CHAPTER 10

Amendment of Articles of Incorporation and Bylaws

ARTICLE 1

Amendment of Articles of Incorporation

**SECTION 33‑10‑101.** Authority to amend.

 (a) A corporation may amend its articles of incorporation to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

 (b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

HISTORY: Derived from 1976 Code Section 33‑15‑10 [1962 Code Section 12‑19.1; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1851, 1892; R. S. 1499; 1886 (19) 846; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑102.** Amendment by board of directors.

 Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt one or more amendments to the corporation’s articles of incorporation without shareholder action to:

 (1) delete the names and addresses of the initial directors;

 (2) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

 (3) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

 (4) change the corporate name by substituting the word “corporation”, “incorporated”, “company”, “limited”, or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.” for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

 (5) make any other change expressly permitted by Chapters 1 thru 20 of this title to be made without shareholder action.

HISTORY: Derived from 1976 Code Section 33‑15‑30 [1962 Code Section 12‑19.3; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; repealed by implication by 1981 Act No. 146 Section 2; Repealed, 1988 Act No. 444 Section 2], and Section 33‑15‑80 [1962 Code Section 12‑19.8; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444 Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑103.** Amendment by board of directors and shareholders.

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

 (b) For an amendment proposed by the board of directors to be adopted:

 (1) the board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the amendment; and

 (2) the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (f).

 (c) The board of directors may condition on any basis its submission of an amendment that it proposes.

 (d) In the case of a corporation which is not a public corporation, if the holders of at least ten percent of any class of voting shares of the corporation propose amendments to the articles of incorporation, the board of directors shall submit the proposed amendments to the shareholders at the next possible special or annual meeting.

 (e) The corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders’ meeting in accordance with Section 33‑7‑105. The notice of meeting must state also 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.

 (f) Unless Chapters 1 thru 20 of this title or the articles of incorporation require a different vote or the board of directors (acting pursuant to subsection (c)) requires a greater vote than that specified by this subsection or the articles of incorporation, to be adopted the amendment must be approved by: (1) two‑thirds of the votes entitled to be cast on the amendment, regardless of the class or voting group to which the shares belong, and (2) two‑thirds of the votes entitled to be cast on the amendment within each voting group entitled to vote as a separate voting group on the amendment.

 (g) The articles of incorporation may require a lower or higher vote for approval than that specified in subsection (f), but the required vote must be at least (1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters’ rights, and (2) the votes required by Sections 33‑7‑250 and 33‑7‑260 by every other voting group entitled to vote on the amendment.

HISTORY: Derived from 1976 Code Section 33‑15‑40 [1962 Code Section 12‑19.4; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1998 Act No. 328, Section 5.

**SECTION 33‑10‑104.** Voting on amendments by voting groups.

 (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by Chapters 1 thru 20 of this title) on a proposed amendment if the amendment would:

 (1) increase or decrease the aggregate number of authorized shares of the class;

 (2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

 (3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

 (4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

 (5) change the shares of all or part of the class into a different number of shares of the same class;

 (6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

 (7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

 (8) limit or deny an existing preemptive right of all or part of the shares of the class; or

 (9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

 (b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

 (c) If a proposed amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

 (d) Shares are entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

HISTORY: Derived from 1976 Code Section 33‑15‑50 [1962 Code Section 12‑19.5; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑105.** Amendment before issuance of shares.

 (a) If a corporation has not yet issued shares, its board of directors or, if directors have not been named, its incorporators may adopt amendments to the corporation’s articles of incorporation by a unanimous vote.

 (b) If any amendment permitted by subsection (a) effects a material change in the articles of incorporation, subscribers not assenting to the amendment may rescind their subscriptions without liability, notwithstanding any contrary provision of the subscription agreement or Chapters 1 thru 20 of this title.

HISTORY: Derived from 1976 Code Section 33‑15‑20 [1962 Code Section 12‑19.2; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑106.** Articles of amendment.

 A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

 (1) the name of the corporation;

 (2) the text of each amendment adopted;

 (3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

 (4) the date of each amendment’s adoption;

 (5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;

 (6) if an amendment was approved by the shareholders:

 (i) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting;

 (ii) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

HISTORY: Derived from 1976 Code Section 33‑15‑60 [1962 Code Section 12‑19.6; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑107.** Restated articles of incorporation.

 (a) A corporation’s board of directors may restate its articles of incorporation with or without shareholder action.

 (b) The restatement may include amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in Section 33‑10‑103.

 (c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice must state also 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 of the restatement that identifies any amendment or other change it would make in the articles.

 (d) 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, if it has been changed, all of its former names), the date of filing of its original articles, and the text of the restated articles of incorporation together with a certificate setting forth:

 (1) whether the restatement contains an amendment to the articles requiring shareholder approval 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 shareholder approval, the information required by Section 33‑10‑106.

 (e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

 (f) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

HISTORY: Derived from 1976 Code Section 33‑15‑80 [1962 Code Section 12‑19.8; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑108.** Amendment pursuant to reorganization.

 (a) A corporation’s articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by Section 33‑2‑102.

 (b) The individual designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

 (1) the name of the corporation;

 (2) the text of each amendment approved by the court;

 (3) the date of the court’s order or decree approving the articles of amendment;

 (4) the title of the reorganization proceeding in which the order or decree was entered; and

 (5) a statement that the court had jurisdiction of the proceeding under federal statute.

 (c) Shareholders of a corporation undergoing reorganization do not have dissenters’ rights except as and to the extent provided in the reorganization plan.

 (d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

HISTORY: Derived from 1976 Code Section 33‑15‑90 [1962 Code Section 12‑19.9; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑109.** Effect of amendment.

 An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation’s name does not abate a proceeding brought by or against the corporation in its former name.

HISTORY: Derived from 1976 Code Section 33‑15‑70 [1962 Code Section 12‑19.7; 1952 Code Sections 12‑401 to 12‑404; 1942 Code Sections 7676, 7736, 7741, 7744; 1932 Code Sections 7676, 7736, 7741, 7744; Civ. C. ‘22 Sections 4250, 4310, 4315, 4318; Civ. C. ‘12 Sections 2846, 2849, 2873; Civ. C. ‘02 Sections 1842, 1889, 1892; R. S. 1499; 1886 (19) 546; 1896 (22) 97; 1898 (22) 769, 771; 1901 (23) 710; 1917 (30) 36; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑110.** Conversion to nonprofit public benefit corporation.

 (A) A corporation formed under this chapter may, by amendment of its articles pursuant to this section, convert to a nonprofit public benefit corporation as defined in Section 33‑31‑140 or to a nonprofit mutual benefit corporation as defined in Section 33‑31‑140. Upon conversion, the corporation is considered to have previously filed articles of incorporation under Section 33‑31‑202 upon the date of its incorporation under this chapter and to have filed articles of amendment pursuant to Section 33‑10‑106.

 (B) The amendment of the articles to convert to a nonprofit corporation shall:

 (1) revise the statement of purpose for which the corporation is organized;

 (2) set forth one of the statements provided for in Section 33‑31‑202(a)(2);

 (3) set forth the address, including zip code, of the proposed principal office for the corporation which may be either within or outside this State;

 (4) delete the authorization for shares and any other provisions relating to authorized or issued shares;

 (5) state whether or not the corporation will have members;

 (6) set forth provisions not inconsistent with law regarding the distribution of assets on dissolution;

 (7) make other changes as necessary or desired pursuant to Section 33‑31‑202; and

 (8) if any shares have been issued, provide either for the cancellation of those shares or for the conversion of those shares to memberships of the nonprofit corporation.

 (C) If shares have been issued, an amendment to convert to a nonprofit corporation must be approved by all of the outstanding shares of all classes regardless of limitations or restrictions on the voting rights of the shares.

 (D) Upon conversion, the corporation’s bylaws must be amended to comply with the provisions of Chapter 31 of this title, the South Carolina Nonprofit Corporation Act of 1994, and any successor act.

HISTORY: 2004 Act No. 221, Section 41.

ARTICLE 2

Amendment of Bylaws

**SECTION 33‑10‑200.** Amendment by board of directors or shareholders.

 (a) A corporation’s board of directors may amend or repeal the corporation’s bylaws unless:

 (1) the articles of incorporation or Chapters 1 thru 20 of this title reserves this power exclusively to the shareholders in whole or part; or

 (2) the shareholders in adopting, amending, or repealing a particular bylaw provide expressly that the board of directors may not adopt, amend, or repeal that bylaw or any bylaw on that subject.

 (b) A corporation’s shareholders may amend or repeal the corporation’s bylaws even though the bylaws also may be amended or repealed by its board of directors.

 (c) Any notice of a meeting of shareholders at which bylaws are to be adopted, amended, or repealed shall state that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment, or repeal of bylaws and contain or be accompanied by a copy or summary of the proposal.

HISTORY: Derived from 1976 Code Section 33‑11‑10 [1962 Code Section 12‑16.1; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑10‑210.** Bylaw increasing quorum or voting requirement for shareholders.

 (a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by Chapters 1 thru 20 of this title. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

 (b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

HISTORY: 1988 Act No. 444, Section 2.

**SECTION 33‑10‑220.** Bylaw increasing quorum or voting requirement for directors.

 (a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

 (1) if originally adopted by the shareholders, only by the shareholders;

 (2) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

 (b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

 (c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

HISTORY: 1988 Act No. 444, Section 2.