

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 385*

Short Title: Consolidate Business Provisions.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES
VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID
UNNECESSARY REPETITION, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CONSOLIDATION OF FILING REQUIREMENTS.

SECTION 1. The General Statutes are amended by adding a new Chapter to
read:

"Chapter 55D.

"Filings for

Corporations, Nonprofit Corporations, Limited Liability Companies,
Limited Partnerships, and Limited Liability Partnerships.

"Article 1

"General Provisions.

§ 55D-1. Applicable definitions.

The following definitions apply in this Chapter:

(1) 'Corporation' or 'domestic corporation'. – Defined in G.S. 55-1-40(4).

(2) 'Deliver'. – Defined in G.S. 55-1-40(5).

(3) 'Entity'. – Defined in G.S. 55-1-40(9).

(4) 'Foreign corporation'. – Defined in G.S. 55-1-40(10).

(5) 'Foreign limited liability company'. – Defined in G.S. 57C-1-03(8).

(6) 'Foreign limited liability partnership'. – Defined in G.S. 59-32(4a).

(7) 'Foreign limited partnership'. – Defined in G.S. 59-102(5).

(8) 'Foreign nonprofit corporation'. – A foreign corporation as defined in
G.S. 55A-1-40(11).

1 ~~corporations~~ corporations, foreign nonprofit corporations, foreign
2 limited liability companies, and foreign limited liability partnerships
3 need not be in English if accompanied by a reasonably authenticated
4 English translation.

5 (5) A document submitted by an entity must be executed by a person
6 authorized to execute documents (i) under G.S. 55-1-20 if the entity is
7 a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the
8 entity is a domestic or foreign nonprofit corporation, (iii) under G.S.
9 57C-1-20 if the entity is a domestic or foreign limited liability
10 company, (iv) under G.S. 59-204 if the entity is a domestic or foreign
11 limited partnership, or (v) under G.S. 59-73.7 if the entity is any other
12 partnership as defined in G.S. 59-36 whether or not formed under the
13 laws of the State.

14 (g) (6) ~~The person executing the document shall~~ must sign it and state beneath
15 or opposite ~~his signature his name~~ the person's signature, the person's
16 name and the capacity in which he the person signs. Any signature on
17 the document may be a facsimile or an electronic signature in a form
18 acceptable to the Secretary of State. The document may but need not
19 contain:

20 (1) ~~The corporate seal;~~

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

22 (3) ~~An acknowledgement, verification, or proof.~~ contain a corporate seal,
23 attestation, acknowledgment, verification, or proof.

24 (h) (7) ~~If the Secretary of State has prescribed a mandatory form for the~~
25 ~~document under G.S. 55-1-21,~~ document, the document must be in or
26 on the prescribed form.

27 (i) (8) ~~The document must be delivered to the office of the Secretary of State~~
28 ~~for filing and must be accompanied by one exact or conformed copy~~
29 ~~(except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees~~
30 ~~required by this Chapter.~~ the applicable fees.

31 **"§ 55D-11. Expedited filings.**

32 A person submitting a document for filing may request an expedited filing at the
33 time the document is submitted. The Secretary of State shall guarantee the expedited
34 filing of a document upon receipt of the document in proper form and the payment of
35 the required filing fee. The Secretary of State may collect the following additional fees
36 for the expedited filing of a document received in good form: the document if the
37 document is in proper form and accompanied by all applicable fees, including the
38 following fee:

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

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

1 The Secretary of State shall not collect the fees allowed in this section unless the person
2 submitting the document for filing ~~requests an expedited filing and~~ is informed by the
3 Secretary of State of the fees prior to the filing of the document.

4 **"§ 55D-12. Advisory review of documents.**

5 Upon request, the Secretary of State shall ~~provide for the~~ review of a document prior
6 to its submission for filing to determine whether it satisfies ~~the requirements of this~~
7 ~~Chapter.~~ applicable filing requirements. Submission of a document for review shall be
8 accompanied by ~~the proper fee~~ a fee of two hundred dollars (\$200.00) and shall be in
9 accordance with procedures adopted by rule by the Secretary of State. The advisory
10 review shall be completed within 24 hours after submission, excluding weekends and
11 holidays, unless the person submitting the document is otherwise notified in accordance
12 with procedures adopted by rule by the Secretary of State fixing priority between
13 submissions under this section and filings under ~~G.S. 55-1-22.1.~~ G.S. 55D-11. Upon
14 completion of the advisory review, the Secretary of State shall notify the person
15 submitting the document of any deficiencies in the document that would prevent its
16 filing.

17 **"§ 55D-13. Effective time and date of document.**

18 (a) Except as provided in subsection (b) of this section and G.S. 55-1-24(e); in
19 G.S. 55D-14, a document accepted for filing is effective:

- 20 (1) At the time of filing on the date it is filed, as evidenced by the
21 Secretary of State's date and time endorsement on the ~~original~~ filed
22 document; or
23 (2) At the time specified in the document as its effective time on the date
24 it is filed.

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

30 (c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and 57C-2-20(b), the
31 fact that a document has become effective under this section does not determine its
32 validity or invalidity or the correctness or incorrectness of the information contained in
33 the document.

34 **"§ 55D-14. Correcting filed document.**

35 (a) ~~A domestic or foreign corporation~~ person on whose behalf a document was
36 filed in the Office of the Secretary of State may correct a document filed by the
37 Secretary of State if the document (1) that document if it (i) contains a statement that is
38 incorrect and was incorrect when the document was filed or (2)(ii) was defectively
39 executed, attested, sealed, verified, or acknowledged.

40 (b) A document is ~~corrected:~~ corrected by delivering to the Secretary of State for
41 filing articles of correction that:

- 42 (1) ~~By preparing articles of correction that (i) describe~~ Describe the
43 document (including its filing date) or attach a copy of it to the
44 articles, have attached to them a copy of the document;

1 (2) ~~(ii) specify~~ Specify the incorrect statement and the reason it is
2 incorrect or the manner in which the execution was ~~defective,~~
3 ~~defective;~~ and

4 (3) ~~(iii) correct~~ Correct the incorrect statement or defective ~~execution;~~
5 ~~and execution.~~

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

7 (c) Articles of correction are effective ~~on the effective~~ as of the effective time
8 and date of the document they correct except as to persons relying on the uncorrected
9 document and adversely affected by the correction. As to those persons, articles of
10 correction are effective when filed.

11 **"§ 55D-15. Filing duty of Secretary of State.**

12 (a) If a document delivered to the office of the Secretary of State for filing
13 satisfies the requirements of this ~~Chapter,~~ Chapter and of Chapter 55, 55A, 55B, 57C, or
14 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the
15 Secretary of State ~~pursuant to~~ under this Chapter may be maintained by the Secretary
16 either in their original form or in photographic, microfilm, optical disk media, or other
17 reproduced form. The Secretary may make reproductions of documents filed under this
18 Chapter, or under any predecessor ~~aet,~~ law, by photographic, microfilm, optical disk
19 media, or other means of reproduction, and may destroy the originals of those
20 documents reproduced.

21 (b) The Secretary of State files a document by ~~stamping or otherwise endorsing~~
22 "Filed", together with the Secretary's name and official title and the date and time of
23 filing, on ~~both the original and the document copy.~~ the document. After filing a
24 document, ~~except as provided in G.S. 55-5-03 and G.S. 55-15-09,~~ the Secretary of State
25 shall deliver the document copy to the ~~domestic or foreign corporation or its~~
26 ~~representative.~~ person submitting the document for filing and as provided in G.S. 55-5-
27 03, 55-15-09, 55A-5-03, 55A-15-09, 57C-2-42, and 57C-7-09.

28 (c) If the Secretary of State refuses to file a document, the Secretary shall return
29 it, ~~by personal delivery or by first class mail postage prepaid, to the domestic or foreign~~
30 ~~corporation or its representative~~ it to the person submitting the document for filing
31 within five days after the document was received, together with a ~~brief,~~ written
32 statement of the date of the refusal and a brief explanation of the reason for refusal. The
33 Secretary of State may correct apparent errors and omissions on a document submitted
34 for filing if authorized to make the corrections by the person submitting the document
35 for filing. ~~The authorization to make the corrections shall be confirmed, according to~~
36 ~~procedures adopted by rule, by the Secretary prior to making the correction.~~

37 (d) The Secretary of State's duty is to review and file documents that satisfy the
38 requirements of this ~~Chapter.~~ Chapter and of Chapter 55, 55A, 55B, 57C, or 59 of the
39 General Statutes. The Secretary of State's filing or refusing to file a document does not:

40 (1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or 57C-2-20(b),
41 affect the validity or invalidity of the document in whole or part;

42 (2) Relate to the correctness or incorrectness of information contained in
43 the document;

- 1 (3) Create a presumption that the document is valid or invalid or that
2 information contained in the document is correct or incorrect.

3 **"§ 55D-16. Appeal from Secretary of State's refusal to file document.**

4 (a) If the Secretary of State refuses to file a document delivered to ~~his~~ the
5 Secretary of State's office for filing, the person ~~tendering the document on whose behalf~~
6 the document was submitted for filing may, within 30 days after ~~such~~ the date of the
7 refusal, appeal the refusal to the Superior Court of Wake County. The appeal is
8 commenced by filing a petition with the court and with the Secretary of State requesting
9 the court to compel the Secretary of State to file the document. The petition ~~shall~~ must
10 have attached to it the document to be filed and the Secretary of State's explanation for
11 ~~his~~ the refusal to file. The appeal to the superior court is not governed by ~~the~~
12 ~~Administrative Procedure Act Chapter 150B of the General Statutes, the Administrative~~
13 ~~Procedure Act~~, and shall be determined upon such further notice and opportunity to be
14 heard, if any, as the court may deem appropriate under the circumstances.

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

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

19 **"§ 55D-17. Evidentiary effect of copy of filed document.**

20 A certificate attached to a copy of a document filed by the Secretary of State,
21 bearing the Secretary of State's signature ~~(which may be in facsimile)~~ and the seal of
22 office (both of which may be in facsimile or in any electronic form approved by the
23 Secretary of State) and certifying that the copy is a true copy of the document, is
24 conclusive evidence that the original document is on file with the Secretary of State. A
25 photographic, microfilm, optical disk media, or other reproduced copy of a document
26 filed ~~pursuant to this Chapter~~ under this Chapter, Chapter 55, 55A, 55B, 57C, or 59 of
27 the General Statutes, or any predecessor act, law, when certified by the Secretary, shall
28 be considered an original for all purposes and is admissible in evidence in like manner
29 as an original.

30 **"§ 55D-18. Penalty for signing false document.**

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

34 (b) An offense under this section is a Class 1 misdemeanor."
35

36 PART II. MISCELLANEOUS AND CONFORMING AMENDMENTS.

37
38 **SECTION 5.(a)** G.S. 55-1-40(9) reads as rewritten:

39 "(9) "Entity" includes (without limiting the meaning of such term in Article
40 9) 9 of this Chapter):

41 a. Any domestic or foreign:

- 42 1. Corporation; ~~corporation and foreign corporation;~~
43 nonprofit corporation; professional corporation;
44 2. Limited ~~limited~~ liability company;

1 3. ~~Profit~~ profit and nonprofit unincorporated association;
2 and

3 4. ~~Business~~ business trust, estate, partnership, ~~trust,~~ and
4 trust;

5 b. ~~Two~~ two or more persons having a joint or common economic
6 interest; and

7 c. ~~state,~~ The United States, and any state and foreign
8 government."

9 **SECTION 5.(b)** G.S. 55A-1-40(10) reads as rewritten:

10 "(10) "Entity" ~~includes~~ includes:

11 a. ~~Any domestic or foreign:~~

12 1. ~~Corporation; corporation and foreign corporation;~~
13 ~~domestic or foreign business corporation; professional~~
14 ~~corporation;~~

15 2. ~~Limited~~ limited liability company;

16 3. ~~Profit~~ profit and nonprofit unincorporated association,
17 chapter or other organizational unit; and

18 4. ~~Business~~ business trust, estate, partnership, ~~trust,~~ and
19 trust;

20 b. ~~Two~~ two or more persons having a joint or common economic
21 interest; and

22 c. ~~state,~~ The United States, and any state and foreign
23 government."

24 **SECTION 6.(a)** G.S. 55-1-20, as amended by Section 3 of this act, reads as

25 rewritten:

26 "**§ 55-1-20. Filing requirements.**

27 ~~(a) through (e). Recodified.~~

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

30 ~~(1) By the chairman of the board of directors, by its president, or by another of its~~
31 ~~officers;~~

32 ~~(2) If directors have not been selected or the corporation has not been formed, by~~
33 ~~an incorporator; or~~

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

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

42 ~~(g) through (j). Recodified.~~

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

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

3 (1) By the presiding officer of the board of directors, by its president, or
4 by another of its officers;

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

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

9 **SECTION 6.(b)** G.S. 55-1-22(a)(27) is repealed.

10 **SECTION 7.(a)** G.S. 55A-1-20 reads as rewritten:

11 "**§ 55A-1-20. Filing requirements.**

12 ~~(a) To be entitled to filing by the Secretary of State under this Chapter, a~~
13 ~~document shall satisfy the requirements of this section, and of any other section that~~
14 ~~adds to or varies these requirements.~~

15 ~~(b) The document must be one that is required or permitted by this Chapter to be~~
16 ~~filed in the office of the Secretary of State.~~

17 ~~(c) The document shall contain the information required by this Chapter. It may~~
18 ~~contain other information as well.~~

19 ~~(d) The document shall be typewritten or printed.~~

20 ~~(e) The document shall be in the English language.~~

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

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

26 ~~(1) By the presiding officer of the board of directors by its president, or by~~
27 ~~another of its officers;~~

28 ~~(2) If directors have not been selected or the corporation has not been~~
29 ~~formed, by an incorporator; or~~

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

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

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

41 ~~(1) The corporate seal;~~

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

43 ~~(3) An acknowledgment, verification, or proof.~~

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

3 ~~(i) The document shall be delivered to the office of the Secretary of State for~~
4 ~~filing and shall be accompanied by one exact or conformed copy (except as provided in~~
5 ~~G.S. 55A-5-03 and G.S. 55A-15-09), and all fees required by this Chapter.~~

6 ~~(j) Any signature on any document authorized to be filed with the Secretary of~~
7 ~~State under any provision of this Chapter may be a facsimile.~~

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

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

12 ~~(1) By the presiding officer of the board of directors, by its president, or~~
13 ~~by another of its officers;~~

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

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

18 **SECTION 7.(b)** G.S. 55A-1-22.1, 55A-1-22.2, 55A-1-23, 55A-1-24,
19 55A-1-25, 55A-1-26, 55A-1-27, and 55A-1-29 are repealed.

20 **SECTION 7.(c)** G.S. 55A-1-22(a)(28) is repealed.

21 **SECTION 8.(a)** G.S. 57C-1-20 reads as rewritten:

22 "**§ 57C-1-20. Filing requirements.**

23 ~~(a) To be entitled to filing by the Secretary of State under this Chapter, a~~
24 ~~document must satisfy the requirements of this section, and of any other section that~~
25 ~~adds to or varies these requirements.~~

26 ~~(b) The document must be one that is required or permitted by this Chapter to be~~
27 ~~filed in the Office of the Secretary of State.~~

28 ~~(c) The document must contain the information required by this Chapter. It may~~
29 ~~contain other information as well.~~

30 ~~(d) The document must be typewritten or printed.~~

31 ~~(e) The document must be in the English language. The name of a limited~~
32 ~~liability company need not be in English if written in English letters or Arabic or~~
33 ~~Roman numerals, and the certificate of existence required of foreign limited liability~~
34 ~~companies need not be in English if accompanied by a reasonably authenticated English~~
35 ~~translation.~~

36 ~~(f) A document submitted by a domestic or foreign limited liability company~~
37 ~~must be executed:~~

38 ~~(1) By a manager of the limited liability company;~~

39 ~~(2) If managers have not been selected, or if the limited liability company~~
40 ~~does not have a manager other than a member, by any member;~~

41 ~~(3) If the limited liability company has not been formed or if no initial~~
42 ~~members of the limited liability company have been identified in the~~
43 ~~manner provided in this Chapter, by an organizer; or~~

- 1 (4) If the limited liability company is in the hands of a receiver, trustee, or
2 other court-appointed fiduciary, by that fiduciary.

3 A document submitted by a business entity other than a domestic or foreign limited
4 liability company must be executed by a person authorized to execute documents (i)
5 pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation,
6 (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit
7 corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign
8 limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any
9 other partnership as defined in G.S. 59-36 whether or not formed under the laws of this
10 State.

11 (g) The person executing the document shall sign it and state beneath or opposite
12 his signature his name and the capacity in which he signs. The document may, but need
13 not, contain an acknowledgement, verification, or proof.

14 (h) If the Secretary of State has prescribed a mandatory form for the document
15 under G.S. 57C-1-21, the document must be in or on the prescribed form unless the
16 Secretary of State otherwise permits an alternative form.

17 (i) The document must be delivered to the Office of the Secretary of State for
18 filing and must be accompanied by one exact or conformed copy and all fees required
19 by this Chapter.

20 (j) Any signature on any document authorized to be filed with the Secretary of
21 State under any provision of this Chapter may be a facsimile.

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

24 (b) A document submitted on behalf of a domestic or foreign limited liability
25 company must be executed:

26 (1) By a manager of the limited liability company;

27 (2) If managers have not been selected, or if the limited liability company
28 does not have a manager other than a member, by any member;

29 (3) If the limited liability company has not been formed if no initial
30 members of the limited liability company have been identified in the
31 manner provided in this Chapter, by an organizer; or

32 (4) If the limited liability company is in the hands of a receiver, trustee, or
33 other court-appointed fiduciary, by that fiduciary."

34 **SECTION 8.(b)** G.S. 57C-1-22.1, 57C-1-22.2, 57C-1-23, 57C-1-24,
35 57C-1-25, 57C-1-26, 57C-1-27, and 57C-1-29 are repealed.

36 **SECTION 8.(c)** G.S. 57C-1-22(a)(27) is repealed.

37 **SECTION 9.** G.S. 59-73.7 reads as rewritten:

38 "**§ 59-73.7. Filing of documents.**

39 (a) ~~To be entitled to filing by the Secretary of State, a document submitted~~
40 ~~pursuant to this Part must meet all of the following requirements:~~

41 (1) ~~The document must contain the information required by this Part. It~~
42 ~~may contain other information as well.~~

43 (2) ~~The document must be typewritten or printed.~~

44 (3) ~~The document must be in the English language.~~

- 1 (4) ~~A document submitted by a partnership must be executed by a general~~
2 ~~partner of the partnership. A document submitted by a business entity~~
3 ~~other than a partnership must be executed by a person authorized to~~
4 ~~execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity~~
5 ~~is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f)~~
6 ~~if the business entity is a domestic or foreign nonprofit corporation,~~
7 ~~(iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or~~
8 ~~foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the~~
9 ~~business entity is a domestic or foreign limited partnership.~~
- 10 (5) ~~The person executing the document must sign it and state beneath or~~
11 ~~opposite the person's signature, the person's name and the capacity in~~
12 ~~which the person signs. Any signature on the document may be a~~
13 ~~facsimile. The document may, but need not, contain an~~
14 ~~acknowledgment, verification, or proof.~~
- 15 (6) ~~The document must be delivered to the Office of the Secretary of State~~
16 ~~for filing and must be accompanied by one exact or conformed copy~~
17 ~~and by the required filing fee.~~

18 A document required or permitted by this Act to be filed by the Secretary of State must
19 be filed under Chapter 55D of the General Statutes.

20 (b) ~~A partnership may correct a document filed by the Secretary of State pursuant~~
21 ~~to this Part if the document (i) contains a statement that is incorrect and was incorrect~~
22 ~~when the document was filed or (ii) was defectively executed, attested, sealed, verified,~~
23 ~~or acknowledged.~~

24 A document is corrected by:

- 25 (1) ~~Preparing articles of correction that (i) describe the document~~
26 ~~(including its filing date) or have attached to them a copy of the~~
27 ~~document, (ii) specify the incorrect statement and the reason it is~~
28 ~~incorrect or the manner in which the execution was defective, and (iii)~~
29 ~~correct the incorrect statement or defective execution; and~~
- 30 (2) ~~Delivering the articles of correction to the Secretary of State for filing,~~
31 ~~accompanied by one exact or conformed copy and the required filing~~
32 ~~fee.~~

33 ~~Articles of correction are effective on the effective date of the document that is~~
34 ~~corrected except as to persons relying on the uncorrected document and adversely~~
35 ~~affected by the correction. As to those persons, articles of correction are effective when~~
36 ~~filed.~~

37 (b1) A document submitted under this Act for filing by the Secretary of State must
38 be executed by a general partner of the partnership.

39 (c) The Secretary of State shall collect the following fees when the documents
40 described in this subsection are submitted by a partnership to the Secretary of State for
41 filing:

<u>Document</u>	<u>Fee</u>
42 Articles of Merger	\$50.00
43 Articles of Correction	\$10.00

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

5 The Secretary of State shall collect the following fees for copying, comparing, and
6 certifying a copy of a document filed by a partnership pursuant to this Part:

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

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

10 ~~(d) The Secretary of State shall guarantee the expedited filing of a document~~
11 ~~upon receipt of the document in proper form and the payment of the required filing fee.~~
12 ~~The Secretary of State may collect the following additional fees for the expedited filing~~
13 ~~of a document received in good form:~~

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

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

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

22 ~~(e) Upon request, the Secretary of State shall provide for the review of a~~
23 ~~document prior to its submission for filing to determine whether it satisfies the~~
24 ~~requirements of this Part. Submission of a document for review shall be accompanied~~
25 ~~by the proper fee and shall be in accordance with procedures adopted by rule by the~~
26 ~~Secretary of State. The advisory review shall be completed within 24 hours after~~
27 ~~submission, excluding weekends and holidays, unless the person submitting the~~
28 ~~document is otherwise notified in accordance with procedures adopted by rule by the~~
29 ~~Secretary of State fixing priority between submissions under this subsection and filings~~
30 ~~under subsection (d) of this section. Upon completion of the advisory review, the~~
31 ~~Secretary of State shall notify the person submitting the document of any deficiencies in~~
32 ~~the document that would prevent its filing.~~

33 ~~(f) Except as provided in this subsection and in subsection (b) of this section, a~~
34 ~~document accepted for filing is effective:~~

35 ~~(1) At the time of filing on the date it is filed, as evidenced by the~~
36 ~~Secretary of State's date and time endorsement on the original~~
37 ~~document; or~~

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

40 ~~A document may specify a delayed effective time and date, and if it does so the~~
41 ~~document becomes effective at the time and date specified. If a delayed effective date~~
42 ~~but no time is specified, the document is effective at 11:59:59 p.m. on that date. A~~
43 ~~delayed effective date for a document may not be later than the 90th day after the date it~~
44 ~~is filed.~~

1 ~~The fact that a document has become effective under this subsection does not~~
2 ~~determine its validity or invalidity or the correctness or incorrectness of the information~~
3 ~~contained in the document.~~

4 ~~(g) If a document delivered to the Office of the Secretary of State for filing~~
5 ~~satisfies the requirements of this Part, the Secretary of State shall file it. Documents~~
6 ~~filed with the Secretary of State pursuant to this Part may be maintained by the~~
7 ~~Secretary either in their original form or in photographic, microfilm, optical disk media,~~
8 ~~or other reproduced form. The Secretary may make reproductions of documents filed~~
9 ~~under this Part, or under any predecessor act, by photographic, microfilm, optical disk~~
10 ~~media, or other means of reproduction, and may destroy the originals of those~~
11 ~~documents reproduced.~~

12 ~~The Secretary of State files a document by stamping or otherwise endorsing "Filed",~~
13 ~~together with the Secretary of State's name and official title and the date and time of~~
14 ~~filing, on both the original and the document copy. After filing a document, the~~
15 ~~Secretary of State shall deliver the document copy to the partnership or its~~
16 ~~representative.~~

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

24 ~~The Secretary of State's duty is to review and file documents that satisfy the~~
25 ~~requirements of this Part. The Secretary of State's filing or refusing to file a document~~
26 ~~does not:~~

- 27 ~~(1) Affect the validity or invalidity of the document in whole or part;~~
- 28 ~~(2) Relate to the correctness or incorrectness of information contained in~~
29 ~~the document; or~~
- 30 ~~(3) Create a presumption that the document is valid or invalid or that~~
31 ~~information contained in the document is correct or incorrect.~~

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

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

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

2 (i) ~~A certificate attached to a copy of a document filed by the Secretary of State,~~
3 ~~bearing the Secretary of State's signature (which may be in facsimile) and the seal of~~
4 ~~office and certifying that the copy is a true copy of the document, is conclusive evidence~~
5 ~~that the original document is on file with the Secretary of State. A photographic,~~
6 ~~microfilm, optical disk media, or other reproduced copy of a document filed pursuant to~~
7 ~~this Part or any predecessor act, when certified by the Secretary, shall be considered an~~
8 ~~original for all purposes and is admissible in evidence in like manner as an original.~~

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

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

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

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

30 **SECTION 10.(a)** G.S. 59-204(a) reads as rewritten:

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

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

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

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

39 Any other document submitted by a domestic or foreign limited partnership for
40 filing pursuant to this or any other Chapter must be signed by at least one general
41 partner. ~~Any document submitted by a business entity other than a domestic or foreign~~
42 ~~limited partnership must be executed by a person authorized to execute documents (i)~~
43 ~~pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation,~~
44 ~~(ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit~~

1 corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or
2 foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business
3 entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of
4 this State, other than a domestic or foreign limited partnership."

5 **SECTION 10.(b)** G.S. 59-204(b1) is repealed.

6 **SECTION 10.(c)** G.S. 59-206 reads as rewritten:

7 **"§ 59-206. Filing requirements.**

8 (a) A document required or permitted by this Article to be filed by the Secretary
9 of State must be filed under Chapter 55D of the General Statutes. Whenever the
10 provisions of this Article require any document relating to a limited partnership to be
11 executed and filed in accordance with this Article, unless otherwise specifically stated
12 in this Article:

13 (1) ~~There shall be an original executed document and also one conformed~~
14 ~~copy.~~

15 (2) ~~The original document so signed, together with the conformed copy,~~
16 ~~shall be delivered to the Secretary of State. If the Secretary finds that it~~
17 ~~satisfies the requirements of this Article, the Secretary shall, when the~~
18 ~~proper fees have been tendered, endorse upon the original the word~~
19 ~~"filed" and the hour, day, month and year of the filing thereof and shall~~
20 ~~file the same in the Secretary's office. The Secretary of State shall~~
21 ~~thereupon immediately compare the copy with the original and if the~~
22 ~~Secretary finds that they are identical the Secretary shall make upon~~
23 ~~the conformed copy the same endorsement which appears on the~~
24 ~~original and shall attach to the copy a certificate stating that attached~~
25 ~~thereto is a true copy of the document, designated by an appropriate~~
26 ~~title, filed in the Secretary's office and showing the date of the filing.~~
27 ~~The Secretary shall thereupon return the copy so certified to the~~
28 ~~limited partnership or its representatives. Any documents filed with the~~
29 ~~Secretary of State pursuant to this Chapter may be maintained by the~~
30 ~~Secretary either in their original form or in photographic, microfilm,~~
31 ~~optical disk media, or other reproduced form. The Secretary may make~~
32 ~~reproductions of documents filed under this Chapter, or under any~~
33 ~~predecessor act, by photographic, microfilm, optical disk media, or~~
34 ~~other means of reproduction, and may destroy the originals of the~~
35 ~~documents reproduced. The Secretary of State may correct apparent~~
36 ~~errors and omissions on a document submitted for filing if authorized~~
37 ~~to make the corrections by the person submitting the document for~~
38 ~~filing. The authorization to make the corrections shall be confirmed,~~
39 ~~according to procedures adopted by rule, by the Secretary prior to~~
40 ~~making the correction.~~

41 (2b) ~~A domestic or foreign limited partnership may correct a document~~
42 ~~filed by the Secretary of State if the document (i) contains a statement~~
43 ~~that is incorrect and was incorrect when the document was filed or (ii)~~
44 ~~was defectively executed, attested, sealed, verified, or acknowledged.~~

- 1 ~~(3) Repealed by Session Laws 1991, c. 153, s. 2.~~
- 2 (3a) Whenever the name of any domestic or foreign limited partnership
- 3 holding title to real property in this State is changed upon amendment
- 4 to the certificate of limited partnership, or whenever title to its real
- 5 property is vested by operation of law in another entity upon merger,
- 6 consolidation, or conversion of the domestic or foreign limited
- 7 partnership, a certificate reciting the name change, merger,
- 8 consolidation, or conversion shall be recorded in the office of the
- 9 register of deeds of the county where the property lies, or if the
- 10 property is located in more than one county, then in each county where
- 11 any portion of the property lies.
- 12 (4) The Secretary of State shall adopt uniform certificates to be furnished
- 13 for registration in accordance with this section. In the case of a foreign
- 14 limited partnership, a similar certificate by any competent authority of
- 15 the jurisdiction under which the limited partnership is organized may
- 16 be registered in accordance with this section.
- 17 (5) The certificate required by subdivision (3a) of this subsection shall be
- 18 recorded by the register of deeds in the same manner as deeds, and for
- 19 the same fees, but no formalities as to acknowledgement, probate, or
- 20 approval by any other officer shall be required. The former name of
- 21 the domestic or foreign limited partnership holding title to the real
- 22 property before the name change, merger, consolidation, or conversion
- 23 shall appear in the "Grantor" index, and the new name of the domestic
- 24 or foreign limited partnership or the name of the other entity holding
- 25 title to the real property by virtue of the merger, consolidation, or
- 26 conversion, as applicable, shall appear in the "Grantee" index.
- 27 ~~(b) Repealed by Session Laws 1991, c. 153, s. 2.~~
- 28 ~~(b1) Except as provided in subsection (b2), a document accepted for filing is~~
- 29 ~~effective:~~
- 30 ~~(1) At the time of filing on the date it is filed, as evidenced by the~~
- 31 ~~Secretary of State's date and time endorsement on the original~~
- 32 ~~document; or~~
- 33 ~~(2) At the time specified in the document as its effective time on the date~~
- 34 ~~it is filed.~~
- 35 ~~(b2) A document may specify a delayed effective time and date, and if it does so~~
- 36 ~~the document becomes effective at the time and date specified. If a delayed effective~~
- 37 ~~date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A~~
- 38 ~~delayed effective date for a document may not be later than the ninetieth day after the~~
- 39 ~~date it is filed.~~
- 40 ~~(b3) The fact that a document has become effective under this section does not~~
- 41 ~~determine its validity or invalidity or the correctness or incorrectness of the information~~
- 42 ~~contained in the document.~~
- 43 ~~(c) It shall be the duty of the Secretary of State, whenever so requested and upon~~
- 44 ~~tender of the proper fees, to certify as aforesaid any true copy of any document on file in~~

1 the office, or if requested, to make or cause to be made typewritten or photostatic copies
 2 of the documents and to certify the same as aforesaid."

3 SECTION 10.(d) G.S. 59-206.1 and G.S. 59-206.2 are repealed.

4 SECTION 10.(e) G.S. 59-1106 reads as rewritten:

5 "§ 59-1106. ~~Fees; expedited filing.~~ Fees.

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

- 8 (1) For filing a certificate of limited partnership
 9 (G.S. 59-201)..... \$50.00
- 10 (2) For filing a certificate of amendment
 11 (G.S. 59-202; 59-905) 25.00
- 12 (3) For filing a certificate of cancellation
 13 (G.S. 59-203; 59-906) 25.00
- 14 (4) For filing an application for reservation of name
 15 (G.S. 59-104(a)) 10.00
- 16 (5) For filing a transfer of name
 17 (G.S. 59-104(d)) 10.00
- 18 (6) For filing an application for registration
 19 as foreign limited partnership
 20 (G.S. 59-502)..... 50.00
- 21 (7) For preparing and furnishing a copy of any
 22 document, instrument or paper filed or recorded
 23 relating to a limited partnership (G.S. 59-206(c))
 24 For each page..... 1.00
 25 For affixing the certificate and official seal thereto 5.00
- 26 (8) For comparing a copy furnished to him of any
 27 document, instrument or paper filed or recorded
 28 relating to a limited partnership
 29 For each page..... 1.00
- 30 (9) For filing any other document not ~~herein~~ specifically
 31 provided for 10.00
- 32 (10) ~~For the expedited filing by the end of the same~~
 33 ~~business day of a document received in good order~~
 34 ~~by 12:00 noon Eastern Standard Time~~ 200.00
 35 additional fee
- 36 (11) ~~For the expedited filing of a document received in~~
 37 ~~good order within 24 hours after receipt, excluding~~
 38 ~~weekends and holidays~~ 100.00
 39 additional fee
- 40 (12) Advisory review of a document 200.00.

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

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

3 **SECTION 11.** G.S. 55B-3 reads as rewritten:

4 "**§ 55B-3. North Carolina Business Corporation Act ~~applicable~~applicable; other**
5 **applicable law.**

6 (a) Chapter 55 of the General Statutes, the ~~The~~ North Carolina Business
7 Corporation Act shall be applicable to such Act, applies to professional corporations,
8 including their organization, and professional corporations shall enjoy the powers and
9 privileges and shall be subject to the duties, restrictions and liabilities of other
10 corporations, except insofar as the same may be limited or enlarged by this Chapter. If
11 any provision of this Chapter conflicts with the provisions of Chapter 55 of the General
12 Statutes, the North Carolina Business Corporation Act, the provisions of this Chapter
13 shall prevail.

14 (b) A document required or permitted by this Chapter to be filed by the Secretary
15 of State shall be filed under Chapter 55D of the General Statutes, Filings for
16 Corporations, Nonprofit Corporations, Limited Liability Companies, Limited
17 Partnerships, and Limited Liability Partnerships."

18 **SECTION 12.** The Revisor of Statutes is authorized to transfer, as historical
19 annotations, the Official Comments and the North Carolina Comments to those portions
20 of Chapter 55 of the General Statutes that are recodified by this act to the corresponding
21 locations in Chapter 55D of the General Statutes, as the Revisor deems appropriate.

22
23 PART III. EFFECTIVE DATE AND APPLICABILITY.

24
25 **SECTION 13.** This act becomes effective October 1, 2001, and applies to
26 documents submitted for filing on or after that date.