent's resignation. The
43 certification shall include the name and title of the partner notified, if
44 any, and the address to which the notice was mailed or delivered.

1 (2) After filing the statement, the Secretary of State shall mail one copy to
2 the registered office, if not discontinued, and the other copy to the
3 limited partnership at the address certified in the statement of
4 resignation.

5 (3) The agency appointment is terminated, and the registered office
6 discontinued if so provided, on the thirty-first day after the date on
7 which the statement was filed."

8 **SECTION 124.** G.S. 59-201(a)(3) reads as rewritten:

9 "~~(3)~~ If the limited partnership is to dissolve by a specific date, the
10 latest date upon which the limited partnership is to dissolve. If no date
11 for dissolution is specified, there shall be no limit on the duration of
12 the limited partnership."

13 **SECTION 125.** G.S. 59-204(a) reads as rewritten:

14 "(a) Each certificate required by this Article to be filed in the office of the
15 Secretary of State shall be executed in the following manner:

16 (1) An original certificate of limited partnership must be signed by all
17 general partners;

18 (2) A certificate of amendment must be signed by at least one general
19 partner and by each other partner designated in the certificate as a new
20 general partner; and

21 (3) A certificate of cancellation must be signed by all general partners.

22 Any other document submitted by a domestic or foreign limited partnership for filing
23 pursuant to this or any other Chapter must be signed by at least one general partner. Any
24 document submitted by a business entity other than a domestic or foreign limited
25 partnership must be executed by a person authorized to execute documents (i) pursuant
26 to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii)
27 pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit
28 corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or
29 foreign limited liability company, or (iv) pursuant to G.S. ~~59-73.7(a)(4)~~ 59-35.1(a)(4) if
30 the business entity is a partnership as defined in G.S. 59-36, whether or not formed
31 under the laws of this State, other than a domestic or foreign limited partnership."

32 **SECTION 126.** G.S. 59-206 is amended by adding the following new
33 subsections to read:

34 "(d) If a document delivered to the Office of the Secretary of State for filing
35 satisfies the requirements of this Article, the Secretary of State shall file it. Documents
36 filed with the Secretary of State pursuant to this Article may be maintained by the
37 Secretary either in their original form or in photographic, microfilm, optical disk media,
38 or other reproduced form. The Secretary may make reproductions of documents filed
39 under this Article, or under any predecessor act, by photographic, microfilm, optical
40 disk media, or other means of reproduction and may destroy the originals of those
41 documents reproduced.

42 (e) If the Secretary of State refuses to file a document, the Secretary of State
43 shall return it to the person submitting the document for filing within five days after the

1 document was received, together with a brief, written explanation of the reason for
2 refusal.

3 (f) The Secretary of State's duty is to review and file documents that satisfy the
4 requirements of this Article. The Secretary of State's filing or refusing to file a
5 document does not:

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

7 (2) Relate to the correctness or incorrectness of information contained in
8 the document; or

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

11 (g) A person commits an offense if the person signs a document the person
12 knows is false in any material respect with intent that the document be delivered to the
13 Secretary of State for filing. An offense under this subsection is a Class 1
14 misdemeanor."

15 **SECTION 127.** Part 2 of Article 5 of Chapter 59 of the General Statutes is
16 amended by adding the following new sections to read:

17 **"§ 59-209. Certificate of status.**

18 (a) Anyone may apply to the Secretary of State to furnish a certificate of status
19 for a domestic limited partnership or a certificate of authorization for a foreign limited
20 partnership.

21 (b) A certificate of status or authorization sets forth:

22 (1) The domestic limited partnership's name or the foreign limited
23 partnership's name used in this State;

24 (2) That (i) the domestic limited partnership has filed a certificate of
25 limited partnership under the law of this State, the effective date of the
26 filing, and the period of the domestic limited partnership's duration, or
27 (ii) the foreign limited partnership is authorized to transact business in
28 this State;

29 (3) If the limited partnership has registered as a limited liability limited
30 partnership, that the registration has not been withdrawn or revoked for
31 failure to comply with the provisions of this Chapter;

32 (4) That a certificate of cancellation has not been filed; and

33 (5) Other facts of record in the Office of the Secretary of State that may be
34 requested by the applicant.

35 (c) Subject to any qualification stated in the certificate, a certificate of status or
36 authorization issued by the Secretary of State may be relied upon as conclusive
37 evidence that the domestic limited partnership has filed a certificate of limited
38 partnership and has not filed a certificate of cancellation or that the foreign limited
39 partnership is authorized to transact business in this State.

40 **"§ 59-210. Limited liability limited partnerships.**

41 (a) To become a limited liability limited partnership, a limited partnership shall
42 file with the Secretary of State an application stating:

43 (1) The name of the limited liability limited partnership, which shall
44 contain the words 'registered limited liability limited partnership' or

- 1 'limited liability limited partnership' or the abbreviation 'L.L.L.P.',
2 'R.L.L.L.P.', 'LLLP', or 'RLLLP' as the last words or letters of its name.
- 3 (2) The street address, and mailing address if different from the street
4 address, of its principal office.
- 5 (3) The fiscal year end of the limited liability limited partnership.
- 6 (b) The terms and conditions on which a limited partnership becomes a limited
7 liability limited partnership shall be approved in the manner provided in the partnership
8 agreement; provided, however, if the partnership agreement does not contain any such
9 provision, the terms and conditions must be approved (i) in the case of a limited
10 partnership having a partnership agreement that expressly considers obligations to
11 contribute to the partnership, in the manner necessary to amend those provisions, or (ii)
12 in any other case, in the manner necessary to amend the partnership agreement.
- 13 (c) A limited partnership becomes a limited liability limited partnership when its
14 application for registration becomes effective.
- 15 (d) The status of a limited liability limited partnership and the liability of its
16 partners is not affected by errors or later changes in the information required to be
17 contained in the application for registration.
- 18 (e) A limited liability limited partnership shall promptly amend its registration to
19 reflect any change in the information contained in its application for registration, other
20 than changes which are required to be reflected in an amendment to its certificate of
21 limited partnership or in an annual report. A registration is amended by filing a
22 certificate of amendment with the Secretary of State. The certificate of amendment shall
23 set forth:
- 24 (1) The name of the limited liability limited partnership as reflected on the
25 application for registration;
- 26 (2) The date of filing of the application for registration; and
- 27 (3) The amendment to the application for registration.
- 28 (f) A limited liability limited partnership may cancel its registration by filing a
29 certificate of cancellation with the Secretary of State. The certificate of cancellation
30 shall set forth:
- 31 (1) The name of the limited liability limited partnership as reflected on the
32 application for registration;
- 33 (2) The date of filing of the application for registration;
- 34 (3) A mailing address to which the Secretary of State may mail a copy of
35 any process served on the Secretary of State under this subsection;
- 36 (4) A commitment to file with the Secretary of State a statement of any
37 subsequent change in its mailing address; and
- 38 (5) The effective date and time of cancellation if it is not to be effective at
39 the time of filing the certificate.
- 40 (g) Each limited liability limited partnership shall continuously maintain in this
41 State a registered office and agent in accordance with G.S. 59-105.
- 42 (h) A limited liability limited partnership shall be subject to the provisions of
43 G.S. 59-84.4(f) regarding annual reports and revocation of registration as if it were a
44 registered limited liability partnership."

1 **SECTION 128.** G.S. 59-402(6) reads as rewritten:

2 "(6) In the case of a general partner who is a natural person,

3 a. ~~His~~The general partner's death; or

4 b. The entry ~~or of~~ an order by a court of competent jurisdiction
5 adjudicating ~~him~~the general partner incompetent to manage his
6 or her person or ~~his estate; property;~~".

7 **SECTION 129.** G.S. 59-402(9) reads as rewritten:

8 "(9) In the case of a general partner that is a corporation, the filing of a
9 certificate of dissolution, or its equivalent, for the corporation or the
10 revocation of its charter; ~~or~~".

11 **SECTION 130.** G.S. 59-402(10) reads as rewritten:

12 "(10) Unless otherwise provided in the partnership agreement, or with the
13 consent of all partners, in ~~in~~ the case of a general partner that is an
14 estate, the distribution by the fiduciary of the estate's entire interest in
15 the ~~partnership.~~partnership;".

16 **SECTION 131.** G.S. 59-402 is further amended by adding the following
17 new subdivisions to read:

18 "(11) In the case of a general partner that is a limited liability company, the
19 dissolution and commencement of winding up of the limited liability
20 company; or

21 (12) In the case of a general partner that is not a natural person, trust,
22 separate partnership, corporation, estate, or limited liability company,
23 the termination of the general partner."

24 **SECTION 132.** G.S. 59-403(b) reads as rewritten:

25 "(b) Except as provided in this Article, a general partner of a limited partnership
26 that is not a limited liability limited partnership has the liabilities of a partner in a
27 partnership without limited partners to persons other than the partnership and the other
28 ~~partners.~~ partners, and a general partner of a limited liability limited partnership has the
29 liabilities of, and has the limitation on liability afforded to, a partner in a registered
30 limited liability partnership under the North Carolina Uniform Partnership Act to
31 persons other than the partnership and the other partners. Except as provided in this
32 Article or in the partnership agreement, a general partner of a limited partnership that is
33 not a limited liability limited partnership has the liabilities of a partner in a partnership
34 without limited partners to the partnership and to the other ~~partners.~~ partners, and a
35 general partner of a limited liability limited partnership has the liabilities of, and has the
36 limitation on liability afforded to, a partner in a registered limited liability partnership
37 under the North Carolina Uniform Partnership Act to the partnership and to the other
38 partners."

39 **SECTION 133.** G.S. 59-403 is further amended by adding a new subsection
40 to read:

41 "(c) Unless otherwise provided in the partnership agreement, a general partner of
42 a limited partnership has the power and authority to delegate to one or more other
43 persons the general partner's rights and powers to manage and control the business and
44 affairs of the limited partnership, including to delegate to agents, officers, and

1 employees of the general partner or the limited partnership, and to delegate by a
2 management agreement or another agreement with, or otherwise to, other persons.
3 Unless otherwise provided in the partnership agreement, a delegation by a general
4 partner of a limited partnership shall not cause the general partner to cease to be a
5 general partner of the limited partnership, and shall not reduce or absolve the general
6 partner of the general partner's duties or obligations to the limited partnership or its
7 other partners."

8 **SECTION 134.** G.S. 59-902 reads as rewritten:

9 "**§ 59-902. Registration.**

10 (a) Before transacting business in this State, a foreign limited partnership shall
11 procure a certificate of authority to transact business in this State from the Secretary of
12 State. No foreign limited partnership shall be entitled to transact in this State any
13 business which a limited partnership organized under this Article is not permitted to
14 transact. In order to register, a foreign limited partnership shall deliver to the Secretary
15 of State an original and one conformed copy of an application for registration as a
16 foreign limited partnership, signed by a general partner and setting forth:

- 17 (1) The name of the foreign limited partnership and, if different, the name
18 under which it proposes to register and transact business in this State;
- 19 (2) The jurisdiction and date of its formation;
- 20 (3) The date of formation and the period of duration;
- 21 (4) The street address, ~~including county and city or town, and street and~~
22 ~~number, if any, and the mailing address if different from the street~~
23 address, of the principal office of the foreign limited partnership;
- 24 (5) The street address, ~~including county and city or town, and street and~~
25 ~~number, if any, and the mailing address if different from the street~~
26 address, of the ~~proposed~~ registered office of the foreign limited
27 partnership in this State, the county in which the registered office is
28 located, and the name of its proposed registered agent in this State ~~at~~
29 ~~such address; the agent must be an individual resident of this State, a~~
30 ~~domestic corporation, or a foreign corporation having a place of~~
31 ~~business in, and authorized to do business in this State;~~
- 32 (6) If the certificate of limited partnership filed in the foreign limited
33 partnership's state of organization is not required to include the names
34 and addresses of the partners, a list of the names and addresses or, at
35 the election of the foreign limited partnership, a list of the names and
36 addresses of the general partners and the address, including county and
37 city or town, and street and number, of the office at which is kept a list
38 of the names and addresses of the limited partners and their capital
39 contributions, together with an undertaking by the foreign limited
40 partnership to keep such records until such foreign limited
41 partnership's registration in this State is cancelled;
- 42 (7) A statement that in consideration of the issuance of a certificate of
43 authority to transact business in this State, the foreign limited
44 partnership appoints the Secretary of State of North Carolina as the

1 agent to receive service of process, notice, or demand, whenever the
2 foreign limited partnership fails to appoint or maintain a registered
3 agent in this State or whenever any such registered agent cannot with
4 reasonable diligence be found at the registered office;

5 (8) The names and addresses including county and city or town, and street
6 and number, if any, of all of the general partners; and

7 (9) ~~The execution of a certificate or amendment by a general partner~~
8 ~~constitutes an affirmation under the penalties of perjury that the facts~~
9 ~~stated therein are true.~~ effective date and time of the registration if it is
10 not to be effective at the time of filing of the application.

11 (b) Without excluding other activities which ~~may~~ shall not constitute transacting
12 business in this State, a foreign limited partnership shall not be considered to be
13 transacting business in this State, for the purpose of this Article, by reason of carrying
14 on in this State any one or more of the following activities:

15 (1) Maintaining or defending any action or suit or any administrative or
16 arbitration proceeding, or effecting the settlement thereof or the
17 settlement of claims or disputes;

18 (2) Holding meetings of its partners or carrying on other activities
19 concerning its internal affairs;

20 (3) Maintaining bank accounts or borrowing money in this State, with or
21 without security, even if such borrowings are repeated and continuous
22 transactions;

23 (4) Maintaining offices or agencies for the transfer, exchange, and
24 registration of its securities, or appointing and maintaining trustees or
25 depositaries with relation to its securities;

26 (5) Soliciting or procuring orders, whether by mail or through employees
27 or agents or otherwise, where such orders require acceptance without
28 this State before becoming binding contracts;

29 (6) Making or investing in loans with or without security including
30 servicing of mortgages or deeds of trust through independent agencies
31 within the State, the conducting of foreclosure proceedings and ~~sale,~~
32 sales, the acquiring of property at foreclosure sale and the management
33 and rental of such property for a reasonable time while liquidating its
34 investment, provided no office or agency therefor is maintained in this
35 State;

36 (7) Taking security for or collecting debts due to it or enforcing any rights
37 in property securing the same;

38 (8) Transacting business in interstate commerce; and

39 (9) Conducting an isolated transaction completed within a period of six
40 months and not in the course of a number of repeated transactions of
41 like nature.

42 (b1) Each foreign limited partnership authorized to transact business in this State
43 shall continuously maintain in this State:

- 1 (1) A registered office that may be the same as any of its places of
2 business; and
3 (2) A registered agent, who shall be (i) an individual who resides in this
4 State and whose business office is identical with the registered office;
5 (ii) a domestic corporation, nonprofit corporation, or limited liability
6 company whose business office is identical with the registered office,
7 or (iii) a foreign corporation, nonprofit corporation, or limited liability
8 company authorized to transact business or conduct affairs in this State
9 whose business office is identical with the registered office.

10 The sole duty of the registered agent to the foreign limited partnership is to forward
11 to the foreign limited partnership at its last known address any notice, process, or
12 demand that is served on the registered agent.

13 (b2) A foreign limited partnership authorized to transact business in this State may
14 change its registered office or registered agent by delivering to the Secretary of State for
15 filing a statement of change that sets forth:

- 16 (1) Its name;
17 (2) The street address, and the mailing address if different from the street
18 address, of its current registered office, and the county in which it is
19 located;
20 (3) If the address of its registered office is to be changed, the street
21 address, and the mailing address if different from the street address, of
22 the new registered office, and the county in which it is located;
23 (4) The name of its current registered agent;
24 (5) If the current registered agent is to be changed, the name of its new
25 registered agent and the new agent's written consent (either on the
26 statement or attached to it) to the appointment; and
27 (6) That after the change or changes are made, the addresses of its
28 registered office and the business office of its registered agent will be
29 identical.

30 If a registered agent changes the address of his business office, the registered agent
31 may change the address of the registered office of any foreign limited partnership for
32 which he is the registered agent by notifying the foreign limited partnership in writing
33 of the change and signing (either manually or in facsimile) and delivering to the
34 Secretary of State for filing a statement of change that complies with the requirements
35 of this subsection and recites that the foreign limited partnership has been notified of the
36 change.

37 (b3) The following provisions shall apply for the resignation of a registered agent:

- 38 (1) A registered agent may resign his agency appointment by signing and
39 filing with the Secretary of State the signed original and two exact or
40 conformed copies of a statement of resignation which may include a
41 statement that the registered office is also discontinued. The statement
42 shall include or be accompanied by a certification from the registered
43 agent that the agent has mailed or delivered to the foreign limited
44 partnership at its last known address written notice of the agent's

1 resignation. Such certification shall include the name and title of the
2 partner notified, if any, and the address to which the notice was mailed
3 or delivered.

4 (2) After filing the statement, the Secretary of State shall mail one copy to
5 the registered office, if not discontinued, and the other copy to the
6 foreign limited partnership at the address certified in the statement of
7 resignation.

8 (3) The agency appointment is terminated, and the registered office
9 discontinued if so provided, on the 31st day after the date on which the
10 statement was filed.

11 (b4) The registered agent of a foreign limited partnership authorized to transact
12 business in this State is an agent of the foreign limited partnership for service of
13 process, notice, or demand required or permitted by law to be served on the foreign
14 limited partnership.

15 (c) Whenever a foreign limited partnership shall fail to appoint or maintain a
16 registered agent in this State, or whenever its registered agent cannot with due diligence
17 be found at the registered office, then the Secretary of State shall be an agent of such
18 foreign limited partnership upon whom any such process, notice, or demand may be
19 served. Service on the Secretary of State of ~~any such~~ the process, notice, or demand
20 shall be made by delivering to and leaving with ~~him, the Secretary of State,~~ or with any
21 clerk ~~having charge of the limited partnership department of his office,~~ authorized by
22 the Secretary of State to accept service of process, duplicate copies of ~~such the~~ process,
23 notice or ~~demand,~~ demand and the fee required by G.S. 59-1106(b). In the event any
24 such process, notice or demand is served on the Secretary of State, ~~he~~ the Secretary of
25 State shall immediately cause one of the copies thereof to be forwarded by registered or
26 certified ~~mail, addressed mail~~ to the foreign limited partnership at its registered office.
27 ~~Any such~~ Service on a foreign limited partnership so served under this subsection shall
28 be ~~in court~~ effective for all purposes from and after the date of ~~such the~~ service on the
29 Secretary of State.

30 (d) The Secretary of State shall keep a record of all processes, notices and
31 demands served upon ~~him~~ the Secretary of State under this section, and shall record
32 therein the time of such service and ~~his~~ the Secretary of State's action with reference
33 thereto.

34 (e) Nothing herein contained shall limit or affect the right to serve any process
35 notice or demand required or permitted by law to be served upon a foreign limited
36 partnership in any other manner now or hereafter permitted by law."

37 **SECTION 135.** G.S. 59-904 reads as rewritten:

38 "**§ 59-904. Name.**

39 A foreign limited partnership may register with the Secretary of State under any
40 name (whether or not it is the name under which it is registered in its state of
41 organization) that includes without abbreviation the words 'limited partnership' or has
42 the abbreviation 'L.P.', 'LP', 'R.L.L.L.P.', 'RLLLP', 'L.L.L.P.', or 'LLLP' as the last letters
43 of its name and that could be registered and used as its name under G.S. 59-103 by a
44 domestic limited partnership."

SECTION 136. G.S. 59-909(a) reads as rewritten:

"(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

- (1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;
- (2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and
- (4) A commitment to ~~notify~~ file with the Secretary of State ~~in the future~~ a statement of any subsequent change in its mailing address."

SECTION 137. G.S. 59-909 is amended by adding a new subsection to read:

"(c) After the withdrawal of the foreign limited partnership is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State or any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-1106(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section."

SECTION 138. The heading of Part 10A of Chapter 59 of the General Statutes reads as rewritten:

"Part 10A. Conversion ~~and Merger~~. to Limited Partnership."

SECTION 139. G.S. 59-1050 reads as rewritten:

"~~§ 59-1050. Conversions.~~ Conversion.

(a) ~~A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.~~

~~(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, and any other limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:~~

~~(1) Such converting business entity complies with the requirements of G.S. 59-1051 and G.S. 59-1052; and~~

~~(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.~~

A business entity other than a domestic limited partnership may convert to a domestic limited partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this part and, to the extent applicable, the laws referred to in subdivision (1) of this section."

SECTION 140. G.S. 59-1051 reads as rewritten:

"§ 59-1051. Plan of conversion.

(a) ~~The holders of the interests in the converting business entity shall approve a written plan of conversion containing:~~

(01) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

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

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

~~(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws~~

1 of this State, the plan of conversion must be approved in the manner provided for the
2 approval of such a conversion in a written partnership agreement that is binding on all
3 the partners or, if there is no such provision, by the unanimous consent of all the
4 partners. In the case of a foreign limited liability company, a foreign limited partnership,
5 or other partnership as defined in G.S. 59-36 whose organization and internal affairs are
6 governed by a law other than the laws of this State, ~~the~~ The plan of conversion must
7 shall be approved in accordance with the laws of the state or country governing the
8 organization and internal affairs of the converting business entity.

9 (c) After a plan of conversion has been approved as provided in subsection (b) of
10 this section, but before a certificate of limited partnership for the resulting domestic
11 ~~limited liability company partnership~~ becomes effective, the plan of conversion may be
12 amended or abandoned to the extent ~~provided in the plan of conversion.~~ permitted by
13 the laws that govern the organization and internal affairs of the converting business
14 entity."

15 **SECTION 141.** G.S. 59-1052 reads as rewritten:

16 "**§ 59-1052. Filing of certificate of limited partnership by converting business**
17 **entity.**

18 (a) After a plan of conversion has been approved by the converting business
19 entity as provided in G.S. 59-1051, the converting business entity shall deliver a
20 certificate of limited partnership to the Secretary of State for filing. In addition to the
21 matters required or permitted by G.S. 59-201, the certificate of limited partnership shall
22 ~~state:~~ contain articles of conversion stating:

- 23 (1) That the domestic limited partnership is being formed pursuant to a
24 conversion of another business entity;
- 25 (2) The name of the converting business entity, its type of business entity,
26 and the state or country whose laws govern its organization and
27 internal affairs; and
- 28 (3) That a plan of conversion has been approved by the converting
29 business entity in the manner required by law.

30 If the plan of conversion is abandoned after the certificate of limited partnership has
31 been filed with the Secretary of State but before the certificate of limited partnership
32 becomes effective, the converting business entity promptly shall deliver to the Secretary
33 of State for filing prior to the time the articles of organization become effective an
34 amendment to the certificate of limited partnership reflecting the abandonment of the
35 plan of conversion, withdrawing the certificate of limited partnership.

36 (b) The conversion takes effect when the certificate of limited partnership
37 becomes effective.

38 (c) ~~The converting business entity shall furnish a copy of the plan of conversion,~~
39 ~~on request and without cost, to any member or partner (whether general or limited) of~~
40 ~~the converting business entity.~~

41 (d) Certificates of conversion shall also be registered as provided in G.S.
42 47-18.1."

43 **SECTION 142.** Article 5 of Chapter 59 of the General Statutes is amended
44 by adding a new Part to read:

"Part 10B. Conversion of Limited Partnership."

"§ 59-1054. Conversion.

A domestic limited partnership may convert to a different type of business entity if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other type of business entity; and
- (2) The converting domestic limited partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 59-1055. Plan of conversion.

(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic limited partnership;
- (2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) The converting domestic limited partnership shall provide a copy of the plan of conversion to each partner of the converting domestic limited partnership. The plan of conversion shall be approved by the domestic limited partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no provision, by the unanimous consent of its partners. If any partner of the converting domestic limited partnership will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited partnership shall require the consent of each such partner.

(c) After a plan of conversion has been approved by a domestic limited partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined by the general partners of the domestic limited partnership in accordance in G.S. 59-403.

"§ 59-1056. Articles of conversion.

(a) After a plan of conversion has been approved by the converting domestic limited partnership as provided in G.S. 59-1055, the converting domestic limited partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

- 1 (1) The name of the converting domestic limited partnership;
- 2 (2) The name of the resulting business entity, its type of business entity,
- 3 the state or country whose laws govern its organization and internal
- 4 affairs, and, if the resulting business entity is not authorized to transact
- 5 business or conduct affairs in this State, a designation of its mailing
- 6 address and a commitment to file with the Secretary of State a
- 7 statement of any subsequent change in its mailing address; and
- 8 (3) That a plan of conversion has been approved by the domestic limited
- 9 partnership as required by law.

10 If the domestic limited partnership is converting to a business entity whose
11 formation or status requires the filing of a document with the Secretary of State, then the
12 articles of conversion shall be included as part of the document in addition to the
13 matters otherwise required or permitted by law.

14 If the plan of conversion is abandoned after the articles of conversion have been
15 filed with the Secretary of State but before the articles of conversion become effective,
16 the converting domestic limited partnership shall deliver to the Secretary of State for
17 filing prior to the time the articles of conversion become effective an amendment of the
18 articles of conversion withdrawing the articles of conversion.

19 (b) The conversion takes effect when the articles of conversion become effective.

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

21 **"§ 59-1057. Effects of conversion.**

22 (a) When the conversion takes effect:

- 23 (1) The converting domestic limited partnership ceases its prior form of
- 24 organization and continues in existence as the resulting business entity;
- 25 (2) The title to all real estate and other property owned by the converting
- 26 domestic limited partnership continues vested in the resulting business
- 27 entity without reversion or impairment;
- 28 (3) All liabilities of the converting domestic limited partnership continue
- 29 as liabilities of the resulting business entity;
- 30 (4) A proceeding pending by or against the converting domestic limited
- 31 partnership may be continued as if the conversion did not occur; and
- 32 (5) The interests in the converting domestic limited partnership that are to
- 33 be converted into interests, obligations, or securities of the resulting
- 34 business entity or into the right to receive cash or other property are
- 35 thereupon so converted, and the former holders of interests in the
- 36 converting domestic limited partnership are entitled only to the rights
- 37 provided in the plan of conversion.

38 The conversion shall not affect the liability or absence of liability of any holder of an
39 interest in the converting domestic limited partnership for any acts, omissions, or
40 obligations of the converting domestic limited partnership made or incurred prior to the
41 effectiveness of the conversion. The cessation of the existence of the converting
42 domestic limited partnership in its form of organization as a domestic limited
43 partnership in the conversion shall not constitute a dissolution or termination of the
44 converting domestic limited partnership.

1 (b) If the resulting business entity is not a domestic corporation or a domestic
 2 limited liability company, when the conversion takes effect the resulting business entity
 3 is deemed:

4 (1) To agree that it may be served with process in this State for
 5 enforcement of (i) any obligation of the converting domestic limited
 6 partnership, and (ii) any obligation of the resulting business entity
 7 arising from the conversion; and

8 (2) To have appointed the Secretary of State as its agent for service of
 9 process in any such proceeding. Service on the Secretary of State of
 10 any such process shall be made by delivering to and leaving with the
 11 Secretary of State, or with any clerk authorized by the Secretary of
 12 State to accept service of process, duplicate copies of the process and
 13 the fee required by G.S. 59-1106(b). Upon receipt of service of process
 14 on behalf of a resulting business entity in the manner provided for in
 15 this section, the Secretary of State shall immediately mail a copy of the
 16 process by registered or certified mail, return receipt requested, to the
 17 resulting business entity. If the resulting business entity is authorized
 18 to transact business or conduct affairs in this State, the address for
 19 mailing shall be its principal office designated in the latest document
 20 filed with the Secretary of State that is authorized by law to designate
 21 the principal office or, if there is no principal office on file, its
 22 registered office. If the resulting business entity is not authorized to
 23 transact business or conduct affairs in this State, the address for
 24 mailing shall be the mailing address designated pursuant to G.S.
 25 59-1056(a)(2)."

26 **SECTION 143.** Article 5 of Chapter 59 of the General Statutes is amended
 27 by adding a new Part with the heading set forth below and containing G.S. 59-1054,
 28 59-1055, 59-1056, and 59-1057 recodified as G.S. 59-1070, 59-1071, 59-1072, and
 29 59-1073, respectively.

30 "Part 10C. Merger."

31 **SECTION 144.** G.S. 59-1070, as recodified by Section 143 of this act, reads
 32 as rewritten:

33 "**§ 59-1070. Merger.**

34 A domestic limited partnership may merge with one or more other domestic limited
 35 partnerships or other business entities if:

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

39 (2) Each merging domestic limited partnership and each other merging
 40 business entity comply with the requirements of G.S. ~~59-1055-59-1071~~
 41 and G.S. ~~59-1056~~59-1072, and, to the extent applicable, the laws
 42 referred to in subdivision (1) of this section."

43 **SECTION 145.** G.S. 59-1071(b), as recodified by Section 143 of this act,
 44 reads as rewritten:

1 "(b) In the case of a merging domestic limited partnership, the plan of merger
2 must be approved in the manner provided in a written partnership agreement that is
3 binding on all the partners for approval of a merger with the type of business entity
4 contemplated in the plan of merger, or, if there is no provision, by the unanimous
5 consent of its partners. If any partner of a merging domestic limited partnership has or
6 will have personal liability for any existing or future obligation of the surviving
7 business entity solely as a result of holding an interest in the surviving business entity,
8 then in addition to the requirements of the preceding sentence, approval of the plan of
9 merger by the domestic limited partnership shall require the consent of that partner. In
10 the case of each other merging business entity, the plan of merger must be approved in
11 accordance with the laws of the state or country governing the organization and internal
12 affairs of the merging business entity."

13 **SECTION 146.** G.S. 59-1072(a), as recodified by Section 143 of this act,
14 reads as rewritten:

15 "(a) After a plan of merger has been approved by each merging domestic limited
16 partnership and each other merging business entity as provided in G.S. ~~59-1055,~~
17 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of
18 State for filing. The articles of merger shall set forth:

- 19 (1) The plan of merger;
- 20 (2) For each merging business entity, its name, type of business entity, and
21 the state or country whose laws govern its organization and internal
22 affairs;
- 23 (3) ~~The name and address of the surviving business entity;~~ entity and, if
24 the surviving business entity is not authorized to transact business or
25 conduct affairs in this State, a designation of its mailing address and a
26 commitment to file with the Secretary of State a statement of any
27 subsequent change in its mailing address;
- 28 (4) A statement that the plan of merger has been approved by each
29 merging business entity in the manner required by law; and
- 30 (5) The effective date and time of the merger if it is not to be effective at
31 the time of filing of the articles of merger.

32 If the plan of merger is amended or abandoned after the articles of merger have been
33 filed but before the articles of merger become effective, the surviving business entity
34 promptly shall deliver to the Secretary of State for filing an amendment to the articles of
35 merger reflecting the amendment or abandonment of the plan of merger."

36 **SECTION 147.** G.S. 59-1073(b), as recodified by Section 143 of this act,
37 reads as rewritten:

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

- 41 (1) To agree that it may be served with process in this State in any
42 proceeding for enforcement of (i) any obligation of any merging
43 domestic limited liability company, domestic corporation, domestic
44 nonprofit corporation, domestic limited partnership or other

partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) ~~If the surviving business entity does not have a registered agent in this State, to~~ To have appointed the Secretary of State as its registered agent for service of process in any such ~~proceeding.~~ proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of ~~such process.~~ the process and the fee required by G.S. 59-1106(b). Upon receipt of service of process on behalf of a surviving business ~~entity,~~ entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business ~~entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.~~ entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1072(a)(3)."

SECTION 148. G.S. 59-1105 is repealed.

SECTION 149. G.S. 59-1106 reads as rewritten:

"§ 59-1106. Filing, service and copying Fees; fees; expedited filings.

(a) The Secretary of State shall collect the following ~~fees and remit them to the State Treasurer for the use of the State.~~ when the documents described in this subsection are delivered to the Secretary of State for filing:

| | <u>Document</u> | <u>Fee</u> |
|-----|--|------------|
| (1) | For filing a certificate <u>Certificate of limited partnership (G.S. 59-201)</u> | \$50.00 |
| (2) | For filing a certificate <u>Certificate of amendment (G.S. 59-202; 59-905)</u> | 25.00 |
| (3) | For filing a certificate <u>Certificate of cancellation (G.S. 59-203; 59-906)</u> | 25.00 |
| (4) | For filing an application <u>Application for reservation of name (G.S. 59-104(a))</u> | 10.00 |

| | | | |
|----|------|---|------------------------------|
| 1 | (5) | <u>For filing a Notice of transfer</u> | |
| 2 | | <u>of name (G.S. 59-104(d))</u> | 10.00 |
| 3 | (5a) | <u>Limited partnership's or foreign limited</u> | |
| 4 | | <u>partnership's statement of</u> | |
| 5 | | <u>change of registered agent or registered</u> | |
| 6 | | <u>office or both</u> | 5.00 |
| 7 | (5b) | <u>Agent's statement of change of registered</u> | |
| 8 | | <u>office for each affected</u> | |
| 9 | | <u>partnership</u> | 5.00 |
| 10 | (5c) | <u>Agent's statement of resignation</u> | No Fee |
| 11 | (5d) | <u>Designation of registered agent or</u> | |
| 12 | | <u>registered office or both</u> | 5.00 |
| 13 | (6) | For filing an application <u>Application</u> | |
| 14 | | for registration as foreign limited | |
| 15 | | partnership (G.S. 59-502) | 50.00 |
| 16 | (7) | For preparing and furnishing a copy of | |
| 17 | | any document, instrument or | |
| 18 | | paper filed or recorded relating to a limited | |
| 19 | | partnership (G.S. 59-206(e)) | |
| 20 | | For each page | 1.00 |
| 21 | | For affixing the certificate and official seal | |
| 22 | | thereto | 5.00 |
| 23 | (8) | For comparing a copy furnished to him | |
| 24 | | of any document instrument or | |
| 25 | | paper filed or recorded relating to a limited partnership. | |
| 26 | | For each page | 1.00 |
| 27 | (9) | For filing any <u>Any other document</u> | |
| 28 | | not herein specifically provided | |
| 29 | | for <u>required or permitted to be filed by this Article</u> | 10.00 |
| 30 | (10) | For the expedited filing by the end of the | |
| 31 | | same business day of a document received in good | |
| 32 | | order by 12:00 noon Eastern Standard Time | 200.00 <u>additional fee</u> |
| 33 | (11) | For the expedited filing of a document received | |
| 34 | | in good order within 24 hours after receipt, | |
| 35 | | excluding weekends and holidays | 100.00 |
| 36 | | additional fee | |
| 37 | (12) | <u>Advisory review of a document</u> | 200.00. |
| 38 | (13) | <u>Certificate of amendment of</u> | |
| 39 | | <u>registration as foreign limited partnership</u> | 25.00 |
| 40 | (14) | <u>Cancellation of registration as foreign</u> | |
| 41 | | <u>limited partnership</u> | 25.00 |
| 42 | (15) | <u>Application for certificate of withdrawal</u> | |
| 43 | | <u>by reason of merger, consolidation, or conversion</u> | 10.00 |
| 44 | (16) | <u>Articles of merger</u> | 50.00 |

| | | |
|----|--|---------------|
| 1 | <u>(17) Articles of conversion (other than articles of</u> | |
| 2 | <u>conversion included</u> | |
| 3 | <u>as part of another document)</u> | <u>50.00</u> |
| 4 | <u>(18) Application for registration as a limited</u> | |
| 5 | <u>liability limited partnership</u> | <u>125.00</u> |
| 6 | <u>(19) Certificate of amendment of registration</u> | |
| 7 | <u>as a limited liability limited partnership</u> | <u>25.00</u> |
| 8 | <u>(20) Certificate of cancellation of registration</u> | |
| 9 | <u>as a limited liability limited partnership</u> | <u>25.00</u> |
| 10 | <u>(21) Annual report for a limited liability</u> | |
| 11 | <u>limited partnership</u> | <u>200.00</u> |

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

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

19 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
 20 original; and

21 (2) Five dollars (\$5.00) for the certificate.

22 (d) The Secretary of State shall guarantee the expedited filing of a document
 23 upon receipt of the document in proper form and the payment of the required filing fee.
 24 The Secretary of State may collect the following additional fees for the expedited filing
 25 of a document received in good form:

26 (1) Two hundred dollars (\$200.00) for the filing by the end of the same
 27 business day of a document received by 12:00 noon Eastern Standard
 28 Time; and

29 (2) One hundred dollars (\$100.00) for the filing of a document within 24
 30 hours after receipt, excluding weekends and holidays.

31 ~~The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11)~~
 32 ~~of this section-subsection unless the person submitting the document for filing requests~~
 33 ~~an expedited filing and is informed by the Secretary of State of the fees prior to the~~
 34 ~~filing of the document. Upon receipt of a document in proper form and payment of the~~
 35 ~~required filing fee, the Secretary of State shall guarantee the expedited filing of the~~
 36 ~~document."~~

37 **SECTION 150.** Part 11 of Article 5 of Chapter 59 of the General Statutes is
 38 amended by adding a new section to read:

39 **"§ 59-1107. Income taxation.**

40 A limited partnership, a foreign limited partnership authorized to transact business in
 41 this State, and a partner of one of these partnerships are subject to taxation under Article
 42 4 of Chapter 105 of the General Statutes in accordance with their classification for
 43 federal income tax purposes. Accordingly, if a limited partnership or a foreign limited
 44 partnership authorized to transact business in this State is classified for federal income

1 tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or a S corporation as
2 defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under
3 Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or
4 an S corporation, as the case may be, and its shareholders. If a limited partnership or a
5 foreign limited partnership authorized to transact business in this State is classified for
6 federal income tax purposes as a partnership, the partnership and its partners are subject
7 to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If a limited
8 partnership or a foreign limited partnership authorized to transact business in this State
9 is classified for federal income tax purposes as other than a corporation or a partnership,
10 the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the
11 General Statutes in a manner consistent with that classification. This section does not
12 require a limited partnership or a foreign limited partnership to obtain an administrative
13 ruling from the Internal Revenue Service on its classification under the Internal
14 Revenue Code."

15 **SECTION 151.** G.S. 105-187.6(b) reads as rewritten:

16 "(b) Partial Exemptions. -- A maximum tax of forty dollars (\$40.00) applies when
17 a certificate of title is issued as the result of a transfer of a motor vehicle:

- 18 (1) To a secured party who has a perfected security interest in the motor
19 vehicle.
- 20 (2) To a partnership, limited liability company, ~~or corporation as an~~
21 ~~incident to the formation of the partnership, limited liability company,~~
22 ~~or corporation, and trust, or other person where~~ no gain or loss arises
23 on the transfer of the motor vehicle under section 351 or section 721 of
24 the Code, or because the transfer is treated under the Code as being to
25 an entity that is not a separate entity from its owner or whose separate
26 existence is otherwise disregarded, or to a partnership, limited liability
27 company, or corporation by merger, conversion, or consolidation in
28 accordance with applicable law."

29 **SECTION 152.** G.S. 105-230(b) reads as rewritten:

30 "(b) Any act performed or attempted to be performed during the period of
31 suspension is invalid and of no ~~effect.~~ effect, unless the Secretary of State reinstates the
32 corporation or limited liability company pursuant to G.S. 105-232."

33 **SECTION 153.** G.S. 105-232(a) reads as rewritten:

34 "(a) Any corporation or limited liability company whose articles of incorporation,
35 articles of organization, or certificate of authority to do business in this State has been
36 suspended by the Secretary of State under G.S. 105-230, that complies with all the
37 requirements of this Subchapter and pays all State taxes, fees, or penalties due from it
38 (which total amount due may be computed, for years prior and subsequent to the
39 suspension, in the same manner as if the suspension had not taken place), and pays to
40 the Secretary of Revenue a fee of twenty-five dollars (\$25.00) to cover the cost of
41 reinstatement, is entitled to exercise again its rights, privileges, and franchises in this
42 State. The Secretary of Revenue shall notify the Secretary of State of this compliance
43 and the Secretary of State shall reinstate the corporation or limited liability company by
44 appropriate entry upon the records of the Office of Secretary of State. Upon entry of

1 reinstatement, it relates back to and takes effect as of the date of the suspension by the
2 Secretary of State, and the corporation or limited liability company resumes carrying on
3 its business as if the suspension had never occurred, subject to the rights of any person
4 who reasonably relied to that person's prejudice on the suspension. The Secretary of
5 State shall immediately notify by mail the corporation or limited liability company of
6 the reinstatement."

7

8 **PART V. EFFECTIVE DATE.**

9 **SECTION 154.** This act becomes effective October 1, 2001.