

Senate Bill 555

By: Senators Hall of the 22nd and Meyer von Bremen of the 12th

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to  
2 nonprofit corporations, so as to provide for the updating of provisions relating to nonprofit  
3 corporations; to provide for definitions; to change certain provisions relating to notice  
4 requirements so as to provide for notice by electronic transmission; to provide for voting by  
5 electronic transmission pursuant to a court ordered meeting; to change certain provisions  
6 relating to publication of notice of intent to file articles of incorporation; to provide for  
7 consents by electronic transmission; to change a reference relating to ultra vires purposes and  
8 powers for conformity purposes; to change certain provisions relating to the definition of  
9 "nonprofit" and rights and powers of a nonprofit corporation; to change certain provisions  
10 relating to venue, residency, and principal office requirements; to change certain references  
11 relating to voting rights relative to members of nonprofit corporations; to provide for notice  
12 by electronic transmission of resignation of a member of a nonprofit corporation; to change  
13 certain provisions relating to special meetings of members of nonprofit corporations; to  
14 change certain provisions relating to approval of action without a meeting of members of a  
15 nonprofit corporation; to change certain provisions relating to notice of a meeting of  
16 members of a nonprofit corporation; to provide for waiver of notice by electronic  
17 transmission by a member of a nonprofit corporation; to provide for ballots by electronic  
18 transmission relating to action taken without a meeting of the members of a nonprofit  
19 corporation; to change certain provisions relating to membership lists of nonprofit  
20 corporations; to change certain provisions relating to proxies relative to voting by members  
21 of nonprofit corporations; to change certain provisions relating to the validity of a signature  
22 on a proxy by a member of a nonprofit corporation; to provide for resignation by a director  
23 of a nonprofit corporation by electronic transmission; to change certain provisions relating  
24 to action taken without a meeting of the board of directors of a nonprofit corporation; to  
25 provide for waiver of notice of a meeting by electronic transmission by a director of a  
26 nonprofit corporation; to change certain provisions relating to duties of officers of nonprofit  
27 corporations; to provide for notice of resignation of an officer of a nonprofit corporation by  
28 electronic transmission; to revise a reference relating to indemnification of officers,

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1 employees, and agents of nonprofit corporations; to change certain provisions relating to  
 2 applicability of indemnification provisions in certain official documents of nonprofit  
 3 corporations; to change certain provisions relating to restated articles of incorporation for  
 4 nonprofit corporations; to change certain provisions relating to definitions and plans for  
 5 mergers of nonprofit corporations; to change certain provisions relating to a merger without  
 6 court approval; to change certain provisions relating to approval of plan of merger by  
 7 members or directors and abandonment of the plan; to change certain provisions relating to  
 8 articles of merger and publication of notice of merger; to provide for publication of notice  
 9 of merger; to change certain provisions relating to effect of mergers, mergers with foreign  
 10 corporations, and effect of mergers on bequests, devises, or other transfers of property; to  
 11 provide for definitions relating to mergers, mergers with other entities, and the plan of  
 12 merger with another entity; to change certain provisions relating to exceptions to prohibition  
 13 against distributions relative to nonprofit corporations; to change certain provisions relating  
 14 to dissolution by incorporators or initial directors; to change certain provisions relating to  
 15 proposal of dissolution and approval thereof; to change certain provisions relating to request  
 16 for presentation of claims, enforcement of claims, and when claims are barred; to provide for  
 17 remedies of corporations for actions existing prior to the dissolution of a corporation; to  
 18 change certain provisions relating to the requirement of a certificate of authority to transact  
 19 business; to change a reference relating to application for a certificate of authority; to change  
 20 certain provisions relating to resignation of a registered agent of a foreign corporation; to  
 21 change certain provisions relating to withdrawal of a foreign corporation from the state; to  
 22 change certain provisions relating to members' rights to copy and inspect records; to provide  
 23 for a request by a member by electronic transmission for an annual statement; to change  
 24 certain provisions relating to applicability of chapter to certain corporations; to change  
 25 certain provisions relating to saving provisions; to provide for changes regarding references  
 26 to gender; to amend Article 3 of Chapter 5 of Title 14 of the Official Code of Georgia  
 27 Annotated, relating to corporations organized for religious, fraternal, or educational purposes,  
 28 so as to change a reference for conformity purposes; to provide for related matters; to repeal  
 29 conflicting laws; and for other purposes.

30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

31 **SECTION 1.**

32 Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to nonprofit  
 33 corporations, is amended by striking in its entirety Part 4 of Article 1, relating to definitions  
 34 and notice relative to nonprofit corporations, and inserting in lieu thereof the following:

## "Part 4

14-3-140.

As used in this chapter, the term:

(1) 'Articles of incorporation' or 'articles' includes amended and restated articles of incorporation and articles of merger.

(2) 'Board of directors' or 'board' means the person or persons vested with the authority to manage the affairs of the corporation, irrespective of the name by which such group is designated, but shall not include any person solely by virtue of powers delegated to him or her by Code Section 14-3-801.

(3) 'Business corporation' means a corporation for profit, incorporated under the provisions of Chapter 2 of this title.

~~(3)~~(4) 'Bylaws' means the code of rules (~~other~~ other than the ~~articles~~) articles adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

~~(4)~~(5) 'Class' refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this Code section, rights shall be considered the same if they are determined by a formula applied uniformly.

~~(5) 'Conspicuous' means written in such a manner 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.~~

(6) 'Corporation' or 'domestic corporation' means a ~~nonprofit~~ corporation, other than a foreign corporation, ~~organized~~ incorporated under or subject to the provisions of this chapter.

(7) 'Delegate' means a person elected or appointed to vote in a representative assembly for the election of a director or on other matters.

(8) 'Deliver' includes ~~mail~~ delivery by hand, mail, private carrier, and electronic transmission.

(9) 'Distribution' means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. Payment of indemnification or reasonable compensation, fees, or expenses incurred in the performance of duties on behalf of the corporation is not a distribution.

~~(10) 'Domestic corporation' means a corporation.~~

~~(11)~~(10) 'Effective date of notice' is defined in Code Section 14-3-141.

~~(11.1)~~(11) 'Electronic transmission' or 'electronically transmitted' means any process form of communication not directly involving the physical ~~transfer of paper that is~~

1 ~~suitable for the retention, retrieval, and reproduction of information by the recipient~~  
 2 transmission of paper that creates a record that may be retained, retrieved, and reviewed  
 3 by a recipient thereof and that may be directly reproduced in paper form by such a  
 4 recipient through an automated process. Electronic transmissions include, but are not  
 5 limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile  
 6 transmissions.

7 (12) 'Electronic network' means any medium for sending, receiving, and viewing  
 8 electronic transmissions among persons.

9 ~~(12)~~(13) 'Employee' includes an officer but not a director. A director may accept duties  
 10 that make him or her also an employee.

11 ~~(13)~~ (14) 'Entity' includes corporation and foreign corporation; business corporation and  
 12 foreign business corporation; profit and nonprofit unincorporated association; business  
 13 trust, estate, general partnership, limited partnership, trust, two or more persons having  
 14 a joint or common economic interest; limited liability company and foreign limited  
 15 liability company; limited liability partnership and foreign limited liability partnership;  
 16 state, United States, and foreign government; and regional development center solely for  
 17 the purpose of implementing subsection (f) of Code Section 50-8-35.

18 (15) 'Foreign business corporation' means a corporation for profit incorporated under a  
 19 law other than the law of this state.

20 ~~(14)~~(16) 'Foreign corporation' means a corporation ~~organized~~ incorporated under a law  
 21 other than the law of this state which would be a nonprofit corporation if ~~organized~~  
 22 incorporated under, or subject to, this chapter.

23 ~~(15)~~(17) 'Governmental subdivision' includes an authority, county, district, and  
 24 municipality or any other political subdivision.

25 ~~(16)~~(18) 'Includes' denotes a partial definition.

26 ~~(17)~~(19) 'Individual' includes the estate of an incompetent or deceased individual.

27 ~~(18)~~(20) 'Mail' includes the United States mail.

28 ~~(19)~~(21) 'Means' denotes an exhaustive definition.

29 ~~(20)~~(22) 'Member' means ~~(without~~ without regard to the name by which a person is  
 30 designated in the articles or ~~bylaws)~~ bylaws any person who is entitled to vote for the  
 31 election of a director or directors pursuant to a provision of the corporation's articles or  
 32 bylaws that expressly provides for or contemplates the existence of members. A person  
 33 is not a member by virtue of any of the following:

34 (A) Any rights such person has as a delegate;

35 (B) Any rights such person has to designate or confirm a director or directors; or

36 (C) Any rights such person has as a director.

1 ~~(21) 'Nonprofit corporation' means a corporation which may make no distribution to its~~  
 2 ~~members, directors, or officers, except as reasonable compensation for services rendered,~~  
 3 ~~and except as otherwise provided in this chapter.~~

4 ~~(22)~~(23) 'Notice' is defined in Code Section 14-3-141.

5 ~~(23)~~(24) 'Person' includes an individual and an entity.

6 ~~(24)~~(25) 'Principal office' means the office (~~in in~~ in or out of this ~~state~~) state so designated  
 7 in the annual registration where the principal executive offices of a domestic or foreign  
 8 corporation are located.

9 ~~(25)~~(26) 'Proceeding' includes civil suit and criminal, administrative, and investigatory  
 10 action.

11 ~~(26)~~(27) 'Record date' means the date established under Article 6 or 7 of this chapter on  
 12 which a corporation determines the identity of its members for purposes of this chapter.  
 13 The determinations shall be made as of the close of business on the record date unless  
 14 another time for doing so is specified when the record date is fixed.

15 ~~(27)~~(28) 'Secretary' means the corporate officer to whom the board of directors has  
 16 delegated responsibility under subsection (b) of Code Section 14-3-840 for custody of the  
 17 minutes of the meetings of the board of directors and of any members and for  
 18 authenticating records of the corporation.

19 (29) 'Signature' or 'sign' includes any manual, facsimile, conformed, or electronic  
 20 signature.

21 ~~(28)~~(30) 'State,' when referring to a part of the United States, includes a state,  
 22 commonwealth, the District of Columbia (and their agencies and governmental  
 23 subdivisions) and a territory and insular possession (and their agencies and governmental  
 24 subdivisions) of the United States.

25 ~~(29)~~(31) 'Superior court' means the superior court of the county in which the  
 26 corporation's registered office is located; or, if the corporation has no registered office,  
 27 the county in which the corporation's principal office is located; or, if the corporation has  
 28 neither a registered office nor a principal office, then the Superior Court of Fulton  
 29 County.

30 ~~(30)~~(32) 'United States' includes district, authority, bureau, commission, department, and  
 31 any other agency of the United States.

32 ~~(31)~~(33) 'Voting power' means the total number of votes entitled to be cast for the  
 33 election of directors at the time the determination of voting power is made, excluding a  
 34 vote which is contingent upon the happening of a condition or event that has not occurred  
 35 at the time. Where a class is entitled to vote as a class for directors, the determination of  
 36 voting power of the class shall be based on the percentage of the number of directors the  
 37 class is entitled to elect out of the total number of authorized directors.

1 14-3-141.

2 (a) Notice under this chapter shall be in writing or by electronic transmission unless oral  
3 notice is reasonable under the circumstances.

4 (b) Notice may be communicated in person; by telephone, ~~telegraph, teletype~~ electronic  
5 transmission, or other form of wire or wireless communication; or by mail or private  
6 carrier. If these forms of personal notice are ~~likely to prove impracticable in particular~~  
7 ~~cases~~, notice may ~~in addition~~ be communicated by a newspaper of general circulation in  
8 the area where published or by radio, television, or other form of public broadcast  
9 communication. Unless otherwise provided in the articles of incorporation, bylaws, or this  
10 chapter, notice by electronic transmission shall be deemed to be notice in writing for  
11 purposes of this chapter.

12 (c) Written notice by a domestic or foreign corporation to its members, if in a  
13 comprehensible form, is effective when mailed, if mailed with first-class postage prepaid  
14 and correctly addressed to the member's address shown in the corporation's current record  
15 of members. If the corporation has more than 500 members of record entitled to vote at a  
16 meeting, it may utilize a class of mail other than first class if the notice of the meeting is  
17 mailed, with adequate postage prepaid, not less than 30 days before the date of the meeting.

18 (d) Written notice to a domestic or foreign corporation (~~authorized~~ authorized to transact  
19 business in this ~~state~~) state may be addressed to its registered agent at its registered office  
20 or to the corporation or its secretary at its principal office shown in its most recent annual  
21 registration or, in the case of a foreign corporation that has not yet delivered an annual  
22 registration, in its application for a certificate of authority.

23 (e) Except as provided in ~~subsection (c)~~ subsections (c) and (h) of this Code section or in  
24 the articles of incorporation or bylaws, written notice, if in a comprehensible form, is  
25 effective at the earliest of the following:

26 (1) When received or when delivered, properly addressed, to the addressee's last known  
27 principal place of business or residence;

28 (2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with  
29 first-class postage prepaid and correctly addressed; or

30 (3) On the date shown on the return receipt, if sent by registered or certified mail or  
31 statutory overnight delivery, return receipt requested, and the receipt is signed by or on  
32 behalf of the addressee.

33 (f) Oral notice is effective when communicated if communicated in a comprehensible  
34 manner.

35 (g) In calculating time periods for notice under this chapter, when a period of time  
36 measured in days, weeks, months, years, or other measurement of time is prescribed for the

1 exercise of any privilege or the discharge of any duty, the first day shall not be counted but  
2 the last day shall be counted.

3 (h)(1) Without limiting the manner by which notice otherwise may be given effectively  
4 to members, any notice to members given by the corporation under any provision of this  
5 chapter, the articles of incorporation, or the bylaws shall be effective if given by a form  
6 of electronic transmission consented to by the member to whom the notice is given. Any  
7 such consent shall be revocable by the member by written notice to the corporation. Any  
8 such consent shall be deemed revoked if:

9 (A) The corporation is unable to deliver by electronic transmission two consecutive  
10 notices given by the corporation in accordance with such consent; and

11 (B) Such inability becomes known to the secretary or an assistant secretary of the  
12 corporation or to the transfer agent or other person responsible for the giving of notice;  
13 provided, however, that the inadvertent failure to treat such inability as a revocation  
14 shall not invalidate any meeting or other action.

15 (2) Notice given pursuant to this subsection shall be deemed effective:

16 (A) If by facsimile telecommunication, when transmitted to a number at which the  
17 member has consented to receive notice;

18 (B) If by e-mail, when transmitted to an e-mail address at which the member has  
19 consented to receive notice;

20 (C) If by a posting on an electronic network together with separate notice to the  
21 member of such specific posting, upon the later of (i) such posting or (ii) the giving of  
22 such separate notice; and

23 (D) If by any other form of electronic transmission, when transmitted to the member.

24 (i) An affidavit, certificate, or other written confirmation of the secretary or an assistant  
25 secretary or of the transfer agent or other agent of the corporation that the notice has been  
26 given under this Code section shall, in the absence of fraud, be prima-facie evidence of the  
27 facts stated therein.

28 (j) The corporation may be obligated to accept from a member consents, requests,  
29 demands, or notices given and delivered under this chapter to the principal place of  
30 business of the corporation or to an officer or agent of the corporation having custody of  
31 the books in which proceedings of meetings of members are recorded by electronic  
32 transmission only as provided by resolution of the board of directors of the corporation or  
33 in the articles of incorporation.

34 (k) Unless the registered agent of the corporation shall provide written consent to the  
35 corporation to the receipt of a member's consent, request, demand, or notice by electronic  
36 transmission under this chapter, delivery made to a corporation's registered office shall be

1 made by hand or by certified or registered mail or statutory overnight delivery, return  
 2 receipt requested.

3 (1) If this chapter prescribes notice requirements for particular circumstances, those  
 4 requirements govern. If articles of incorporation or bylaws prescribe notice requirements,  
 5 not inconsistent with this Code section or other provisions of this chapter, those  
 6 requirements govern."

## 7 SECTION 2.

8 Said chapter is further amended by striking subsection (a) of Code Section 14-3-160, relating  
 9 to court ordered meetings, notice of such meetings, and the validity of such meetings or votes  
 10 relative to nonprofit corporations, in its entirety and inserting in lieu thereof the following:

11 "(a) If for any reason it is impractical or impossible for any corporation to call or conduct  
 12 a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the  
 13 manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director,  
 14 officer, delegate, member, or the Attorney General, the superior court may order that such  
 15 a meeting be called or that a ~~written~~ ballot in writing or by electronic transmission or other  
 16 form of obtaining the vote of members, delegates, or directors be authorized, in such a  
 17 manner as the court finds fair and equitable under the circumstances."

## 18 SECTION 3.

19 Said chapter is further amended by striking in its entirety Code Section 14-3-202.1, relating  
 20 to publication of notice of intent to file articles of incorporation of nonprofit corporations,  
 21 and inserting in lieu thereof the following:

22 "14-3-202.1.

23 Code Section 14-2-201.1 shall apply equally to the organization of corporations under this  
 24 chapter, except that the notice to the publisher of the newspaper shall be in substantially  
 25 the following form:

### 26 'NOTICE OF ~~INTENT TO INCORPORATE~~ INCORPORATION

27 Notice is given that articles of incorporation which ~~will~~ incorporate  
 28 \_\_\_\_\_ (name of corporation) ~~will be~~ have been delivered to the  
 29 Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code.  
 30 The initial registered office of the corporation ~~will be~~ is located at  
 31 \_\_\_\_\_ (address of registered office) and its initial registered agent  
 32 at such address is \_\_\_\_\_ (name of agent)."





1 except as set forth in or authorized by the articles or bylaws. Except for the rights specified  
 2 in Code ~~Section 14-3-630~~ Sections 14-3-740 through 14-3-747, members of any  
 3 corporation existing on July 1, 1991, shall be limited to having the same voting and other  
 4 rights as before such date, until changed by amendment of its articles of incorporation or  
 5 bylaws."

#### 6 SECTION 9.

7 Said chapter is further amended by striking subsection (a) of Code Section 14-3-620, relating  
 8 to the resignation of a member of a nonprofit corporation and the effect thereof, and inserting  
 9 in lieu thereof the following:

10 "(a) Unless otherwise provided by law, a member may resign from membership at any time  
 11 by delivering notice in writing or by electronic transmission to the corporation. A  
 12 resignation is effective when the notice is delivered unless the notice specifies a later  
 13 effective date, although the articles or bylaws may require reasonable notice before the  
 14 resignation is effective."

#### 15 SECTION 10.

16 Said chapter is further amended by striking in its entirety Code Section 14-3-702, relating  
 17 to special meetings of members of nonprofit corporations, and inserting in lieu thereof the  
 18 following:

19 "14-3-702.

20 (a) A corporation with members shall hold a special meeting of members:

21 (1) On call of its board or the person or persons authorized to do so by the articles or  
 22 bylaws; or

23 (2) Except as otherwise provided in the articles or bylaws, if the holders of at least 5  
 24 percent of the voting power of any corporation sign, date, and deliver to any corporate  
 25 officer one or more ~~written~~ demands in writing or by electronic transmission for the  
 26 meeting describing the purpose or purposes for which it is to be held.

27 (b) If not otherwise fixed under Code Section 14-3-703 or Code Section 14-3-707, the  
 28 record date for determining members entitled to demand a special meeting is the date the  
 29 first member signs the demand.

30 (c) If a notice for a special meeting demanded under paragraph (2) of subsection (a) of this  
 31 Code section is not given pursuant to Code Section 14-3-705 within 30 days after the date  
 32 the ~~written~~ demand or demands in writing or by electronic transmission are delivered to a  
 33 corporate officer, regardless of the requirements of subsection (d) of this Code section, a  
 34 person signing the demand or demands may set the time and place of the meeting and give  
 35 notice pursuant to Code Section 14-3-705.

1 (d) Special meetings of members may be held in or out of this state at the place stated in  
 2 or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the  
 3 bylaws, special meetings shall be held at the corporation's principal office or other suitable  
 4 place.

5 (e) Only those matters that are within the purpose or purposes described in the meeting  
 6 notice required by Code Section 14-3-705 may be conducted at a special meeting of  
 7 members.

8 (f) Unless otherwise provided in the articles, a demand by a member for a special meeting  
 9 may be revoked by a written or electronic transmission to that effect by the member  
 10 received by the corporation prior to the call of the special meeting.

11 (g) A bylaw provision governing the voting power required to call special meetings is not  
 12 a quorum or voting requirement."

### 13 SECTION 11.

14 Said chapter is further amended by striking in its entirety Code Section 14-3-704, relating  
 15 to approval of action without a meeting of the members of a nonprofit corporation, and  
 16 inserting in lieu thereof the following:

17 "14-3-704.

18 (a) Unless limited or prohibited by the articles or bylaws, or unless this chapter requires  
 19 a greater number of affirmative votes, action required or permitted by this chapter to be  
 20 approved by the members may be approved without a meeting of members if the action is  
 21 approved by members holding at least a majority of the voting power. The action must be  
 22 evidenced by one or more ~~written~~ consents in writing or by electronic transmission  
 23 describing the action taken, signed by those members representing at least a majority of the  
 24 voting power, and delivered to the corporation for inclusion in the minutes or filing with  
 25 the corporate records.

26 (b) No consent in writing or by electronic transmission signed under this Code section  
 27 shall be valid unless:

28 (1) The consenting member has been furnished the same material that, under this chapter,  
 29 would have been required to be sent to members in a notice of a meeting at which the  
 30 proposed action would have been submitted to the members for action; or

31 (2) The written consent contains an express waiver of the right to receive the material  
 32 otherwise required to be furnished.

33 (c) If not otherwise determined under Code Section 14-3-703 or Code Section 14-3-707,  
 34 the record date for determining members entitled to take action without a meeting is the  
 35 date the first member signs the consent.

1 ~~(e)~~(d) A consent signed under this Code section has the effect of a meeting vote and may  
2 be described as such in any document.

3 ~~(d)~~(e) Written notice of member approval pursuant to this Code section shall be given to  
4 all members who have not signed the written consent. If written notice is required, member  
5 approval pursuant to this Code section shall be effective ten days after such written notice  
6 is given.

7 (f) An electronic transmission which is transmitted by a member that evidences a  
8 member's consent or approval on a ballot, requests or demands an action to be taken by the  
9 corporation, or provides notice to the corporation under this chapter shall be deemed to be  
10 written, signed, and dated for the purposes of this chapter, provided that any such electronic  
11 transmission sets forth or is delivered with information from which the corporation can  
12 determine (1) that the electronic transmission was transmitted by the member and (2) the  
13 date on which such member transmitted such electronic transmission. The date on which  
14 such electronic transmission is transmitted shall be deemed to be the date on which such  
15 consent, request, demand, or notice was signed."

#### 16 SECTION 12.

17 Said chapter is further amended by striking subsection (e) of Code Section 14-3-705, relating  
18 to notice of a meeting of members of a nonprofit corporation, and inserting in lieu thereof  
19 the following:

20 "(e) When giving notice of an annual, regular, or special meeting of members, a  
21 corporation shall give notice of a matter a member intends to raise at the meeting if:

22 (1) Requested in writing or by electronic transmission to do so by a person entitled to  
23 call a special meeting; and

24 (2) The request is received by the secretary or president of the corporation at least ten  
25 days before the corporation gives notice of the meeting."

#### 26 SECTION 13.

27 Said chapter is further amended by striking subsection (a) of Code Section 14-3-706, relating  
28 to waiver of notice by a member of a nonprofit corporation, and inserting in lieu thereof the  
29 following:

30 "(a) A member may waive any notice required by this chapter, the articles, or bylaws  
31 before or after the date and time stated in the notice. The waiver must be in writing or by  
32 electronic transmission, be signed by the member entitled to the notice, and be delivered  
33 to the corporation for inclusion in the minutes or filing with the corporate records."



1 (b) The list of members must be available for inspection by any member for the purpose  
 2 of communication with other members concerning the meeting, beginning two business  
 3 days after notice is given of the meeting for which the list was prepared and continuing  
 4 through the meeting: (1) on a reasonably accessible electronic network, provided that the  
 5 information required to gain access to such list is provided with the notice of the meeting  
 6 or upon request or (2) during ordinary business hours; at the corporation's principal office  
 7 or at a reasonable place identified in the meeting notice in the city where the meeting will  
 8 be held. In the event that the corporation makes the list available on an electronic network,  
 9 the corporation may take reasonable steps to ensure that such information is available only  
 10 to members of the corporation. A member, a member's agent, or a member's attorney is  
 11 entitled on written demand to inspect and, subject to the limitations of subsection (c) of  
 12 Code Section 14-3-1602 and Code Section 14-3-1605, to copy the list, at a reasonable time  
 13 and at the member's expense, during the period it is available for inspection.

14 (c) ~~The~~ If the meeting is to be held in person, the corporation shall make the list of  
 15 members available at the meeting, and any member, a member's agent, or member's  
 16 attorney is entitled to inspect the list at any time during the meeting or any adjournment.  
 17 If the meeting is to be held solely by means of remote communication, then the list shall  
 18 be open to the examination of any member during the duration of the meeting on a  
 19 reasonably accessible electronic network, and the information required to access such list  
 20 shall be provided with the notice of the meeting."

## 21 SECTION 16.

22 Said chapter is further amended by striking in its entirety Code Section 14-3-724, relating  
 23 to proxies relative to voting by members of nonprofit corporations, and inserting in lieu  
 24 thereof the following:

25 "14-3-724.

26 (a) Unless the articles or bylaws prohibit or limit proxy voting, a member may vote in  
 27 person or by proxy.

28 (b) A member or his or her agent or attorney in fact may appoint a proxy to vote or  
 29 otherwise act for the member by signing an appointment form either personally or by ~~an~~  
 30 ~~attorney in fact~~ an electronic transmission. An electronic transmission must contain or be  
 31 accompanied by information from which it can be determined that the member, the  
 32 member's agent, or the member's attorney in fact authorized the electronic transmission.

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

1 (d) An appointment of a proxy is revocable by the member.

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

6 (f) Appointment of a proxy is revoked by the person appointing the proxy:

7 (1) Attending any meeting and voting in person; or

8 (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate  
9 proxy votes either a writing stating that the appointment of the proxy is revoked or a  
10 subsequent appointment form.

11 (g) Subject to Code Section 14-3-727 and any express limitation on the proxy's authority  
12 appearing on the face of the appointment form or in the electronic transmission, a  
13 corporation is entitled to accept the proxy's vote or other action as that of the member  
14 making the appointment.

15 (h) Any copy, facsimile transmission, or other reliable reproduction of the writing or  
16 electronic transmission created pursuant to subsection (b) of this Code section may be  
17 substituted or used in lieu of the original writing or electronic transmission for any and all  
18 purposes for which the original writing or electronic transmission could be used, provided  
19 that such copy, facsimile transmission, or other reproduction shall be a complete  
20 reproduction of the entire original writing or electronic transmission.

21 (i) A corporation may adopt bylaws authorizing additional means or procedures for  
22 members to exercise rights granted by this Code section."

### 23 SECTION 17.

24 Said chapter is further amended by striking subsections (c) through (e) of Code Section  
25 14-3-727, relating to the validity of a signature on a proxy by a member of a nonprofit  
26 corporation, and inserting in lieu thereof the following:

27 "(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if  
28 the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has  
29 reasonable basis for doubt about the validity of the signature on it or about the signatory's  
30 authority to sign for the member or about the faithfulness or completeness of the  
31 reproduction when the original has not been examined.

32 (d) The corporation and its officer or agent who accept or reject a vote, consent, waiver,  
33 or proxy appointment in good faith and in accordance with the standards of this Code  
34 section or subsection (b) of Code Section 14-3-724 are not liable in damages to the member  
35 for the consequences of the acceptance or rejection.

1 (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or  
 2 proxy appointment under this Code section or subsection (b) of Code Section 14-3-724 is  
 3 valid unless a court of competent jurisdiction determines otherwise."

#### 4 SECTION 18.

5 Said chapter is further amended by striking subsection (a) of Code Section 14-3-807, relating  
 6 to the resignation of directors of nonprofit corporations, and inserting in lieu thereof the  
 7 following:

8 "(a) A director may resign at any time by delivering ~~written~~ notice in writing or by  
 9 electronic transmission to the board of directors, its presiding officer, or to the president  
 10 or secretary, or in such other manner as the articles or bylaws may provide."

#### 11 SECTION 19.

12 Said chapter is further amended by striking subsections (b) and (d) of Code Section  
 13 14-3-821, relating to action taken without a meeting of the board of directors of a nonprofit  
 14 corporation, and inserting in lieu thereof the following:

15 "(b) Action taken without a meeting shall be taken by all members of the board, unless the  
 16 articles or bylaws specifically permit such action to be taken by less than all, but not less  
 17 than a majority of the board. The action must be evidenced by one or more ~~written~~  
 18 in writing or by electronic transmission describing the action taken, signed by no fewer  
 19 than the required number of directors, and delivered to the corporation for inclusion in the  
 20 minutes for filing with the corporate records reflecting the action taken. Such filing shall  
 21 be in paper form if the minutes are maintained in paper form and shall be in electronic form  
 22 if the minutes are maintained in electronic form."

23 "(d) A consent signed and delivered by a director under this Code section has the effect of  
 24 a meeting vote and may be described as such in any document."

#### 25 SECTION 20.

26 Said chapter is further amended by striking subsection (a) of Code Section 14-3-823, relating  
 27 to waiver of notice of a meeting of the board of directors of a nonprofit corporation, and  
 28 inserting in lieu thereof the following:

29 "(a) A director may waive any notice required by this chapter, the articles of incorporation,  
 30 or bylaws before or after the date and time stated in the notice. Except as provided by  
 31 subsection (b) of this Code section, the waiver must be in writing or by electronic  
 32 transmission, signed by the director entitled to the notice, and delivered to the corporation  
 33 for inclusion in the minutes or filing with the corporate records."

**SECTION 21.**

Said chapter is further amended by striking in its entirety Code Section 14-3-841, relating to duties of officers of nonprofit corporations, and inserting in lieu thereof the following:

"14-3-841.

Each officer has the authority and shall perform the duties set forth in the articles or bylaws or, to the extent consistent with the articles or bylaws, the duties and authority prescribed by the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers. Unless the articles, bylaws, or a resolution of the board of directors of the corporation provides otherwise, the chief executive officer or the president if no person has been designated as chief executive officer of the corporation shall have authority to conduct all ordinary business on behalf of the corporation and may execute and deliver on behalf of the corporation any contract, conveyance, or similar document not requiring approval by the board of directors or members as provided in this chapter."

**SECTION 22.**

Said chapter is further amended by striking subsection (a) of Code Section 14-3-843, relating to resignation and removal of officers of nonprofit corporations, and inserting in lieu thereof the following:

"(a) An officer may resign at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date."

**SECTION 23.**

Said chapter is further amended by striking subparagraph (a)(2)(C) of Code Section 14-3-856, relating to indemnification of officers, employees, and agents of nonprofit corporations, and inserting in lieu thereof the following:

"(C) The types of liability set forth in Code Section ~~14-2-832~~ 14-3-831; or".

**SECTION 24.**

Said chapter is further amended by striking subsections (a) and (b) of Code Section 14-3-858, relating to applicability of indemnification provisions in certain official documents of nonprofit corporations, and inserting in lieu thereof the following:

"(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or ~~shareholders~~

1 members, obligate itself in advance of the act or omission giving rise to a proceeding to  
 2 provide indemnification or advance funds to pay for or reimburse expenses consistent with  
 3 this part. Any such provision that obligates the corporation to provide indemnification to  
 4 the fullest extent permitted by law shall be deemed to obligate the corporation to advance  
 5 funds to pay for or reimburse expenses in accordance with Code Section 14-3-853 to the  
 6 fullest extent permitted by law, unless the provision specifically provides otherwise. Any  
 7 such provision existing on July 1, 1991, shall be valid to the extent it does not provide for  
 8 broader indemnification than is allowed under this part.

9 (b) Any provision pursuant to subsection (a) of this Code section shall not obligate the  
 10 corporation to indemnify or advance expenses to a director of a predecessor of the  
 11 corporation, pertaining to conduct with respect to the predecessor, unless otherwise  
 12 specifically provided. Any provision for indemnification or advance for expenses in the  
 13 articles of incorporation, bylaws, or a resolution of the board of directors, members, ~~or~~  
 14 shareholders, partners, or, in the case of limited liability companies, members or managers  
 15 of a predecessor of the corporation or other entity in a merger or in a contract to which the  
 16 predecessor is a party, existing at the time the merger takes effect, shall be governed by  
 17 paragraph (3) of Code Section 14-3-1105."

#### 18 **SECTION 25.**

19 Said chapter is further amended by striking in their entirety subsections (c), (d), (e), and (g)  
 20 of Code Section 14-3-1006, relating to restated articles of incorporation for nonprofit  
 21 corporations, and inserting in lieu thereof the following:

22 "(c) If the board seeks to have the restatement approved by the members at a membership  
 23 meeting, the corporation shall notify each of its members of the proposed membership  
 24 meeting in writing in accordance with Code Section 14-3-705. The notice must also state  
 25 that the purpose, or one of the purposes, of the meeting is to consider the proposed  
 26 restatement and contain or be accompanied by a copy ~~or summary~~ of the restatement that  
 27 identifies any amendments or other change it would make in the articles or contain or be  
 28 accompanied by a full and complete summary of any such amendment or other change.

29 (d) If the board seeks to have the restatement approved by the members by written consent  
 30 or written ballot, the material soliciting the approval shall contain or be accompanied by  
 31 a copy ~~or summary~~ of the restatement that identifies any amendments or other change it  
 32 would make in the articles or contain or be accompanied by a full and complete summary  
 33 of any such amendment or other change.

34 (e) A corporation restating its articles of incorporation shall deliver to the Secretary of  
 35 State for filing articles of restatement setting forth the name of the corporation and the text

1 of the restated articles of incorporation, including or accompanied by ~~together with~~ a  
 2 certificate setting forth the following information:

3 (1) Whether the restatement contains an amendment to the articles requiring approval by  
 4 the members or any other person other than the board of directors and, if it does not, that  
 5 the board of directors adopted the restatement; or

6 (2) If the restatement contains an amendment to the articles requiring approval by the  
 7 members, the information required by Code Section 14-3-1005; and

8 (3) If the restatement contains an amendment to the articles requiring approval by a  
 9 person whose approval is required pursuant to Code Sections 14-3-1030 and 14-3-1041,  
 10 a statement that such approval was obtained."

11 "(g) The Secretary of State may certify restated articles of incorporation, as the articles of  
 12 incorporation currently in effect, without including ~~the~~ any certificate information required  
 13 by filed pursuant to subsection (e) of this Code section."

#### 14 SECTION 26.

15 Said chapter is further amended by striking in its entirety Code Section 14-3-1101, relating  
 16 to definitions and plans for mergers of nonprofit corporations, and inserting in lieu thereof  
 17 the following:

18 "14-3-1101.

19 ~~(a) As used in this Code section, the term:~~

20 ~~(1) 'Business corporation' means a corporation for profit, incorporated under the~~  
 21 ~~provisions of Chapter 2 of this title.~~

22 ~~(2) 'Entity' includes any domestic or foreign business corporation, domestic or foreign~~  
 23 ~~nonprofit corporation, domestic or foreign limited liability company, domestic or foreign~~  
 24 ~~joint-stock association, or domestic or foreign limited partnership.~~

25 ~~(3) 'Foreign business corporation' means a corporation for profit incorporated under a~~  
 26 ~~law other than the law of this state.~~

27 ~~(4) 'Governing agreements' includes the articles of incorporation and bylaws of a~~  
 28 ~~domestic or foreign business corporation or domestic or foreign nonprofit corporation,~~  
 29 ~~articles of association or trust agreement or indenture and bylaws of a joint-stock~~  
 30 ~~association, articles of organization and operating agreement of a limited liability~~  
 31 ~~company, and the certificate of limited partnership and limited partnership agreement of~~  
 32 ~~a limited partnership, and agreements serving comparable purposes under the laws of~~  
 33 ~~other states or jurisdictions.~~

34 ~~(5) 'Joint-stock association' includes any association of the kind commonly known as a~~  
 35 ~~joint-stock association or joint-stock company and any unincorporated association, trust,~~  
 36 ~~or enterprise having members or having outstanding shares of stock or other evidences~~

1 ~~of financial and beneficial interest therein, whether formed by agreement or under~~  
 2 ~~statutory authority or otherwise, but does not include a corporation, partnership, or~~  
 3 ~~nonprofit organization. A joint-stock association as defined in this paragraph may be one~~  
 4 ~~formed under the laws of this state, including a trust created pursuant to Article 3 of~~  
 5 ~~Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or~~  
 6 ~~jurisdiction.~~

7 ~~(6) 'Limited liability company' includes limited liability companies formed under the~~  
 8 ~~laws of this state or of any other state or territory or the District of Columbia, unless the~~  
 9 ~~laws of such other state or jurisdiction forbid the merger of a limited partnership with a~~  
 10 ~~corporation.~~

11 ~~(7) 'Limited partnership' includes limited partnerships formed under the laws of this state~~  
 12 ~~or of any other state or territory or the District of Columbia, unless the laws of such other~~  
 13 ~~state or jurisdiction forbid the merger of a limited partnership with a corporation.~~

14 ~~(8) 'Share' includes shares, memberships, financial or beneficial interests, units, or~~  
 15 ~~proprietary or partnership interests in a domestic or foreign business corporation, limited~~  
 16 ~~liability company, joint-stock association, or a limited partnership but does not include~~  
 17 ~~debt obligations of any entity.~~

18 ~~(9) 'Shareholder' includes every shareholder, member, or partner in a domestic or foreign~~  
 19 ~~business corporation, a limited liability company, a joint-stock association, or a limited~~  
 20 ~~partnership that is a party to a merger or a holder of a share of stock or other evidence of~~  
 21 ~~financial or beneficial interest therein.~~

22 ~~(b)(a)~~ Subject to the limitations set forth in Code Section 14-3-1102, one or more nonprofit  
 23 corporations may merge into ~~an entity~~ another corporation if the plan of merger is approved  
 24 as provided in Code Section 14-3-1103.

25 ~~(c)(b)~~ The plan of merger must set forth:

26 (1) The name of each corporation ~~and entity~~ planning to merge and the name of the  
 27 surviving corporation ~~or entity~~ into which each plans to merge;

28 (2) The terms and conditions of the planned merger; and

29 (3) The manner and basis, if any, of converting the memberships of each corporation ~~and~~  
 30 ~~the shares, financial or beneficial interests, or units in each of the entities~~ into shares,  
 31 obligations, memberships, or other securities of the surviving or any other corporation or  
 32 ~~entity~~ or into cash or other property in whole or in part.

33 ~~(d)(c)~~ The plan of merger may set forth:

34 (1) ~~Any amendments~~ Amendments to the articles of incorporation, bylaws, or governing  
 35 agreements of the surviving corporation ~~or entity to be effected by the planned merger;~~  
 36 and

37 (2) Other provisions relating to the ~~planned~~ merger.

1 (d) Any of the terms of the plan of merger may be made dependent upon facts  
 2 ascertainable outside of the plan of merger, provided that the manner in which such facts  
 3 shall operate upon the terms of the merger is clearly and expressly set forth in the plan of  
 4 merger. As used in this subsection, the term 'facts' includes, but is not limited to, the  
 5 occurrence of any event, including a determination or action by any person or body,  
 6 including the corporation."

#### 7 **SECTION 27.**

8 Said chapter is further amended by striking in its entirety subsection (a) of Code Section  
 9 14-3-1102, relating to a merger without court approval, notice to the Attorney General, and  
 10 receipt or retention by a member of anything resulting from a merger, and inserting in lieu  
 11 thereof a new subsection (a) and by adding at the end thereof a new subsection (d) to read  
 12 as follows:

13 "(a) Without the prior approval of the superior court in a proceeding of which the Attorney  
 14 General has been given written notice, a corporation described in paragraph (2) of  
 15 subsection (a) of Code Section 14-3-1302 may merge with a ~~domestic~~ corporation or  
 16 foreign corporation or other entity, provided that:

17 (1) The corporation or entity which is the surviving corporation or entity is a corporation  
 18 or entity described in paragraph (2) of subsection (a) in Code Section 14-3-1302 after the  
 19 merger; or

20 (2)(A) On or prior to the effective date of the merger, assets with a value equal to the  
 21 greater of the fair market value of the net tangible and intangible assets (~~including~~  
 22 including good ~~with~~ will of the corporation or the fair market value of the corporation  
 23 if it were to be operated as a business concern are transferred or conveyed to one or  
 24 more persons who would have received its assets under subsection (b) of Code Section  
 25 14-3-1403 had it dissolved;

26 (B) It shall return, transfer, or convey any assets held by it upon condition requiring  
 27 return, transfer, or conveyance, which condition occurs by reason of the merger, in  
 28 accordance with such condition; and

29 (C) The merger is approved by a majority of directors of the corporation who are not  
 30 and will not become members or shareholders in or officers, employees, agents, or  
 31 consultants of the surviving corporation or entity."

32 "(d) For purposes of this Code section, the definitions contained in Code Section  
 33 14-3-1108 shall be applicable."



1 (A) The designation, number of memberships outstanding, number of votes entitled to  
 2 be cast by each class entitled to vote separately on the plan, and number of votes of  
 3 each class indisputably voting on the plan; and

4 (B) Either the total number of votes cast for and against the plan by each class entitled  
 5 to vote separately on the plan or the total number of undisputed votes cast for the plan  
 6 by each class and a statement that the number cast for the plan by each class was  
 7 sufficient for approval by that class;

8 (4) If approval of the plan by some person or persons other than the members or the  
 9 board is required pursuant to paragraph (3) of subsection (a) of Code Section 14-3-1103,  
 10 a statement that the approval was obtained; and

11 (5) If approval of the shareholders of one or more corporations or entities party to the  
 12 merger was required, a statement that the merger was duly approved by the shareholders.

13 ~~The merging corporation or entity shall deliver the articles of merger to the Secretary of~~  
 14 ~~State for filing in substantially the same manner as provided in its governing agreements~~  
 15 ~~and in compliance with any applicable laws applying to domestic entities, or, in the~~  
 16 ~~absence of such requirements, in substantially the same manner as provided in Code~~  
 17 ~~Section 14-2-1105 and shall comply with the provisions of Code Section 14-2-1105.1;~~  
 18 ~~except that the notice to the publisher of the newspaper shall be in substantially the~~  
 19 ~~following form:~~

#### 20 NOTICE OF MERGER

21 ~~Notice is given that articles or a certificate of merger by and between~~  
 22 ~~\_\_\_\_\_ (name and state of incorporation or organization of each~~  
 23 ~~of the constituent corporations or entities) will be delivered to the Secretary of State for~~  
 24 ~~filing in accordance with the Georgia Nonprofit Corporation Code. The name of the~~  
 25 ~~surviving corporation (or other entity) in the merger will be~~  
 26 ~~\_\_\_\_\_, a corporation (or other entity) incorporated (organized~~  
 27 ~~pursuant to the laws of) in the State of \_\_\_\_\_. The registered office of such~~  
 28 ~~corporation (name of type of entity) (is) (will be) located at~~  
 29 ~~\_\_\_\_\_ (address of registered office) and its registered (agent)~~  
 30 ~~(agents) at such address (is) (are) \_\_\_\_\_ (name or names of agent~~  
 31 ~~or agents).<sup>1</sup>~~

32 (b) In lieu of filing articles of merger that set forth the plan of merger, the surviving ~~or~~  
 33 ~~acquiring~~ corporation or entity may ~~file~~ deliver to the Secretary of State for filing a  
 34 certificate of merger which sets forth:

35 (1) The name and state of incorporation of each corporation or entity which is merging  
 36 and the name of the surviving corporation or entity into which each other corporation or  
 37 entity is merging;

1 (2) Any amendments to the articles of incorporation or governing agreements of the  
2 surviving corporation or entity;

3 (3) That the executed plan of merger is on file at the principal place of business of the  
4 surviving corporation or entity, stating the address thereof;

5 (4) That a copy of the plan of merger will be furnished by the surviving corporation or  
6 entity, on request and without cost, to any member or shareholder of any corporation or  
7 entity that is a party to the merger;

8 (5) If ~~shareholder~~ approval of members was not required, a statement to that effect; and  
9 a statement that the plan was approved by a sufficient vote of the board of directors;

10 (6) If approval by members was required:

11 (A) The designation, number of memberships outstanding, number of votes entitled to  
12 be cast by each class entitled to vote separately on the plan, and number of votes of  
13 each class indisputably voting on the plan; and

14 (B) Either the total number of votes cast for and against the plan by each class entitled  
15 to vote separately on the plan or the total number of undisputed votes cast for the plan  
16 by each class and a statement that the number cast for the plan by each class was  
17 sufficient for approval by that class;

18 (7) If approval of the plan by some person or persons other than the members or the  
19 board is required pursuant to paragraph (3) of subsection (a) of Code Section 14-3-1103,  
20 a statement that the approval was obtained; and

21 (8) If approval of the shareholders of one or more corporations or entities party to the  
22 merger was required, a statement that the merger was duly approved by the shareholders.

23 (c) Unless a delayed effective date is specified, a merger takes effect when the articles or  
24 certificate of merger is filed.

25 (d) For purposes of this Code section, the definitions contained in Code Section 14-3-1108  
26 shall be applicable."

### 27 **SECTION 30.**

28 Said chapter is further amended by adding immediately following Code Section 14-3-1104  
29 a new Code Section 14-3-1104.1 to read as follows:

30 "14-3-1104.1.

31 (a) Together with the articles or certificate of merger, the surviving corporation or entity  
32 shall deliver to the Secretary of State an undertaking which may appear in the articles or  
33 certificate of merger or be set forth in a letter or other instrument executed by an officer or  
34 any person authorized to act on behalf of such corporation or entity that the request for  
35 publication of a notice of filing the articles or certificate of merger and payment therefor  
36 will be made as required by subsection (b) of this Code section.

1 (b) No later than the next business day after filing the articles or certificate of merger, the  
 2 surviving corporation or entity shall mail or deliver to the publisher of a newspaper which  
 3 is the official organ of the county where the registered office of the surviving corporation  
 4 or entity is to be located, if the surviving corporation or entity will be required to maintain  
 5 a registered office in Georgia, or where the registered office of the merging corporation or  
 6 entity was located prior to the merger in any other case, or which is a newspaper of general  
 7 circulation published within such county whose most recently published annual statement  
 8 of ownership and circulation reflects a minimum of 60 percent paid circulation a request  
 9 to publish a notice in substantially the following form:

10 **'NOTICE OF MERGER**

11 Notice is given that articles or a certificate of merger which will effect a merger by and  
 12 between (or among) \_\_\_\_\_ (name and state of incorporation or organization of each  
 13 constituent corporation or entity) will be delivered to the Secretary of State for filing in  
 14 accordance with the Georgia Nonprofit Corporation Code. The name of the surviving  
 15 corporation (or other entity) in the merger will be \_\_\_\_\_, a corporation (or other  
 16 entity) incorporated (organized pursuant to the laws of) in the State of \_\_\_\_\_. The  
 17 registered office of such corporation (name of type of entity) (is) (will be) located at  
 18 \_\_\_\_\_ (address of registered office) and its registered (agent) (agents) at such  
 19 address (is) (are) \_\_\_\_\_ (name or names of agent or agents).'

20 The request for publication of the notice shall be accompanied by a check, draft, or money  
 21 order in the amount of \$40.00 in payment of the cost of publication. The notice shall be  
 22 published once a week for two consecutive weeks commencing within ten days after  
 23 receipt of the notice by the newspaper. Failure on the part of the surviving corporation or  
 24 entity to mail or deliver the notice or payment therefor or failure on the part of the  
 25 newspaper to publish the notice in compliance with this subsection shall not invalidate the  
 26 merger.

27 (c) For purposes of this Code section, the definitions contained in Code Section 14-3-1108  
 28 shall be applicable."

29 **SECTION 31.**

30 Said chapter is further amended by striking in their entirety Code Sections 14-3-1105,  
 31 relating to effect of mergers, 14-3-1106, relating to mergers with foreign corporations, and  
 32 14-3-1107, relating to effect of mergers on bequests, devises, or other transfers of property,  
 33 and inserting in lieu thereof the following:

34 "14-3-1105.

35 (a) When a merger governed by this chapter takes effect:

1 (1) Every other corporation or entity party to the merger merges into the surviving  
 2 corporation or entity and the separate existence of every corporation except the surviving  
 3 corporation or entity ceases;

4 (2) The title to all real estate and other property owned by, and every contract right  
 5 possessed by, each corporation or entity party to the merger is vested in the surviving  
 6 corporation or entity without reversion or impairment, without further act or deed, and  
 7 without any conveyance, transfer, or assignment having occurred, subject to any and all  
 8 conditions to which the property was subject prior to the merger;

9 (3) The surviving corporation or entity has all liabilities and obligations of each  
 10 corporation or entity party to the merger;

11 (4) A proceeding pending against any corporation or entity party to the merger may be  
 12 continued as if the merger did not occur or the surviving corporation or entity may be  
 13 substituted in the proceeding for the corporation or entity whose existence ceased; and

14 (5) The articles of incorporation and bylaws or governing agreements of the surviving  
 15 corporation or entity are amended to the extent provided in the plan of merger.

16 (b) For purposes of this Code section, the definitions contained in Code Section 14-3-1108  
 17 shall be applicable.

18 14-3-1106.

19 (a) Except as provided in Code Section 14-3-1102, one or more foreign corporations or  
 20 foreign business or nonprofit corporations may merge with one or more ~~domestic nonprofit~~  
 21 corporations if:

22 (1) The merger is permitted by the law of the state or country under whose law each  
 23 foreign corporation or foreign business corporation is incorporated and each foreign  
 24 corporation or foreign business corporation complies with that law in effecting the  
 25 merger;

26 (2) The foreign corporation or foreign business corporation complies with Code ~~Section~~  
 27 ~~14-3-1104~~ Sections 14-3-1104 and 14-3-1104.1 if it is the surviving corporation of the  
 28 merger; and

29 (3) Each ~~domestic nonprofit~~ corporation complies with the applicable provisions of Code  
 30 Sections 14-3-1101 through 14-3-1103 and, if it is the surviving corporation of the  
 31 merger, with Code ~~Section 14-3-1104~~ Sections 14-3-1104 and 14-3-1104.1.

32 (b) Upon the merger taking effect, the surviving foreign corporation or foreign business  
 33 corporation, if it does not have a registered agent in this state, shall be deemed to have  
 34 appointed the Secretary of State as its registered agent for service of process in a  
 35 proceeding to enforce any obligation of a domestic corporation party to the merger, until  
 36 such time as it appoints a registered agent in this state.

1 14-3-1107.  
 2 Any bequest, devise, gift, grant, or promise contained in a will or other instrument of  
 3 donation, subscription, or conveyance, that is made to a constituent corporation or entity  
 4 and that takes effect or remains payable after the merger, inures to the surviving  
 5 corporation or entity unless the will or other instrument otherwise specifically provides. "

### 6 SECTION 32.

7 Said chapter is further amended by adding immediately following Code Section 14-3-1107  
 8 a new Code Section 14-3-1108 to read as follows:

9 "14-3-1108.

10 (a) As used in this Code section and in Code Section 14-3-1107, the term:

11 (1) 'Entity' includes any business corporation or foreign business corporation, domestic  
 12 or foreign limited liability company, domestic or foreign joint-stock association, or  
 13 domestic or foreign limited partnership.

14 (2) 'Governing agreements' includes the articles of incorporation and bylaws of a  
 15 business corporation, foreign business corporation, corporation or foreign corporation,  
 16 articles of association or trust agreement or indenture and bylaws of a joint-stock  
 17 association, articles of organization and operating agreement of a limited liability  
 18 company, and the certificate of limited partnership and limited partnership agreement of  
 19 a limited partnership, and agreements serving comparable purposes under the laws of  
 20 other states or jurisdictions.

21 (3) 'Joint-stock association' includes any association of the kind commonly known as a  
 22 joint-stock association or joint-stock company and any unincorporated association, trust,  
 23 or enterprise having members or having outstanding shares of stock or other evidences  
 24 of financial and beneficial interest therein, whether formed by agreement or under  
 25 statutory authority or otherwise, but does not include a corporation, partnership, limited  
 26 liability partnership, limited liability company, or nonprofit organization. A joint-stock  
 27 association as defined in this paragraph may be one formed under the laws of this state,  
 28 including a trust created pursuant to Article 3 of Chapter 12 of Title 53, or one formed  
 29 under or pursuant to the laws of any other state or jurisdiction.

30 (4) 'Limited liability company' includes limited liability companies formed under the  
 31 laws of this state or of any other state or territory or the District of Columbia, unless the  
 32 laws of such other state or jurisdiction forbid the merger of a limited liability company  
 33 with a corporation.

34 (5) 'Limited partnership' includes limited partnerships formed under the laws of this state  
 35 or of any other state or territory or the District of Columbia, unless the laws of such other  
 36 state or jurisdiction forbid the merger of a limited partnership with a corporation.

1 (6) 'Share' includes shares, memberships, financial or beneficial interests, units, or  
2 proprietary or partnership interests in a business corporation or a foreign business  
3 corporation, limited liability company, joint-stock association or a limited partnership,  
4 but does not include debt obligations of any entity.

5 (7) 'Shareholder' includes every member of a limited liability company or a joint-stock  
6 association that is a party to a merger or holder of a share or other evidence of financial  
7 or beneficial interest therein.

8 (b) Subject to the limitations set forth in Code Section 14-3-1102, one or more  
9 corporations may merge with one or more entities, except an entity formed under the laws  
10 of a state or jurisdiction which forbids a merger with a corporation. The corporation or  
11 corporations and one or more entities may merge into a single corporation or other entity,  
12 which may be any one of the constituent corporations or entities.

13 (c) The board of directors of each merging corporation and the appropriate body of each  
14 entity, in accordance with its governing agreements and the laws of the state or jurisdiction  
15 under which it was formed, shall adopt a plan of merger in accordance with each  
16 corporation's and entity's governing agreements and the laws of the state or jurisdiction  
17 under which it was formed, as the case may be.

18 (d) The plan of merger:

19 (1) Must set forth:

20 (A) The name of each corporation and entity planning to merge and the name of the  
21 surviving corporation or entity into which each other corporation and entity plans to  
22 merge;

23 (B) The terms and conditions of the merger; and

24 (C) The manner and basis of converting the shares of each corporation and the shares,  
25 memberships, or financial or beneficial interests or units in each of the entities into  
26 shares, obligations, or other securities of the surviving or any other corporation or entity  
27 or into cash or other property in whole or in part; and

28 (2) May set forth:

29 (A) Amendments to the articles of incorporation or governing agreements of the  
30 surviving corporation or entity; and

31 (B) Other provisions relating to the merger.

32 (e) Any of the terms of the plan of merger may be made dependent upon facts  
33 ascertainable outside of the plan of merger, provided that the manner in which such facts  
34 shall operate upon the terms of the merger is clearly and expressly set forth in the plan of  
35 merger. As used in this subsection, the term 'facts' includes, but is not limited to, the  
36 occurrence of any event, including a determination or action by any person or body,  
37 including the corporation.

1 (f) In the case of any entity, the plan of merger shall be approved in the manner required  
 2 by its governing agreements and in compliance with any applicable laws of the state or  
 3 jurisdiction under which it was formed. In addition, each of the corporations shall comply  
 4 with all other provisions of this chapter which relate to the merger of corporation. Each  
 5 other entity shall comply with all other provisions of its governing agreements and all  
 6 provisions of the laws, if any, of the state or jurisdiction in which it was formed which  
 7 relate to the merger.

8 (g) Each merging corporation shall comply with the requirements of Code Section  
 9 14-3-1104."

### 10 SECTION 33.

11 Said chapter is further amended by striking in its entirety Code Section 14-3-1302, relating  
 12 to exceptions to prohibition against distributions relative to nonprofit corporations, and  
 13 inserting in lieu thereof the following:

14 "14-3-1302.

15 (a) A corporation may make distributions to the following:

16 (1) Organizations (~~whether whether~~ or not ~~incorporated~~) incorporated that are organized  
 17 and operated for the same or similar purposes as the distributing corporation;

18 (2) Organizations (~~whether whether~~ or not ~~incorporated~~) incorporated that are organized  
 19 and operated exclusively for religious, charitable, scientific, testing for public safety,  
 20 literary, or educational purposes, or to foster national or international sports competition,  
 21 or for the prevention of cruelty to children or animals, no part of the net earnings of  
 22 which inures to the benefit of any private shareholder, member, or individual; or

23 (3) A state or possession of the United States, or any political subdivision of any of the  
 24 foregoing, or the United States or the District of Columbia.

25 (b) Except for corporations described in paragraph (2) of subsection (a) of this Code  
 26 section, a corporation may repurchase a membership for the consideration that the member  
 27 paid for his or her membership if, after the purchase is completed:

28 (1) The corporation would be able to pay its debts as they become due in the normal  
 29 course of business; and

30 (2) The corporation's total assets would at least equal the sum of its liabilities."

### 31 SECTION 34.

32 Said chapter is further amended by striking in its entirety Code Section 14-3-1401, relating  
 33 to dissolution by incorporators or initial directors, and inserting in lieu thereof the following:

1 "14-3-1401.

2 A majority of the incorporators or initial directors of a corporation that has not admitted  
3 members entitled to vote on dissolution, has not commenced activities, and has no net  
4 assets may dissolve the corporation by delivering to the Secretary of State for filing articles  
5 of dissolution that set forth:

6 (1) The name of the corporation;

7 (2) The date of its incorporation;

8 (3) That:

9 (A) The corporation has not admitted members entitled to vote on dissolution;

10 (B) The corporation has not commenced activities; ~~or~~ and

11 (C) The corporation has no net assets.

12 (4) That no debt of the corporation remains unpaid; and

13 (5) That a majority of the incorporators or initial directors authorized the dissolution."

14 **SECTION 35.**

15 Said chapter is further amended by striking subsection (a) of Code Section 14-3-1402,  
16 relating to proposal of dissolution and approval thereof, and inserting in lieu thereof the  
17 following:

18 "(a) A corporation's board of directors may propose dissolution for submission to the  
19 members, if there are members entitled to vote thereon: as follows:

20 (1) For a proposal to dissolve to be adopted:

21 (A) The board of directors must recommend dissolution to the members unless the  
22 board of directors elects, because of a conflict of interest or other special circumstances,  
23 to make no recommendation and communicates the basis for its determination to the  
24 members; and

25 (B) The members entitled to vote must approve the proposal to dissolve as provided  
26 in ~~subsection (e) of this Code section.~~ paragraph (4) of this subsection;

27 (2) The board of directors may condition its submission of the proposal for dissolution  
28 on any basis; ~~and~~

29 (3) The corporation shall notify each member entitled to vote of the proposed members'  
30 meeting in accordance with Code Section 14-3-705. The notice must also state that the  
31 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; ~~and~~

32 (4) Unless the articles of incorporation, the bylaws, or the board of directors (~~acting~~  
33 acting pursuant to paragraph (2) of this ~~subsection~~) subsection requires a greater vote or  
34 vote by classes, the proposal to dissolve to be adopted must be approved by a majority  
35 of all the votes entitled to be cast on that proposal; and

1 (5) If the board seeks to have dissolution approved by the members by written consent  
 2 or written ballot, the material soliciting the approval shall contain or be accompanied by  
 3 a copy or summary of the plan of dissolution."

#### 4 **SECTION 36.**

5 Said chapter is further amended by striking subsection (e) of Code Section 14-3-1408,  
 6 relating to request for presentation of claims, enforcement of claims, and when claims are  
 7 barred, and inserting in lieu thereof the following:

8 "(e) Subject to the provisions of this Code section, a claim against a corporation in  
 9 dissolution or against a dissolved corporation may be enforced under this Code section:

10 (1) Against the corporation, to the extent of its undistributed assets; or

11 (2) If the assets have been distributed in liquidation, against a distributee of the  
 12 corporation to the extent of ~~his~~ such distributee's pro rata share of the claim or the  
 13 corporate assets distributed to him or her in liquidation, whichever is less, but a  
 14 distributee's total liability for all claims under this Code section may not exceed the total  
 15 amount of assets distributed to him or her."

#### 16 **SECTION 37.**

17 Said chapter is further amended by adding immediately following Code Section 14-3-1409  
 18 a new Code Section 14-3-1409.1 to read as follows:

19 "14-3-1409.1.

20 The dissolution of a corporation in any manner, except by a decree of the superior court  
 21 when the court has supervised the liquidation of the assets and business of the corporation  
 22 as provided in Code Section 14-3-1430 and 14-3-1433, shall not take away or impair any  
 23 remedy available to such corporation, its directors, officers, or members for any right or  
 24 claim existing prior to such dissolution if action or other proceeding thereon is pending on  
 25 the date of such dissolution or is commenced within two years after the date of such  
 26 dissolution. Any such action or proceeding by the corporation may be prosecuted by the  
 27 corporation in its corporate name. The members, directors, and officers shall have the  
 28 power to take such corporation or other action as shall be appropriate to protect such  
 29 remedy, right, or claim."

#### 30 **SECTION 38.**

31 Said chapter is further amended by striking paragraphs (6), (12), and (13) of subsection (b)  
 32 of Code Section 14-3-1501, relating to the requirement of a certificate of authority to transact  
 33 business, and inserting in lieu thereof the following:

1 "(6) Soliciting or procuring orders, whether by mail or through employees or agents or  
 2 otherwise, where the orders require acceptance ~~without~~ outside this state before becoming  
 3 binding contracts and where the contracts do not involve any local performance other  
 4 than delivery and installation;"

5 "(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary  
 6 capacity, where permitted so to serve by the laws of this state; ~~or~~

7 (13) Owning directly or indirectly an interest in or controlling directly or indirectly  
 8 another entity organized under the laws of or transacting business within this state; or

9 (14) Serving as a manager of a limited liability company organized under the laws of  
 10 ~~Owning and controlling a subsidiary corporation incorporated in or transacting business~~  
 11 within this state."

### 12 SECTION 39.

13 Said chapter is further amended by striking paragraph (1) of subsection (a) of Code Section  
 14 14-3-1503, relating to application for a certificate of authority, and inserting in lieu thereof  
 15 the following:

16 "(1) The name of the foreign corporation or, if its name is unavailable for use in this  
 17 state, a corporate name that satisfies the requirements of Code Section ~~14-2-1506~~  
 18 14-3-1506;"

### 19 SECTION 40.

20 Said chapter is further amended by striking Code Section 14-3-1509, relating to resignation  
 21 of registered agent of foreign corporation, and inserting in lieu thereof the following:

22 "14-3-1509.

23 (a) The registered agent of a foreign corporation may resign his or her agency appointment  
 24 by signing and delivering to the Secretary of State for filing a statement of resignation. The  
 25 statement may include a statement that the registered office is also discontinued.

26 (b) On or before the date of filing of the statement of resignation, the registered agent shall  
 27 deliver or mail a written notice of the agent's intention to resign to the chief executive  
 28 officer, chief financial officer, or secretary of the corporation, or a person holding a  
 29 position comparable to any of the foregoing, as named, and at the address shown in the  
 30 annual registration, or in the articles of incorporation if no annual registration has been  
 31 filed, ~~on or before the date of filing of the statement.~~

32 (c) The agency appointment is terminated, and the registered office discontinued if so  
 33 provided, on the earlier of the filing by the corporation of an amendment to its annual  
 34 registration designating a new registered agent and registered office if also discontinued  
 35 or the thirty-first day after the date on which the statement was filed."

**SECTION 41.**

Said chapter is further amended by striking subsection (a) of Code Section 14-3-1520, relating to withdrawal of a foreign corporation from the state, and inserting in lieu thereof the following:

"(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State. A foreign corporation authorized to transact business in this state that merges with and into a domestic corporation pursuant to Code Section 14-3-1106 and is not the surviving corporation in such merger need not obtain a certificate of withdrawal from the Secretary of State."

**SECTION 42.**

Said chapter is further amended by striking paragraphs (5), (6), and (8) of subsection (a) of Code Section 14-3-1602, relating to members' rights to copy and inspect records, and inserting in lieu thereof the following:

"(5) The minutes of all meetings of members ~~and records of, executed waivers of notice of meetings, and executed consents, delivered in writing or by electronic transmission, evidencing all actions taken or approved by the members without a meeting,~~ for the past three years;

(6) All ~~written~~ communications in writing or by electronic transmission to members generally within the past three years, including the financial statements furnished for the past three years under Code Section 14-3-1620;"

"(8) Its most recent annual ~~report~~ registration delivered to the Secretary of State under Code Section 14-3-1622."

**SECTION 43.**

Said chapter is further amended by striking subsection (a) of Code Section 14-3-1620, relating to furnishing financial statements to members, and inserting in lieu thereof the following:

"(a) A corporation upon ~~written demand~~ request in writing or by electronic transmission from a member shall furnish that member its latest prepared annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, in reasonable detail as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis."

**SECTION 44.**

Said chapter is further amended by striking subsection (d) of Code Section 14-3-1701, relating to applicability of chapter to certain corporations, and inserting in lieu thereof the following:

"(d) If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were not authorized or permitted by the prior general corporation law of this state but which are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall be valid on and from that date, and action may be taken on and from that date in reliance on those provisions. If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were authorized or permitted by the prior nonprofit corporation law of this state that were validly adopted under the law in effect at the time of their adoption, and that are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall continue to be valid on and from that date, whether or not this chapter imposes requirements for the adoption of such provisions that are different from those in effect at the time the provisions were adopted."

**SECTION 45.**

Said chapter is further amended by striking paragraphs (2), (5), and (6) of subsection (a) of Code Section 14-3-1703, relating to saving provisions, and inserting in lieu thereof the following:

"(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal, ~~except as provided in Code Section 14-3-1408;~~ but the same, as well as actions that are pending on July 1, 1991, may be asserted, enforced, prosecuted, or defended as if the prior statute has not been repealed;"

"(5) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(6) Any provision of the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, that was authorized or permitted by the prior nonprofit corporation law of this state, that was validly adopted under the law in effect at the time of its adoption, and that is authorized or permitted by this chapter; or

(7) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent."

**SECTION 46.**

Said chapter is further amended by striking from the following Code sections the word "he" wherever the same shall occur and inserting in lieu thereof "he or she":

- (1) Code Section 14-3-125, relating to duty of the Secretary of State to file documents and effect of filing or refusing to do so;
- (2) Code Section 14-3-129, relating to penalty for signing false document;
- (3) Code Section 14-3-170, relating to powers of the Attorney General over unlawful assignment of corporate assets, dissolution of corporation, and investigative and subpoena powers;
- (4) Code Section 14-3-813, relating to appointment of provisional director in case of deadlock;
- (5) Code Section 14-3-842, relating to standards of conduct for officers;
- (6) Code Section 14-3-861, relating to transactions not subject to being enjoined, set aside, or other sanctions;
- (7) Code Section 14-3-862, relating to directors' action after disclosure of conflict or abstention by interested director;
- (8) Code Section 14-3-865, relating to voidability of conflicting interest transaction;
- (9) Code Section 14-3-1508, relating to change of registered office or registered agent of foreign corporation;
- (10) Code Section 14-3-1530, relating to grounds for revocation; and
- (11) Code Section 14-3-1531, relating to procedure for and effect of revocation.

**SECTION 47.**

Said chapter is further amended by striking from the following Code sections the word "him" wherever the same shall occur and inserting in lieu thereof "him or her":

- (1) Code Section 14-3-130, relating to powers of Secretary of State;
- (2) Code Section 14-3-813, relating to appointment of provisional director in case of deadlock;
- (3) Code Section 14-3-823, relating to waiver of notice; and
- (4) Code Section 14-3-863, relating to members' action following disclosure of conflict.

**SECTION 48.**

Said chapter is further amended by striking from the following Code sections the word "his" wherever the same shall occur and inserting in lieu thereof "his or her":

- (1) Code Section 14-3-125, relating to duty of the Secretary of State to file documents and effect of filing or refusing to do so;

- 1 (2) Code Section 14-3-126, relating to appeal from Secretary of State's refusal to file  
 2 document;
- 3 (3) Code Section 14-3-401, relating to corporate name;
- 4 (4) Code Section 14-3-503, relating to resignation of registered agent;
- 5 (5) Code Section 14-3-601, relating to criteria for membership;
- 6 (6) Code Section 14-3-823, relating to waiver of notice;
- 7 (7) Code Section 14-3-842, relating to standards of conduct for officers;
- 8 (8) Code Section 14-3-862, relating to directors' action after disclosure of conflict or  
 9 abstention by interested director;
- 10 (9) Code Section 14-3-1506, relating to corporate name of foreign corporation;
- 11 (10) Code Section 14-3-1508, relating to change of registered office or registered agent  
 12 of foreign corporation; and
- 13 (11) Code Section 14-3-1531, relating to procedure for and effect of revocation.

14 **SECTION 49.**

15 Article 3 of Chapter 5 of Title 14 of the Official Code of Georgia Annotated, relating to  
 16 corporations organized for religious, fraternal, or educational purposes, is amended by  
 17 striking in its entirety Code Section 14-5-40, relating to applicability of Chapter 3 of Title  
 18 14, and inserting in lieu thereof the following:

19 "14-5-40.

20 Chapter 3 of this title shall be fully applicable to all nonprofit corporations organized for  
 21 religious, fraternal, or educational purposes, including incorporated churches, religious and  
 22 fraternal societies, schools, academies, colleges, or universities which are ~~'nonprofit~~  
 23 ~~corporations'~~ 'corporations' as that term is defined in paragraph ~~(21)~~ (6) of Code Section  
 24 14-3-140."

25 **SECTION 50.**

26 All laws and parts of laws in conflict with this Act are repealed.