

## **Chapter 55.**

### **North Carolina Business Corporation Act.**

#### Article 1.

##### General Provisions.

###### Part 1. Short Title and Reservation of Power.

###### **§ 55-1-01. Short title.**

This Chapter shall be known and may be cited as the "North Carolina Business Corporation Act". (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

###### **§ 55-1-02. Reservation of power to amend or repeal.**

The General Assembly has power to amend or repeal all or part of this Chapter at any time and all domestic and foreign corporations subject to this Chapter are governed by the amendment or repeal. (1901, c. 2, s. 7; Rev., s. 1136; C.S., s. 1135; G.S. 55-36; 1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

###### **§§ 55-1-03 through 55-1-19. Reserved for future codification purposes.**

###### Part 2. Filing Documents.

###### **§ 55-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

- (1) By the chair of its 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.

(c) through (i). Reserved.

(j) Repealed by Session Laws 2002-159, s. 15 effective October 11, 2002. (1955, c. 1371, s. 1; 1967, c. 13, s. 1; c. 823, s. 16; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.1(a); 1991, c. 645, s. 15; 1999-369, s. 1.1; 2001-358, ss. 3(a), 6(a); 2001-387, ss. 1, 155, 173; 2001-413, s. 6; 2002-159, s. 15.)

###### **§ 55-1-21. Forms.**

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

- (1) An application for a certificate of existence.
- (2) A foreign corporation's application for a certificate of authority to transact business in this State.
- (3) A foreign corporation's application for a certificate of withdrawal.
- (4) Repealed by Session Laws 1997-475, s. 6.2.

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

(b) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1997-475, s. 6.2.)

**§ 55-1-22. Filing, service, and copying fees.**

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

Document	Fee
(1) Articles of incorporation	\$125.00
(2) Application for reserved name	30.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Corporation's statement of change of registered agent or registered office or both	5.00
(7) Agent's statement of change of registered office for each affected corporation	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of incorporation	50.00
(11) Restated articles of incorporation with amendment of articles	10.00 50.00
(12) Articles of merger or share exchange	50.00
(12a) Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13) Articles of dissolution	30.00
(14) Articles of revocation of dissolution	10.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	100.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	250.00
(20) Application for amended certificate of authority	75.00
(21) Application for certificate of withdrawal	25.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Annual report (paper)	25.00
(23a) Annual report (electronic)	18.00
(24) Articles of correction	10.00
(25) Application for certificate of existence or authorization (paper)	15.00
(25a) Application for certificate of existence or authorization (electronic)	10.00
(26) Any other document required or permitted to be filed by this Chapter	10.00
(27) Repealed by Session Laws 2001-358, s. 6(b), effective January 1, 2002.	
(28) Articles of validation	150.00

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

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original.
- (2) Fifteen dollars (\$15.00) for a paper certificate.
- (3) Ten dollars (\$10.00) for an electronic certificate.

(d) The fee for the annual report in subdivision (23) of this section is nonrefundable. (1957, c. 1180; 1967, c. 823, s. 20; 1969, c. 751, ss. 42, 43, 45; c. 797, ss. 4, 5; 1975, 2nd Sess., c. 981, s. 1; 1983, c. 713, ss. 32-38; 1989, c. 265, s. 1; c. 714; 1989 (Reg. Sess., 1990), c. 1057; 1991, c. 574, s. 1; 1997-456, s. 55.3; 1997-475, s. 5.1; 1997-485, s. 10; 2001-358, s. 6(b); 2001-387, ss. 2, 173; 2001-413, s. 6; 2002-126, ss. 29A.25, 29A.26; 2003-349, s. 7; 2007-323, s. 30.6(a); 2018-45, s. 1.)

**§§ 55-1-22.1 through 55-1-27: Transferred to §§ 55D-11 through 55D-17 by Session Laws 2001-358, s. 3(b).**

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

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

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

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this State;
- (2) That (i) the domestic corporation is duly incorporated under the law of this State, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this State;
- (3) That the articles of incorporation of a domestic corporation or the certificate of authority of a foreign corporation has not been suspended for failure to comply with the Revenue Act of this State and that the corporation has not been administratively dissolved for failure to comply with the provisions of this Chapter;
- (4) That its most recent annual report required by G.S. 55-16-22 either has been delivered to the Secretary of State or is not delinquent;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this State. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1991, c. 645, s. 1; 1997-475, s. 6.3.)

**§ 55-1-29: Transferred to § 55D-18 by Session Laws 2001-358, s. 3(b).**

Part 3. Secretary of State.

**§ 55-1-30. Powers.**

The Secretary of State has the power reasonably necessary to perform the duties required of him by this Chapter. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

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

The Secretary of State may propound to any corporation, domestic or foreign which he has reason to believe is subject to the provisions of this Chapter, and to any officer or director thereof, such written interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation is subject to the provisions of this Chapter or has complied with all the provisions of this Chapter applicable to it. Subject to applicable jurisdictional requirements, such interrogatories shall be answered within 30 days after the mailing therefor, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice-president, secretary or assistant secretary thereof. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Chapter, requiring or permitting action by the Attorney General. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

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

(a) The knowing failure or refusal of a domestic or foreign corporation to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter shall constitute grounds for administrative dissolution under G.S. 55-14-20 or for revocation under G.S. 55-15-30, as the case may be.

(b) Each officer and director of a domestic or foreign corporation who knowingly fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor. (1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1993, c. 539, s. 440, c. 552, s. 3; 1994, Ex. Sess., c. 24, s. 14(c).)

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

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action or proceedings by this State. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

**§§ 55-1-34 through 55-1-39. Reserved for future codification purposes.**

Part 4. Definitions.

**§ 55-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

- (2a) "Business entity," as used in G.S. 55-11-10 and Article 11A of this Chapter, means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation, a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) "Corporation" or "domestic corporation" means a corporation for profit or a corporation having capital stock that is incorporated under or subject to the provisions of this Chapter and that is not a foreign corporation except that in G.S. 55-9-01 and G.S. 55-15-21 "corporation" includes domestic and foreign corporations.
- (5) "Deliver" includes mail.
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (6a) "Dividend credit" as used in G.S. 55-6-01(d)(5) means the aggregate of all yearly dividend credits. "Yearly dividend credit" means with respect to noncumulative preferred shares, the amount by which the full dividend preference of such a share, to the extent that such preference is earned by the corporation with respect to such a share in a particular fiscal year, exceeds the dividends paid on said share for that year; provided, that no dividend credit shall accrue unless, and only to the extent that, there exists an earned surplus at the end of such fiscal year. Computations of earnings allocable to classes of shares made in good faith by the board of directors in accordance with generally accepted accounting principles shall be conclusive. For the purpose of this definition, a dividend is deemed paid if it has been declared and funds for its payment have been set aside.
- (6b) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57D-1-03.
- (6c) "Domestic limited partnership" has the same meaning as in G.S. 59-102.
- (6d) "Domestic nonprofit corporation" means a corporation as defined in G.S. 55A-1-40.
- (7) "Effective date of notice" is defined in G.S. 55-1-41.
- (8) "Electronic" has the same meaning as in G.S. 66-312.
- (8a) "Electronic record" has the same meaning as in G.S. 66-312.
- (8b) "Electronic signature" has the same meaning as in G.S. 66-312.
- (9) "Entity" includes (without limiting the meaning of such term in Article 9 of this Chapter):

- a. Any domestic or foreign:
    - 1. Corporation; nonprofit corporation; professional corporation;
    - 2. Limited liability company;
    - 3. Profit and nonprofit unincorporated association; and
    - 4. Business trust, estate, partnership, trust;
  - b. Two or more persons having a joint or common economic interest; and
  - c. The United States, and any state and foreign government.
- (10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this State.
  - (10a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
  - (10b) "Foreign limited partnership" has the same meaning as in G.S. 59-102.
  - (10c) "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A-1-40.
  - (11) "Governmental subdivision" includes authority, county, district, and municipality.
  - (12) "Includes" means a partial definition.
  - (13) "Individual" denotes a natural person legally competent to act and also includes the estate of an incompetent or deceased individual.
  - (13a) "Mail," when used as a verb, means to deposit in the United States mail with postage thereon prepaid and correctly addressed. When a corporation mails an item to a shareholder, "correctly addressed" means addressed to the shareholder's address as shown in the corporation's current record of shareholders.
  - (14) "Means" denotes an exhaustive definition.
  - (14a) "Merger" as used in Article 9 includes a "share exchange" as used in Article 11.
  - (15) "Notice" includes demand and is defined in G.S. 55-1-41.
  - (16) "Person" includes individual and entity.
  - (17) "Principal office" means the office (in or out of this State) where the principal executive offices of a domestic or foreign corporation are located, as designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign corporation that has not yet filed an annual report, in its articles of incorporation or application for a certificate of authority, respectively.
  - (18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
  - (18a) "Public corporation" means any corporation that has a class of shares registered under Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78I).
  - (19) "Record date" means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders for purposes of this Chapter.
  - (20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under G.S. 55-8-40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

- (20a) "Service-disabled veteran" means a veteran with a disability that was incurred or aggravated during the veteran's service in the Armed Forces of the United States.
- (20b) "Service-disabled veteran-owned small business" means a business that satisfies both of the following requirements:
  - a. The business's net annual receipts do not exceed one million dollars (\$1,000,000).
  - b. One or more service-disabled veterans own more than fifty percent (50%) of the business.
- (21) "Shares" means the units into which the proprietary interests in a corporation are divided.
- (22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (23) "State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.
- (24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (24a) "Unincorporated entity" means a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.
- (25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- (25a) "Veteran" means an individual entitled to any benefits or rights under the laws of the United States by reason of service in the Armed Forces of the United States.
- (25b) "Veteran-owned small business" means a business that satisfies both of the following requirements:
  - a. The business's net annual receipts do not exceed one million dollars (\$1,000,000).
  - b. One or more veterans own more than fifty percent (50%) of the business.
- (26) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this Chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this Chapter to vote generally on the matter are for that purpose a single voting group. (1955, c. 1371, s. 1; 1959, c. 1316, s. 1; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.4; 1993, c. 552, s. 4; 1999-369, ss. 1.2, 1.3; 1999-456, s. 3; 2001-358, s. 5(a); 2001-387, ss. 3, 4, 5, 173, 175(a); 2001-413, s. 6; 2001-487, s. 62(a); 2013-157, s. 3; 2017-90, s. 1(a); 2017-102, s. 14.2(a); 2018-45, s. 33.1.)

**§ 55-1-41. Notice.**

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

(b) Notice may be communicated in person; by electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper in the county wherein the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county wherein it has its registered office; or by radio, television, or other form of public broadcast communication.

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

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

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

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

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

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

(g) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern. (1989, c. 265, s. 1; 1993, c. 552, s. 5; 2001-387, s. 6.)

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

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

- (1) All co-owners of the same shares;
- (2) A corporation, partnership, trust, estate, or other entity;



(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this Chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person. (1989, c. 265, s. 1.)

**§§ 55-1-43 through 55-1-49. Reserved for future codification purposes.**

Part 5. Miscellaneous.

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

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors. (2001-387, s. 7.)

§ 55-1-51: Reserved for future codification purposes.

§ 55-1-52: Reserved for future codification purposes.

§ 55-1-53: Reserved for future codification purposes.

§ 55-1-54: Reserved for future codification purposes.

§ 55-1-55: Reserved for future codification purposes.

§ 55-1-56: Reserved for future codification purposes.

§ 55-1-57: Reserved for future codification purposes.

§ 55-1-58: Reserved for future codification purposes.

§ 55-1-59: Reserved for future codification purposes.

Part 6. Ratification of Defective Corporate Actions.

**§ 55-1-60. Definitions.**

In this Part, the following definitions apply:

- (1) Corporate action. – Any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee, a subcommittee, an officer or agent of the corporation, or the shareholders.
- (2) Date of the defective corporate action. – The date the defective corporate action was purported to have been taken or, if the exact date is unknown, the approximate date thereof.
- (3) Defective corporate action. – Any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of

authorization. This term includes an over issue. This term does not include a business combination subject to G.S. 55-9-02, unless the business combination was approved by shareholders in accordance with G.S. 55-9-02.

- (4) Failure of authorization. – The (i) failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this Chapter, the articles of incorporation or bylaws of the corporation, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent the failure would render the corporate action void or voidable, or (ii) failure of the board of directors or any officer of the corporation to authorize or approve any act or transaction taken by or on behalf of the corporation that would have required for its due authorization the approval of the board of directors or the officer.
- (5) Over issue. – The purported issuance of either of the following:
  - a. Shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under G.S. 55-6-01 at the time of the issuance.
  - b. Shares of any class or series that is not then authorized for issuance by the articles of incorporation.
- (6) Putative shares. – The shares of any class or series of the corporation, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect thereto, that were created or issued as a result of a defective corporate action, and that satisfy either of the following conditions:
  - a. Would constitute valid shares but for any failure of authorization.
  - b. Cannot be determined by the board of directors to be valid shares.
- (7) Valid shares. – The shares of any class or series of the corporation that have been duly authorized and validly issued in accordance with this Chapter, including as a result of ratification or validation under this Part.
- (8) Validation effective time. – With respect to any defective corporate action ratified under this Part, means the later of (i) the time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by G.S. 55-1-64 becomes effective in accordance with G.S. 55-1-41 or (ii) the time at which any articles of validation filed in accordance with G.S. 55-1-66 become effective. The validation effective time shall not be affected by the filing or pendency of a judicial proceeding in accordance with this Chapter or otherwise, unless otherwise ordered by the court. (2018-45, s. 3.)

**§ 55-1-61. Defective corporate actions.**

(a) A defective corporate action is not void or voidable if ratified in accordance with G.S. 55-1-62 or validated in accordance with G.S. 55-1-67.

(b) Ratification under G.S. 55-1-62 or validation under G.S. 55-1-67 is not the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with this Part does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor does it create a presumption that the corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an over issue, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon either of the following:

- (1) The effectiveness under this Part and under Article 10 of this Chapter of an amendment to the articles of incorporation authorizing, designating, or creating the shares.
- (2) The effectiveness of any other corporate action under this Part ratifying the authorization, designation, or creation of the shares. (2018-45, s. 3.)

**§ 55-1-62. Ratification of defective corporate actions.**

(a) Except as otherwise provided in subsection (b) of this section, the board of directors shall ratify a defective corporate action by taking action in accordance with G.S. 55-1-63 that states all of the following:

- (1) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued.
- (2) The date of the defective corporate action.
- (3) The nature of the failure of authorization with respect to the defective corporate action to be ratified.
- (4) That the board of directors approves the ratification of the defective corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under G.S. 55-2-05(a)(2), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action that states all of the following:

- (1) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation.
- (2) The earlier of the date on which the person or persons identified under subdivision (1) of this subsection first took the action or were purported to have been elected as the initial board of directors.
- (3) That the ratification of the election of the person or persons identified under subdivision (1) of this subsection as the initial board of directors is approved.

(c) If any provision of this Chapter, the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party in effect at the time action under subsection (a) of this section is taken, requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (a) of this section shall be submitted to the shareholders for approval in accordance with G.S. 55-1-63.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (a) of this section, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time prior to the validation effective time without further action of the shareholders. (2018-45, s. 3.)

**§ 55-1-63. Action on ratification.**

(a) The quorum and voting requirements applicable to a ratifying action by the board of directors under G.S. 55-1-62(a) are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under G.S. 55-1-62(c), and, if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, whether or not entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of the defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action and shall be accompanied by (i) a copy of the action taken by the board of directors in accordance with G.S. 55-1-62(a) or (ii) the information required by subdivisions (1) through (4) of subsection (a) of G.S. 55-1-62. The notice shall also include a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) Except as provided in subsection (d) of this section with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by G.S. 55-1-62(c) are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring the ratification of the election exceed the votes cast opposing the ratification of the election at a meeting at which a quorum is present.

(e) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under G.S. 55-1-62(c), and without giving effect to any ratification of putative shares that becomes effective as a result of the vote, shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an over issue, in addition to the approval required by G.S. 55-1-62, approval of an amendment to the articles of incorporation under Article 10 of this Chapter to increase the number of shares of an authorized class or series, or to authorize the creation of a class or series of shares so there would be no over issue, shall also be required. (2018-45, s. 3.)

#### **§ 55-1-64. Notice requirements.**

(a) Unless shareholder approval is required under G.S. 55-1-62(c), prompt notice of an action taken under G.S. 55-1-62 shall be given to each holder of valid and putative shares, whether or not entitled to vote, as of (i) the date of the action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice required under subsection (a) of this section shall contain (i) a copy of the action taken by the board of directors in accordance with subsection (a) or (b) of G.S. 55-1-62 or (ii) the information required by subdivisions (1) through (4) of subsection (a) of G.S. 55-1-62 or

subdivisions (1) through (3) of subsection (b) of G.S. 55-1-62, as applicable. The notice shall also include a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under G.S. 55-1-62(c) if notice is given in accordance with G.S. 55-1-63(b).

(d) A notice required by this section may be given in any manner permitted by G.S. 55-1-41 and, for any public corporation, may be given by means of a filing or furnishing of the notice with the Securities and Exchange Commission which becomes publicly accessible on the Web site of the Securities and Exchange Commission approximately contemporaneously with the filing or furnishing. (2018-45, s. 3.)

#### **§ 55-1-65. Effect of ratification.**

Ratification in accordance with this Part shall have the following effects from and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under G.S. 55-1-67:

- (1) Each defective corporate action ratified in accordance with G.S. 55-1-62 is not void or voidable as a result of the failure of authorization identified in the action taken under subsection (a) or (b) of G.S. 55-1-62 and is a valid corporate action effective as of the date of the defective corporate action.
- (2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under G.S. 55-1-62 is not void or voidable, and the putative share or fraction of the putative share is an identical share or fraction of a valid share as of the time it was purportedly issued.
- (3) Any corporate action taken subsequent to the defective corporate action ratified in accordance with this Part in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action shall be valid as of the time taken. (2018-45, s. 3.)

#### **§ 55-1-66. Filings.**

(a) If the defective corporate action ratified under this Part would have required under any other section of this Chapter a filing in accordance with this Chapter, then, whether or not a filing was previously made in respect of the defective corporate action and in lieu of a filing otherwise required by this Chapter, the corporation shall file articles of validation in accordance with this section, and the articles of validation shall serve to amend or substitute for any other filing with respect to the defective corporate action required by this Chapter.

(b) The articles of validation shall set forth all of the following:

- (1) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which the putative shares were purported to have been issued.
- (2) The date of the defective corporate action.

- (3) The nature of the failure of authorization in respect of the defective corporate action.
  - (4) A statement that the defective corporate action was ratified in accordance with G.S. 55-1-62, including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action.
  - (5) The information required by subsection (c) of this section.
- (c) The articles of validation shall also contain all of the following information that is applicable:
- (1) If a filing was previously made in respect of the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with G.S. 55-1-62, the articles of validation shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction thereto and (ii) a statement that a copy of the filing previously made, together with any articles of correction thereto, is attached as an exhibit to the articles of validation.
  - (2) If a filing was previously made in respect of the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with G.S. 55-1-62, the articles of validation shall set forth (i) the name, title, and filing date of the filing previously made and any articles of correction thereto, (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of this Chapter to give effect to the defective corporate action is attached as an exhibit to the articles of validation, and (iii) the date and time that the filing is deemed to have become effective.
  - (3) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under G.S. 55-1-62 would have required a filing under any other section of this Chapter, the articles of validation shall set forth (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of this Chapter to give effect to the defective corporate action is attached as an exhibit to the articles of validation and (ii) the date and time that the filing is deemed to have become effective. (2018-45, s. 3.)

**§ 55-1-67. Judicial proceedings regarding validity of corporate actions.**

(a) Upon application to the Superior Court Division of the General Court of Justice by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under G.S. 55-1-62, or any other person claiming to be substantially and adversely affected by a ratification under G.S. 55-1-62, the appropriate court of the county where the corporation's principal office, or, if none, its registered office, in this State is located, or, if the legal action is designated a mandatory complex business case pursuant to G.S. 7A-45.4, the Business Court, may do all of the following:

- (1) Determine the validity and effectiveness of any corporate action or defective corporate action.

(2) Determine the validity and effectiveness of any ratification under G.S. 55-1-62.

(3) Determine the validity of any putative shares.

(b) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations that it deems proper under the circumstances.

(c) Service of process of the application under subsection (a) of this section on the corporation may be made in any manner provided by State law or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days of the validation effective time. (2018-45, s. 3.)