Senate Bill 555

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

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapters 2 and 3 of Title 14 of the Official Code of Georgia Annotated, relating to business corporations and nonprofit corporations, respectively, so as to provide for the updating of provisions relating to business corporations and nonprofit corporations; to provide for undeliverable shareholder notices; to provide for electronic transmissions; to provide for renunciation of business opportunities; to provide for flexibility in amendments to series; to provide for effectiveness of amendments; to provide for mergers and share exchanges; to provide for mailings; to provide for authority to issue options; to provide for and change definitions; to change certain provisions relating to notice requirements; to change certain provisions relating to organization of corporations; to change certain provisions relating to terms of class or series determined by board of directors; to change certain provisions relating to share options; to change provisions relating to shareholders´ preemptive rights; to change certain provisions relating to effect of failure to present securities for redemption, surrender, cancellation, or payment; to change certain provisions relating to shareholders´ special meetings; to change certain provisions relating to shareholders´ actions without a meeting; to change certain provisions relating to notice of annual and special meetings of shareholders; to provide for waiver of notice by electronic transmission by a shareholder; to provide for a shareholders´ list for a shareholders´ meeting; to change certain provisions relating to resignation of a member of the board of directors; to change certain provisions relating to board of directors´ action without a meeting of the board of directors; to change certain provisions relating to waiver and notice of a meeting of the board of directors; to change certain provisions relating to resignation and removal of officers of corporations; to change certain provisions relating to amendment by board of directors and shareholders to the articles of incorporation; to change certain provisions relating to plan of merger or share exchange; to change certain provisions relating to sale of assets requiring shareholder approval; to change certain provisions relating to inspection of records of shareholders; to change certain provisions relating to financial statements for shareholders; to change certain provisions relating to notice requirements so as to provide for notice by electronic transmission; to provide for voting by electronic transmission

pursuant to a court ordered meeting; to change certain provisions relating to publication of notice of intent to file articles of incorporation; to provide for consents by electronic transmission; to change a reference relating to ultra vires purposes and powers for conformity purposes; to change certain provisions relating to the definition of "nonprofit" and rights and powers of a nonprofit corporation; to change certain provisions relating to venue, residency, and principal office requirements; to change certain references relating to voting rights relative to members of nonprofit corporations; to provide for notice by electronic transmission of resignation of a member of a nonprofit corporation; to change certain provisions relating to special meetings of members of nonprofit corporations; to change certain provisions relating to approval of action without a meeting of members of a nonprofit corporation; to change certain provisions relating to notice of a meeting of members of a nonprofit corporation; to provide for waiver of notice by electronic transmission by a member of a nonprofit corporation; to provide for ballots by electronic transmission relating to action taken without a meeting of the members of a nonprofit corporation; to change certain provisions relating to membership lists of nonprofit corporations; to change certain provisions relating to proxies relative to voting by members of nonprofit corporations; to change certain provisions relating to the validity of a signature on a proxy by a member of a nonprofit corporation; to provide for resignation by a director of a nonprofit corporation by electronic transmission; to change certain provisions relating to action taken without a meeting of the board of directors of a nonprofit corporation; to provide for waiver of notice of a meeting by electronic transmission by a director of a nonprofit corporation; to change certain provisions relating to duties of officers of nonprofit corporations; to provide for notice of resignation of an officer of a nonprofit corporation by electronic transmission; to revise a reference relating to indemnification of officers, employees, and agents of nonprofit corporations; to change certain provisions relating to applicability of indemnification provisions in certain official documents of nonprofit corporations; to change certain provisions relating to restated articles of incorporation for nonprofit corporations; to change certain provisions relating to definitions and plans for mergers of nonprofit corporations; to change certain provisions relating to a merger without court approval; to change certain provisions relating to approval of plan of merger by members or directors and abandonment of the plan; to change certain provisions relating to articles of merger and publication of notice of merger; to provide for publication of notice of merger; to change certain provisions relating to effect of mergers, mergers with foreign corporations, and effect of mergers on bequests, devises, or other transfers of property; to provide for definitions relating to mergers, mergers with other entities, and the plan of merger with another entity; to change certain provisions relating to exceptions to prohibition against distributions relative to nonprofit corporations; to change certain provisions relating to dissolution by incorporators

or initial directors; to change certain provisions relating to proposal of dissolution and approval thereof; to change certain provisions relating to request for presentation of claims, enforcement of claims, and when claims are barred; to provide for remedies of corporations for actions existing prior to the dissolution of a corporation; to change certain provisions relating to the requirement of a certificate of authority to transact business; to change certain provisions relating to resignation of a registered agent of a foreign corporation; to change certain provisions relating to withdrawal of a foreign corporation from the state; to change certain provisions relating to members´ rights to copy and inspect records; to provide for a request by a member by electronic transmission for an annual statement; to change certain provisions relating to applicability of chapter to certain corporations; to change certain provisions relating to saving provisions; to provide for changes regarding references to gender; to amend Article 3 of Chapter 5 of Title 14 of the Official Code of Georgia Annotated, relating to corporations organized for religious, fraternal, or educational purposes, so as to change a reference for conformity purposes; to amend Code Section 7-1-712 of the Official Code of Georgia Annotated, relating to applicability of Article 15 of Chapter 2 of Title 14, so as to correct a cross-reference; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to business corporations, is amended by striking Code Section 14-2-140, relating to definitions related to the chapter on business corporations, and inserting in lieu thereof the following:

″14-2-140.

As used in this chapter, the term:

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

(2) 'Authorized shares' means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) 'Conspicuous' or 'conspicuously' means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color or typing in capitals or underlined is conspicuous.

(4) 'Corporation' or 'domestic corporation' means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) 'Deliver' includes <u>delivery by hand,</u> mail<u>, private carrier, and electronic transmission</u>.

(6) 'Distribution' means a direct or indirect transfer of money or other property ~~(~~except its own shares or rights to acquire its own shares~~)~~ or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) 'Effective date of notice' is defined in Code Section 14-2-141.

~~(7.1)~~(8) 'Electronic transmission' or 'electronically transmitted' means any ~~process~~ form of communication not directly involving the physical ~~transfer~~ transmission of paper that ~~is suitable for the retention, retrieval, and reproduction of information by the recipient~~ creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile transmissions.

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

~~(8)~~(10) 'Employee' includes an officer but not a director. A director may accept duties that make him or her also an employee.

~~(9)~~(11) 'Entity' includes corporation and foreign corporation; nonprofit corporation and foreign nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, general partnership, limited partnership, trust, two or more persons having a joint or common economic interest; limited liability company and foreign limited liability company; limited liability partnership and foreign limited liability partnership; and state, United States, and foreign government.

(12) 'First-class' includes, when used with a reference to postage or mail, any class of postage or mail that is the equivalent of or better than first-class under the then prevailing mail classifications.

~~(10)~~(13) 'Foreign corporation' means a corporation for profit incorporated under a law other than the law of this state.

~~(11)~~(14) 'Governmental subdivision' includes authority, county, district, and municipality.

~~(12)~~(15) 'Includes' denotes a partial definition.

~~(13)~~(16) 'Individual' includes the estate of an incompetent or deceased individual.

~~(14)~~(17) 'Mail' means the United States mail.

~~(15)~~(18) 'Means' denotes an exhaustive definition.

~~(16)~~(19) 'National securities exchange' means any securities exchange or securities quotation system if the securities listed on that exchange or system are exempt from the registration requirements of Chapter 5 of Title 10, known as the 'Georgia Securities Act

of 1973,' pursuant to paragraph (8) or (8.1) of Code Section 10-5-8 or any successor provision.

~~(17)~~(20) 'Notice' is defined in Code Section 14-2-141.

~~(18)~~(21) 'Person' includes an individual and an entity.

~~(19)~~(22) 'Principal office' means the office ~~(~~in or out of this state~~)~~ so designated in the annual registration where the principal executive offices of a domestic or foreign corporation are located.

~~(20)~~(23) 'Proceeding' includes civil suit and criminal, administrative, and investigatory action.

~~(21)~~(24) 'Record date' means the date established under Article 6 or 7 of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~(22)~~(25) 'Secretary' means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of Code Section 14-2-840 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

~~(23)~~(26) 'Shares' means the units into which the proprietary interests in a corporation are divided.

~~(24)~~(27) 'Share exchange' means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with Code Section 14-2-1102.

~~(25)~~(28) 'Shareholder' means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(29) 'Sign' or 'signature' includes any manual, facsimile, conformed, or electronic signature.

~~(26)~~(30) 'State,' when referring to a part of the United States, includes a state and commonwealth ~~(~~and their agencies and governmental subdivisions~~)~~ and a territory and insular possession ~~(~~and their agencies and governmental subdivisions~~)~~ of the United States.

~~(27)~~(31) 'Subscriber' means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~(28)~~(32) 'Treasury shares' means shares of a corporation which have been issued and which subsequently have been acquired by the corporation if the articles of incorporation of such corporation provide that shares so acquired become treasury shares. Treasury shares shall be deemed to be issued shares~~,~~ but not outstanding shares.

~~(29)~~(33) 'United States' includes district, authority, bureau, commission, department, and any other agency of the United States.

~~(30)~~(34) 'Voting group' means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

SECTION 2.

Said chapter is further amended by striking subsections (b) and (c) of Code Section 14-2-141, relating to notice requirements, and inserting in their place new subsections (b) and (c) and by adding new subsections (j) through (m) to read as follows:

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

(c) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder´s address shown in the corporation´s current record of shareholders. If at the record date fixed to determine the shareholders entitled to receive a notice the corporation has a class or series of shares listed on a national securities exchange or has more than 500 shareholders of record ~~entitled to vote at a meeting~~, it may utilize a class of mail other than first class; provided, however, that if the notice is of ~~the~~ a meeting of shareholders, the notice is mailed, with adequate postage prepaid, not less than 30 days before the date of the meeting."

"(j)(1) Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if:

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

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

(2) Notice given pursuant to paragraph (1) of this subsection shall be deemed effective:

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

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

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

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

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

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

(m) Unless the registered agent of the corporation provides written consent to the corporation to the receipt of a shareholder´s consent, request, demand, or notice by electronic transmission under this chapter, delivery made to a corporation´s registered office shall be made by hand or by certified or registered mail or statutory overnight delivery, return receipt requested.″

SECTION 3.

Said chapter is further amended by striking subsection (b) of Code Section 14-2-205, relating to organization of a corporation, and inserting in lieu thereof the following:

″(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more ~~written~~ consents in writing or by electronic transmission describing the action taken and signed by each incorporator.″

SECTION 4.

Said chapter is further amended by striking subsection (e) of Code Section 14-2-602, relating to terms of class or series determined by board of directors, and inserting in lieu thereof the following:

"(e) ~~After the~~ Unless otherwise provided in the articles of incorporation if a board of directors has established a series in accordance with the terms of this Code section, the board of directors may at any time and from time to time ~~may~~ amend the preferences, limitations, and relative rights of the series before any shares of the series have been issued; increase or decrease the number of shares contained in the series, but not below the number of shares then issued~~.~~; or eliminate the series where no shares are issued; in each case the board shall do so by filing articles of amendment, which are effective without shareholder action, in the manner provided in subsection (d) of this Code section. In case the number of shares contained in a series shall be decreased or a series of shares shall be eliminated, the shares that are the subject of the decrease or that compose the series being eliminated shall resume the status that they had prior to the adoption of the articles of amendment that first established such series unless otherwise provided in the articles of incorporation or unless the board of directors causes such shares to become treasury shares."

SECTION 5.

Said chapter is further amended by adding a new subsection to Code Section 14-2-624, relating to share options, to read as follows:

"(f) The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

(1) Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of rights, options, or warrants to be issued by the corporation; or

(2) Determine the number of rights, options, or warrants to be received by such officers and employees;

provided, however, that the resolution authorizing such officer or officers shall specify the total number of rights, options, or warrants such authorized officer or officers may award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any rights, options, or warrants."

SECTION 6.

Said chapter is further amended by striking subparagraph (c)(2)(I) and paragraph (3) of subsection (c) of Code Section 14-2-630, relating to shareholders´ preemptive rights, and inserting in lieu thereof the following:

"(I) Shares released by waiver from their preemptive right by the affirmative vote or ~~written~~ consent in writing or by electronic transmission of the holders of two-thirds of the shares of the class to be issued. Any vote or consent shall be binding on all shareholders and their transferees for the time specified in the vote or consent up to but not exceeding one year from the date thereof and shall protect the corporation, its management, and all persons who may within that time acquire the shares so released;"

"(3) A shareholder may waive his or her individual preemptive right at any time, and the holders of a class of shares may waive the preemptive rights of the class by the affirmative vote or ~~written~~ consent in writing or by electronic transmission of the holders of two-thirds of the shares of the class with preemptive rights. The waiver of preemptive rights with respect to past issuances of shares shall be effective if made by the person who was the shareholder at the time the shares were issued. A waiver evidenced by a writing or by electronic transmission is irrevocable even though it is not supported by consideration;".

SECTION 7.

Said chapter is further amended by striking subsections (b) and (c) of Code Section 14-2-641, relating to effect of failure to present securities for redemption, surrender, cancellation, or payment, and inserting in lieu thereof the following:

"(b) When a corporation has duly and properly called for redemption of any securities and the registered holder of the securities has been ~~mailed~~ sent notice of call at his or her last address as it appears on the records of the corporation but fails to present the certificate for the securities or otherwise take action as required by the call within 60 days of the effective date of the call or such longer time as may be specified in the notice of the call, then the corporation may transfer the money or other property distributable upon the redemption to a trustee, for the benefit of the registered owner or his or her successors in title, and thereupon the securities shall be deemed as of the effective date of the call to have been redeemed, canceled, or paid and no longer outstanding.

(c) In order for the transfer to the trustee permitted by subsection (b) of this Code section to be effective for this purpose, the corporation must have adopted a plan therefor prior to the call, and must have ~~mailed~~ sent notice to the registered holder of the securities of the details of the plan, including the name and address of the trustee, at the time of the ~~mailing~~ sending of the notice of the call. The registered holder for whom the transfer in trust is made~~,~~ or his or her successors in title~~,~~ shall have only the right to obtain the money or other property from the trustee:

(1) In the case of certificated securities, upon surrender to the trustee of the certificates involved; and

(2) In the case of uncertificated securities, upon satisfying the trustee that he or she was the registered holder."

SECTION 8.

Said chapter is further amended by striking subsections (a) and (e) of Code Section 14-2-702, relating to shareholders´ special meetings, and inserting in lieu thereof the following:

"(a) A corporation shall hold a special meeting of shareholders:

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

(2) Except as to corporations described in paragraph (3) of this subsection, if the holders of at least 25 percent, or such greater or lesser percentage as may be provided in the articles of incorporation or bylaws, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting, sign, date, and deliver to the corporation one or more ~~written~~ demands in writing or by electronic transmission for the meeting describing the purpose or purposes for which it is to be held; or

(3) In the case of a corporation having 100 or fewer shareholders of record, if the holders of at least 25 percent, or such lesser percentage as may be provided in the articles of incorporation or bylaws, of all the votes entitled to be cast on any issue to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more ~~written~~ demands in writing or by electronic means for the meeting describing the purpose or purposes for which it is to be held."

"(e) Unless otherwise provided in the articles of incorporation, a ~~written~~ demand by a shareholder for a special meeting may be revoked by a ~~writing~~ written or electronic transmission to that effect by the shareholder received by the corporation prior to the call of the special meeting."

SECTION 9.

Said chapter is further amended by adding a new subsection to Code Section 14-2-704, relating to action taken without a shareholders´ meeting, to read as follows:

"(h) An electronic transmission which is transmitted by a shareholder that evidences a shareholder´s consent, requests or demands an action to be taken by the corporation, or provides notice to the corporation under this chapter shall be deemed to be written, signed, and dated for the purposes of this chapter, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (1) that the electronic transmission was transmitted by the shareholder and (2) the date on which such shareholder transmitted such electronic transmission.

The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent, request, demand, or notice was signed."

SECTION 10.

Said chapter is further amended by adding a new subsection to Code Section 14-2-705, relating to notice of annual and special shareholders´ meetings, to read as follows:

"(f) Notwithstanding the provisions of this Code section, a corporation need not provide any notice required by this Code section to a shareholder to whom:

(1) Notices of two consecutive annual meetings; or

(2) All and at least two payments of dividends or interest on securities or dividend reinvestment confirmations during a 12 month period

have been mailed addressed to the shareholder´s address shown in the corporation´s current record of shareholders and have been returned as undeliverable. Any action or meeting which shall be taken or held without notice to any such shareholder shall have the same force and effect as if such notice had been duly given. If any such shareholder shall deliver to the corporation written notice setting forth such shareholder´s then current address, the requirement that notice be given to such shareholder shall be reinstated. If the action taken by the corporation requires the filing of a document under any other provision of this chapter, the document need not state that notice was not given to shareholders to whom notice was not required to be given pursuant to this subsection."

SECTION 11.

Said chapter is further amended by striking subsection (a) of Code Section 14-2-706, relating to waiver of notice by a shareholder, and inserting in lieu thereof the following:

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

SECTION 12.

Said chapter is further amended by striking subsections (a) and (b) of Code Section 14-2-720, relating to the list of shareholders who are entitled to notice of shareholders´ meetings, and inserting in lieu thereof the following:

"(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders´ meeting. The list must be arranged by voting group (and within each voting group by class

or series of shares~~)~~ and show the address of and number of shares held by each shareholder. Nothing contained in this Code section shall require the corporation to include e-mail addresses or other information for delivery of electronic transmissions on such list.

(b) The shareholders´ list must be available for inspection by any shareholder, his or her agent, ~~his~~ or his or her attorney ~~at the time and place of the meeting~~:

(1) On a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting upon request; or

(2) During ordinary business hours at the principal place of business of the corporation.

In the event that the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders of the corporation. If the meeting is to be held in person, then the list shall be produced and kept at the time and place of the meeting during the duration of the meeting and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the duration of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.″

SECTION 13.

Said chapter is further amended by striking subsection (a) of Code Section 14-2-807, relating to resignation of directors, and inserting in lieu thereof the following:

″(a) A director may resign at any time by delivering ~~written~~ notice in writing or by electronic transmission to the board of directors, its chairman, or to the corporation.″

SECTION 14.

Said chapter is further amended by striking Code Section 14-2-821, relating to board of directors´ action without a board of directors´ meeting, and inserting in lieu thereof the following:

″14-2-821.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors´ meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more ~~written~~ consents in writing or by electronic transmission describing the action taken, signed by each director, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

SECTION 15.

Said chapter is further amended by striking subsection (a) of Code Section 14-2-823, relating to waiver of notice of a meeting of the board of directors, and inserting in lieu thereof the following:

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

SECTION 16.

Said chapter is further amended by striking subsection (a) of Code Section 14-2-843, relating to resignation and removal of officers of 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 ~~later~~ future effective date. A copy of the notice of resignation as delivered to the corporation may be filed with the Secretary of State."

SECTION 17.

Said chapter is further amended by striking in its entirety Code Section 14-2-1003, relating to amendments by board of directors and shareholders to the articles of incorporation, and inserting in lieu thereof the following:

"14-2-1003.

(a) A corporation´s board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors must recommend the amendment to the shareholders unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the shareholders with the amendment; and

(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e) of this Code section.

(c) The board of directors may condition its submission of the proposed amendment, the effectiveness of the proposed amendment, or both on any basis.

(d) The corporation shall notify each shareholder entitled to vote of the proposed shareholders´ meeting in accordance with Code Section 14-2-705. The notice of meeting

must also state that the purpose~~,~~ or one of the purposes~~,~~ of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors ~~(~~acting pursuant to subsection (c) of this Code section~~)~~ require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by a majority of the votes entitled to be cast on the amendment by each voting group entitled to vote on the amendment.

(f) At any time prior to the time the amendment becomes effective, notwithstanding authorization of the proposed amendment by the shareholders of the corporation, the board of directors may abandon such proposed amendment without further shareholder action. If the amendment is abandoned after articles of amendment have been filed with the Secretary of State but before the amendment has become effective, a statement that the amendment has been abandoned in accordance with this Code section executed on behalf of the corporation shall be delivered to the Secretary of State for filing prior to the effectiveness of the amendment. Upon filing, the statement shall take effect and the amendment shall be deemed abandoned and shall not become effective.″

SECTION 18.

Said chapter is further amended by striking subsections (c) and (i) of Code Section 14-2-1103, relating to action on plan of merger or share exchange, and inserting in their place new subsections (c) and (i) and by adding a new subsection (j) to read as follows:

″(c) The board of directors may condition its submission of the proposed merger or share exchange, the effectiveness of the proposed merger or share exchange, or both on any basis.″

″(i) ~~After~~ Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation that is a party to a merger or share exchange is organized or by which it is governed, a merger or share exchange is authorized, and at any time before articles of merger or a certificate of merger or share exchange ~~is filed, the planned~~ becomes effective, the plan of merger or share exchange may be abandoned ~~(~~subject to any contractual rights~~)~~ without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors and otherwise in accordance with subsection (j) of this Code section.

(j) If a merger or share exchange is abandoned as permitted by subsection (i) of this Code section after articles or a certificate of merger or share exchange has been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this

Code section executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative shall be delivered to the Secretary of State for filing prior to the effectiveness of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.″

SECTION 19.

Said chapter is further amended by striking subsection (c) of Code Section 14-2-1202, relating to sale of assets requiring shareholder approval, and inserting in lieu thereof the following:

″(c) The board of directors may condition its submission of the proposed transaction, the effectiveness of the proposed transaction, or both on any basis.″

SECTION 20.

Said chapter is further amended by striking paragraphs (5) and (6) of subsection (a) of Code Section 14-2-1602, relating to inspection of records by shareholders, and inserting in lieu thereof the following:

″(5) The minutes of all shareholders´ meetings, executed waivers of notice of meetings, and executed ~~written~~ consents, delivered in writing or by electronic transmission, evidencing all action taken by shareholders without a meeting, for the past three years;

(6) All ~~written~~ communications in writing or by electronic transmission to shareholders generally within the past three years, including the financial statements furnished for the past three years under Code Section 14-2-1620;″.

SECTION 21.

Said chapter is further amended by striking in its entirety subsection (a) of Code Section 14-2-1620, relating to financial statements for shareholders, and inserting in lieu thereof the following:

″(a) Not later than four months after the close of each fiscal year and in any case prior to the annual meeting of shareholders, each corporation shall prepare (1) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year~~,~~ and (2) a profit and loss statement showing the results of its operation during its fiscal year. Upon ~~written~~ request in writing or by electronic transmission, the corporation promptly shall mail to any shareholder of record a copy of the most recent balance sheet and profit and loss statement. If prepared for other purposes, the corporation shall also furnish upon ~~written~~ request in writing or by electronic transmission a statement of sources and applications of funds and a statement of changes in shareholders´ equity for

the fiscal year. If financial statements are prepared by the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared~~,~~ and disclose that they are prepared~~,~~ on that basis. If financial statements are prepared otherwise than on the basis of generally accepted accounting principles, they must so disclose and must be prepared on the same basis as other reports or statements prepared by the corporation for the use of others."

SECTION 22.

Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to nonprofit corporations, is amended by striking in its entirety Part 4 of Article 1, relating to definitions 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 suitable for the retention, retrieval, and reproduction of information by the recipient~~ transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile transmissions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(29)~~(31) 'Superior court' means the superior court of the county in which the corporation´s registered office is located; or, if the corporation has no registered office,

the county in which the corporation´s principal office is located; or, if the corporation has neither a registered office nor a principal office, then the Superior Court of Fulton County.

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

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

14-3-141.

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

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

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

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

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

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

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

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

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

(g) In calculating time periods for notice under this chapter, when a period of time measured in days, weeks, months, years, or other measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

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

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

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

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

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

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

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

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

(i) An affidavit, certificate, or other written confirmation of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been

given under this Code section shall, in the absence of fraud, be prima-facie evidence of the facts stated therein.

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

(k) Unless the registered agent of the corporation shall provide written consent to the corporation to the receipt of a member´s consent, request, demand, or notice by electronic transmission under this chapter, delivery made to a corporation´s registered office shall be made by hand or by certified or registered mail or statutory overnight delivery, return receipt requested.

(l) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this Code section or other provisions of this chapter, those requirements govern.″

SECTION 23.

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

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

SECTION 24.

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

″14-3-202.1.

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

'NOTICE OF ~~INTENT TO INCORPORATE~~ INCORPORATION

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

SECTION 25.

Said chapter is further amended by striking subsection (b) of Code Section 14-3-205, relating to organizational meetings relative to nonprofit corporations, and inserting in lieu thereof the following:

"(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more ~~written~~ consents in writing or by electronic transmission describing the action taken and signed by each incorporator."

SECTION 26.

Said chapter is further amended by striking subsection (b) of Code Section 14-3-304, relating to ultra vires purposes and powers relative to nonprofit corporations, and inserting in lieu thereof the following:

"(b) A corporation´s power to act may be challenged:

(1) In a proceeding by a member against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under Code Section ~~14-2-1430~~ 14-3-1430."

SECTION 27.

Said chapter is further amended by striking subsections (a) and (b) of Code Section 14-3-305, relating to a nonprofit defined, rights, reporting practices, and the director´s role, and inserting in lieu thereof the following:

"(a) As used in this Code section, the term 'nonprofit' means any ~~nonprofit~~ corporation ~~organized under or subject to this chapter~~ which is formed, created, or operated by or on behalf of a hospital authority.

(b) Nonprofits shall have all of the rights, powers, benefits, and purposes granted to other ~~nonprofit~~ corporations under this chapter and shall not be subject to any restrictions contained in Article 4 of Chapter 7 of Title 31, the 'Hospital Authorities Law,' except as provided in subsections (c) and (d) of this Code section."

SECTION 28.

Said chapter is further amended by striking subsection (b) of Code Section 14-3-510, relating to venue, residency, and principal office requirements, and inserting in lieu thereof the following:

"(b) ~~For the purpose of determining venue, each~~ Each domestic corporation and each foreign corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue as follows:

(1) ~~For purposes of~~ In civil proceedings generally, in the county of this state where the corporation maintains its registered office ~~is maintained~~, or if the corporation fails to maintain a registered office, it shall be deemed to reside in the county ~~in this state~~ where its last named registered office or principal office, as shown by the records of the Secretary of State, was maintained;

(2) ~~For purposes of proceedings~~ In actions based on contracts, in that county in ~~which~~ this state where the contract ~~sought~~ to be enforced was made or is to be performed, if ~~it~~ the corporation has an office and transacts business in that county~~, and may be sued~~;

(3) ~~For purposes of proceedings~~ In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated, if the corporation has an office and transacts business in that county; ~~and~~

(4) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated. If venue is based solely on this paragraph, the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business. A notice of removal shall be filed within 45 days of service of the summons. Upon motion by the plaintiff filed within 45 days of the removal, the court to which the case is removed may remand the case to the original court if it finds that removal is improper under the provisions of this paragraph. Upon the defendant´s filing of a notice of removal, the 45 day time period for filing such notice shall be tolled until the remand, the entry of an order by the court determining that the removal is valid, or the expiration of the time period for the plaintiff to file a motion challenging the removal, whichever occurs first; and

(5) In ~~For purposes of~~ garnishment proceedings, in the county of this state in which is located the corporate office or place of business where the employee who is the defendant in the main action is employed."

SECTION 29.

Said chapter is further amended by striking in its entirety Code Section 14-3-610, relating to voting rights relative to members of nonprofit corporations, and inserting in lieu thereof the following:

"14-3-610.

Members as defined in paragraph ~~(20)~~ (22) of Code Section 14-3-140 shall have no voting rights, other than to elect directors, except as specifically provided in the articles or bylaws. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. Except for the rights specified in Code ~~Section 14-3-630~~ Sections 14-3-740 through 14-3-747, members of any corporation existing on July 1, 1991, shall be limited to having the same voting and other rights as before such date, until changed by amendment of its articles of incorporation or bylaws."

SECTION 30.

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

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

SECTION 31.

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

"14-3-702.

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

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

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

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

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

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

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

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

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

SECTION 32.

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

″14-3-704.

(a) Unless limited or prohibited by the articles or bylaws, or unless this chapter requires a greater number of affirmative votes, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least a majority of the voting power. The action must be evidenced by one or more ~~written~~ consents in writing or by electronic transmission describing the action taken, signed by those members representing at least a majority of the

voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

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

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

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

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

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

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

SECTION 33.

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

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

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

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

SECTION 34.

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

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

SECTION 35.

Said chapter is further amended by striking in its entirety Code Section 14-3-708, relating to action taken without a meeting of the members of a nonprofit corporation, and inserting in lieu thereof the following:

"14-3-708.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ~~written~~ ballot in writing or by electronic transmission to every member entitled to vote on the matter.

(b) A ~~written~~ ballot in writing or by electronic transmission shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by ~~written~~ ballot in writing or by electronic transmission pursuant to this Code section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ~~written~~ ballot in writing or by electronic transmission shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a ~~written~~ ballot in writing or by electronic transmission may not be revoked."

SECTION 36.

Said chapter is further amended by striking subsections (a) through (c) of Code Section 14-3-720, relating to membership lists of nonprofit corporations, and inserting in lieu thereof the following:

"(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of and number of votes each member is entitled to vote at the meeting. Nothing contained in this Code section shall require the corporation to include e-mail addresses or other information for delivery of electronic transmissions on such list.

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

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

SECTION 37.

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

"14-3-724.

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

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

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

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

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

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

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

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

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

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

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

SECTION 38.

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

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

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

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

SECTION 39.

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

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

SECTION 40.

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

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

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

SECTION 41.

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

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

SECTION 42.

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 43.

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 44.

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 45.

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

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

SECTION 46.

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

"(c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with Code Section 14-3-705. The notice must also state

that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy ~~or summary~~ of the restatement that identifies any amendments or other change it would make in the articles or contain or be accompanied by a full and complete summary of any such amendment or other change.

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

(e) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, including or accompanied by ~~together with~~ a certificate setting forth the following information:

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

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

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

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

SECTION 47.

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

"14-3-1101.

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

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

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

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

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

~~(5) 'Joint-stock association' includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust, or enterprise having members or having outstanding shares of stock or other evidences of financial and beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but does not include a corporation, partnership, or nonprofit organization. A joint-stock association as defined in this paragraph may be one formed under the laws of this state, including a trust created pursuant to Article 3 of Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or jurisdiction.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 48.

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

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

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

(2)(A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets ~~(including~~ including good ~~will)~~ will of the corporation or the fair market value of the corporation if it were to be operated as a business concern are transferred or conveyed to one or

more persons who would have received its assets under subsection (b) of Code Section 14-3-1403 had it dissolved;

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

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

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

SECTION 49.

Said chapter is further amended by striking subsections (a) and (e) of Code Section 14-3-1103, relating to approval of plan of merger by members or directors and abandonment of the plan, and inserting in lieu thereof the following:

"(a) Unless this chapter, the articles, the bylaws, or the board of directors or members ~~(acting~~ acting pursuant to subsection (c) of this Code ~~section)~~ section require a greater vote or voting by class, a plan of merger to be ~~adopted~~ authorized must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by Code Section 14-3-1030 for an amendment to the articles or bylaws."

"(e) If the board seeks to have the plan approved by the members by ~~written~~ consent or ~~written~~ ballot in writing or electronic transmission, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect."

SECTION 50.

Said chapter is further amended by striking in its entirety Code Section 14-3-1104, relating to articles of merger and publication of notice of merger, and inserting in lieu thereof the following:

″14-3-1104.

(a) After a plan of merger is approved by the board of directors, and, if required by Code Section 14-3-1103, by the members and any other persons, the surviving ~~or acquiring~~ corporation or entity shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The plan of merger;

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

(3) If approval by members was required:

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

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

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

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

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

~~'NOTICE OF MERGER~~

~~Notice is given that articles or a certificate of merger by and between _____ (name and state of incorporation or organization of each of the constituent corporations or entities) will be delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The name of the surviving corporation (or other entity) in the merger will be _____, a corporation (or other entity) incorporated (organized pursuant to the laws of) in the State of _____. The registered office of such corporation (name of type of entity) (is) (will be) located at~~

~~_____ (address of registered office) and its registered (agent) (agents) at such address (is) (are) _____ (name or names of agent or agents).'~~

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

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

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

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

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

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

(6) If approval by members was required:

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

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

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

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

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

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

SECTION 51.

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

"14-3-1104.1.

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

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

'NOTICE OF MERGER

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

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

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

SECTION 52.

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

″14-3-1105.

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

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

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

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

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

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

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

14-3-1106.

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

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

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

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

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

14-3-1107.

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

SECTION 53.

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

″14-3-1108.

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

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

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

(3) 'Joint-stock association' includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust, or enterprise having members or having outstanding shares of stock or other evidences of financial and beneficial interest therein, whether formed by agreement or under

statutory authority or otherwise, but does not include a corporation, partnership, limited liability partnership, limited liability company, or nonprofit organization. A joint-stock association as defined in this paragraph may be one formed under the laws of this state, including a trust created pursuant to Article 3 of Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or jurisdiction.

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

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

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

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

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

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

(d) The plan of merger:

(1) Must set forth:

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

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

(C) The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into

shares, obligations, or other securities of the surviving or any other corporation or entity or into cash or other property in whole or in part; and

(2) May set forth:

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

(B) Other provisions relating to the merger.

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

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

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

SECTION 54.

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

″14-3-1302.

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

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

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

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

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

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

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

SECTION 55.

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

"14-3-1401.

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

(1) The name of the corporation;

(2) The date of its incorporation;

(3) That:

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

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

(C) The corporation has no net assets.

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

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

SECTION 56.

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

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

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

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

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

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

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

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

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

SECTION 57.

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

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

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

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

SECTION 58.

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

″14-3-1409.1.

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

corporation in its corporate name. The members, directors, and officers shall have the power to take such corporation or other action as shall be appropriate to protect such remedy, right, or claim."

SECTION 59.

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

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

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

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

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

SECTION 60.

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

"14-3-1509.

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

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

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

SECTION 61.

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 62.

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 63.

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 64.

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 65.

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 66.

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 67.

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 68.

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;

(2) Code Section 14-3-126, relating to appeal from Secretary of State´s refusal to file document;

(3) Code Section 14-3-401, relating to corporate name;

(4) Code Section 14-3-503, relating to resignation of registered agent;

(5) Code Section 14-3-601, relating to criteria for membership;

(6) Code Section 14-3-823, relating to waiver of notice;

(7) Code Section 14-3-842, relating to standards of conduct for officers;

(8) Code Section 14-3-862, relating to directors´ action after disclosure of conflict or abstention by interested director;

(9) Code Section 14-3-1506, relating to corporate name of foreign corporation;

(10) Code Section 14-3-1508, relating to change of registered office or registered agent of foreign corporation; and

(11) Code Section 14-3-1531, relating to procedure for and effect of revocation.

SECTION 69.

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

"14-5-40.

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

SECTION 70.

Code Section 7-1-712 of the Official Code of Georgia Annotated, relating to applicability of Article 15 of Chapter 2 of Title 14, is amended by striking said Code section and inserting in lieu thereof the following:

"7-1-712.

Notwithstanding the definition of the term 'foreign corporation' appearing in paragraph ~~(10)~~ (13) of Code Section 14-2-140, all of the provisions of Article 15 of Chapter 2 of Title 14, relating to foreign corporations, shall apply to all international bank agencies doing business in this state, except that references therein to the Secretary of State should be construed as references to the department."

SECTION 71.

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