

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 107

(By Mr. Moreland and Mr. Poffenbarger)

PASSED March 9 1974

In Effect July 1, 1975 ~~Passage~~



FILED IN THE OFFICE  
EDGAR F. HEISKELL III  
SECRETARY OF STATE

THIS DATE 3-27-74

107

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### **Senate Bill No. 107**

(By Mr. MORELAND AND Mr. POFFENBARGER)

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[Passed March 9, 1974; in effect July 1, 1975.]

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AN ACT to amend and reenact article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seventy-seven through ninety, inclusive, article twelve, chapter eleven of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to corporations generally, including business and nonprofit corporations; providing a short title and provisions relating to rules of construction, application and severability; defining terms; relating to the purposes for which corporations may be organized and the general powers of any such corporations; prohibiting corporate existence to churches and religious denominations; permitting the indemnification of corporate officers, directors, employees and agents in certain cases; limiting the defense of ultra vires; establishing requirements with respect to corporate names, including prohibition as to the use of certain names and words with respect thereto, and procedures for reserving and registering corporate names with the office of the secretary of state; designating the secretary of state as the attorney in fact for all business and nonprofit corporations; setting forth the procedures for the service of notice and process upon the secretary of state and the acceptance of such service by him and defining acts which constitute the conducting of affairs or the doing or transacting of business for the purpose of service of notice or process; relating to the venue of ac-

tions involving certain foreign corporations; adoption of corporate bylaws and amendments thereto; the meetings of shareholders or members and the notices required therefor; procedures for the closing of transfer books for the purpose of establishing voting rights; establishing the rules for a quorum and majority with respect to shareholders' or members' meetings; permitting cumulative voting by shareholders or members and voting by proxy or voting trusts; establishing boards of directors and their powers; providing for the number and election of directors, their classification and removal; relating to the manner of filling vacancies; the right of a director to transact business with corporations of which he is a director and requiring disclosures in such cases; permitting boards of directors to conduct their affairs through committees; providing for meetings of board of directors; relating to the number of persons required as incorporators; articles of incorporation, the contents thereof, filing with the secretary of state and other requirements with respect thereto; issuance of certificate of incorporation, the recordation thereof and the effect of such issuance; organizational meetings of corporations and the notice required to be given of such meetings and the waiver thereof; the right to amend articles of incorporation and the procedures relating thereto; the contents required to be included in articles of amendment and the filing, recordation and admission in evidence of such amendments and the effect thereof; restated articles of incorporation, the procedures, contents and filing thereof, the issuance of certificate of a restated certificate of incorporation and the recordation and admission in evidence thereof; procedures with respect to the merger or consolidation of corporations and the requirements for the approval thereof; articles of merger or consolidation and the contents and filing thereof, the issuance of certificates of merger or consolidation and the recordation and admission in evidence thereof; establishing special provisions relating to the merger of subsidiary business corporations; relating to the effect of mergers or consolidations and requirements for the conveyance of title to real estate in such cases; the merger or consolidation of domestic and foreign corporations and the effect

thereof; procedures with respect to the voluntary dissolution of corporations and the revocation or abandonment thereof; the issuance of articles of dissolution by the secretary of state and the recordation thereof; procedures and methods for the distribution of assets in cases of dissolution; the rights of certain shareholders in cases of dissolution; the survival of certain corporate powers following dissolution; the jurisdiction and power of courts to liquidate corporations and the procedures relating thereto; providing for the appointment and qualification of receivers and the filing of claims in liquidation proceedings; providing for the deposit of corporate assets in the state treasury in certain cases following liquidation; relating to the admission and qualification of foreign corporations to transact business in this state and provisions with respect to the powers of such foreign corporations; application for certificate of authority to transact business by foreign corporations and its contents; issuance of certificates of authority in such cases, the recordation of such certificates and the effect thereof; procedures for change of location of principal office of certain corporations; procedures with respect to amendments of articles of incorporation of foreign corporation and the filing of such amendments in the office of the secretary of state; procedures required when one or more foreign corporations merge when such corporations are authorized to transact business in this state, amended certificates of authority in such cases and their recordation; procedures for the withdrawal of foreign corporations and the publication of notice and other requirements relating to such withdrawal; requiring a certificate of payment of certain taxes as a prerequisite for corporate dissolution, withdrawal, consolidation, merger or expiration; relating to grounds for which the secretary of state may revoke the certificate of authority of foreign corporations to transact business in this state, the issuance of orders in connection therewith and appeals in such cases; conditions for expiration of corporate existence; inability of foreign corporations to maintain actions or proceedings until qualified; the liability of foreign corporations doing business without authority for certain taxes and fees; the powers and duties

of the secretary of state with respect to corporations generally and authority of the secretary of state to promulgate rules and regulations with respect thereto; providing for appeal from ruling or decision of the secretary of state and courts to which appeals lie; requiring that certificates and certified copies of documents issued by secretary of state be admitted in evidence; relating to the weight to be given such evidence; requiring certain forms to be furnished by secretary of state; permitting greater voter requirements than are required by law; authorizing the waiver of notice by shareholders, members or directors of corporations in certain cases and setting forth the procedures to follow in such cases; permitting a certain action by corporate members or directors without a meeting and prescribing procedures therefor; requiring corporate acknowledgment or other acknowledgment on forms filed with secretary of state and in other instances; prescribing penalties for failure to record certain documents issued by the secretary of state in the office of the appropriate clerk of the county court; exempting intangible property of corporations not doing business in this state from taxation; relating to the authorization and issuance of shares by business corporations and permitting such shares to be issued in differing classes and preference; the right of business corporations to acquire and dispose of their own shares; the rights of the board of directors of any corporation to divide its shares into classes and series and the procedures to be followed with respect thereto prior to issuance of such shares; the subscription, consideration and payment for corporate shares; establishing certain stock rights and options for the purchase of business corporation stock; establishing the manner of determining the amount of stated capital of a business corporation; establishing the requirements for issuance of stock certificates and issuance of fractional shares; relating to the extent of liability of subscribers and shareholders; shareholders' preemptive rights; establishing procedures for the payment of dividends and distribution of capital surplus; permitting corporations to lend money to their employees and directors in certain instances; providing for the liability of directors in certain cases of improper

payment of dividends, purchase of corporate shares or distribution of corporate assets; establishing the rights of shareholders to institute actions against a corporation in certain instances; relating to corporate officers, their authority and the removal of such officers; the requirement of corporations to keep books and records of account and minutes of their proceedings and the rights of shareholders and members to examine such books, records and minutes; providing for certain penalties against any officer or agent who refuses to permit such examination; relating to the power of courts to compel production of such books, records and minutes for examination; redemption, purchase and cancellation of redeemable and other reacquired shares of business corporations and procedures and restrictions relating thereto; establishing procedures relating to the reduction of stated capital by business corporations and provisions relating to surplus and reserves in such cases; relating to the sale or encumbrance of corporate assets; the right of shareholders or members of a corporation to dissent from corporate action in certain cases, the rights of such shareholders and members with respect thereto, procedures for determining the value of such dissenting shareholders' or members' interests and the payment therefor by the corporation; requiring certain annual reports to be filed by domestic and foreign nonprofit corporations and extending authority to the secretary of state to dissolve or revoke the authority of such corporations for failure to file such reports; providing for certain fees to be charged by the secretary of state with respect to acts performed; transferring the powers, duties and authority of the state auditor with respect to the collection and assessment of the annual corporate license tax to the state tax commissioner; transferring the powers, duties and authority of the state auditor to serve as attorney in fact for all foreign and domestic corporations to the secretary of state; and providing criminal offenses and penalties.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; that sections seventy-seven through ninety, inclusive, article twelve, chapter eleven of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

## CHAPTER 31. CORPORATIONS

### ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

#### PART I—SHORT TITLE, CONSTRUCTION AND APPLICATION OF ARTICLE, EFFECT OF REPEAL, AND SEVERABILITY.

##### §31-1-1. Short title.

1 This article shall be known and may be cited as the  
2 "West Virginia Corporation Act."

##### §31-1-2. Construction of article.

1 (a) The provisions of Part II of this article shall have  
2 general application to all corporations. The provisions of  
3 Part III of this article shall relate solely to business cor-  
4 porations. The provisions of Part IV of this article shall  
5 relate solely to nonprofit corporations. In the event of  
6 any inconsistency between any of the provisions of Part II  
7 of this article and the provisions of either Part III or  
8 Part IV of this article, the provisions contained in either  
9 Part III or Part IV shall prevail to the extent of such in-  
10 consistency.

11 (b) In the event of any inconsistency between any of  
12 the provisions of this article and the provisions made for  
13 particular classes of corporations by either the subsequent  
14 articles of this chapter or the provisions of chapter thirty-  
15 one-a or chapter thirty-three of this code, the provisions  
16 contained in such subsequent articles of this chapter or  
17 in chapter thirty-one-a or chapter thirty-three of this code  
18 shall prevail to the extent of such inconsistency.

##### §31-1-3. Application of article; application to foreign and interstate commerce.

1 Except as may be otherwise provided by the provisions  
2 of this article, this article shall become and be oper-  
3 ative as of the effective date hereof, and the provi-

4 sions thereof shall apply to and govern all corporations  
5 then existing or thereafter formed, and all corporate  
6 acts thereafter done: *Provided*, That nothing contained  
7 in this article shall be construed to affect the existence  
8 of any then existing corporation or to impair the  
9 validity of any corporate act done and performed in  
10 accordance with the preexisting law. In the event of  
11 any inconsistency between any of the provisions of this  
12 article and the rights conferred by any special act of  
13 the Legislature of the state of Virginia before the forma-  
14 tion of the state of West Virginia, or the Legislature of the  
15 state of West Virginia subsequent to such date, the pro-  
16 visions of such special act shall prevail to the extent of  
17 such inconsistency.

18 The provisions of this article shall apply to commerce  
19 with foreign nations and among the several states only in-  
20 sofar as the same may be permitted under the provisions  
21 of the constitution of the United States.

**§31-1-4. Effect of repeal of prior acts.**

1 The repeal of any prior act by the adoption of this  
2 article shall not affect any right accrued or established,  
3 or any liability or penalty incurred, under the provisions  
4 of such act, prior to the repeal thereof.

**§31-1-5. Severability.**

1 If any section, subsection, subdivision, subparagraph,  
2 sentence or clause of this article is adjudged to be un-  
3 constitutional or invalid, such invalidation shall not affect  
4 the validity of the remaining portions of this article, and,  
5 to this end, the provisions of this article are hereby de-  
6 clared to be severable.

**PART II—CORPORATIONS GENERALLY.**

**§31-1-6. Definitions.**

1 As used in this article, unless the context otherwise  
2 requires a different meaning, the term:

3 (a) "Articles of incorporation" means the original or  
4 restated articles of incorporation or articles of consolida-  
5 tion and all amendments thereto including articles of  
6 merger.



7 (b) "Authorized shares" means the shares of all classes  
8 which a business corporation is authorized to issue.

9 (c) "Business corporation" means a corporation orga-  
10 nized for profit.

11 (d) "Bylaws" means the code or codes of rules adopted  
12 for the regulation or management of the affairs of the  
13 corporation, irrespective of the name or names by which  
14 such rules are designated.

15 (e) "Capital surplus" means the entire surplus of a  
16 business corporation other than its earned surplus.

17 (f) "Corporation" or "domestic corporation" means a  
18 business corporation or a nonprofit corporation, subject to  
19 the provisions of this article, except a foreign corporation.

20 (g) "Director or directors" or "board of directors"  
21 shall include those who are vested with the management  
22 of the affairs of the corporation, by whatever name they  
23 may be called.

24 (h) "Earned surplus" means the portion of the surplus  
25 of a business corporation equal to the balance of its net  
26 profits, income, gains and losses from the date of incor-  
27 porations, or from the latest date when a deficit was  
28 eliminated by an application of its capital surplus or  
29 stated capital or otherwise, after deducting subsequent  
30 distributions to shareholders and transfers to stated  
31 capital and capital surplus to the extent such distributions  
32 and transfers are made out of earned surplus. Earned  
33 surplus shall include also any portions of surplus allocated  
34 to earn surplus in mergers, consolidations or acquisitions  
35 of all or substantially all of the outstanding shares or of  
36 the property and assets of another corporation, domestic  
37 or foreign.

38 (i) "Employee" includes officers but not directors. A  
39 director may accept duties which make him also an em-  
40 ployee.

41 (j) "Foreign corporation" means a business corporation  
42 or nonprofit corporation organized under laws other than  
43 the laws of this state for a purpose or purposes for which  
44 a corporation may be organized under this article.

45 (k) "Insolvent" means inability of a corporation to pay  
46 its debts as they become due in the usual course of its  
47 business.

48 (l) "Member" means one having membership in a  
49 nonprofit corporation in accordance with the provisions  
50 of its articles of incorporation or bylaws and shall include  
51 shareholders where such corporation issues shares.

52 (m) "Net assets" means the amount by which the total  
53 assets of a corporation exceed the total debt of the cor-  
54 poration.

55 (n) "Nonprofit corporation" means a corporation no  
56 part of the income or profit of which is distributable to its  
57 shareholders, members, directors or officers.

58 (o) "Shareholder" means one who is a holder of record  
59 of shares in a corporation and may include the term  
60 "member."

61 (p) "Shares" means the units into which the proprie-  
62 tary interests in a corporation are divided.

63 (q) "Stated capital" means, at any particular time, the  
64 sum of (1) the par value of all shares of a business  
65 corporation having a par value that have been issued, (2)  
66 the amount of the consideration received by a business  
67 corporation for all shares of such corporation without par  
68 value that have been issued, except such part of the  
69 consideration therefor as may have been allocated to  
70 capital surplus in a manner permitted by law, and (3)  
71 such amounts not included in clauses (1) and (2) of this  
72 subdivision as have been transferred to stated capital of  
73 such corporation, whether upon the issue of shares as a  
74 share dividend or otherwise, minus all reductions from  
75 such sums as have been effected in a manner permitted  
76 by law. Irrespective of the manner of designation thereof  
77 by the laws under which a foreign corporation is orga-  
78 nized, the stated capital of a foreign corporation shall be  
79 determined on the same basis and in the same manner as  
80 the stated capital of a domestic corporation, for the pur-  
81 pose of computing fees, franchise taxes and other charges  
82 prescribed by law.

83 (r) "Subscriber" means one who subscribes for shares  
84 in a corporation, whether before or after incorporation.

85 (s) "Surplus" means the excess of the net assets of a  
86 business corporation over its stated capital.

87 (t) "Treasury shares" means shares of a business  
88 corporation which have been issued and have been subse-  
89 quently acquired by and belong to such corporation, and  
90 have not, either by reason of the acquisition or thereafter,  
91 been cancelled or restored to the status of authorized but  
92 unissued shares. Treasury shares shall be deemed to be  
93 issued shares, but not outstanding shares.

**§31-1-7. Purposes of incorporation.**

1 (a) Business corporations may be organized under this  
2 article for any lawful purpose or purposes.

3 (b) Nonprofit corporations may be organized under this  
4 article for any lawful purpose or purposes, including,  
5 without being limited to, any one or more of the following  
6 purposes: charitable; benevolent; eleemosynary; educa-  
7 tional; civic; patriotic; political; social; fraternal; literary;  
8 cultural; athletic; scientific; agricultural; horticultural;  
9 animal husbandry; and professional, commercial, indus-  
10 trial or trade association.

11 (c) No charters or certificates of incorporation shall  
12 be granted or issued to any church or religious denomi-  
13 nation.

**§31-1-8. General powers of corporations.**

1 Every corporation shall have the power:

2 (a) To have perpetual succession by its corporate name  
3 unless a limited period of duration is stated in its articles  
4 of incorporation. Any corporation chartered heretofore  
5 and still in existence, which under its agreement of in-  
6 corporation, had less than perpetual existence, is hereby  
7 granted perpetual existence, provided all license fees and  
8 taxes due the state of West Virginia shall have been paid.

9 (b) To sue and be sued, complain and defend, in its  
10 corporate name.

11 (c) To have a corporate seal which may be altered at  
12 pleasure, and to use the same by causing it, or a facsimile  
13 thereof, to be impressed or affixed or in any other manner  
14 reproduced.

15 (d) To purchase, take, receive, lease, take by gift,  
16 devise or bequest, or otherwise acquire, own, hold, im-  
17 prove, use and otherwise deal in and with real or personal  
18 property, or any interest therein, wherever situated.

19 (e) To sell, convey, mortgage, pledge, lease, exchange,  
20 transfer and otherwise dispose of all or any part of its  
21 property and assets.

22 (f) To lend money and use its credit to assist its em-  
23 ployees.

24 (g) To purchase, take, receive, subscribe for, or other-  
25 wise acquire, own, hold, vote, use, employ, sell, mortgage,  
26 lend, pledge, or otherwise dispose of, and otherwise use  
27 and deal in and with, shares or other interests in, or obli-  
28 gations of, other domestic or foreign corporations, associa-  
29 tions, partnerships, joint partnerships or individuals, or  
30 direct or indirect obligations of the United States or of  
31 any other government, state territory, governmental dis-  
32 trict or municipality or of any instrumentality thereof.

33 (h) To make contracts and guarantees and incur  
34 liabilities, borrow money at such rates of interest as the  
35 corporation may determine, issue its notes, bonds and  
36 other obligations, and secure any of its obligations by  
37 mortgage, deed of trust or pledge of all or any of its prop-  
38 erty, franchises and income.

39 (i) To lend money for its corporate purposes, invest  
40 and reinvest its funds, and take and hold real and personal  
41 property as security for the payment of funds so loaned  
42 or invested.

43 (j) To conduct its business and affairs, carry on its  
44 operations and have offices and exercise the powers  
45 granted by this article, within or without this state.

46 (k) To elect or appoint officers and agents of the  
47 corporation, and define their duties and fix their com-  
48 pensation.

49 (l) To make and alter bylaws, not inconsistent with its  
50 articles of incorporation or with the laws of this state,  
51 for the administration and regulation of the business and  
52 affairs of the corporation.

53 (m) To make donations for the public welfare or for  
54 charitable, scientific or educational purposes.

55 (n) To transact any lawful business which the board  
56 of directors shall find will be in the aid of governmental  
57 policy.

58 (o) To pay pensions and establish pension plans or  
59 pension trusts for any or all of its directors, officers and  
60 employees, and in the case of business corporations, to  
61 establish profit sharing plans, stock bonus plans, stock  
62 option plans and other incentive plans for any or all of its  
63 directors, officers and employees.

64 (p) To be a promoter, partner, member, associate, or  
65 manager of any partnership, joint partnership, joint ven-  
66 ture, trust or other enterprise.

67 (q) To cease its corporate activities and surrender its  
68 corporate franchise in accordance with the provisions of  
69 this article.

70 (r) To have and exercise all powers necessary or con-  
71 venient to effect its purposes.

**§31-1-9. Indemnification of officers, directors, employees and  
agents.**

1 (a) A corporation shall have power to indemnify any  
2 person who was or is a party or is threatened to be made a  
3 party to any threatened, pending or completed action or  
4 proceeding, whether civil, criminal, administrative or in-  
5 vestigative (other than an action by or in the right of the  
6 corporation) by reason of the fact that he is or was a  
7 director, officer, employee or agent of the corporation, or  
8 is or was of another corporation, partnership, joint part-  
9 nership, joint venture, trust or other enterprise, against  
10 expenses (including attorneys' fees), judgments, fines,  
11 taxes and penalties and interest thereon, and amounts  
12 paid in settlement actually and reasonably incurred by  
13 him in connection with such action or proceeding if he  
14 acted in good faith and in a manner he reasonably believed  
15 to be in or not opposed to the best interests of the cor-  
16 poration, and, with respect to any criminal action or pro-  
17 ceeding, had no reasonable cause to believe his conduct  
18 was unlawful. The termination of any action or proceed-  
19 ing by judgment, order, settlement, conviction, or upon a  
20 plea of nolo contendere or its equivalent, shall not, of  
21 itself, create a presumption that the person did not act in

22 good faith and in a manner which he reasonably believed  
23 to be in or not opposed to the best interest of the corpora-  
24 tion, and, with respect to any criminal action or proceed-  
25 ing, that such person did have reasonable cause to be-  
26 lieve that his conduct was unlawful.

27 (b) A corporation shall have power to indemnify any  
28 person who was or is a party or is threatened to be made a  
29 party to any threatened, pending or completed action or  
30 proceeding by or in the right of the corporation to procure  
31 judgment in its favor by reason of the fact that he is or  
32 was a director, officer, employee or agent of the corpora-  
33 tion, or is or was serving at the request of the corporation  
34 as a director, officer, employee or agent of another cor-  
35 poration, partnership, joint partnership, joint venture,  
36 trust or other enterprise against expenses (including at-  
37 torneys' fees) actually and reasonably incurred by him  
38 in connection with the defense or settlement of such action  
39 or proceeding if he acted in good faith and in a manner  
40 he reasonably believed to be in or not opposed to the best  
41 interests of the corporation, except that no indemnifica-  
42 tion shall be made in respect of any claim, issue or mat-  
43 ter, including, but not limited to, taxes or any interest or  
44 penalties thereon, as to which such person shall have been  
45 adjudged to be liable for negligence or misconduct in the  
46 performance of his duty to the corporation unless and only  
47 to the extent that the court in which such action or pro-  
48 ceeding was brought shall determine upon application  
49 that, despite the adjudication of liability but in view of  
50 all circumstances of the case, such person is fairly and  
51 reasonably entitled to indemnity for such expenses which  
52 such court shall deem proper.

53 (c) To the extent that a director, officer, employee or  
54 agent of a corporation has been successful on the merits or  
55 otherwise in defense of any action or proceeding referred  
56 to in subsections (a) or (b), or in defense of any claim,  
57 issue or matter therein, he shall be indemnified against  
58 expenses (including attorney's fees) actually and reason-  
59 ably incurred by him in connection therewith.

60 (d) Any indemnification under subsections (a) or (b)  
61 (unless ordered by a court) shall be made by the corpora-  
62 tion only as authorized in the specific case upon a deter-

63 mination that indemnification of the director, officer, em-  
64 ployee or agent is proper in the circumstances because he  
65 has met the applicable standard of conduct set forth in  
66 subsections (a) or (b). Such determination shall be made  
67 (1) by the board of directors by a majority vote of a quo-  
68 rum consisting of directors who were not parties to such  
69 action or proceeding, or (2) if such a quorum is not obtain-  
70 able, or even if obtainable a quorum of disinterested direc-  
71 tors so directs, by independent legal counsel in a written  
72 opinion, or (3) by the shareholders or members.

73 (e) Expenses (including attorneys' fees) incurred in  
74 defending a civil or criminal action or proceeding may be  
75 paid by the corporation in advance of the final disposition  
76 of such action or proceeding as authorized in the manner  
77 provided in subsection (d) upon receipt of an undertaking  
78 by or on behalf of the director, officer, employee or agent  
79 to repay such amount unless it shall ultimately be de-  
80 termined that he is entitled to be indemnified by the cor-  
81 poration as authorized in this section.

82 (f) The indemnification provided by this section shall  
83 not be deemed exclusive of any other rights to which any  
84 shareholder or member may be entitled under any bylaw,  
85 agreement, vote of shareholders, members or disinterested  
86 directors or otherwise, both as to action in his official  
87 capacity and as to action in another capacity while holding  
88 such office, and shall continue as to a person who has  
89 ceased to be a director, officer, employee or agent and  
90 shall inure to the benefit of the heirs, executors and ad-  
91 ministrators of such a person.

92 (g) A corporation shall have power to purchase and  
93 maintain insurance on behalf of any person who is or was  
94 a director, officer, employee or agent of the corporation, or  
95 is or was serving at the request of the corporation as a  
96 director, officer, employee or agent of another corporation,  
97 partnership, joint partnership, joint venture, trust or other  
98 enterprise against any liability asserted against him and  
99 incurred by him in any such capacity or arising out of his  
100 status as such, whether or not the corporation would have  
101 the power to indemnify him against such liability under  
102 the provisions of this section.

**§31-1-10. Defense of ultra vires.**

1 No act of a corporation and no conveyance or transfer  
2 of real or personal property to or by a corporation shall be  
3 invalid by reason of the fact that the corporation was  
4 without capacity or power to do such act or to make or  
5 receive such conveyance or transfer, but such lack of  
6 capacity or power may be asserted:

7 (a) In a proceeding by a shareholder, member or  
8 director against the corporation to enjoin the doing of any  
9 act or the continuation of unauthorized acts or the transfer  
10 of real or personal property by or to the corporation. If  
11 the unauthorized act or transfer sought to be enjoined is  
12 being, or is to be, performed or made pursuant to a con-  
13 tract to which the corporation is a party, the court may, if  
14 all of the parties to the contract are parties to the proceed-  
15 ing and if it deems the same to be equitable, set aside and  
16 enjoin the performance of such contract, and in so doing  
17 may allow to the corporation or to the other parties to the  
18 contract, as the case may be, compensation for the loss or  
19 damage sustained by either of them which may result  
20 from the action of the court in setting aside and enjoining  
21 the performance of such contract, but anticipated profits  
22 to be derived from the performance of the contract shall  
23 not be awarded by the court as a loss or damage sus-  
24 tained.

25 (b) In a proceeding by the corporation, whether acting  
26 directly or through a receiver, trustee or other legal  
27 representative, or through shareholders or members in a  
28 representative action, against the incumbent or former  
29 officers or directors of the corporation.

30 (c) In any proceeding by the state, or by any of its  
31 agencies or departments or by the attorney general, as  
32 provided in this article, or as provided or authorized by  
33 any other provisions of this code, to dissolve the corpora-  
34 tion, or in a proceeding by the attorney general to enjoin  
35 the corporation from performing unauthorized acts or  
36 transacting unauthorized business or in any other pro-  
37 ceeding brought by or in the name of or for the benefit  
38 of the state.



**§31-1-11. Corporate name; requirements; certain names prohibited.**

1 (a) Except for corporations in existence prior to the  
2 effective date of this article, the corporate name:

3 (1) Shall contain the word "corporation," "company,"  
4 "incorporated" or "limited," or shall contain an abbrevi-  
5 ation of one of such words.

6 (2) Shall not contain any word or phrase which  
7 indicates or implies that it is organized for any purpose  
8 other than one or more of the purposes contained in its  
9 articles of incorporation.

10 (3) Shall not be the same as, or deceptively similar  
11 to, the name of any domestic corporation, whether stock or  
12 nonstock and whether or not organized for profit, existing  
13 under the laws of this state or of any foreign corporation,  
14 whether stock or nonstock and whether or not organized  
15 for profit, authorized to conduct affairs or do or trans-  
16 act business in this state, or a name the exclusive right to  
17 which is, at the time, reserved in the manner provided in  
18 this article, or the name of a corporation which has in  
19 effect a registration of its corporate name as provided in  
20 this article, except that this provision shall not apply if  
21 the applicant files with the secretary of state either (i)  
22 the written consent of such other corporation or holder of  
23 a reserved or registered name to use the same or decep-  
24 tively similar name and one or more words are added to  
25 make such name distinguishable from such other name,  
26 or (ii) a certified copy of a final order of a court of com-  
27 petent jurisdiction establishing the prior right of the  
28 applicant to the use of such name in this state.

29 (4) Shall be transliterated into letters of the English  
30 alphabet, if it is not in English.

31 (b) A corporation with which another corporation,  
32 domestic or foreign, is merged, or which is formed by the  
33 reorganization or consolidation of one or more domestic or  
34 foreign corporations or upon a sale, lease or other dispo-  
35 sition to or exchange with, a domestic corporation of all  
36 or substantially all the assets of another corporation, do-  
37 mestic or foreign, including its name, may have the same  
38 name as that used in this state by any of such corpora-

39 tions if such other corporation was organized under the  
40 laws of, or is authorized to conduct affairs or do or trans-  
41 act business in this state.

42 (c) After the effective date of this section, no corpora-  
43 tion shall be chartered in this state under any name  
44 which includes the word "engineer," "engineers," "engi-  
45 neering" or any combination of same unless the purpose  
46 of the corporation is to practice professional engineering  
47 as defined in article thirteen, chapter thirty of this code,  
48 as amended, and one or more of the incorporators is a  
49 registered professional engineer as therein defined.

**§31-1-12. Reserved name.**

1 The exclusive right to the use of a corporate name may  
2 be reserved by:

3 (a) Any person intending to organize a corporation  
4 under this article.

5 (b) Any domestic corporation intending to change its  
6 name.

7 (c) Any foreign corporation intending to make appli-  
8 cation for a certificate of authority to conduct affairs or  
9 do or transact business in this state.

10 (d) Any foreign corporation authorized to conduct  
11 affairs or do or transact business in this state and intend-  
12 ing to change its name.

13 (e) Any person intending to organize a foreign cor-  
14 poration and intending to have such corporation make  
15 application for a certificate of authority to conduct affairs  
16 or do or transact business.

17 The reservation shall be made by filing with the secre-  
18 tary of state an application to reserve a specified corporate  
19 name, executed by the applicant. If the secretary of state  
20 finds that the name is available for corporate use, he  
21 shall reserve the name for the exclusive use of the appli-  
22 cant for a period of one hundred twenty days.

23 The right to the exclusive use of a specified corporate  
24 name so reserved may be transferred to any other person  
25 or corporation by filing in the office of the secretary of  
26 state a notice of such transfer, executed by the applicant  
27 for whom the name was reserved, and specifying the  
28 name and address of the transferee.

**§31-1-13. Registered name.**

1 Any corporation organized and existing under the laws  
2 of any state or territory of the United States may register  
3 its corporate name under this article, provided its corpor-  
4 ate name is not the same as, or deceptively similar to,  
5 the name of any domestic corporation existing under the  
6 laws of this state, or the name of any foreign corporation  
7 authorized to conduct affairs or do or transact business  
8 in this state, or any corporate name reserved or registered  
9 under this article.

10 Such registration shall be made by:

11 (a) Filing with the secretary of state (1) an applica-  
12 tion for registration executed by the corporation by an  
13 officer thereof, setting forth the name of the corporation,  
14 the state or territory under the laws of which it is incor-  
15 porated, the date of its incorporation, a statement that it  
16 is carrying on or doing business, and a brief statement  
17 of the business in which it is engaged, and (2) a certifi-  
18 cate setting forth that such corporation is in good standing  
19 under the laws of the state or territory wherein it is  
20 organized, executed by the secretary of state of such state  
21 or territory or by such other official as may have custody  
22 of the records pertaining to corporations, and

23 (b) Paying to the secretary of state a registration fee  
24 in the amount of fifty cents for each month, or a fraction  
25 thereof, between the date of filing such application and  
26 June thirtieth of the fiscal year in which such applica-  
27 tion is filed.

28 Such registration shall be effective until the close of  
29 the fiscal year in which the application for registration is  
30 filed.

**§31-1-14. Renewal of registered name.**

1 A corporation which has in effect a registration of its  
2 corporate name may renew such registration from year to  
3 year by annually filing an application for renewal setting  
4 forth the facts required to be set forth in an original  
5 application for registration and a certificate of good stand-  
6 ing as required for the original registration and by paying  
7 a fee of five dollars. A renewal application may be filed  
8 between the first day of April and the thirtieth day of

9 June in each year, and shall extend the registration for  
10 the following fiscal year.

**§31-1-15. Secretary of state constituted attorney in fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.**

1 The secretary of state of this state is hereby constituted  
2 the attorney in fact for and on behalf of every corpora-  
3 tion created by virtue of the laws of this state and every  
4 foreign corporation authorized to conduct affairs or do  
5 or transact business herein pursuant to the provisions of  
6 this article, with authority to accept service of notice and  
7 process on behalf of every such corporation and upon  
8 whom service of notice and process may be made in this  
9 state for and upon every such corporation. No act of such  
10 corporation appointing the secretary of state such attorney  
11 in fact shall be necessary. Immediately after being served  
12 with or accepting any such process or notice, of which  
13 process or notice two copies for each defendant shall be  
14 furnished the secretary of state with the original notice  
15 or process, the secretary of state shall file in his office a  
16 copy of such process or notice, with a note thereon en-  
17 dorsed of the time of service, or acceptance, as the case  
18 may be, and transmit one copy of such process or notice by  
19 registered or certified mail, return receipt requested, to  
20 such corporation at the address last furnished by it, as  
21 required by law. No process or notice shall be served on  
22 the secretary of state or accepted by him less than ten  
23 days before the return day thereof. Such corporation shall  
24 pay the annual fee prescribed in article twelve, chapter  
25 eleven of this code for the services of the secretary of state  
26 as its attorney in fact.

27 Any foreign corporation which shall conduct affairs or  
28 do or transact business in this state without having been  
29 authorized so to do pursuant to the provisions of this  
30 article shall be conclusively presumed to have appointed  
31 the secretary of state as its attorney in fact with authority  
32 to accept service of notice and process on behalf of such  
33 corporation and upon whom service of notice and process

34 may be made in this state for and upon every such cor-  
35 poration in any action or proceeding described in the next  
36 following paragraph of this section. No act of such cor-  
37 poration appointing the secretary of state such attorney  
38 in fact shall be necessary. Immediately after being served  
39 with or accepting any such process or notice, of which  
40 process or notice two copies for each defendant shall be  
41 furnished the secretary of state with the original notice or  
42 process, together with a fee of two dollars, the secretary  
43 of state shall file in his office a copy of such process or  
44 notice, with a note thereon endorsed of the time of service  
45 or acceptance, as the case may be, and transmit one copy  
46 of such process or notice by registered or certified mail,  
47 return receipt requested, to such corporation at the address  
48 of its principal office, which address shall be stated in such  
49 process or notice. Such service or acceptance of such  
50 process or notice shall be sufficient if such return receipt  
51 shall be signed by an agent or employee of such corpora-  
52 tion, or the registered or certified mail so sent by the  
53 secretary of state is refused by the addressee and the  
54 registered or certified mail is returned to the secretary  
55 of state, or to his office, showing thereon the stamp of the  
56 United States postal service that delivery thereof has been  
57 refused, and such return receipt or registered or certified  
58 mail is appended to the original process or notice and filed  
59 therewith in the clerk's office of the court from which  
60 such process or notice was issued. No process or notice  
61 shall be served on the secretary of state or accepted by  
62 him less than ten days before the return date thereof. The  
63 court may order such continuances as may be reasonable  
64 to afford each defendant opportunity to defend the action  
65 or proceedings.

66 For the purpose of this section, a foreign corporation  
67 not authorized to conduct affairs or do or transact business  
68 in this state pursuant to the provisions of this article  
69 shall nevertheless be deemed to be conducting affairs or  
70 doing or transacting business herein (a) if such corpora-  
71 tion makes a contract to be performed, in whole or in part,  
72 by any party thereto, in this state, (b) if such corporation  
73 commits a tort in whole or in part in this state, or (c) if  
74 such corporation manufactures, sells, offers for sale or

75 supplies any product in a defective condition and such  
76 product causes injury to any person or property within  
77 this state notwithstanding the fact that such corporation  
78 had no agents, servants or employees or contacts within  
79 this state at the time of said injury. The making of such  
80 contract, the committing of such tort or the manufacture  
81 or sale, offer of sale or supply of such defective product as  
82 hereinabove described shall be deemed to be the agree-  
83 ment of such corporation that any notice or process served  
84 upon, or accepted by, the secretary of state pursuant to  
85 the next preceding paragraph of this section in any action  
86 or proceeding against such corporation arising from, or  
87 growing out of, such contract, tort, or manufacture or  
88 sale, offer of sale or supply of such defective product shall  
89 be of the same legal force and validity as process duly  
90 served on such corporation in this state.

**§31-1-16. Venue of actions involving foreign corporations.**

1 In all cases arising under this chapter wherein the  
2 corporations seeking to exercise the rights conferred by  
3 this article, or against which any proceeding is instituted  
4 thereunder, do not have or maintain any office, own any  
5 property or conduct affairs or do or transact any business  
6 in this state, the circuit court of the county in which the  
7 seat of government is located shall have original juris-  
8 diction, except in cases in which jurisdiction is expressly  
9 conferred upon some other court by this chapter.

**§31-1-17. Bylaws.**

1 The initial bylaws of a corporation shall be adopted by  
2 its board of directors. The power to alter, amend or repeal  
3 the bylaws or adopt new bylaws, subject to repeal or  
4 change by action of the shareholders or members, shall  
5 be vested in the board of directors unless reserved to the  
6 shareholders or members by the articles of incorporation.  
7 The bylaws may contain any provisions for the regula-  
8 tion and management of the affairs of the corporation  
9 not inconsistent with law or the articles of incorporation.

**§31-1-18. Meetings of shareholders or members.**

1 (a) Meetings of shareholders or members may be held  
2 at such place, either within or without this state, as may

3 be stated in or fixed in accordance with the bylaws. If no  
4 other place is stated or so fixed, meetings shall be held at  
5 the place of the principle office of the corporation.

6 (b) An annual meeting of the shareholders or members  
7 shall be held at such time as may be stated in, or fixed in  
8 accordance with, the bylaws. Failure to hold the annual  
9 meeting at the designated time shall not work a forfei-  
10 ture or dissolution of the corporation.

11 (c) In the case of a business corporation, if the annual  
12 meeting is not held within any thirteen-month period,  
13 the circuit court of the county wherein the place of the  
14 principle office of the corporation is located, or the circuit  
15 court of Kanawha county in the case of corporations  
16 not having a principle office in this state, may, on the  
17 application of any shareholder, summarily order a meet-  
18 ing to be held.

19 (d) In the case of a business corporation, special  
20 meetings of the shareholders may be called by the board  
21 of directors, the holders of not less than one-tenth of all  
22 the shares entitled to vote at the meeting, or such other  
23 persons as may be authorized in the articles of incorpora-  
24 tion or the bylaws.

25 (e) In the case of a nonprofit corporation, special  
26 meetings of the members may be called by the president  
27 or by the board of directors. Special meetings of the  
28 members may also be called by such other officers or  
29 persons or number or proportion of members as may be  
30 provided in the provision fixing the number or propor-  
31 tion of members entitled to call a meeting. In the absence  
32 of a provision fixing the number or proportion of mem-  
33 bers entitled to call a meeting, a special meeting of  
34 members may be called by members having one-twen-  
35 tieth of the votes entitled to be cast at such meeting.

**§31-1-19. Notice of shareholders' or members' meetings.**

1 Written notice stating the place, day and hour of the  
2 meeting and, in case of a special meeting, the purpose or  
3 purposes for which the meeting is called, shall be deliv-  
4 ered not less than ten nor more than fifty days before the  
5 date of the meeting, either personally or by mail, by or  
6 at the direction of the president, the secretary, or the  
7 officer or persons calling the meeting, to each shareholder

8 of record or member entitled to vote at such meeting. If  
9 mailed, such notice shall be deemed to be delivered when  
10 deposited in the United States mail addressed to the  
11 shareholder or member at his address as it appears on the  
12 corporate records, with postage thereon prepaid.

**§31-1-20. Quorum of shareholders or members.**

1 In the case of a business corporation, unless otherwise  
2 provided in the articles of incorporation, a majority of the  
3 shares entitled to vote, represented in person or by proxy,  
4 shall constitute a quorum at a meeting of shareholders, but  
5 in no event shall a quorum consist of less than one third  
6 of the shares entitled to vote at the meeting.

7 In the case of a nonprofit corporation, the bylaws may  
8 provide the number or percentage of members entitled  
9 to vote represented in person or by proxy, which shall  
10 constitute a quorum at a meeting of members and in  
11 the absence of any such provision, members holding  
12 one-tenth of the votes entitled to be cast on the matter  
13 to be voted upon represented in person or by proxy  
14 shall constitute a quorum. A majority of the votes  
15 entitled to be cast on a matter to be voted upon by  
16 the members present or represented by proxy at a meet-  
17 ing at which a quorum is present shall be necessary for  
18 the adoption thereof unless a greater proportion is re-  
19 quired by this article, the articles of incorporation or the  
20 bylaws.

21 If a quorum is present, the affirmative vote of the ma-  
22 jority of the shares represented or members present at the  
23 meeting and entitled to vote on the subject matter shall be  
24 the act of the shareholders or members, unless the vote of  
25 a greater number or voting by classes is required by this  
26 article or the articles of incorporation or bylaws.

**§31-1-21. Number and election of directors; classification of directors.**

1 (a) The board of directors of a corporation shall con-  
2 sist of one or more persons. The number of directors shall  
3 be fixed by, or in the manner provided in, the articles of  
4 incorporation or the bylaws. The number of directors may  
5 be increased or decreased from time to time by amend-



6 ment to, or in the manner provided in, the articles of  
7 incorporation or by the bylaws, but no decrease shall have  
8 the effect of shortening the term of any incumbent direc-  
9 tor. In the absence of a bylaw providing for the number of  
10 directors, the number shall be the same as that provided  
11 for in the articles of incorporation. Unless the articles of  
12 incorporation provide that a change in the number of  
13 directors shall be made only by amendment to the articles  
14 of incorporation, a change in the number of directors made  
15 by amendment to the bylaws shall be controlling. The  
16 names and addresses of the members of the first board of  
17 directors may be stated in the articles of incorporation.  
18 Such persons, if stated, shall hold office until their suc-  
19 cessors shall have been elected and qualified. At the first  
20 annual meeting of shareholders or members and at each  
21 annual meeting thereafter the shareholders or members  
22 shall elect directors to hold office until the next succeeding  
23 annual meeting, except in case of the classification of di-  
24 rectors as permitted by this article. Each director shall  
25 hold office for the term for which he is elected and until  
26 his successor shall have been elected and qualified.

27 (b) The directors of any corporation may, by the  
28 articles of incorporation or any amendment thereto, or by  
29 a vote of the shareholders or members, be divided into  
30 one, two or three classes; the term of office of those of  
31 the first class to expire at the annual meeting next en-  
32 suing; of the second class one year thereafter; of the  
33 third class two years thereafter; and at each annual  
34 election held after such classification and election, direc-  
35 tors shall be chosen for a full term, as the case may be,  
36 to succeed those whose terms expire.

**§31-1-22. Vacancies in board of directors; manner of filling.**

1 Any vacancy occurring in the board of directors and any  
2 directorship to be filled by reason of an increase in the  
3 number of directors may be filled by the affirmative vote  
4 of a majority of the remaining directors, though less than  
5 a quorum of the board of directors, unless the articles of  
6 incorporation or the bylaws provide that a vacancy or  
7 directorship so created shall be filled in some other man-  
8 ner, in which case such provision shall control.

9 A director elected or appointed, as the case may be, to  
10 fill a vacancy shall be elected or appointed for the unex-  
11 pired term of his predecessor in office.

12 Any directorship to be filled by reason of an increase  
13 in the number of directors may be filled by the board of  
14 directors for a term of office continuing only until the  
15 next election of directors.

**§31-1-23. Quorum of directors.**

1 A majority of the number of directors fixed by or in  
2 the manner provided in the bylaws, or in the absence of a  
3 bylaw fixing or providing for the number of directors,  
4 then of the number stated in the articles of incorporation,  
5 shall constitute a quorum for the transaction of business  
6 unless a greater number is required by the articles of in-  
7 corporation or the bylaws. The act of the majority of the  
8 directors present at a meeting at which a quorum is pres-  
9 ent shall be the act of the board of directors, unless the  
10 act of a greater number is required by the articles of  
11 incorporation or the bylaws.

**§31-1-24. Place and notice of directors' meetings.**

1 (a) Meetings of the board of directors, regular or  
2 special, may be held either within or without this state.

3 (b) Regular meetings of the board of directors may be  
4 held with or without notice as prescribed in the bylaws.  
5 Special meetings of the board of directors shall be held  
6 upon such notice as is prescribed in the bylaws except  
7 that notice shall be required to be given to every director  
8 when the meeting is being called for the purpose of  
9 amending the bylaws or for the purpose of authorizing  
10 the sale of all or substantially all of the assets of the  
11 corporation, in which case such notice shall set forth the  
12 nature of the business intended to be transacted.

13 (c) Attendance of a director at a meeting shall consti-  
14 tute a waiver of notice of such meeting, except where  
15 a director attends a meeting for the express purpose of  
16 objecting to the transaction of any business because the  
17 meeting is not lawfully called or convened. Except as  
18 provided in subsection (b) of this section, neither the  
19 business to be transacted at, nor the purpose of, any  
20 regular or special meeting of the board of directors need

21 be specified in the notice or waiver of notice of such  
22 meeting unless required by the bylaws.

**§31-1-25. Action by directors without a meeting.**

1 Unless otherwise provided by the articles of incorpora-  
2 tion or bylaws, any action required by this article to be  
3 taken at a meeting of the directors of a corporation, or any  
4 action which may be taken at a meeting of the directors  
5 or of a committee, may be taken without a meeting if a  
6 consent in writing, setting forth the action so taken, shall  
7 be signed by all of the directors, or all of the members of  
8 the committee, as the case may be. Such consent shall  
9 have the same effect as a unanimous vote.

**§31-1-26. Incorporators.**

1 One or more persons, or a domestic or foreign corpora-  
2 tion, may act as incorporator or incorporators of a cor-  
3 poration by signing and delivering in duplicate to the  
4 secretary of state articles of incorporation for such  
5 corporation.

**§31-1-27. Articles of incorporation; contents; matters not re-  
quired to be set forth; inconsistencies with by-  
laws; acknowledgment.**

1 (a) The articles of incorporation shall set forth:  
2 (1) The name of the corporation.  
3 (2) The period of duration, which may be perpetual.  
4 (3) The purpose or purposes for which the corporation  
5 is organized.  
6 (4) The address of its initial principal office.  
7 (5) The name and address of each incorporator.  
8 (b) In the case of a business corporation, in addition  
9 to those matters required to be set forth by the provisions  
10 of subsection (a) of this section, the articles of incorpora-  
11 tion shall set forth:  
12 (1) The aggregate number of shares which the cor-  
13 poration shall have authority to issue; if such shares are  
14 to consist of one class only, the par value of each of such  
15 shares, or a statement that all of such shares are without  
16 par value; or, if such shares are to be divided into classes,

17 the number of shares of each class, and a statement of  
18 the par value of the shares of each such class or that such  
19 shares are to be without par value.

20 (2) If the shares are to be divided into classes, the  
21 designation of each class and a statement of the prefer-  
22 ences, limitations and relative rights in respect of the  
23 shares of each class.

24 (3) If the corporation is to issue the shares of any  
25 preferred or special class in series, the designation of  
26 each series and a statement of the variations in the  
27 relative rights and preferences as between series insofar  
28 as the same are to be fixed in the articles of incorporation,  
29 and a statement of any authority to be vested in the board  
30 of directors to establish series and fix and determine the  
31 variations in the relative rights and preferences as be-  
32 tween series.

33 (4) Any provision, not inconsistent with law, which  
34 the incorporators elect to set forth in the articles of incor-  
35 poration for the regulation of the internal affairs of the  
36 corporation, including any provision restricting the trans-  
37 fer of shares and any provision which under this article  
38 is required or permitted to be set forth in the bylaws.

39 (c) In the case of a nonprofit corporation, in addition  
40 to those matters required to be set forth by the provisions  
41 of subsection (a) of this section, the articles of incorpora-  
42 tion shall set forth any provisions, not inconsistent with  
43 law, which the incorporators elect to set forth in such  
44 articles of incorporation for the regulation of the internal  
45 affairs of the corporation, including any provisions for  
46 distribution of assets on dissolution or final liquidation.

47 (d) It shall not be necessary to set forth in the articles  
48 of incorporation any of the corporate powers enumerated  
49 in this article.

50 (e) Whenever a provision of the articles of incorpora-  
51 tion is inconsistent with a bylaw, the provision of the  
52 articles of incorporation shall be controlling.

53 (f) The agreement of incorporation shall be acknowl-  
54 edged by the incorporators before a notary public and  
55 transmitted with the proper fees to, and shall be filed  
56 with, the secretary of state.

**§31-1-28. Filing of articles of incorporation; issuance of certificate of incorporation; recordation of certificate in county clerk's office.**

1 (a) Duplicate originals of the articles of incorporation  
2 shall be delivered to the secretary of state. If the secretary  
3 of state finds that the articles of incorporation conform to  
4 law, he shall, when all fees have been paid as prescribed  
5 by law, (i) endorse on each of such duplicate originals  
6 the word "Filed," and the month, day and year of the filing  
7 thereof; (ii) file one of such duplicate originals in his  
8 office; and (iii) issue a certificate of incorporation to  
9 which he shall affix the other duplicate original.

10 The certificate of incorporation, together with the dupli-  
11 cate original of the articles of incorporation affixed there-  
12 to by the secretary of state, shall be returned to the  
13 incorporators or their representative.

14 (b) If the corporation has its principal office in this  
15 state, it shall cause such certificate, or a duly certified  
16 copy thereof, to be recorded in the office of the clerk of  
17 the county court of the county in which such principal  
18 office is located; if its principal office is not within this  
19 state but it conducts affairs or does or transacts business  
20 herein, then in the county in which it conducts its affairs  
21 or does or transacts its principal business. If its principal  
22 office is without the state and it does not conduct affairs  
23 or do or transact business within the state, such charter  
24 need not be recorded in a county clerk's office. A failure  
25 to comply with the foregoing recordation provision within  
26 six months from the date of such certificate shall subject  
27 the corporation to a fine of not more than one thousand  
28 dollars.

**§31-1-29. Effect of issuance of certificate of incorporation.**

1 Upon the issuance of the certificate of incorporation,  
2 the corporate existence shall begin, and such certificate of  
3 incorporation shall be conclusive evidence that all con-  
4 ditions precedent required to be performed by the incor-  
5 porators have been complied with and that the corporation  
6 has been incorporated under this article, except as against  
7 this state in a proceeding to cancel or revoke the certificate  
8 of incorporation or for involuntary dissolution of the cor-  
9 poration.

**§31-1-30. Organization meeting; notice, waiver of notice.**

1 After the issuance of the certificate of incorporation an  
2 organizational meeting shall be held, either within or  
3 without this state, at the call of a majority of the directors,  
4 if named in the articles of incorporation, or at the call of a  
5 majority of the shareholders, members or incorporators  
6 named in the articles of incorporation, for the purpose of  
7 adopting bylaws, electing officers and a board of directors,  
8 if not named in the articles of incorporation, and for trans-  
9 acting such other business as may come before the meet-  
10 ing. The shareholders, members, incorporators or direc-  
11 tors calling the meeting shall give at least three days'  
12 notice thereof by mail to each shareholder, member or  
13 incorporator so named in the articles of incorporation,  
14 stating the time and place of the meeting, unless such  
15 notice is waived in accordance with the provisions of this  
16 article.

**§31-1-31. Filing of articles of amendment; recordation; admission in evidence.**

1 Upon adoption of the articles of amendment, in accord-  
2 ance with the provisions of section one hundred seven  
3 or section one hundred forty-seven of this article, which-  
4 ever is applicable, duplicate originals of such articles of  
5 amendment shall be delivered to the secretary of state.  
6 If the secretary of state finds that the articles of amend-  
7 ment conform to law, he shall, when all fees have been  
8 paid as prescribed by law, (i) endorse on each of such  
9 duplicate originals the word "Filed," and the month, day  
10 and year of such filing thereof; (ii) file one of such dupli-  
11 cate originals in his office; and (iii) issue a certificate of  
12 amendment to which he shall affix the other duplicate  
13 original.

14 The certificate of amendment, together with the dupli-  
15 cate original of the articles of amendment affixed thereto  
16 by the secretary of state, shall be returned to the cor-  
17 poration or its representative.

18 The certificate of amendment, or certified copy thereof,  
19 shall be recorded in the office of the appropriate county  
20 clerk in the same manner as certificates of incorporation  
21 are required to be recorded, in accordance with the pro-

visions of subsection (b) of section twenty-eight of this article and received in evidence to the same extent as an original certificate of incorporation or a certified copy of such original.

**§31-1-32. Effect of certificate of amendment.**

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than shareholders or members, and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

**§31-1-33. Filing of restated articles of incorporation; recordation; admission in evidence.**

Upon adoption of restated articles of incorporation, in accordance with the provisions of section one hundred ten or section one hundred forty-nine of this article, which ever is applicable, duplicate originals of such restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that such restated articles of incorporation conform to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in this office; and (iii) issue a restated certificate of incorporation, to which he shall affix the other duplicate original.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall super-

21 sede the original articles of incorporation and all amend-  
22 ments thereto.

23 The restated certificate of incorporation or certified copy  
24 thereof, shall be recorded in the office of the appropriate  
25 county clerk in the same manner as original certificates  
26 of incorporation are required to be recorded, in accord-  
27 ance with the provisions of subsection (b) of section  
28 twenty-eight of this article and received in evidence to  
29 the same extent as an original certificate of incorporation  
30 or a certified copy of such original.

**§31-1-34. Procedure for merger.**

1 Any two or more domestic corporations, whether stock  
2 or nonstock, or whether or not organized for profit, may  
3 merge into one of such corporations, irrespective of  
4 whether the surviving corporation is a stock or nonstock  
5 corporation and irrespective of whether or not it is organ-  
6 ized for profit, pursuant to a plan of merger approved in  
7 the manner provided in this article.

8 The board of directors of each corporation shall, by  
9 resolution adopted by each such board, approve a plan of  
10 merger setting forth:

11 (a) The names of the corporations proposing to merge,  
12 and the name of the corporation into which they propose  
13 to merge.

14 (b) The terms and conditions of the proposed merger.

15 (c) The manner and basis of converting the shares of  
16 each corporation into shares, obligations or other securities  
17 of the surviving corporation or of any other corporation or,  
18 in whole or in part, into cash or other property.

19 (d) A statement of any changes in the articles of in-  
20 corporation of the surviving corporation to be effected by  
21 such merger.

22 (e) Such other provisions with respect to the proposed  
23 merger as are deemed necessary or desirable.

**§31-1-35. Procedure for consolidation.**

1 Any two or more domestic corporations, whether stock  
2 or nonstock, or whether or not organized for profit, may  
3 consolidate into a new corporation, irrespective of wheth-  
4 er the new corporation is a stock or nonstock corporation



5 and irrespective of whether or not it is organized for  
6 profit, pursuant to a plan of consolidation approved in the  
7 manner provided in this article.

8 The board of directors of each corporation shall, by  
9 resolution adopted by each such board, approve a plan of  
10 consolidation setting forth:

11 (a) The names of the corporations proposing to con-  
12 solidate, and the name of the new corporation into which  
13 they propose to consolidate.

14 (b) The terms and conditions of the proposed consoli-  
15 dation.

16 (c) The manner and basis of converting the shares of  
17 each corporation into shares, obligations or other securi-  
18 ties of the new corporation or of any other corporation  
19 or, in whole or in part, into cash or other property.

20 (d) With respect to the new corporation, all of the  
21 statements required to be set forth in articles of incor-  
22 poration, as required by section twenty-seven of this  
23 article for corporations organized under this article.

24 (e) Such other provisions with respect to the proposed  
25 consolidation as are deemed necessary or desirable.

**§31-1-36. Articles of merger or consolidation; filing; issuance  
of certificate; recordation; admission in evidence.**

1 (a) Upon approval, in accordance with the provisions  
2 of section one hundred seventeen or section one hundred  
3 fifty of this article, whichever is applicable, the articles of  
4 merger or articles of consolidation shall be executed in  
5 duplicate by each corporation by its president or a vice  
6 president and by its secretary or an assistant secretary,  
7 and verified by one of the officers of each corporation  
8 signing such articles.

9 (b) Duplicate originals of the articles of merger or  
10 articles of consolidation shall be delivered to the secre-  
11 tary of state. If the secretary of state finds that such  
12 articles conform to law, he shall, when all fees have been  
13 paid as prescribed by law, (i) endorse on each of such  
14 duplicate originals the word "Filed," and the month, day  
15 and year of the filing thereof; (ii) file one of such dupli-  
16 cate originals in his office; and (iii) issue a certificate of  
17 merger or a certificate of consolidation to which he shall  
18 affix the other duplicate original.

19 The certificate of merger or certificate of consolidation,  
20 together with the duplicate original of the articles of  
21 merger or articles of consolidation affixed thereto by the  
22 secretary of state, shall be returned to the surviving or  
23 new corporation, as the case may be, or its representative.

24 (c) The certificate of merger or certificate of consoli-  
25 dation, or certified copy thereof, shall be recorded in the  
26 office of the appropriate county clerk in the same manner  
27 as original certificates of incorporation are required to be  
28 recorded, in accordance with the provisions of subsection  
29 (b) of section twenty-eight of this article and received  
30 in evidence to the same extent as an original certificate  
31 of incorporation or a certified copy of such original.

**§31-1-37. Effect of merger or consolidation; conveyance of  
title to real estate in state to surviving or new  
corporation.**

1 (a) Upon the issuance of the certificate of merger or  
2 the certificate of consolidation by the secretary of state,  
3 the merger or consolidation shall be effected. When such  
4 merger or consolidation has been effected:

5 (1) The several corporations parties to the plan of  
6 merger or consolidation shall be a single corporation,  
7 which, in the case of a merger, shall be that corporation  
8 designated in the plan of merger as the surviving corpora-  
9 tion, and, in the case of a consolidation, shall be the new  
10 corporation provided for in the plan of consolidation.

11 (2) The separate existence of all corporations parties  
12 to the plan of merger or consolidation, except the surviv-  
13 ing or new corporation, shall cease.

14 (3) Such surviving or new corporation shall have all  
15 the rights, privileges, immunities and powers and shall  
16 be subject to all the duties and liabilities of a corporation  
17 organized under this article.

18 (4) Such surviving or new corporation shall thereupon  
19 and thereafter possess all the rights, privileges, immuni-  
20 ties and franchises, of a public as well as of a private na-  
21 ture, of each of the merging or consolidating corporations;  
22 and all property, real, personal and mixed, and all debts  
23 due on whatever account, including subscriptions to  
24 shares, if any, and all other choses in action, and all and

25 every other interest of or belonging to or due to each of  
26 the corporations so merged or consolidated, shall be taken  
27 and deemed to be transferred to and vested in such single  
28 corporation without further act or deed; and the title to  
29 any real estate, or any interest therein, vested in any of  
30 such corporations shall not revert or be in any way im-  
31 paired by reason of such merger or consolidation.

32 (5) Such surviving or new corporation shall hence-  
33 forth be responsible and liable for all the liabilities and  
34 obligations of each of the corporations so merged or con-  
35 solidated; and any claim existing or action or proceeding  
36 pending by or against any of such corporations may be  
37 prosecuted as if such merger or consolidation had not  
38 taken place, or such surviving or new corporations may  
39 be substituted in its place. Neither the rights of creditors  
40 nor any liens upon the property of any such corporation  
41 shall be impaired by such merger or consolidation.

42 (6) In the case of a merger, the articles of incorpora-  
43 tion of the surviving corporation shall be deemed to be  
44 amended to the extent, if any, that changes in its articles  
45 of incorporation are stated in the plan of merger; and,  
46 in the case of a consolidation, the statements set forth in  
47 the articles of consolidation and which are required or  
48 permitted to be set forth in the articles of incorporation  
49 of corporations organized under this article shall be  
50 deemed to be the original articles of incorporation of the  
51 new corporation.

52 (b) In any merger or consolidation of corporations  
53 under the laws of the state of West Virginia, any con-  
54 stituent corporation thereof owning or holding real estate  
55 in West Virginia shall further evidence the title thereto  
56 in the surviving or new corporation by executing and  
57 acknowledging for record a confirmatory deed or deeds to  
58 the respective parcels of real estate, which deed or deeds  
59 shall be recorded in the office of the clerks of the county  
60 courts of the respective counties in which such real estate  
61 is situated; and such deed or deeds shall recite as the  
62 consideration therefor the said merger or consolidation  
63 and shall be deemed confirmatory of the title of such real  
64 estate in the surviving or new corporation.

**§31-1-38. Merger or consolidation of domestic and foreign corporations; effect; abandonment; confirmation of title to real estate required.**

1 (a) One or more domestic corporations, whether  
2 stock or nonstock, and whether or not organized for  
3 profit, and one or more foreign corporations, whether  
4 stock or nonstock, and whether or not organized for  
5 profit, may merge or consolidate into one of such cor-  
6 porations, irrespective of whether the surviving or new  
7 corporation is a stock or nonstock corporation and ir-  
8 respective of whether or not it is organized for profit,  
9 if such merger or consolidation is permitted by the  
10 laws of the state under which each such foreign  
11 corporation is organized. Any such merger or con-  
12 solidation shall be completed in the following man-  
13 ner:

14 (1) Each domestic corporation shall comply with  
15 the provisions of this article with respect to the  
16 merger or consolidation, as the case may be, of  
17 domestic corporations and each foreign corpora-  
18 tion shall comply with the applicable provisions  
19 of the laws of the state under which it is or-  
20 ganized.

21 (2) If the surviving or new corporation, as the case  
22 may be, is to be governed by the laws of any state other  
23 than this state, it shall comply with the provisions of this  
24 article with respect to foreign corporations if it is to  
25 conduct its affairs or do or transact business in this state,  
26 and in every case it shall file with the secretary of state  
27 of this state (i) an agreement that it may be served with  
28 process in this state in any proceeding for the enforce-  
29 ment of any obligation of any domestic corporation which  
30 is a party to such merger or consolidation and in any  
31 proceeding for the enforcement of the rights of a dis-  
32 senting shareholder or member of any such domestic  
33 corporation against the surviving or new corporation; (ii)  
34 an irrevocable appointment of the secretary of state of  
35 this state as its agent to accept service of process in any  
36 such proceeding; and (iii) an agreement that it will  
37 promptly pay to the dissenting shareholders or members  
38 of any such domestic corporation the amount, if any, to

39 which they shall be entitled under the provisions of this  
40 article with respect to the rights of dissenting share-  
41 holders.

42 (b) The effect of such merger or consolidation shall be  
43 the same as in the case of the merger or consolidation of  
44 domestic corporations, if the surviving or new corporation  
45 is to be governed by the laws of this state and the pro-  
46 visions of section thirty-seven of this article shall apply  
47 in every such instance. If the surviving or new corpora-  
48 tion is to be governed by the laws of any state other than  
49 this state, the effect of such merger or consolidation of  
50 domestic corporation shall be the same as in the case of  
51 the merger or consolidation of domestic corporations ex-  
52 cept insofar as the laws of such other state provide other-  
53 wise.

54 (c) At any time prior to the filing of the articles of  
55 merger or consolidation, the merger or consolidation may  
56 be abandoned pursuant to the provisions therefor, if any,  
57 set forth in the plan of merger or consolidation.

58 (d) Irrespective of whether such surviving or new  
59 corporation is to be governed by the laws of this state or  
60 by the laws of any other state, any constituent corpora-  
61 tion thereof owning or holding real estate in West Vir-  
62 ginia shall further evidence the title thereto in the  
63 surviving or new corporation by executing and acknowl-  
64 edging for record a confirmatory deed or deeds to the  
65 respective parcels of real estate, which deed or deeds shall  
66 be recorded in the office of the clerks of the county courts  
67 of the respective counties in which such real estate is  
68 situate; and such deed or deeds shall recite as the con-  
69 sideration therefor the said merger or consolidation and  
70 shall be deemed confirmatory of the title of such real  
71 estate in the surviving or new corporation.

**§31-1-39. Articles of dissolution; contents.**

1 (a) If voluntary dissolution proceedings have not been  
2 revoked, then when all debts, liabilities and obligations of  
3 the corporation have been paid and discharged, or ade-  
4 quate provision has been made therefor, and all of the  
5 remaining property and assets of the corporation have  
6 been distributed to its shareholders in the case of a busi-

7 ness corporation, or, in the case of a nonprofit corporation,  
8 when all of the remaining property and assets of the cor-  
9 poration shall have been transferred, conveyed or dis-  
10 tributed in accordance with the provisions of sections one  
11 hundred fifty-five and one hundred fifty-six of this article,  
12 articles of dissolution shall be executed in duplicate by the  
13 corporation by its president or a vice president and by its  
14 secretary or an assistant secretary, and verified by one of  
15 the officers signing such statement, which statement shall  
16 set forth:

17 (1) The name of the corporation.

18 (2) That all debts, obligations and liabilities of the  
19 corporation have been paid and discharged or that ade-  
20 quate provision has been made therefor.

21 (3) That all the remaining property and assets of the  
22 corporation have been distributed among its shareholders  
23 in accordance with their respective rights and interests, in  
24 the case of a business corporation, or, in the case of a  
25 nonprofit corporation, that all the remaining property and  
26 assets of the corporation have been transferred, conveyed  
27 or distributed in accordance with the provisions of sections  
28 one hundred fifty-five and one hundred fifty-six of this  
29 article.

30 (4) That there are no actions pending against the  
31 corporation in any court, or that adequate provision has  
32 been made for the satisfaction of any judgment or order  
33 which may be entered against it in any pending action.

34 (b) In the case of a business corporation, such state-  
35 ment, in addition to the matters required to be set forth  
36 under the provisions of subsection (a) of this section, shall  
37 contain a statement that the secretary of state has here-  
38 tofore filed a statement of intent to dissolve the corpora-  
39 tion, and the date on which such statement was filed.

40 (c) In the case of a nonprofit corporation, such state-  
41 ment in addition to the matters required to be set forth,  
42 under the provisions of subsection (a) of this section, shall  
43 set forth:

44 (1) If there are members entitled to vote thereon, a  
45 statement setting forth the date of the meeting of mem-  
46 bers at which the resolution to dissolve was adopted, that  
47 a quorum was present at such meeting and that such reso-

48 lution received the approval of a majority of the votes  
49 which members present at such meeting or represented  
50 by proxy were entitled to cast, or a statement that such  
51 resolution was adopted by a consent in writing signed by  
52 all members entitled to vote with respect thereto.

53 (2) If there are no members, or no members entitled to  
54 vote thereon, a statement of such fact, the date of the  
55 meeting of the board of directors at which the resolution to  
56 dissolve was adopted and a statement of the fact that such  
57 resolution received the vote of a majority of the directors  
58 in office.

59 (3) A copy of the plan of distribution, if any, as  
60 adopted by the corporation, or a statement that no plan  
61 was so adopted.

**§31-1-40. Articles of dissolution, filing, issuance of certificate  
of dissolution by secretary of state; recordation.**

1 (a) Duplicate originals of the articles of dissolution  
2 shall be delivered to the secretary of state. If the secre-  
3 tary of state finds that such articles of dissolution conform  
4 to law and if the provisions of section sixty-one have been  
5 fully satisfied, he shall, when all fees have been paid as  
6 prescribed by law, (i) endorse on each of such duplicate  
7 originals the word "Filed," and the month, day and year  
8 of the filing thereof; (ii) file one of such duplicate orig-  
9 inals in his office; and (iii) issue a certificate of dissolution  
10 to which he shall affix the other duplicate original.

11 (b) In the case of a nonprofit corporation, in addition  
12 to the duplicate originals of the articles of dissolution, a  
13 copy of the notice required to be published under the  
14 provisions of one hundred fifty-four of this article and the  
15 publisher's certificate of such publication shall be de-  
16 livered to the secretary of state. The secretary of state,  
17 prior to endorsing, filing and issuing the certificate of  
18 dissolution, shall ascertain that the notice and certificate  
19 conform to law.

20 (c) The certificate of dissolution, together with the  
21 duplicate original of the articles of dissolution affixed  
22 thereto by the secretary of state, shall be returned to the  
23 incorporators or to the representatives of the dissolved  
24 corporation. If the certificate of incorporation shall have

25 been recorded in the office of the clerk of the county court  
26 of any county in this state, the incorporators or their rep-  
27 resentative shall record the certificate of dissolution in the  
28 office of the clerk of the county court in which the cer-  
29 tificate of incorporation is recorded, and the clerk shall  
30 note on the margin of the record book in which the  
31 certificate of incorporation is engrossed the fact of the  
32 dissolution of the corporation, and upon such recordation  
33 the existence of the corporation shall cease, except for  
34 the purpose of actions, other proceedings and appropriate  
35 corporate action by shareholders or members, directors  
36 and officers as provided in this article.

**§31-1-41. Jurisdiction of court to liquidate assets and business  
or affairs of corporation; when such actions may  
be brought; venue; parties.**

1 (a) Any of the circuit courts or inferior courts of  
2 record with general civil jurisdiction shall have full power  
3 to liquidate the assets and business or affairs of a corpora-  
4 tion in an action by a shareholder or member when it is  
5 established:

6 (1) That the directors are deadlocked in the man-  
7 agement of the corporate affairs and that irreparable in-  
8 jury to the corporation is being suffered or is threatened  
9 by reason thereof, and either that the shareholders or  
10 members are unable to break the deadlock or there are  
11 no shareholders or members having voting rights; or

12 (2) That the acts of the directors or those in control  
13 of the corporation are illegal, oppressive or fraudulent;  
14 or

15 (3) That the shareholders or members entitled to vote  
16 in the election of directors, are deadlocked in voting  
17 power, and have failed for a period which includes at least  
18 two consecutive annual meeting dates, to elect successors  
19 to directors whose terms have expired or would have ex-  
20 pired upon the election of their successors; or

21 (4) That the corporate assets are being misapplied or  
22 wasted; or,

23 (5) In addition, in the case of a nonprofit corporation,  
24 that such corporation is unable to carry out its purposes.



25 (b) Such courts shall also have full power to liquidate  
26 the assets and business or affairs of a corporation in an  
27 action by a creditor:

28 (1) When the claim of the creditor has been reduced  
29 to judgment and an execution thereon has been returned  
30 unsatisfied and it is established that the corporation is  
31 insolvent; or

32 (2) When the corporation has admitted in writing that  
33 the claim of the creditor is due and owing and it is estab-  
34 lished that the corporation is insolvent.

35 (c) Such courts shall also have full power to liquidate  
36 the assets or business or affairs of the corporation:

37 (1) Upon application by a corporation which has filed  
38 a statement of intent to dissolve, as provided in this  
39 article, to have its liquidation continued under the super-  
40 vision of the court; or

41 (2) In the case of a business corporation, when an  
42 action has been filed pursuant to the provisions of section  
43 eighty-six, article twelve, chapter eleven of this code, to  
44 dissolve a corporation and it is established that liquidation  
45 of its assets and business or affairs should precede the  
46 entry of an order of dissolution.

47 (d) Actions or proceedings brought under subsection  
48 (a) or (b), or under subdivision (1) of subsection (c) of  
49 this section, shall be brought in the county in which the  
50 principal office of the corporation is situated, or if there  
51 be no such office in this state, in the county in which any  
52 one or more of its shareholders or members reside or are  
53 found or in which the property of such corporation, or any  
54 part of it, may be.

55 (e) It shall not be necessary to make shareholders or  
56 members parties to any such action or proceedings unless  
57 relief is sought against them personally.

**§31-1-42. Procedure in liquidation of corporation by court;  
appointment and powers of receivers.**

1 In proceedings to liquidate the assets and business or  
2 affairs of a corporation the court shall have power to  
3 issue injunctions, to appoint a receiver or receivers pen-  
4 dente lite, with such powers and duties as the court, from  
5 time to time, may direct, and to take such other action

6 as may be requisite to preserve the corporate assets  
7 wherever situated, and carry on the business or affairs  
8 of the corporation until a full hearing can be had.

9 After a hearing had upon such notice as the court may  
10 direct to be given to all parties to the proceedings and to  
11 any other parties in interest designated by the court, the  
12 court may appoint a liquidating receiver or receivers with  
13 authority to collect the assets of the corporation, including  
14 all amounts owing to the corporation by subscribers, if  
15 any. Such liquidating receiver or receivers shall have  
16 authority, subject to the order of the court, to sell, convey  
17 and dispose of all or any part of the assets of the corpora-  
18 tion wherever situated, either at public or private sale.  
19 The order appointing such liquidating receiver or re-  
20 ceivers shall state their powers and duties. Such powers  
21 and duties may be increased or diminished at any time  
22 during the proceedings.

23 The court shall have power to allow from time to time,  
24 as expenses of the liquidation, compensation to the re-  
25 ceiver or receivers and to attorneys in the proceeding,  
26 and to direct the payment thereof out of the assets of the  
27 corporation or the proceeds of any sale or disposition of  
28 such assets.

29 A receiver of a corporation appointed under the provi-  
30 sions of this section shall have authority to sue and defend  
31 in all courts in his own name as receiver of such corpora-  
32 tion. The court appointing such receiver shall have ex-  
33 clusive jurisdiction of the corporation and its property,  
34 wherever situated.

#### **§31-1-43. Qualifications of receivers.**

1 A receiver appointed pursuant to the provisions of  
2 section forty-two of this article shall in all cases be a  
3 natural person who is a citizen of the United States or a  
4 corporation authorized to act as receiver, which corpora-  
5 tion may be a domestic corporation or a foreign corpora-  
6 tion authorized to conduct affairs or do or transact busi-  
7 ness in this state, and shall in all cases give such bond  
8 as the court may direct with such sureties as the court  
9 may require.

**§31-1-44. Filing of claims in liquidation proceedings.**

1 In proceedings to liquidate the assets and business or  
2 affairs of a corporation the court may require all creditors  
3 of the corporation to file with the clerk of the court or  
4 with the receiver, in such form as the court may pre-  
5 scribe, proofs under oath of their respective claims. If  
6 the court requires the filing of claims it shall fix a date,  
7 which shall be not less than four months from the date  
8 of the order, as the last day for the filing of claims, and  
9 shall prescribe the notice that shall be given to creditors  
10 and claimants of the date so fixed. Prior to the date so  
11 fixed, the courts may extend the time for filing of claims.  
12 Creditors and claimants failing to file proofs of claim  
13 on or before the date so fixed may be barred, by order  
14 of the court, from participating in the distribution of  
15 the assets of the corporation.

**§31-1-45. Discontinuance of liquidation proceedings.**

1 The liquidation of the assets and business or affairs  
2 of a corporation may be discontinued at any time during  
3 the liquidation proceedings when it is established that  
4 cause for liquidation no longer exists. In such event the  
5 court shall dismiss the proceedings and direct the re-  
6 ceiver to deliver to the corporation all its remaining  
7 property and assets.

**§31-1-46. Order of involuntary dissolution; filing with the secretary of state.**

1 In proceedings to liquidate the assets and business or  
2 affairs of a corporation, when the costs and expenses of  
3 such proceedings and all debts, obligations and liabilities  
4 of the corporation shall have been paid and discharged  
5 and all of its remaining property and assets distributed  
6 to its shareholders, or in the case of a nonprofit corpora-  
7 tion, in accordance with the provisions of sections one  
8 hundred fifty-five and one hundred fifty-six of this article,  
9 the court shall enter an order dissolving the corporation,  
10 whereupon the existence of the corporation shall cease.  
11 In case its property and assets are not sufficient to satisfy  
12 and discharge such costs, expenses, debts and obligations  
13 and all the property and assets have been applied so far as

14 they will go to their payment, the court shall likewise  
15 enter an order dissolving the corporation, whereupon the  
16 existence of the corporation shall cease.

17 If the court shall enter an order dissolving a corpora-  
18 tion, it shall be the duty of the clerk of such court to  
19 cause a certified copy of the order to be filed with the  
20 secretary of state. No fee shall be charged by the secre-  
21 tary of state for the filing thereof.

**§31-1-47. Deposits with state treasurer of amounts due certain persons.**

1 Upon the voluntary or involuntary dissolution of a  
2 corporation, the portion of the assets distributable to  
3 any creditor, shareholder, member or person who is  
4 unknown or who cannot be found, or who is under dis-  
5 ability and for whom there is no person legally competent  
6 to receive such distributive portion, shall be reduced  
7 to cash and deposited with the state treasurer in accor-  
8 dance with the provisions of article eight, chapter thirty-  
9 six of this code, and shall be paid over to such creditor,  
10 shareholder, member or person or to his legal represen-  
11 tative upon proof satisfactory to the state treasurer of  
12 his right thereto, in accordance with the provisions of  
13 said article eight, chapter thirty-six.

**§31-1-48. Survival of remedy after dissolution; effect of dissolution.**

1 The dissolution of a corporation either (1) by the  
2 issuance of a certificate of dissolution by the secretary  
3 of state, or (2) by an order of court when the court has  
4 not liquidated the assets and business or affairs of the  
5 corporation as provided in this article, or (3) by expira-  
6 tion of its period of duration, shall not take away or  
7 impair any remedy available to or against such corpora-  
8 tion, its shareholders or members, directors and officers,  
9 for any right or claim existing, or any liability incurred,  
10 prior to such dissolution if action or other proceeding  
11 thereon is commenced within two years after the date  
12 of such dissolution. Any such action or proceeding by  
13 or against the corporation may be prosecuted or defended  
14 by the corporation in its corporate name. The share-

15 holders or members, directors and officers shall have  
16 power to take such corporate or other action as shall  
17 be appropriate to protect such remedy, right or claim.  
18 If such corporation was dissolved by the expiration of  
19 its period of duration, such corporation may amend its  
20 articles of incorporation at any time during such period  
21 of two years so as to extend its period of duration.

22 The board of directors and the executive officers in  
23 office at the date of such expiration or dissolution, and  
24 their successors in office, shall have the right to fill any  
25 vacancy in any executive office and of the board of direc-  
26 tors by appointment; and they and their successors in  
27 office may cause actions or proceedings to be brought,  
28 conducted, prosecuted or defended, the real and personal  
29 property of the corporation to be conveyed or transferred  
30 under the common seal or otherwise, further assurances  
31 of previous conveyances to be made, and all lawful acts  
32 to be done, in the corporate name, in like manner and  
33 with like effect as before such dissolution or expiration;  
34 but so far only as shall be necessary or proper to do and  
35 perform every act and thing which should have been  
36 or should be done and performed by the corporation,  
37 and for collecting the debts and claims due to the cor-  
38 poration, converting its property and assets into money,  
39 prosecuting, defending and protecting its rights, enforc-  
40 ing all claims in its favor, and paying over and distrib-  
41 uting its property and assets, or the proceeds thereof, to  
42 those entitled thereto.

**§31-1-49. Admission of foreign corporation; acts permitted to  
be done without certificate of authority.**

X 1 (a) No foreign corporation shall have the right to  
2 conduct affairs or do or transact business in this state  
3 until it shall have procured a certificate of authority so  
4 to do from the secretary of state. No foreign corporation  
5 shall be entitled to procure a certificate of authority  
6 under this article to conduct affairs or do or transact  
7 any business in this state which would not be permitted  
8 to be conducted, done or transacted by a corporation  
9 organized under this article. A foreign corporation shall  
10 not be denied a certificate of authority by reason of the

11 fact that the laws of the state or country under which  
12 such corporation is organized governing its organization  
13 and internal affairs differ from the laws of this state,  
14 and nothing in this article contained shall be construed  
15 to authorize this state to regulate the organization or the  
16 internal affairs of such corporation.

17 (b) Without excluding other activities which may  
18 not constitute conducting affairs or doing or transacting  
19 business in this state, a foreign corporation shall not be  
20 considered to be conducting affairs or doing or transacting  
21 business in this state, for the purposes of this article, by  
22 reason of carrying on in this state any one or more of  
23 the following activities:

24 (1) Maintaining or defending any legal action or pro-  
25 ceeding or any administrative or arbitration proceeding,  
26 or effecting the settlement thereof or the settlement of  
27 claims or disputes;

28 (2) Holding meetings of its directors, shareholders  
29 or members or carrying on other activities concerning  
30 its internal affairs;

31 (3) Maintaining bank accounts;

32 (4) Creating evidences of debt, mortgages or liens  
33 on real or personal property;

34 (5) Securing or collecting debts or enforcing any  
35 rights in property securing the same;

36 (6) Conducting its affairs or doing or transacting  
37 business in interstate commerce;

38 (7) Granting funds or other gifts;

39 (8) Distributing information to its shareholders or  
40 members; or

41 (9) Conducting an isolated transaction completed  
42 within a period of thirty days and not in the course  
43 of a number of repeated transactions of like nature.

44 (c) In addition to those activities enumerated in  
45 subsection (b) of this section, a foreign corporation shall  
46 not be considered to be conducting affairs or doing or  
47 transacting business in this state, for the purposes of this  
48 article, by reason of carrying on in this state one or more  
49 of the following activities:

50 (1) Maintaining offices or agencies for the transfer,  
51 exchange and registration of its securities, or appointing  
52 and maintaining trustees or depositaries with relation  
53 to its securities;

54 (2) Effecting sales through independent contractors;  
55 or

56 (3) Soliciting or procuring orders, whether by mail  
57 or through employees or agents or otherwise, where such  
58 orders require acceptance without this state before be-  
59 coming binding contracts.

**§31-1-50. Powers of foreign corporation.**

1 A foreign corporation which shall have received a  
2 certificate of authority under this article shall enjoy the  
3 same, but no greater, rights and privileges as a domestic  
4 corporation organized for the purposes set forth in the  
5 application pursuant to which such certificate of au-  
6 thority is issued, until a certificate of revocation or of  
7 withdrawal shall have been issued as provided in this  
8 article; and except as in this article otherwise provided,  
9 shall be subject to the same duties, restrictions, penalties  
10 and liabilities now or hereafter imposed upon a domestic  
11 corporation of like character.

**§31-1-51. Corporate name of foreign corporation; when cer-  
tificate of authority shall not be issued.**

1 (a) No certificate of authority shall be issued to a  
2 foreign corporation unless the corporate name of such  
3 corporation:

4 (1) Shall contain the word "corporation," "company,"  
5 "incorporated" or "limited," or shall contain an abbrevia-  
6 tion of one of such words, or such corporation shall, for  
7 use in this state, add at the end of its name one of such  
8 words or an abbreviation thereof.

9 (2) Shall not contain any word or phrase which  
10 indicates or implies that it is organized for any purpose  
11 other than one or more of the purposes in its articles of  
12 incorporation, or if the corporate name of corporation  
13 indicates or implies that it is authorized or empowered  
14 to conduct the business of banking or insurance unless

15 such corporation is so authorized or empowered under  
16 the laws of this state.

17 (3) Shall not be the same as, or deceptively similar  
18 to, the name of any corporation existing under the laws  
19 of this state, whether stock or nonstock and whether or not  
20 organized for profit, or any foreign corporation, authorized  
21 to conduct affairs or do or transact business in this state,  
22 whether stock or nonstock and whether or not organized  
23 for profit, or a corporate name reserved or registered as  
24 permitted by the laws of this state.

25 (4) Shall be transliterated into letters of the English  
26 alphabet, if it is not in English.

27 (b) The provisions of subsection (a) (3) of this section  
28 shall not apply if the foreign corporation applying for a  
29 certificate of authority files with the secretary of state  
30 any one of the following:

31 (1) A resolution of its board of directors adopting a  
32 fictitious name for use in conducting affairs or doing or  
33 transacting business in this state, which fictitious name is  
34 not deceptively similar to the name of any domestic cor-  
35 poration or of any foreign corporation authorized to con-  
36 duct affairs or do or transact business in this state or to any  
37 name reserved or registered as provided in this article, or

38 (2) The written consent of such other corporation  
39 or holder of a reserved or registered name to use the  
40 same or deceptively similar name and one or more words  
41 are added to make such name distinguishable from such  
42 other name, or

43 (3) A certified copy of a final order of a court of  
44 competent jurisdiction establishing the prior right of such  
45 foreign corporation to the use of such name in this state.

**§31-1-52. Change of name by foreign corporation.**

1 Whenever a foreign corporation which is authorized  
2 to conduct affairs or do or transact business in this state  
3 shall change its name to one under which a certificate  
4 of authority would not be granted to it on application  
5 therefor, the certificate of authority of such corporation  
6 shall be suspended and it shall not thereafter conduct  
7 any affairs or do or transact any business in this state  
8 until it has changed its name to a name which is avail-



9 able to it under the laws of this state or has otherwise  
10 complied with the provisions of this article.

**§31-1-53. Application for certificate of authority by foreign  
corporation; contents; churches or religious de-  
nominations in corporate capacity prohibited.**

1 (a) A foreign corporation, in order to procure a  
2 certificate of authority to conduct affairs, or do or trans-  
3 act business in this state, shall make application therefor  
4 to the secretary of state, which application shall set  
5 forth:

6 (1) The name of the corporation and the state or  
7 country under the laws of which it is incorporated.

8 (2) If the name of the corporation does not contain  
9 the word "corporation," "company," "incorporated" or  
10 "limited," or does not contain an abbreviation of one of  
11 such words, then the name of the corporation with the  
12 word or abbreviation which it elects to add thereto for  
13 use in this state.

14 (3) The date of incorporation and the period of dura-  
15 tion of the corporation.

16 (4) The address of the principal office of the cor-  
17 poration in the state or country under the laws of which  
18 it is incorporated.

19 (5) The address of the principal office of the cor-  
20 poration in this state if such corporation has or intends  
21 to have a principal office located in this state.

22 (6) The purpose or purposes of the corporation which  
23 it proposes to pursue in conducting its affairs or doing  
24 or transacting its business in this state.

25 (7) The names and respective addresses of the direc-  
26 tors and officers of the corporation.

27 (8) Such additional information as may be neces-  
28 sary or appropriate in order to enable the secretary of  
29 state to determine whether such corporation is entitled  
30 to a certificate of authority to conduct its affairs or do  
31 or transact business in this state and to determine and  
32 assess the fees payable as prescribed by law.

33 (9) The county wherein the corporation intends to  
34 record its articles of incorporation, amendments or re-  
35 statement of such articles of incorporation, pursuant to

36 the provisions of subsection (c) of section fifty-four of  
37 this article.

38 (b) In the case of a business corporation, in addition  
39 to those matters required to be set forth under the pro-  
40 visions of subsection (a) of this section, such application  
41 shall set forth:

42 (1) A statement of the aggregate number of shares  
43 which the corporation has authority to issue, itemized  
44 by classes, par value of shares, shares without par value,  
45 and series, if any, within a class.

46 (2) A statement of the aggregate number of issued  
47 shares itemized by classes, par value of shares, shares  
48 without par value, and series, if any, within a class.

49 (3) A statement, expressed in dollars, of the amount  
50 of stated capital of the corporation, as defined in this  
51 article.

52 (4) An estimate, expressed in dollars, of the value  
53 of all property to be owned by the corporation, for the  
54 following year, wherever located, and an estimate of the  
55 value of the property of the corporation to be located  
56 within this state during such year, and an estimate, ex-  
57 pressed in dollars, of the gross amount of business which  
58 will be done or transacted by the corporation during  
59 such year, and an estimate of the gross amount thereof  
60 which will be done or transacted by the corporation at  
61 or from places of business in this state during such  
62 year.

63 (c) Such application shall be made on forms pre-  
64 scribed and furnished by the secretary of state and shall  
65 be executed in duplicate by the corporation by its presi-  
66 dent or vice president and by its secretary or an assistant  
67 secretary, and verified by one of the officers signing such  
68 application.

69 (d) No church, religious sect or denomination incor-  
70 porated by the laws of any other state or territory of  
71 the United States, the District of Columbia or of any  
72 foreign country shall be qualified to conduct affairs or  
73 do or transact business in this state in a corporate  
74 capacity.

**§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.**

1 (a) Duplicate originals of the application of a for-  
2 eign corporation for a certificate of authority shall be  
3 delivered to the secretary of state, together with a copy  
4 of its articles of incorporation and all amendments  
5 thereto, or a proper restatement thereto, duly certified  
6 by the proper officer of the state or country under the  
7 laws of which it is incorporated, and a statement or  
8 certificate from such officer that the corporation is in  
9 good standing with the state or country under the laws  
10 of which it is incorporated.

11 If the secretary of state finds that such application  
12 conforms to law, he shall, when all fees have been paid  
13 as prescribed by law, (i) endorse on each of such origi-  
14 nals the word "Filed," and the month, day and year of  
15 the filing thereof; (ii) file one of such duplicate originals  
16 of the application and the copy of the articles of incor-  
17 poration and amendments thereto; and (iii) issue a  
18 certificate of authority to conduct affairs or to do or  
19 transact business in this state, to which he shall affix  
20 the other duplicate original application.

21 (b) The certificate of authority, together with the  
22 duplicate original of the application affixed thereto by  
23 the secretary of state, shall be returned to the corpora-  
24 tion or its representative.

25 (c) The certificate of authority, together with a copy  
26 of the articles of incorporation and all amendments  
27 thereto, or a proper restatement thereof, shall be recorded  
28 in the office of the county court of the county where the  
29 principal office of the corporation in this state is located.  
30 If such corporation does not maintain a principal office  
31 in this state, such recordation may be completed in any  
32 county in which it is conducting its affairs or doing or  
33 transacting business. A failure to comply with the provi-  
34 sions of this subsection within six months from the date  
35 of issuance of a certificate of authority shall subject such  
36 corporation to a fine of not more than one thousand  
37 dollars.

**§31-1-55. Effect of certificate of authority.**

1 Upon the issuance of a certificate of authority by the  
2 secretary of state and upon the proper recordation of  
3 such certificate in accordance with the provisions of  
4 subsection (c) of section fifty-four of this article, the  
5 corporation shall be authorized to conduct affairs or do  
6 or transact business in this state for those purposes  
7 set forth in its application, subject, however, to the right  
8 of this state to suspend or to revoke such authority  
9 as provided in this article.

**§31-1-56. Change of principal office of foreign corporation;  
statement required to be filed.**

1 (a) A foreign corporation authorized to conduct affairs  
2 or do or transact business in this state may change the  
3 place of its principal office in this state upon filing in  
4 the office of the secretary of state a statement setting  
5 forth:

6 (1) The name of the corporation.

7 (2) The address of its then principal office.

8 (3) The address to which the principal office is to  
9 be changed.

10 (4) That such change was authorized by resolution  
11 duly adopted by its board of directors.

12 (b) Such statement shall be executed by the corpora-  
13 tion by its president or a vice president, and verified  
14 by him and delivered to the secretary of state. If the  
15 secretary of state finds that such statement conforms to  
16 the provisions of this article, he shall file such statement  
17 in his office, and upon such filing the change of address  
18 of the principal office shall become effective. If such  
19 foreign corporation maintains a principal office in this  
20 state and changes the place of such principal office or  
21 moves its principal office out of this state, or if such  
22 corporation does not maintain a principal office in this  
23 state and moves or changes the place of its principal  
24 office, the statement required by this section to be filed  
25 with the secretary of state shall be filed within ten days  
26 after such move, and no such move or change of the  
27 place of its principal office shall be deemed to be com-

28 pleted until such statement is so filed with the secretary  
29 of state.

**§31-1-57. Amendment to articles of incorporation of foreign corporation; filing; recordation; penalty for failure to record.**

1 (a) Whenever the articles of incorporation of a for-  
2 eign corporation authorized to conduct affairs or do or  
3 transact business in this state are amended, such foreign  
4 corporation shall, within thirty days after such amend-  
5 ment becomes effective, file in the office of the secretary  
6 of state a copy of such amendment duly authenticated  
7 by the proper officer of the state or country under the  
8 laws of which it is incorporated; but the filing thereof  
9 shall not of itself enlarge or alter the purpose or pur-  
10 poses which such corporation is authorized to pursue  
11 in conducting its affairs or in doing or transacting its  
12 business in this state, nor authorize such corporation  
13 to conduct affairs or do or transact business in this state  
14 under any other name than the name set forth in its  
15 certificate of authority.

16 (b) The secretary of state shall issue to such cor-  
17 poration a certificate showing the filing of such amend-  
18 ment and collect a fee of five dollars for such certificate.  
19 The certificate so issued by the secretary of state, to-  
20 gether with a true copy of the amendment, shall be  
21 recorded in the office of the clerk of the county court  
22 of the county in which its original certificate of authority  
23 was recorded, pursuant to the provisions of subsection  
24 (c) of section fifty-four of this article.

25 A failure to comply with the provisions of this sub-  
26 section within six months from the date of such amend-  
27 ment shall subject such corporation to a fine of not more  
28 than one thousand dollars.

**§31-1-58. Merger of foreign corporation authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.**

1 (a) Whenever a foreign corporation authorized to  
2 conduct affairs or do or transact business in this state

3 shall be a party to a merger permitted by the laws of the  
4 state or country under the laws of which it is incor-  
5 porated, and such corporation shall be the surviving cor-  
6 poration, it shall, within thirty days after such merger  
7 become effective, file with the secretary of state a copy  
8 of the articles of merger duly authenticated by the proper  
9 officer of the state or country under the laws of which  
10 such merger was effected; and it shall not be necessary  
11 for such corporation to procure either a new or amended  
12 certificate of authority to conduct affairs or do or trans-  
13 act business in this state unless the name of such cor-  
14 poration be changed thereby or unless the corporation  
15 desires to pursue in this state other or additional purposes  
16 than those which it is then authorized to pursue in this  
17 state.

18 (b) The secretary of state shall issue to such sur-  
19 viving corporation a certificate showing the filing of a  
20 copy of the articles of merger and collect a fee of five  
21 dollars for such certificate. The certificate so issued by  
22 the secretary of state, together with a true copy of the  
23 articles of merger, shall be recorded in the office of the  
24 clerk of the county court of the county in which its  
25 original certificate of authority was recorded, pursuant  
26 to the provisions of subsection (c) of section fifty-four  
27 of this article.

28 A failure to comply with the provisions of this sub-  
29 section within six months from the date of such merger  
30 shall subject such corporation to a fine of not more than  
31 one thousand dollars.

**§31-1-59. Amended certificate of authority; requirements; re-  
cordation; penalty for failure to record.**

1 A foreign corporation authorized to conduct affairs or  
2 do or transact business in this state shall procure an  
3 amended certificate of authority in the event it changes  
4 its corporate name, or desires to pursue in this state  
5 purposes other than or in addition to those purposes  
6 set forth in its prior application for a certificate of au-  
7 thority, by making application therefor to the secretary  
8 of state.

9 The requirements in respect to the form and contents  
10 of such application, the manner of its execution, the  
11 filing of duplicate originals thereof with the secretary  
12 of state, the issuance of an amended certificate of au-  
13 thority and the effect thereof, and the recordation require-  
14 ments for such amended certificate of authority shall  
15 be the same as in the case of an original application for  
16 a certificate of authority.

17 A failure to comply with the provisions of this section  
18 within six months from the date of such change of cor-  
19 porate name or purposes shall subject such corporation  
20 to a fine of not more than one thousand dollars.

**§31-1-60. Procedure for withdrawal of foreign corporation;  
publication required; application for certificate of  
withdrawal; contents; filing; issuance of certifi-  
cate; recordation.**

1 (a) A foreign corporation authorized to conduct  
2 affairs or do or transact business in this state may with-  
3 draw from this state upon procuring from the secretary  
4 of state a certificate of withdrawal. In order to procure  
5 such certificate of withdrawal, such foreign corporation  
6 shall publish a notice of its intention to withdraw from  
7 the state, such notice to be published as a Class II legal  
8 advertisement in compliance with the provisions of article  
9 three, chapter fifty-nine of this code, and the publica-  
10 tion area for such publication shall be the county in which  
11 its principal office in this state is situated, or if there be  
12 no such office in this state, then any county in this state  
13 where it conducts its affairs or transacts its business.

14 (b) After publication of the notice required by the  
15 provisions of subsection (a) of this section, such foreign  
16 corporation shall make application to the secretary of  
17 state for a certificate of withdrawal, which application  
18 shall set forth:

19 (1) The name of the corporation and the state or  
20 country under the laws of which it is incorporated.

21 (2) That the corporation has ceased conducting affairs  
22 or has ceased doing or transacting business in this state.

23 (3) That the corporation surrenders its authority to  
24 conduct affairs or do or transact business in this state.

25 (4) A post-office address to which the secretary of  
26 state may mail a copy of any process against the cor-  
27 poration that may be served on him.

28 (5) Such additional information as may be necessary  
29 or appropriate in order to enable the secretary of state  
30 to determine and assess any unpaid fees payable by  
31 such foreign corporation as may be prescribed by  
32 law.

33 (c) In the case of a business corporation, in addition  
34 to those matters required to be set forth under the pro-  
35 visions of subsection (b) of this section, such application  
36 shall set forth:

37 (1) A statement of the aggregate number of shares  
38 which the corporation has authority to issue, itemized  
39 by classes, par value of shares, shares without par value,  
40 and series, if any, within a class, as of the date of such  
41 application.

42 (2) A statement of the aggregate number of issued  
43 shares, itemized by classes, par value of shares, shares  
44 without par value, and series, if any, within a class, as  
45 of the date of such application.

46 (3) A statement, expressed in dollars, of the amount  
47 of stated capital of the corporation, as of the date of  
48 such application.

49 The application for a certificate of withdrawal shall  
50 be made on forms prescribed and furnished by the sec-  
51 retary of state and shall be executed by the corporation  
52 by its president or a vice president and by its secretary  
53 or an assistant secretary, and verified by one of the  
54 officers signing the application, or, if the corporation is  
55 in the hands of a receiver or trustee, shall be executed  
56 on behalf of the corporation by such receiver or trustee  
57 and verified by him. Such application shall be accom-  
58 panied by a copy of the notice required to be published  
59 under the provisions of subsection (a) of this section  
60 and the publisher's certificate of such publication.

61 (e) Duplicate originals of such application for a  
62 certificate of withdrawal shall be delivered to the secre-  
63 tary of state. If the secretary of state finds that such  
64 application conforms to law, he shall, when all fees have



65 been paid, as prescribed by law, (i) endorse on each of  
66 such duplicate originals the word "Filed," and the month,  
67 day and year of the filing thereof; (ii) file one of such  
68 duplicate originals in his office; and (iii) subject to the  
69 provisions of section sixty-one of this article, issue a  
70 certificate of withdrawal to which he shall affix the other  
71 duplicate original.

72 (f) The certificate of withdrawal, together with the  
73 duplicate original of the application for withdrawal  
74 affixed thereto by the secretary of state, shall be returned  
75 to the corporation or its representative. The corporation  
76 or its representative shall record the certificate of with-  
77 drawal in the office of the clerk of the county court in  
78 which the corporation's certificate of authority is re-  
79 corded, and the clerk shall note on the margin of the  
80 record book in which such certificate of authority is en-  
81 grossed the fact of the withdrawal of the corporation,  
82 and upon the recordation of such certificate of with-  
83 drawal, the authority of the corporation to conduct affairs  
84 or do or transact business in this state shall cease.

**§31-1-61. Certificate as to taxes prerequisite for issuance of  
dissolution, withdrawal, consolidation or merger,  
or expiration.**

1 The secretary of state shall withhold the issuance of  
2 any certificate of dissolution or withdrawal, or certificate  
3 of consolidation or merger in the case where the new  
4 or surviving corporation will be a foreign corporation  
5 which has not qualified to conduct affairs or do or trans-  
6 act business or hold property in this state, nor shall any  
7 corporation expire by virtue of its articles of incor-  
8 poration or amendment thereto, until the receipt by the  
9 secretary of state of a notice from the tax commissioner  
10 and department of employment security to the effect  
11 that all taxes due from said corporation under the pro-  
12 visions of chapter eleven of this code, including, but not  
13 limited to, taxes withheld under the provisions of section  
14 seventy-one, article twenty-one of said chapter eleven,  
15 all business and occupation taxes, motor carrier and  
16 transportation privilege taxes, gasoline taxes, consumer  
17 sales taxes and any and all license, franchise or other

18 excise taxes and corporate net income taxes, and em-  
19 ployment security payments levied or assessed against  
20 the corporation seeking to withdraw, dissolve, consolidate,  
21 merge or expire have been paid or that such payment  
22 has been provided for, or until the secretary of state  
23 receives a notice from the tax commissioner or depart-  
24 ment of employment security, as the case may be, stating  
25 that the corporation in question is not subject to payment  
26 of any such taxes or to the making of any employment  
27 security payments or assessments.

**§31-1-62. Conditions for revocation of certificate of authority.**

1 (a) Subject to the provisions of section sixty-eight of  
2 this article, the certificate of authority of a foreign cor-  
3 poration to conduct affairs or do or transact business  
4 in this state may be revoked by the secretary of state  
5 upon the conditions prescribed in this section when:

6 (1) The corporation has failed, after change of its  
7 principal office to file in the office of the secretary of  
8 state a statement of such change as required by section  
9 fifty-six of this article, or

10 (2) The corporation has failed to file in the office  
11 of the secretary of state any amendment to its articles  
12 of incorporation as required by the provisions of section  
13 fifty-seven of this article, or

14 (3) The corporation has failed to file in the office  
15 of the secretary of state any articles of merger, as re-  
16 quired by the provisions of section fifty-eight of this  
17 article, or

18 (4) A misrepresentation has been made of any ma-  
19 terial matter in any application, report, affidavit or other  
20 document submitted by such corporation pursuant to the  
21 provisions of this article.

22 (b) No certificate of authority of a foreign corpora-  
23 tion shall be revoked by the secretary of state un-  
24 less:

25 (1) He shall have given the corporation not less than  
26 sixty days' notice thereof by registered or certified mail,  
27 return receipt requested, addressed to its principal office  
28 in this state, or if the corporation has no such principal

29 office in this state, then to its principal office outside  
30 this state, and

31 (2) The corporation shall fail, prior to revocation,  
32 to file the required statement of change of principal  
33 office or shall fail to file any amendment to its articles  
34 of incorporation or shall fail to file any articles of merger  
35 or shall fail to correct any such misrepresentation.

**§31-1-63. Issuance of order of revocation; period of appeal.**

1 (a) Upon revoking any certificate of authority, the  
2 secretary of state shall issue an order of revocation in  
3 duplicate, one of which shall be filed in his office and  
4 the other shall be mailed by registered or certified  
5 mail, return receipt requested, to the corporation at  
6 its principal office in this state, or if the corporation  
7 has no such principal office in this state, then to its  
8 principal office outside this state, and a copy of the  
9 notice required by the provisions of subsection (b) of  
10 section sixty-two of this article shall be attached  
11 thereto.

12 (b) Such corporation shall have thirty days from  
13 the date of receipt of such order of revocation to appeal  
14 the action of the secretary of state in accordance with  
15 the provisions of section sixty-eight of this article, and  
16 if such appeal be not taken within such thirty-day period,  
17 then the order of the secretary of state revoking the  
18 certificate of authority of such corporation shall be final  
19 and the authority of the corporation to conduct affairs  
20 or do or transact business in this state shall cease.

**§31-1-64. Conditions of expiration of corporate existence.**

1 Irrespective of any provisions of any articles of in-  
2 corporation or amendment thereto, no corporation shall  
3 expire by virtue of its own articles of incorporation or  
4 amendment thereto until such time as such corporation  
5 has fully complied with all of the provisions of this  
6 article relating to the voluntary dissolution of corpora-  
7 tions, and the existence of any such corporation shall  
8 continue beyond the expiration date established in its  
9 charter or amendment thereto for all intents and pur-

10 poses until such corporation shall have been dissolved in  
11 accordance with the provisions of this article.

12 When any such corporation has fully complied with  
13 the provisions of this article relating to the voluntary  
14 dissolution of corporations, the secretary of state shall  
15 issue a certificate of dissolution which shall be recorded  
16 in the same county and in the same manner as would  
17 be the case for other certificates or dissolution.

**§31-1-65. Application to corporations heretofore authorized  
to conduct affairs or do or transact business in this  
state.**

1 Subject to the limitations set forth in their respective  
2 certificates of authority, foreign corporations which are  
3 duly authorized to conduct affairs or do or transact busi-  
4 ness in this state at the time this article takes effect, for  
5 a purpose or purposes for which a corporation might  
6 secure such authority under this article, shall be en-  
7 titled to all the rights and privileges applicable to foreign  
8 corporations procuring certificates of authority to con-  
9 duct affairs or do or transact business in this state under  
10 this article, and shall not be required to make reapplica-  
11 tion for authority to conduct affairs or do or transact  
12 business in this state by reason of the adoption of this  
13 article. From the time this article takes effect such cor-  
14 porations shall be subject to all the limitations, restric-  
15 tions, liabilities and duties prescribed herein for foreign  
16 corporations procuring certificates of authority to con-  
17 duct affairs or do or transact business in this state.

**§31-1-66. Conducting affairs or doing or transacting business  
without certificate of authority.**

1 No foreign corporation which is conducting affairs or  
2 doing or transacting business in this state without a  
3 certificate of authority shall be permitted to maintain  
4 any action or proceeding in any court of this state until  
5 such corporation shall have obtained a certificate of  
6 authority. Nor shall any action or proceeding be main-  
7 tained in any court of this state by any successor or  
8 assignee of such corporation on any right, claim or de-  
9 mand arising out of the conducting of affairs or the

10 doing or transacting of business by such corporation in  
11 this state, until a certificate of authority shall have been  
12 obtained by such corporation or by a corporation which  
13 has acquired all or substantially all of its assets.

14 The failure of a foreign corporation to obtain a cer-  
15 tificate of authority to conduct affairs or do or transact  
16 business in this state shall not impair the validity of  
17 any contract or act of such corporation, and shall not  
18 prevent such corporation from defending any action  
19 or proceeding in any court of this state.

20 A foreign corporation which conducts affairs or does  
21 or transacts business in this state without a certificate of  
22 authority shall be liable to this state, for the years or  
23 parts thereof during which it conducted affairs or did  
24 or transacted business in this state without a certificate  
25 of authority, in an amount equal to all fees and taxes  
26 which would have been imposed by this article, or by  
27 any other provisions of this code, upon such corporation  
28 had it duly applied for and received a certificate of au-  
29 thority to conduct affairs or do or transact business in  
30 this state as required by this article and thereafter filed  
31 all reports, statements or returns required by this article  
32 or by any other provisions of this code, plus all penalties  
33 imposed for failure to pay any such fees and taxes.

**§31-1-67. Powers of secretary of state; rules and regulations.**

1 The secretary of state shall have the power and author-  
2 ity reasonably necessary to enable him to administer  
3 this article efficiently and to perform the duties therein  
4 imposed upon him.

5 The secretary of state may, from time to time, as he  
6 deems necessary, promulgate rules and regulations in  
7 accordance with the provisions of chapter twenty-nine-a  
8 of this code in order to implement and make effective  
9 the powers and duties vested in him by the provisions  
10 of this article.

**§31-1-68. Appeal from secretary of state.**

1 (a) If the secretary of state shall fail to approve  
2 any articles of incorporation, amendment, merger, consoli-  
3 dation or dissolution, or shall fail to issue any certificate

4 of authority to any foreign corporation seeking to con-  
5 duct affairs or do or transact business in this state, or  
6 shall fail to issue any certificate of withdrawal to any  
7 foreign corporation, or shall revoke any such certificate  
8 of authority, or shall fail to permit the expiration of any  
9 corporation, or shall fail to approve any other document  
10 required by this article to be approved by the secretary  
11 of state before the same shall be filed in his office, he  
12 shall, within ten days after the delivery thereof to him,  
13 give written notice of his ruling, disapproval or decision  
14 to the person or corporation, domestic or foreign, deliv-  
15 ering or desiring the same, specifying the reasons there-  
16 for. Such notice shall be given by registered or certified  
17 mail, return receipt requested, to the principal office  
18 of the corporation or to the address where such prin-  
19 cipal office is proposed to be situated.

20 (b) Any person or corporation aggrieved by any such  
21 ruling, disapproval or decision may appeal to the cir-  
22 cuit court of the county in which the principal office  
23 of such corporation is situated, or is proposed to be situ-  
24 ated, or if such principal office is to be located outside  
25 this state, then such appeal will be to the circuit court  
26 of Kanawha county. Such appeal shall be taken within  
27 thirty days from the date of receipt of the notice of the  
28 ruling, disapproval or decision of the secretary of state  
29 by filing a petition for a writ of certiorari in the appro-  
30 priate court, together with a copy of the notice of the  
31 secretary of state and such other matters as may be  
32 deemed appropriate. Upon any such appeal, such court  
33 shall either sustain the action of the secretary of state  
34 or direct him to take such action as the court may deem  
35 proper.

36 Appeals from all final orders and judgments entered  
37 by the court under this section in review of any ruling,  
38 disapproval or decision of the secretary of state may be  
39 taken as in other civil actions.

**§31-1-69. Certificates and certified copies to be received in evidence.**

1 All certificates issued by the secretary of state in  
2 accordance with the provisions of this article, and all  
3 copies of documents filed in his office in accordance with

4 the provisions of this article when certified by him, shall  
5 be taken and received in all courts, public offices and  
6 official bodies as prima facie evidence of the facts therein  
7 stated. A certificate by the secretary of state under the  
8 great seal of this state, as to the existence or nonexistence  
9 of the facts relating to corporations shall be taken and  
10 received in all courts, public offices, and official bodies  
11 as prima facie evidence of the existence or nonexistence  
12 of the facts therein stated.

**§31-1-70. Forms to be furnished by secretary of state.**

1 All reports required by this article to be filed in the  
2 office of the secretary of state shall be made on forms  
3 which shall be prescribed and furnished by the secretary  
4 of state. Forms for all other documents to be filed in  
5 the office of the secretary of state shall be furnished  
6 by the secretary of state on request therefor, but the  
7 use thereof, unless otherwise specifically prescribed in  
8 this article, shall not be mandatory.

**§31-1-71. Greater voting requirements.**

1 Whenever, with respect to any action to be taken by  
2 the directors, members or shareholders of a corpora-  
3 tion, the articles of incorporation or bylaws require the  
4 vote or concurrence of a greater proportion of the direc-  
5 tors or members or any class of members or of the  
6 holders of the shares, or of any class or series of shares,  
7 than required by this article with respect to such action,  
8 the provisions of the articles of incorporation or bylaws  
9 shall control.

**§31-1-72. Waiver of notice.**

1 Whenever any notice is required to be given to any  
2 shareholder, member or director of a corporation under  
3 the provisions of this article or under the provisions of  
4 the articles of incorporation or bylaws of the corpora-  
5 tion, a waiver thereof in writing signed by the person  
6 or persons entitled to such notice, filed with the records  
7 of the meeting, whether before or after the time stated  
8 therein, shall be equivalent to the giving of such notice.  
9 Further, notice of the time, place or purpose of any meet-  
10 ing of shareholders, members or directors, whether re-

11 quired by the provisions of this article or by the bylaws  
12 of the corporation may be dispensed with if every share-  
13 holder or member shall attend either in person or by  
14 proxy, or if every director shall attend in person.

**§31-1-73. Action by shareholders, members or directors with-  
out a meeting.**

1 (a) Whenever the vote of shareholders or members  
2 at a meeting thereof is required or permitted to be  
3 taken in connection with any corporate action, the meet-  
4 ing and vote of such shareholders or members may be  
5 dispensed with if all of the shareholders or members  
6 who would have been entitled to vote upon the action,  
7 if such meeting were held, shall agree in writing to such  
8 corporate action being taken, and such agreement shall  
9 have like effect and validity as though the action were  
10 duly taken by the unanimous action of all shareholders  
11 or members entitled to vote at a meeting of such share-  
12 holders or members duly called and legally held.

13 (b) Whenever the vote of directors at a meeting there-  
14 of is required or permitted to be taken in connection with  
15 any corporate action, the meeting and vote of such direc-  
16 tors may be dispensed with if all the directors shall agree  
17 in writing to such corporate action being taken, and such  
18 agreement shall have like effect and validity as though the  
19 action were duly taken by the unanimous action of all di-  
20 rectors at a meeting of such directors duly called and  
21 legally held.

22 (c) In the event that the action which is agreed to,  
23 as provided for in subsection (a) or (b) of this section,  
24 is such as would have required the filing of any articles,  
25 document or certificate with the secretary of state under  
26 any provision of this article, if such action had been  
27 voted upon by the shareholders or members or by the  
28 directors at a meeting, the articles, document or certifi-  
29 cate so filed shall state that written agreement has been  
30 executed in lieu of stating that the shareholders, mem-  
31 bers or directors voted upon the corporate action in  
32 question and such articles, document or certificate shall  
33 have the same force and effect under all provisions of  
34 law as if the action had been taken by the unanimous



35 vote of all shareholders or members entitled to vote,  
36 or of all the directors, at a meeting duly called and legally  
37 held.

**§31-1-74. Corporate acknowledgments.**

1 A corporation may acknowledge any instrument re-  
2 quired by law to be acknowledged by its attorney  
3 appointed under seal, and such appointment may be  
4 embodied in the deed or instrument to be acknowledged,  
5 or be made by a separate instrument; or such deed or  
6 other instrument may be acknowledged by the presi-  
7 dent or any vice president of such corporation without  
8 such appointment.

**§31-1-75. Exemption of intangible property of corporations  
not conducting affairs or doing business in state  
from taxes.**

1 No state or local taxes shall be imposed upon the  
2 stocks, bonds, investments, credits or other intangible  
3 property owned by any corporation organized under the  
4 laws of this state which conducts no affairs or which  
5 does or transacts no part of its business in this state.

**§31-1-76. Fees and charges to be collected by secretary of  
state.**

1 Except as otherwise specifically provided in this article,  
2 all fees required to be charged and collected by the secre-  
3 tary of state by the provisions of this article shall be  
4 charged and collected in accordance with the provisions  
5 of section two, article one, chapter fifty-nine of this code.

**PART III—BUSINESS CORPORATIONS**

**§31-1-77. Use of term "corporation."**

1 As used in Part III of this article, the term "corpora-  
2 tion" shall refer exclusively to business corporations.

**§31-1-78. Authorized shares.**

1 Each corporation shall have power to create and issue  
2 the number of shares stated in its articles of incorpora-  
3 tion. Such shares may be divided into one or more  
4 classes, any or all of which classes may consist of shares

5 with par value or shares without par value, with such  
6 designations, preferences, limitations and relative rights  
7 as shall be stated in the articles of incorporation. The  
8 articles of incorporation may limit or deny the voting  
9 rights of or provide special voting rights for the shares  
10 of any class to the extent not inconsistent with the provi-  
11 sions of this article.

12 Without limiting the authority herein contained, a  
13 corporation, when so provided in its articles of incor-  
14 poration, may issue shares of preferred or special  
15 classes:

16 (a) Subject to the right of the corporation to redeem  
17 any of such shares at the price fixed by the articles of  
18 incorporation for the redemption thereof.

19 (b) Entitling the holders thereof to cumulative, non-  
20 cumulative or partially cumulative dividends.

21 (c) Having preference over any other class or classes  
22 of shares as to the payment of dividends.

23 (d) Having preference in the assets of the corpora-  
24 tion over any other class or classes of shares upon the  
25 voluntary or involuntary liquidation of the corporation.

26 (e) Convertible into shares of any other class or into  
27 shares of any series of the same or any other class, except  
28 a class having prior or superior rights and preferences  
29 as to dividends or distribution of assets upon liquida-  
30 tion, but shares without par value shall not be converted  
31 into shares with par value unless that part of the stated  
32 capital of the corporation represented by such shares  
33 without par value is, at the time of conversion, at least  
34 equal to the aggregate par value of the shares into which  
35 the shares without par value are to be converted or the  
36 amount of any such deficiency is transferred from surplus  
37 to stated capital.

**§31-1-79. Issuance of shares of preferred or special classes in series; manner and procedures of issuance; filing of statement and effect thereof.**

1 (a) If the articles of incorporation so provide, the  
2 shares of any preferred or special class may be divided  
3 into and issued in series. If the shares of any such class  
4 are to be issued in series, then each series shall be so

5 designed as to distinguish the shares thereof from the  
6 shares of all other series and classes. Any or all of the  
7 series of any such class and the variations in the rela-  
8 tive rights and preferences as between different series  
9 may be fixed and determined by the articles of incor-  
10 poration, but all shares of the same class shall be iden-  
11 tical except as to the following relative rights and pref-  
12 erences, as to which there may be variations between  
13 different series:

14 (1) The rate of dividend.

15 (2) Whether shares may be redeemed and, if so, the  
16 redemption price and the terms and conditions of re-  
17 demption.

18 (3) The amount payable upon shares in event of  
19 voluntary and involuntary liquidation.

20 (4) Sinking fund provisions, if any, for the redemp-  
21 tion or purchase of shares.

22 (5) The terms and conditions, if any, on which shares  
23 may be converted.

24 (6) Voting rights if any.

25 (b) If the articles of incorporation shall expressly vest  
26 authority in the board of directors, then, to the extent  
27 that the articles of incorporation shall not have estab-  
28 lished series and fixed and determined the variations  
29 in the relative rights and preferences as between series,  
30 the board of directors shall have authority to divide  
31 any or all of such classes into series and, within the  
32 limitations set forth in this section and in the articles  
33 of incorporation, fix and determine the relative rights  
34 and preferences of the shares of any series so established.

35 In order for the board of directors to establish a series,  
36 where authority so to do is contained in the articles of  
37 incorporation, the board of directors shall adopt a resolu-  
38 tion setting forth the designation of the series and fixing  
39 and determining the relative rights and preferences  
40 thereof, or so much thereof as shall not be fixed and  
41 determined by the articles of incorporation.

42 Prior to the issue of any shares of a series established  
43 by resolution adopted by the board of directors, the  
44 corporation shall file in the office of the secretary of  
45 state a statement setting forth:

46 (1) The name of the corporation.

47 (2) A copy of the resolution establishing and desig-  
48 nating the series, and fixing and determining the rela-  
49 tive rights and preferences thereof.

50 (3) The date of adoption of such resolution.

51 (4) That such resolution was duly adopted by the  
52 board of directors.

53 (c) Such statement shall be executed in duplicate  
54 by the corporation by its president or a vice president  
55 and by its secretary or an assistant secretary, and veri-  
56 fied by one of the officers signing such statement, and  
57 shall be delivered to the secretary of state. If the secre-  
58 tary of state finds that such statement conforms to law,  
59 he shall, when all fees have been paid as prescribed by  
60 law, (i) endorse on each of such duplicate originals  
61 the word "Filed," and the month, day and year of the  
62 filing thereof; (ii) file one of such duplicate originals  
63 in his office; and (iii) return the other duplicate origi-  
64 nal to the corporation or its representative.

65 (d) Upon the filing of such statement by the secre-  
66 tary of state, the resolution establishing and designating  
67 the series and fixing and determining the relative rights  
68 and preferences thereof shall become effective and shall  
69 constitute an amendment of the articles of incorporation.

#### §31-1-80. Subscription for shares.

1 A subscription for shares of a corporation to be organ-  
2 ized shall be irrevocable for a period of six months,  
3 unless otherwise provided by the terms of the subscrip-  
4 tion agreement or unless all of the subscribers consent  
5 to the revocation of such subscription.

6 Unless otherwise provided in the subscription agree-  
7 ment, subscriptions for shares, whether made before or  
8 after the organization of a corporation, shall be paid in  
9 full at such time, or in such installments and at such  
10 times, as shall be determined by the board of directors.  
11 Any call made by the board of directors for payment  
12 on subscriptions shall be uniform as to all shares of  
13 the same class or as to all shares of the same series, as  
14 the case may be. In case of default in the payment of  
15 any installment or call when such payment is due, the  
16 corporation may proceed to collect the amount due in

17 the same manner as any debt due the corporation. The  
18 bylaws may prescribe other penalties for failure to pay  
19 installments or calls that may become due, but no pen-  
20 alty working a forfeiture of a subscription, or of the  
21 amounts paid thereon, shall be declared as against any  
22 subscriber unless the amount due thereon shall remain  
23 unpaid for a period of twenty days after written de-  
24 mand has been made therefor. If mailed, such written  
25 demand shall be deemed to be made when deposited  
26 in the United States mail in a sealed envelope addressed  
27 to the subscriber at his last post office address known  
28 to the corporation, with postage thereon prepaid. In  
29 the event of the sale of any shares by reason of any  
30 forfeiture, the excess of proceeds realized over the amount  
31 due and unpaid on such shares shall be paid to the  
32 delinquent subscriber or to his legal representative.

**§31-1-81. Consideration for shares.**

1 Shares having a par value may be issued for such  
2 consideration expressed in dollars, not less than the par  
3 value thereof, as shall be fixed from time to time by  
4 the board of directors.

5 Shares without par value may be issued for such  
6 consideration expressed in dollars as may be fixed from  
7 time to time by the board of directors unless the articles  
8 of incorporation reserve to the shareholders the right  
9 to fix the consideration. In the event that such right  
10 be reserved as to any shares, the shareholders shall,  
11 prior to the issuance of such shares, fix the consideration  
12 to be received for such shares, by a vote of the holders  
13 of a majority of all shares entitled to vote thereon.

14 Treasury shares may be disposed of by the corpora-  
15 tion for such consideration expressed in dollars as may  
16 be fixed from time to time by the board of directors.

17 That part of the surplus of a corporation which is  
18 transferred to stated capital upon the issuance of shares  
19 as a share dividend shall be deemed to be the consider-  
20 ation for the issuance of such shares.

21 In the event of the issuance of shares upon the conver-  
22 sion or exchange of indebtedness or shares, the consider-  
23 ation for the shares so issued shall be (1) the principal  
24 sum of, and accrued interest on, the indebtedness so

25 exchanged or converted, or the stated capital then repre-  
26 sented by the shares so exchanged or converted, and  
27 (2) that part of surplus, if any, transferred to stated  
28 capital upon the issuance of shares for the shares so  
29 exchanged or converted, and (3) any additional consid-  
30 eration paid to the corporation upon the issuance of shares  
31 for the indebtedness or shares so exchanged or converted.

**§31-1-82. Payment for shares.**

1 The consideration for the issuance of shares may be  
2 paid, in whole or in part, in cash, in other property,--  
3 tangible or intangible, or in labor or services actually  
4 performed for the corporation. When payment of the  
5 consideration for which shares are to be issued shall have  
6 been received by the corporation, such shares shall be  
7 deemed to be fully paid and nonassessable.

8 Neither promissory notes nor future services shall  
9 constitute payment or part payment for the issuance of  
10 shares of a corporation.

11 In the absence of fraud in the transaction, the judg-  
12 ment of the board of directors or the shareholders, as  
13 the case may be, as to the value of the consideration  
14 received for shares shall be conclusive.

**§31-1-83. Rights of corporation to acquire and dispose of its own shares.**

1 Subject to the provisions of chapter thirty-one-a of this  
2 code and unless otherwise prohibited by law, a corpora-  
3 tion shall have the right to purchase, take, receive or  
4 otherwise acquire, hold, own, pledge, transfer or other-  
5 wise dispose of its own shares, but purchases of its  
6 own shares, whether direct or indirect, shall be made  
7 only to the extent of unreserved and unrestricted earned  
8 surplus available therefor, and, if the articles of incor-  
9 poration so permit or with the affirmative vote of the  
10 holders of a majority of all shares entitled to vote  
11 thereon, to the extent of unreserved and unrestricted  
12 capital surplus available therefor.

13 To the extent that earned surplus or capital surplus  
14 is used as the measure of the corporation's right to pur-  
15 chase its own shares, such surplus shall be restricted  
16 so long as such shares are held as treasury shares, and

17 upon the disposition or cancellation of any such shares  
18 the restriction shall be removed pro tanto.

19 Notwithstanding the foregoing limitation, a corpora-  
20 tion may purchase or otherwise acquire its own shares  
21 for the purpose of:

22 (a) Eliminating fractional shares.

23 (b) Collecting or compromising indebtedness to the  
24 corporation.

25 (c) Paying dissenting shareholders entitled to pay-  
26 ment for their shares under the provisions of this article.

27 (d) Effecting, subject to the other provisions of this  
28 article, the retirement of its redeemable shares by re-  
29 demption or by purchase at not to exceed the redemp-  
30 tion price.

31 No purchase of or payment for its own shares shall be  
32 made at a time when the corporation is insolvent or when  
33 such purchase or payment would make it insolvent.

#### §31-1-84. Stock rights and options.

1 Subject to the provisions of section ninety of this  
2 article and further subject to any provisions in respect  
3 thereof set forth in its articles of incorporation, a corpo-  
4 ration may create and issue, whether or not in connec-  
5 tion with the issuance and sale of any of its shares or  
6 other securities, rights or options entitling the holders  
7 thereof to purchase from the corporation shares of any  
8 class or classes. Such rights or options shall be evi-  
9 denced in such manner as the board of directors shall  
10 approve and, subject to the provisions of the articles  
11 of incorporation, shall set forth the terms upon which,  
12 the time or times within which and the price or prices  
13 at which such shares may be purchased from the corpo-  
14 ration upon the exercise of any such right or option.  
15 If such rights or options are to be issued to directors,  
16 officers or employees as such of the corporation or of  
17 any subsidiary thereof, and not to the shareholders  
18 generally, their issuance shall be approved by the affirma-  
19 tive vote of the holders of a majority of the shares  
20 entitled to vote such a vote of shareholders. In the  
21 absence of fraud in the transaction, the judgment of  
22 the board of directors as to the adequacy of the consid-  
23 eration received for such rights or options shall be

24 conclusive. The price or prices to be received for any  
25 shares having a par value, other than treasury shares  
26 to be issued upon the exercise of such rights or options,  
27 shall not be less than the par value thereof.

**§31-1-85. Determination of amount of stated capital.**

1 In case of the issuance by a corporation of shares hav-  
2 ing a par value, the consideration received therefor  
3 shall constitute stated capital to the extent of the par  
4 value of such shares, and the excess, if any, of such  
5 consideration shall constitute capital surplus.

6 In case of the issuance by a corporation of shares with-  
7 out par value, the entire consideration received therefor  
8 shall constitute stated capital unless the corporation shall  
9 determine as provided in this section that only a part  
10 thereof shall be stated capital. Within a period of sixty  
11 days after the issuance of any shares without par value,  
12 the board of directors may allocate to capital surplus  
13 any portion of the consideration received for the issuance  
14 of such shares. No such allocation shall be made of any  
15 portion of the consideration received for shares without  
16 par value having a preference in the assets of the corpo-  
17 ration in the event of involuntary liquidation except  
18 the amount, if any, of such consideration in excess of such  
19 preference.

20 If shares have been or shall be issued by a corporation  
21 in merger or consolidation or in acquisition of all or  
22 substantially all of the outstanding shares or of the  
23 property and assets of another corporation, whether  
24 domestic or foreign, any amount that would otherwise  
25 constitute capital surplus under the foregoing provi-  
26 sions of this section may instead be allocated to earned  
27 surplus by the board of directors of the issuing corpo-  
28 ration except that its aggregate earned surplus shall not  
29 exceed the sum of the earned surpluses as defined in this  
30 article of the issuing corporation and all other corpora-  
31 tions, domestic or foreign, which were merged or consoli-  
32 dated or of which the shares or assets were acquired.

33 The stated capital of a corporation may be increased  
34 from time to time by resolution of the board of directors  
35 directing that all or a part of the surplus of the corpo-  
36 ration be transferred to stated capital. The board of



37 directors may direct that the amount of the surplus so  
38 transferred shall be deemed to be stated capital in respect  
39 of any designated class of shares.

**§31-1-86. Expenses of organization, reorganization and financing.**

1 The reasonable charges and expenses of organization  
2 or reorganization of a corporation, and the reasonable  
3 expenses of and compensation for the sale or underwrit-  
4 ing of its shares, may be paid or allowed by such corpo-  
5 ration out of the consideration received by it in pay-  
6 ment for its shares without thereby rendering such  
7 shares not fully paid or accessible.

**§31-1-87. Certificates representing shares.**

1 The shares of a corporation shall be represented by  
2 certificates signed by the president or a vice president  
3 and the secretary or an assistant secretary of the cor-  
4 poration, and may be sealed with the seal of the cor-  
5 poration or a facsimile thereof. The signatures of the  
6 president or vice president and the secretary or assistant  
7 secretary upon a certificate may be facsimiles if the  
8 certificate is manually signed on behalf of a transfer  
9 agent or a registrar, other than the corporation itself or  
10 an employee of the corporation. In case any officer who  
11 has signed or whose facsimile signature has been placed  
12 upon such certificate shall have ceased to be such officer  
13 before such certificate is issued, it may be issued by the  
14 corporation with the same effect as if he were such  
15 officer at the date of its issue.

16 Every certificate representing shares issued by a cor-  
17 poration which is authorized to issue shares of more  
18 than one class shall set forth upon the face or back of  
19 the certificate, or shall state that the corporation will  
20 furnish to any shareholder upon request and without  
21 charge, a full statement of the designations, preferences,  
22 limitations, and relative rights of the shares of each class  
23 authorized to be issued, and if the corporation is author-  
24 ized to issue any preferred or special class in series, the  
25 variations in the relative rights and preferences between  
26 the shares of each such series so far as the same have

27 been fixed and determined and the authority of the  
28 board of directors to fix and determine the relative  
29 rights and preferences of subsequent series.

30 Each certificate representing shares shall state upon  
31 the face thereof:

32 (a) That the corporation is organized under the laws  
33 of this state.

34 (b) The name of the person to whom issued.

35 (c) The number and class of shares, and the desig-  
36 nation of the series, if any, which such certificate repre-  
37 sents.

38 (d) The par value of each share represented by such  
39 certificate, or a statement that the shares are without  
40 par value.

41 No certificate shall be issued for any share until such  
42 share is fully paid.

**§31-1-88. Fractional shares.**

1 A corporation may (1) issue fractions of a share, (2)  
2 arrange for the disposition of fractional interests by those  
3 entitled thereto, (3) pay in cash the fair value of frac-  
4 tions of a share as of the time when those entitled to  
5 receive such fractions are determined, or (4) issue scrip  
6 in registered or bearer form which shall entitle the  
7 holder to receive a certificate for a full share upon the  
8 surrender of such scrip aggregating a full share. A cer-  
9 tificate for a fractional share shall, but scrip shall not  
10 unless otherwise provided therein, entitle the holder to  
11 exercise voting rights, to receive dividends thereon, and  
12 to participate in any of the assets of the corporation in  
13 the event of liquidation. The board of directors may  
14 cause scrip to be issued subject to the condition that it  
15 shall become void if not exchanged for certificates rep-  
16 resenting full shares before a specified date, or subject  
17 to the condition that the shares for which scrip is ex-  
18 changable may be sold by the corporation and the pro-  
19 ceeds thereof distributed to the holders of scrip, or sub-  
20 ject to any other conditions which the board of directors  
21 may deem advisable.

**§31-1-89. Liability of subscribers and shareholders.**

1 A holder of or subscriber to shares of a corporation  
2 shall be under no obligation to the corporation or its  
3 creditors with respect to such shares other than the  
4 obligation to pay to the corporation the full consideration  
5 for which such shares were issued or to be issued.

6 Any person becoming an assignee or transferee of  
7 shares or of a subscription for shares in good faith and  
8 without knowledge or notice that the full consideration  
9 therefor has not been paid shall not be personally liable  
10 to the corporation or its creditors for any unpaid portion  
11 of such consideration.

12 An executor, administrator, conservator, guardian,  
13 trustee, assignee for the benefit of creditors, or receiver  
14 shall not be personally liable to the corporation as a  
15 holder of or subscriber to shares of a corporation but  
16 the estate and funds in his hands shall be so liable.

17 No pledgee or other holder of shares as collateral se-  
18 curity shall be personally liable as a shareholder.

**§31-1-90. Shareholders' preemptive rights.**

1 The articles of incorporation may contain such provi-  
2 sions as may be desired limiting or denying to the share-  
3 holders of a corporation the preemptive right to acquire  
4 unissued or treasury shares of any or all classes or securi-  
5 ties convertible into such shares or carrying a right to  
6 subscribe to or acquire such shares.

**§31-1-91. Closing of transfer books and fixing record date.**

1 For the purpose of determining shareholders entitled  
2 to notice of or to vote at any meeting of shareholders or  
3 any adjournment thereof, or entitled to receive payment  
4 of any dividend, or in order to make a determination of  
5 shareholders for any other proper purpose, the board  
6 of directors of a corporation may provide that the stock  
7 transfer books shall be closed for a stated period but  
8 not to exceed, in any case, fifty days. If the stock trans-  
9 fer books shall be closed for the purpose of determining  
10 shareholders entitled to notice of or to vote at a meeting  
11 of shareholders, such books shall be closed for at least  
12 ten days immediately preceding such meeting. In lieu  
13 of closing the stock transfer books, the bylaws, or in the

14 absence of an applicable bylaw the board of directors,  
15 may fix in advance a date as the record date for any  
16 such determination of shareholders, such date in any  
17 case to be not more than fifty days and, in case of a meet-  
18 ing of shareholders, not less than ten days prior to the  
19 date on which the particular action, requiring such de-  
20 termination of shareholders, is to be taken. If the stock  
21 transfer books are not closed and no record date is fixed  
22 for the determination of shareholders entitled to notice  
23 of or to vote at a meeting of shareholders, or shareholders  
24 entitled to receive payment of a dividend, the date on  
25 which notice of the meeting is mailed or the date on  
26 which the resolution of the board of directors declaring  
27 such dividend is adopted, as the case may be, shall be  
28 the record date for such determination of shareholders.  
29 When a determination of shareholders entitled to vote  
30 at any meeting of shareholders has been made as pro-  
31 vided in this section, such determination shall apply to  
32 any adjournment thereof.

**§31-1-92. Voting record.**

1 The officer or agent having charge of the stock trans-  
2 fer books for shares of a corporation shall make a com-  
3 plete record of the shareholders entitled to vote at such  
4 meeting or any adjournment thereof, arranged in alpha-  
5 betical order, with the address of and the number of  
6 shares held by each. Such record shall be produced and  
7 kept open at the time and place of the meeting and shall  
8 be subject to the inspection of any shareholder during  
9 the whole time of the meeting for the purposes thereof.

10 Failure to comply with the requirements of this  
11 section shall not affect the validity of any action taken  
12 at such meeting.

13 An officer or agent having charge of the stock transfer  
14 books who shall fail to prepare the record of share-  
15 holders, or produce and keep it open for inspection at the  
16 meeting, as provided in this section, shall be liable to  
17 any shareholder suffering damage on account of such  
18 failure, to the extent of such damage.

**§31-1-93. Voting of shares.**

1 Each outstanding share, regardless of class, shall be  
2 entitled to one vote on each matter submitted to a vote  
3 at a meeting of shareholders except as may be otherwise  
4 provided in the articles of incorporation. If the articles  
5 of incorporation provide for more or less than one vote  
6 for any share, on any matter, every reference in this  
7 article to a majority or other proportion of shares shall  
8 refer to such a majority or other proportion of votes  
9 entitled to be cast.

10 Neither treasury shares, nor shares held by another  
11 corporation if a majority of the shares entitled to vote  
12 for the election of directors of such other corporation is  
13 held by the corporation, shall be voted at any meeting  
14 or counted in determining the total number of outstanding  
15 shares at any given time.

16 A shareholder may vote either in person or by proxy  
17 executed in writing by the shareholder or by his duly  
18 authorized attorney-in-fact. No proxy shall be valid  
19 after eleven months from the date of its execution, unless  
20 otherwise provided in the proxy.

21 At each election for directors every shareholder entitled  
22 to vote at such election shall have the right to vote, in  
23 person or by proxy, the number of shares owned by  
24 him for as many persons as there are directors to be  
25 elected and for whose election he has a right to vote,  
26 or to cumulate his votes by giving one candidate as many  
27 votes as the number of such directors multiplied by the  
28 number of his shares shall equal, or by distributing such  
29 votes on the same principle among any number of such  
30 candidates.

31 Shares standing in the name of another corporation,  
32 domestic or foreign, may be voted by such officer, agent  
33 or proxy as the bylaws of such other corporation may  
34 prescribe, or, in the absence of such provision, as the  
35 board of directors of such other corporation may deter-  
36 mine.

37 Shares held by an administrator, executor, guardian,  
38 committee, curator or conservator may be voted by him,  
39 either in person or by proxy, without a transfer of such

40 shares into his name. Shares standing in the name of  
41 a trustee may be voted by him, either in person or by  
42 proxy, but no trustee shall be entitled to vote shares  
43 held by him without a transfer of such shares into his  
44 name.

45 Shares standing in the name of a receiver may be  
46 voted by such receiver, and shares held by or under the  
47 control of a receiver may be voted by such receiver  
48 without the transfer thereof into his name if authority  
49 so to do be contained in an appropriate order of the court  
50 by which such receiver was appointed.

51 A shareholder whose shares are pledged shall be en-  
52 titled to vote such shares until the shares have been  
53 transferred into the name of the pledgee, and thereafter  
54 the pledgee shall be entitled to vote the shares so trans-  
55 ferred.

56 On and after the date on which written notice of re-  
57 demption of redeemable shares has been mailed to the  
58 holders thereof and a sum sufficient to redeem such  
59 shares has been deposited with a bank or trust company  
60 with irrevocable instruction and authority to pay the  
61 redemption price to be holders thereof upon surrender  
62 of certificates therefor, such shares shall not be entitled  
63 to vote on any matter and shall not be deemed to be  
64 outstanding shares.

**§31-1-94. Voting trusts and agreements among shareholders.**

1 Any number of shareholders of a corporation may  
2 create a voting trust for the purpose of conferring upon  
3 a trustee or trustees the right to vote or otherwise rep-  
4 resent their shares, for a period of not to exceed ten  
5 years, by entering into a written voting trust agreement  
6 specifying the terms and conditions of the voting trust,  
7 by depositing a counterpart of the agreement with the  
8 corporation at its principal office, and by transferring  
9 their shares to such trustee or trustees for the purposes  
10 of the agreement. Such trustee or trustees shall keep  
11 a record of the holders of voting trust certificates evi-  
12 dencing a beneficial interest in the voting trust, giving  
13 the names and addresses of all such holders and the  
14 number and class of the shares in respect of which the

15 voting trust certificates held by each are issued, and  
16 shall deposit a copy of such record with the corporation  
17 at its principal office. The counterpart of the voting  
18 trust agreement and the copy of such record so deposited  
19 with the corporation shall be subject to the same right  
20 of examination by a shareholder of the corporation, in  
21 person or by agent or attorney, as are the books and  
22 records of the corporation, and such counterpart and  
23 such copy of such record shall be subject to examination  
24 by any holder of record of a voting trust certificate, either  
25 in person or by agent or attorney, at any reasonable  
26 time for any proper purpose.

27 Agreements among shareholders regarding the voting  
28 of their shares shall be valid and enforceable in accor-  
29 dance with their terms. Such agreements shall not be  
30 subject to the provisions of this section regarding voting  
31 trusts.

**§31-1-95. Board of directors; powers; when vote recorded.**

1 The business and affairs of a corporation shall be man-  
2 aged by a board of directors except as may be otherwise  
3 provided in the articles of incorporation. If any such  
4 provision is made in the articles of incorporation, the  
5 powers and duties conferred or imposed upon the board  
6 of directors by this article shall be exercised or per-  
7 formed to such extent and by such person or persons as  
8 shall be provided in the articles of incorporation. Direc-  
9 tors need not be residents of this state or shareholders  
10 of the corporation unless the articles of incorporation  
11 or bylaws so require. The articles of incorporation or  
12 bylaws may prescribe other qualifications for directors.  
13 The board of directors shall have authority to fix the  
14 compensation of directors unless otherwise provided in  
15 the articles of incorporation.

16 Any member of a board of directors, at his request,  
17 shall have the right to have his vote recorded in the  
18 minutes of such board of directors on any question com-  
19 ing before the board.

**§31-1-96. Removal of directors.**

1 At a meeting of shareholders called expressly for that  
2 purpose, directors may be removed in the manner pro-

3 vided in this section. Any director or the entire board  
4 of directors may be removed, with or without cause,  
5 by a vote of the holders of a majority of the shares then  
6 entitled to vote at an election of directors.

7 If less than the entire board is to be removed, no one  
8 of the directors may be removed if the votes cast against  
9 his removal would be sufficient to elect him.

10 Whenever the holders of the shares of any class are  
11 entitled to elect one or more directors by the provisions  
12 of the articles of incorporation, the provisions of this  
13 section shall apply, in respect to the removal of a direc-  
14 tor or directors so elected, to the vote of the holders of  
15 the outstanding shares of that class and not to the vote  
16 of the outstanding shares as a whole.

**§31-1-97. Director conflicts of interest.**

1 (a) No contract or other transaction between a cor-  
2 poration and one or more of its directors or any other  
3 corporation, firm, association or entity in which one or  
4 more of its directors are directors or officers or are finan-  
5 cially interested, shall be either void or voidable because  
6 of such relationship or interest or because such director  
7 or directors are present at the meeting of the board of  
8 directors or a committee thereof which authorizes, ap-  
9 proves or ratifies such contract or transaction or because  
10 his or their votes are counted for such purpose, if:

11 (1) The fact of such relationship or interest is dis-  
12 closed or known to the board of directors or committee  
13 which authorizes, approves or ratifies the contract or  
14 transaction by a vote or consent sufficient for the purpose  
15 without counting the votes or consents of such interested  
16 directors; or

17 (2) The fact of such relationship or interest is dis-  
18 closed or known to the shareholders entitled to vote and  
19 they authorize, approve or ratify such contract or trans-  
20 action by vote or written consent; or

21 (3) The contract or transaction is fair and reasonable  
22 to the corporation.

23 (b) Common or interested directors may be counted  
24 in determining the presence of a quorum at a meeting  
25 of the board of directors or a committee thereof which



26 authorizes, approves or ratifies such contract or trans-  
27 action.

28 (c) On any question involving the authorization,  
29 approval or ratification of any such contract or trans-  
30 action, the names of those voting each way shall be  
31 entered on the record of their proceedings.

**§31-1-98. Executive and other committees.**

1 If the articles of incorporation or the bylaws so provide,  
2 the board of directors, by resolution adopted by a ma-  
3 jority of the full board of directors, may designate from  
4 among its members an executive committee and one or  
5 more other committees each of which, to the extent  
6 provided in such resolution or in the articles of incor-  
7 poration or the bylaws of the corporation, shall have and  
8 may exercise all the authority of the board of directors,  
9 but no such committee shall have the authority of the  
10 board of directors in reference to amending the articles  
11 of incorporation, adopting a plan of merger or consoli-  
12 dation, recommending to the shareholders the sale, lease,  
13 exchange or other disposition of all or substantially all  
14 the property and assets of the corporation otherwise  
15 than in the usual and regular course of its business,  
16 recommending to the shareholders a voluntary dissolu-  
17 tion of the corporation or a revocation thereof, or amend-  
18 ing the bylaws of the corporation. The designation of  
19 any such committee and the delegation thereto of au-  
20 thority shall not operate to relieve the board of directors,  
21 or any member thereof, of any responsibility imposed  
22 by law.

**§31-1-99. Dividends.**

1 The board of directors of a corporation may, from time  
2 to time, declare and the corporation may pay dividends  
3 in cash, property, or its own shares, except when the  
4 corporation is insolvent or when the payment thereof  
5 would render the corporation insolvent or when the  
6 declaration or payment thereof would be contrary to any  
7 restriction contained in the articles of incorporation, sub-  
8 ject to the following provisions:

9 (a) Dividends may be declared and paid in cash or  
10 property only out of the unreserved and unrestricted  
11 earned surplus of the corporation, except as otherwise  
12 provided in this section.

13 (b) If the articles of incorporation of a corporation  
14 engaged in the business of exploiting natural resources  
15 so provide, dividends may be declared and paid in cash  
16 out of the depletion reserves, but each such dividend  
17 shall be identified as a distribution of such reserves and  
18 the amount per share paid from such reserves shall be  
19 disclosed to the shareholders receiving the same con-  
20 currently with the distribution thereof.

21 (c) Dividends may be declared and paid in its  
22 own treasury shares.

23 (d) Dividends may be declared and paid in its own  
24 authorized but unissued shares out of any unreserved  
25 and unrestricted surplus of the corporation upon the  
26 following conditions:

27 (1) If a dividend is payable in its own shares having  
28 a par value, such shares shall be issued at not less than  
29 the par value thereof and there shall be transferred to  
30 stated capital at the time such dividend is paid an amount  
31 of surplus equal to the aggregate par value of the shares  
32 to be issued as a dividend.

33 (2) If a dividend is payable in its own shares without  
34 par value, such shares shall be issued at such stated value  
35 as shall be fixed by the board of directors by resolution  
36 adopted at the time such dividend is declared, and there  
37 shall be transferred to stated capital at the time such  
38 dividend is paid an amount of surplus equal to the aggre-  
39 gate stated value so fixed in respect of such shares; and  
40 the amount per share so transferred to stated capital  
41 shall be disclosed to the shareholders receiving such  
42 dividend concurrently with the payment thereof.

43 (e) No dividend payable in shares of any class shall  
44 be paid to the holders of shares of any other class unless  
45 the articles of incorporation so provide or such payment  
46 is authorized by the affirmative vote or the written con-  
47 sent of the holders of at least a majority of the outstand-  
48 ing shares of the class in which the payment is to be  
49 made.

50 A split-up or division of the issued shares of any class  
51 into a greater number of shares of the same class without  
52 increasing the stated capital of the corporation shall  
53 not be construed to be a share dividend within the mean-  
54 ing of this section.

**§31-1-100. Distribution from capital surplus.**

1 The board of directors of a corporation may, from time  
2 to time, distribute to its shareholders out of capital sur-  
3 plus of the corporation a portion of its assets, in cash or  
4 property, subject to the following provisions:

5 (a) No such distribution shall be made at a time when  
6 the corporation is insolvent or when such distribution  
7 would render the corporation insolvent.

8 (b) No such distribution shall be made unless the  
9 articles of incorporation so provide or such distribution  
10 is authorized by the affirmative vote of the holders of  
11 a majority of the outstanding shares of each class whether  
12 or not entitled to vote thereon by the provisions of the  
13 articles of incorporation of the corporation.

14 (c) No such distribution shall be made to the holders  
15 of any class of shares unless all cumulative dividends  
16 accrued on all preferred or special classes of shares  
17 entitled to preferential dividends shall have been fully  
18 paid.

19 (d) No such distribution shall be made to the holders  
20 of any class of shares which would reduce the remaining  
21 net assets of the corporation below the aggregate prefer-  
22 ential amount payable in event of involuntary liquidation  
23 to the holders of shares having preferential rights to the  
24 assets of the corporation in the event of liquidation.

25 (e) Each such distribution, when made, shall be iden-  
26 tified as a distribution from capital surplus and the  
27 amount per share disclosed to the shareholders receiving  
28 the same concurrently with the distribution thereof.

29 The board of directors of a corporation may also, from  
30 time to time, distribute to the holders of its outstanding  
31 shares having a cumulative preferential right to receive  
32 dividends, in discharge of their cumulative dividend  
33 rights, dividends payable in cash out of the capital sur-  
34 plus of the corporation, if at the time the corporation

35 has no earned surplus and is not insolvent and would  
36 not thereby be rendered insolvent. Each such distribu-  
37 tion when made, shall be identified as a payment of  
38 cumulative dividends out of capital surplus.

**§31-1-101. Loans to employees and directors.**

1 A corporation shall not lend money to or use its credit  
2 to assist its directors without authorization in the parti-  
3 cular case by its shareholders, but may lend money to  
4 and use its credit to assist any employee of the corpora-  
5 tion or of a subsidiary, including any such employee  
6 who is a director of the corporation, if the board of  
7 directors decides that such loan or assistance may benefit  
8 the corporation.

**§31-1-102. Liability of directors in certain cases.**

1 In addition to any other liabilities imposed by law  
2 upon directors of a corporation:

3 (a) Directors of a corporation who vote for or assent  
4 to the declaration of any dividend or other distribution  
5 of the assets of a corporation to its shareholders contrary  
6 to the provisions of this article or contrary to any re-  
7 strictions contained in the articles of incorporation, shall  
8 be jointly and severally liable to the corporation for the  
9 amount of such dividend which is paid or the value of  
10 such assets which are distributed in excess of the amount  
11 of such dividend or distribution which could have been  
12 paid or distributed without a violation of the provisions  
13 of this article or the restrictions in the article of incor-  
14 poration.

15 (b) Directors of a corporation who vote for or assent  
16 to the purchase of its own shares contrary to the pro-  
17 visions of this article shall be jointly and severally liable  
18 to the corporation for the amount of consideration paid  
19 for such shares which is in excess of the maximum  
20 amount which could have been paid therefor without  
21 a violation of the provisions of this article.

22 (c) The directors of a corporation who vote for or  
23 assent to any distribution of assets of a corporation to  
24 its shareholders during the liquidation of the corporation  
25 without the payment and discharge of, or making ade-

26 quate provision for, all known debts, obligations and  
27 liabilities of the corporation shall be jointly and severally  
28 liable to the corporation for the value of such assets  
29 which are distributed, to the extent that such debts,  
30 obligations and liabilities of the corporation are not  
31 thereafter paid and discharged.

32 A director of a corporation who is present at a meeting  
33 of its board of directors at which action on any corporate  
34 matter is taken shall be presumed to have assented to the  
35 action taken unless his dissent shall be entered in the  
36 minutes of the meeting or unless he shall file his written  
37 dissent to such action with the secretary of the meeting  
38 before the adjournment thereof or shall forward such  
39 dissent by registered or certified mail, return receipt  
40 requested, to the secretary of the corporation immediately  
41 after the adjournment of the meeting. Such right to  
42 dissent shall not apply to a director who voted in favor  
43 of such action.

44 A director shall not be liable under (a), (b) or (c) of  
45 this section if he relied and acted in good faith upon  
46 financial statements of the corporation represented to  
47 him to be correct by the president or the officer of such  
48 corporation having charge of its books of account, or  
49 stated in a written report by an independent public or  
50 certified public accountant or firm of such accountants  
51 fairly to reflect the financial condition of such corpora-  
52 tion, nor shall he be so liable if in good faith in determin-  
53 ing the amount available for any such dividend or distri-  
54 bution he considered the assets to be of their book value.

55 Any director against whom a claim shall be asserted  
56 under or pursuant to this section for the payment of a  
57 dividend or other distribution of assets of a corporation  
58 and who shall be held liable thereon, shall be entitled  
59 to contribution from the shareholders who accepted or  
60 received any such dividend or assets, knowing such divi-  
61 dend or distribution to have been made in violation of  
62 this article, in proportion to the amounts received by  
63 them.

64 Any director against whom a claim shall be asserted  
65 under or pursuant to this section shall be entitled to

66 contribution from the other directors who voted for or  
67 assented to the action upon which the claim is asserted.

**§31-1-103. Provisions relating to actions by shareholders.**

1 No action shall be brought in this state by a share-  
2 holder in the right of a domestic or foreign corporation  
3 unless the plaintiff was a holder of record of shares or  
4 of voting trust certificate therefor at the time of the  
5 transaction of which he complains, or his shares or voting  
6 trust certificates thereafter devolved upon him by opera-  
7 tion of law from a person who was a holder of record  
8 at such time.

9 In any action hereafter instituted in the right of any  
10 domestic or foreign corporation by the holder or holders  
11 of record of shares of such corporation or of voting trust  
12 certificates therefor, the court having jurisdiction, upon  
13 final judgment and a finding that the action was brought  
14 without reasonable cause, may require the plaintiff or  
15 plaintiffs to pay to the parties named as defendant the  
16 reasonable expenses, including fees of attorneys, incurred  
17 by them in the defense of such action.

18 In any action now pending or hereafter instituted or  
19 maintained in the right of any domestic or foreign  
20 corporation by the holder or holders of record of less  
21 than five percent of the outstanding shares of any class  
22 of such corporation or of voting trust certificates therefor,  
23 unless the shares or voting trust certificates so held have  
24 a market value in excess of twenty-five thousand dollars,  
25 the corporation in whose right such action is brought  
26 shall be entitled at any time before final judgment to  
27 require the plaintiff or plaintiffs to give security for the  
28 reasonable expenses, including fees of attorneys, that  
29 may be incurred by it in connection with such action or  
30 may be incurred by other parties named as defendant  
31 for which it may become legally liable. Market value  
32 shall be determined as of the date that the plaintiff  
33 institutes the action or, in the case of an intervenor, as  
34 of the date that he becomes a party to the action. The  
35 amount of such security may from time to time be in-  
36 creased or decreased, in the discretion of the court, upon  
37 showing that the security provided has or may become

38 inadequate or is excessive. The corporation shall have  
39 recourse to such security in such amount as the court  
40 having jurisdiction shall determine upon the termination  
41 of such action, whether or not the court finds the action  
42 was brought without reasonable cause.

**§31-1-104. Officers; removal of officers.**

1 (a) The officers of a corporation shall consist of a  
2 president, one or more vice presidents as may be pre-  
3 scribed by the bylaws, a secretary, and a treasurer, each  
4 of whom shall be elected by the board of directors at  
5 such time and in such manner as may be prescribed by  
6 the bylaws. Such other officers and assistant officers  
7 and agents as may be deemed necessary may be elected  
8 or appointed by the board of directors or chosen in such  
9 other manner as may be prescribed by the bylaws. Any  
10 two or more offices may be held by the same person,  
11 except the offices of president and secretary.

12 All officers and agents of the corporation, as between  
13 themselves and the corporation, shall have such au-  
14 thority and perform such duties in the management of the  
15 corporation as may be provided in the bylaws, or as may  
16 be determined by resolution of the board of directors  
17 not inconsistent with the bylaws.

18 (b) Any officer or agent may be removed by the board  
19 of directors whenever in its judgment the best interests  
20 of the corporation will be served thereby, but such re-  
21 moval shall be without prejudice to the contract rights,  
22 if any, of the person so removed. Election or appoint-  
23 ment of an officer or agent shall not of itself create con-  
24 tract rights.

**§31-1-105. Books and records.**

1 Each corporation shall keep correct and complete books  
2 and records of account and shall keep minutes of the  
3 proceedings of its shareholders and board of directors  
4 and shall keep at its principal office, or at the office  
5 of its transfer agent or registrar, a record of its share-  
6 holders, giving the names and addresses of all share-  
7 holders and the number and class of the shares held by  
8 each. Any books, records and minutes may be in writ-

9 ten form or in any other form capable of being converted  
10 into written form within a reasonable time.

11 Any person who shall have been a holder of record  
12 of shares or of voting trust certificates therefor at least  
13 six months immediately preceding his demand or shall  
14 be the holder of record of, or the holder of record of  
15 voting trust certificates for at least five percent of all  
16 the outstanding shares of the corporation, upon written  
17 demand stating the purpose thereof, shall have the right  
18 to examine, in person, or by agent or attorney, at any  
19 reasonable time or times, for any proper purpose, its  
20 relevant books and records of accounts, minutes, and  
21 record of shareholders and to make extracts therefrom.

22 Any officer or agent who, or a corporation which, shall  
23 refuse to allow any such shareholder or holder of voting  
24 trust certificates, or his agent or attorney, so to examine  
25 and make extracts from its books and records of account,  
26 minutes and record of shareholders, for any proper pur-  
27 pose, shall be liable to such shareholder or holder of  
28 voting trust certificates in a penalty of ten percent of  
29 the value of the shares owned by such shareholder, or  
30 in respect of which such voting trust certificates are  
31 issued, in addition to any other damages or remedy  
32 afforded him by law. It shall be a defense to any  
33 action for penalties under this section that the per-  
34 son suing therefor has within two years sold or offered  
35 for sale any list of shareholders or of holders of voting  
36 trust certificates for shares of such corporation or any  
37 other corporation or has aided or abetted any person  
38 in procuring any list of shareholders or of holders of  
39 voting trust certificates for any such purpose, or has  
40 improperly used any information secured through any  
41 prior examination of the books and records of account,  
42 or minutes, or record of shareholders or of holders of  
43 voting trust certificates for shares of such corporation  
44 or any other corporation, or was not acting in good faith  
45 or for a proper purpose in making his demand.

46 Nothing herein contained shall impair the power of  
47 any court of competent jurisdiction, upon proof by a  
48 shareholder or holder of voting trust certificates of proper  
49 purpose, irrespective of the period of time during which



50 such shareholder or holder of voting trust certificates  
51 shall have been a shareholder of record or a holder of  
52 record of voting trust certificates, and irrespective of  
53 the number of shares held by him or represented by vot-  
54 ing trust certificates held by him, to compel the production  
55 for examination by such shareholder or holder of voting  
56 trust certificates of the books and records of account,  
57 minutes and record of shareholders of a corporation.

58 Upon the written request of any shareholder or holder  
59 or voting trust certificates for shares of a corporation,  
60 the corporation shall mail to such shareholder or holder  
61 of voting trust certificates its most recent financial state-  
62 ments showing in reasonable detail its assets and liabili-  
63 ties and the results of its operations.

**§31-1-106. Right to amend articles of incorporation.**

1 A corporation may amend its articles of incorpora-  
2 tion, from time to time, in any and as many respects  
3 as may be desired, so long as its articles of incorporation  
4 as amended contain only such provisions as might be  
5 lawfully contained in original articles of incorporation  
6 at the time of making such amendment, and, if a change  
7 in shares or the rights of shareholders, or an exchange,  
8 reclassification or cancellation of shares or rights of share-  
9 holders is to be made, such provisions as may be neces-  
10 sary to effect such change, exchange, reclassification or  
11 cancellation.

12 In particular, and without limitation upon such  
13 general power of amendment, a corporation may  
14 amend its articles of incorporation from time to  
15 time, so as:

- 16 (a) To change its corporate name.
- 17 (b) To change its period of duration.
- 18 (c) To change, enlarge or diminish its corporate pur-  
19 poses.
- 20 (d) To increase or decrease the aggregate number  
21 of shares, or shares of any class, which the corporation  
22 has authority to issue.
- 23 (e) To increase or decrease the par value of the  
24 authorized shares of any class having a par value, whether  
25 issued or unissued.

26 (f) To exchange, classify, reclassify or cancel all  
27 or any part of its shares, whether issued or un-  
28 issued.

29 (g) To change the designation of all or any part of  
30 its shares, whether issued or unissued, and to change  
31 the preferences, limitations, and the relative rights in  
32 respect of all or any part of its shares, whether issued  
33 or unissued.

34 (h) To change shares having par value, whether  
35 issued or unissued, into the same or a different number  
36 of shares without par value, and to change shares with-  
37 out par value, whether issued or unissued, into the same  
38 or a different number of shares having a par value.

39 (i) To change the shares of any class, whether issued  
40 or unissued, and whether with or without par value,  
41 into a different number of shares of the same class or  
42 into the same or a different number of shares, either  
43 with or without par value, of other classes.

44 (j) To create new classes of shares having rights and  
45 preferences either prior and superior or subordinate  
46 and inferior to the shares of any class then authorized,  
47 whether issued or unissued.

48 (k) To cancel or otherwise affect the right of the  
49 holders of the shares of any class to receive dividends  
50 which have accrued but have not been declared.

51 (l) To divide any preferred or special class of shares,  
52 whether issued or unissued, into series and fix and de-  
53 termine the designation of such series and the variations  
54 in the relative rights and preferences as between the  
55 shares of such series.

56 (m) To authorize the board of directors to establish,  
57 out of authorized but unissued shares, series of any  
58 preferred or special class of shares and fix and determine  
59 the relative rights and preferences of the shares of any  
60 series so established.

61 (n) To authorize the board of directors to fix and  
62 determine the relative rights and preferences of the  
63 authorized but unissued shares of series theretofore  
64 established in respect of which either the relative rights  
65 and preferences have not been fixed and determined or

66 the relative rights and preferences theretofore fixed and  
67 determined are to be changed.

68 (o) To revoke, diminish, or enlarge the authority of  
69 the board of directors to establish series out of authorized  
70 but unissued shares of any preferred or special class and  
71 fix and determine the relative rights and preferences of  
72 the shares of any series so established.

**§31-1-107. Procedure to amend articles of incorporation.**

1 Amendments to the articles of incorporation shall be  
2 made in the following manner:

3 (a) The board of directors shall adopt a resolution  
4 setting forth the proposed amendment and, if shares  
5 have been issued, directing that it be submitted to a  
6 vote at a meeting of shareholders, which may be either  
7 the annual or a special meeting. If no shares have been  
8 issued, the amendment shall be adopted by resolution  
9 of the board of directors and the provisions for adop-  
10 tion by shareholders shall not apply. The resolu-  
11 tion may incorporate the proposed amendment in re-  
12 stated articles of incorporation which contain a state-  
13 ment that except for the designated amendment the  
14 restated articles of incorporation correctly set forth with-  
15 out change the corresponding provisions of the articles  
16 of incorporation as theretofore amended, and that the re-  
17 stated articles of incorporation together with the desig-  
18 nated amendment supersede the original articles of incor-  
19 poration and all amendments thereto.

20 (b) Written notice setting forth the proposed amend-  
21 ment or a summary of the changes to be effected there-  
22 by shall be given to each shareholder of record entitled  
23 to vote thereon within the time and in the manner  
24 provided in this article for the giving of notice of meet-  
25 ings of shareholders. If the meeting be an annual meet-  
26 ing, the proposed amendment or such summary may be  
27 included in the notice of such annual meeting.

28 (c) At such meeting a vote of the shareholders enti-  
29 tled to vote thereon shall be taken on the proposed  
30 amendment. The proposed amendment shall be adopted  
31 upon receiving the affirmative vote of the holders of a  
32 majority of the shares entitled to vote thereon, unless

33 any class of shares is entitled to vote thereon as a class,  
34 in which event the proposed amendment shall be adopted  
35 upon receiving the affirmative vote of the holders of a  
36 majority of the shares of each class of shares entitled to  
37 vote thereon as a class and of the total shares entitled  
38 to vote thereon.

39 Any number of amendments may be submitted to the  
40 shareholders, and voted upon by them, at one meeting.

**§31-1-108. Class voting on amendments.**

1 The holders of the outstanding shares of a class shall  
2 be entitled to vote as a class upon a proposed amend-  
3 ment, whether or not entitled to vote thereon by the  
4 provisions of the articles of incorporation, if the amend-  
5 ment would:

6 (a) Increase or decrease the aggregate number of  
7 authorized shares of such class.

8 (b) Increase or decrease the par value of the shares  
9 of such class.

10 (c) Effect an exchange, reclassification or cancella-  
11 tion of all or part of the shares of such class.

12 (d) Effect an exchange, or create a right of exchange,  
13 of all or any part of the shares of another class into the  
14 shares of such class.

15 (e) Change the designations, preferences, limitations  
16 or relative rights of the shares of such class.

17 (f) Change the shares of such class, whether with or  
18 without par value, into the same or a different num-  
19 ber of shares, either with or without par value, of the  
20 same class or another class or classes.

21 (g) Create a new class of shares having rights and  
22 preferences prior and superior to the shares of such class,  
23 or increase the rights and preferences or the number of  
24 authorized shares, of any class having rights and pref-  
25 erences prior or superior to the shares of such class.

26 (h) In the case of a preferred or special class of shares,  
27 divide the shares of such class into series and fix and  
28 determine the designation of such series and the varia-  
29 tions in the relative rights and preferences between the  
30 shares of such series, or authorize the board of directors  
31 to do so.

32 (i) Cancel or otherwise affect dividends on the shares  
33 of such class which have accrued but have not been  
34 declared.

**§31-1-109. Articles of amendment.**

1 The articles of amendment shall be executed in dupli-  
2 cate by the corporation by its president or a vice presi-  
3 dent and by its secretary or an assistant secretary and  
4 verified by one of the officers signing such articles, and  
5 shall set forth:

6 (a) The name of the corporation.

7 (b) The amendments so adopted.

8 (c) The date of the adoption of the amendment by  
9 the shareholders, or by the board of directors where no  
10 shares have been issued.

11 (d) The number of shares outstanding, and the num-  
12 ber of shares entitled to vote thereon, and if the shares of  
13 any class are entitled to vote thereon as a class, the desig-  
14 nation and number of outstanding shares entitled to vote  
15 thereon of each such class.

16 (e) The number of shares voted for and against such  
17 amendment, respectively, and, if the shares of any class  
18 are entitled to vote thereon as a class, the number of  
19 shares of each such class voted for and against such  
20 amendment, respectively, or if no shares have been issued,  
21 a statement to that effect.

22 (f) If such amendment provides for an exchange,  
23 reclassification or cancellation of issued shares, and if  
24 the manner in which the same shall be effected is not set  
25 forth in the amendment, then a statement of the manner  
26 in which the same shall be effected.

27 (g) If such amendment effects a change in the amount  
28 of stated capital, then a statement of the manner in  
29 which the same is effected and a statement, expressed in  
30 dollars, of the amount of stated capital as changed by  
31 such amendment.

**§31-1-110. Restated articles of incorporation; procedures for adoption; contents.**

1 A domestic corporation may at any time restate its  
2 articles of incorporation as theretofore amended, by a  
3 resolution adopted by the board of directors.

4 Upon the adoption of such resolution, restated articles  
5 of incorporation shall be executed in duplicate by the  
6 corporation by its president or a vice president and by  
7 its secretary or assistant secretary and verified by one  
8 of the officers signing such articles and shall set forth  
9 all of the operative provisions of the articles of incor-  
10 poration as theretofore amended together with a state-  
11 ment that the restated articles of incorporation correctly  
12 set forth without change the corresponding provisions  
13 of the articles of incorporation as theretofore amended  
14 and that the restated articles of incorporation supersede  
15 the original articles of incorporation and all amendments  
16 thereto.

**§31-1-111. Amendment of articles of incorporation in reor-  
ganization proceedings; contents; purposes; pro-  
cedure for filing; issuance; recordation; admission  
in evidence.**

1 (a) Whenever a plan of reorganization of a corpora-  
2 tion has been confirmed by order of a court of competent  
3 jurisdiction in proceedings for the reorganization of such  
4 corporations, pursuant to the provisions of any applicable  
5 statute of the United States relating to reorganizations  
6 of corporations, the articles of incorporation of the cor-  
7 poration may be amended, in the manner provided in  
8 this section, in as many respects as may be necessary  
9 to carry out the plan and put it into effect, so long as the  
10 articles of incorporation as amended contain only such  
11 provisions as might be lawfully contained in original  
12 articles of incorporation at the time of making such  
13 amendment.

14 (b) In particular and without limitation upon such  
15 general power of amendment, the articles of incorpora-  
16 tion may be amended for such purpose so as to:

17 (1) Change the corporate name, period of duration  
18 or corporate purposes of the corporation;

19 (2) Repeal, alter or amend the bylaws of the corpora-  
20 tion;

21 (3) Change the aggregate number of shares or shares  
22 of any class which the corporation has authority to  
23 issue;

24 (4) Change the preferences, limitations and relative  
25 rights in respect of all or any part of the shares of the  
26 corporation, and classify, reclassify or cancel all or any  
27 part thereof, whether issued or unissued.

28 (5) Authorize the issuance of bonds, debentures or  
29 other obligations of the corporation, whether or not con-  
30 vertible into shares of any class or bearing warrants or  
31 other evidences of optional rights to purchase or sub-  
32 scribe for shares of any class, and fix the terms and con-  
33 ditions thereof; and

34 (6) Constitute or reconstitute and classify or reclas-  
35 sify the board of directors of the corporation, and  
36 appoint directors and officers in place of or in addi-  
37 tion to all or any of the directors or officers then in  
38 office.

39 (c) Amendments to the articles of incorporation  
40 pursuant to this section shall be made in the following  
41 manner:

42 (1) Articles of amendment approved by order of such  
43 court shall be executed and verified in duplicate by such  
44 person or persons as the court shall designate or appoint  
45 for the purpose, and shall set forth the name of the  
46 corporation, the amendments of the articles of incorpora-  
47 tion approved by the court, the date of the order ap-  
48 proving the articles of amendment, the title of the pro-  
49 ceedings in which the order was entered, and a statement  
50 that such order was entered by a court having juris-  
51 diction of the proceedings for the reorganization of the  
52 corporation pursuant to the provisions of an applicable  
53 statute of the United States.

54 (2) Duplicate originals of the articles of amendments  
55 shall be delivered to the secretary of state. If the secre-  
56 tary of state finds that the articles of amendment con-  
57 form to law he shall, when all fees have been paid as  
58 prescribed by law, (i) endorse on each of such duplicate  
59 originals the word "Filed," and the month, day and year  
60 of the filing thereof; (ii) file one of such duplicate orig-  
61 inals in his office; and (iii) issue a certificate of amend-  
62 ment to which he shall affix the other duplicate  
63 original.

64 The certificate of amendment, together with the dupli-  
65 cate original of the articles of amendment affixed thereto  
66 by the secretary of state, shall be returned to the cor-  
67 poration or its representative.

68 Upon the issuance of the certificate of amendment by  
69 the secretary of state, the amendment shall become  
70 effective and the articles of incorporation shall be deemed  
71 to be amended accordingly, without any action thereon  
72 by the directors or shareholders of the corporation and  
73 with the same effect as if the amendments had been  
74 adopted by unanimous action of the directors and share-  
75 holders of the corporation.

76 (d) The certificate of amendment issued by the  
77 secretary of state pursuant to this section, or certified  
78 copy thereof, shall be recorded in the office of the appro-  
79 priate county clerk in the same manner as original cer-  
80 tificates of incorporation are required to be recorded,  
81 in accordance with the provisions of subsection (b) of  
82 section twenty-eight of this article and received in evi-  
83 dence to the same extent as an original certificate of  
84 incorporation or a certified copy of such original.

**§31-1-112. Restriction on redemption or purchase of redeem-  
able shares.**

1 No redemption or purchase of redeemable shares shall  
2 be made by a corporation when it is insolvent or when  
3 such redemption or purchase would render it insolvent,  
4 or which would reduce the net assets below the aggregate  
5 amount payable to the holders of shares having prior  
6 or equal rights to the assets of the corporation upon in-  
7 voluntary dissolution.

**§31-1-113. Cancellation of redeemable shares by redemption  
or purchase; statement of cancellation; contents;  
filing.**

1 (a) When redeemable shares of a corporation are  
2 redeemed or purchased by the corporation, the redemp-  
3 tion or purchase shall effect a cancellation of such shares,  
4 and a statement of cancellation shall be filed as provided  
5 in this section. Thereupon such shares shall be restored  
6 to the status of authorized but unissued shares, unless



7 the articles of incorporation provide that such shares  
8 when redeemed or purchased shall not be reissued, in  
9 which case the filing of the statement of cancellation  
10 shall constitute an amendment to the articles of incor-  
11 poration and shall reduce the number of shares of the  
12 class so cancelled which the corporation is authorized  
13 to issue by the number of shares so cancelled.

14 (b) The statement of cancellation shall be executed  
15 in duplicate by the corporation by its president or a vice  
16 president and by its secretary or an assistant secretary,  
17 and verified by one of the officers signing such statement,  
18 and shall set forth:

19 (1) The name of the corporation.

20 (2) The number of redeemable shares cancelled  
21 through redemption or purchase, itemized by classes  
22 and series.

23 (3) The aggregate number of issued shares, itemized  
24 by classes and series, after giving effect to such can-  
25 cellation.

26 (4) The amount, expressed in dollars, of the stated  
27 capital of the corporation after giving effect to such  
28 cancellation.

29 (5) If the articles of incorporation provide that the  
30 cancelled shares shall not be reissued, the number of  
31 shares which the corporation will have authority to issue  
32 itemized by classes and series, after giving effect to such  
33 cancellation.

34 (c) Duplicate originals of such statement shall be  
35 delivered to the secretary of state. If the secretary of  
36 state finds that such statement conforms to law, he shall,  
37 when all fees have been paid as prescribed by law, (i)  
38 endorse on each of such duplicate originals the word  
39 "Filed," and the month, day and year of the filing there-  
40 of; (ii) file one of such duplicate originals in his office;  
41 and (iii) return the other duplicate original to the cor-  
42 poration or its representative.

43 Upon the filing of such statement of cancellation, the  
44 stated capital of the corporation shall be deemed to be  
45 reduced by that part of the stated capital which was,

46 at the time of such cancellation, represented by the shares  
47 so cancelled.

48 (d) Nothing contained in this section shall be con-  
49 strued to forbid a cancellation of shares or a reduction  
50 of stated capital in any other manner permitted by this  
51 article.

**§31-1-114. Cancellation of other reacquired shares; statement  
of cancellation; contents; filing.**

1 (a) A corporation may at any time, by resolution of  
2 its board of directors, cancel all or any part of the shares  
3 of the corporation of any class reacquired by it, other  
4 than redeemable shares redeemed or purchased, and in  
5 such event a statement of cancellation shall be filed as  
6 provided in this section.

7 (b) The statement of cancellation shall be executed  
8 in duplicate by the corporation by its president or a vice  
9 president and by its secretary or an assistant secretary,  
10 and verified by one of the officers signing such state-  
11 ment, and shall set forth:

12 (1) The name of the corporation.

13 (2) The number of reacquired shares cancelled by  
14 resolution duly adopted by the board of directors, item-  
15 ized by classes and series, and the date of its adop-  
16 tion.

17 (3) The aggregate number of issued shares, itemized  
18 by classes and series, after giving effect to such can-  
19 cellation.

20 (4) The amount, expressed in dollars, of the stated  
21 capital of the corporation after giving effect to such  
22 cancellation.

23 (c) Duplicate originals of such statement shall be  
24 delivered to the secretary of state. If the secretary of  
25 state finds that such statement conforms to law, he shall,  
26 when all fees have been paid as prescribed by law, (i)  
27 endorse on each of such duplicate originals the word  
28 "Filed," and the month, day and year of the filing there-  
29 of; (ii) file one of such duplicate originals in his office;  
30 and (iii) return the other duplicate original to the cor-  
31 poration or its representative.

32 Upon the filing of such statement of cancellation, the  
33 stated capital of the corporation shall be deemed to be  
34 reduced by that part of the stated capital which was,  
35 at the time of such cancellation, represented by the  
36 shares so cancelled, and the shares so cancelled shall be  
37 restored to the status of authorized but unissued shares.

38 (d) Nothing contained in this section shall be con-  
39 strued to forbid a cancellation of shares or a reduction  
40 of stated capital in any other manner permitted by this  
41 article.

**§31-1-115. Reduction of stated capital without amendment of  
articles or cancellation of shares; statement re-  
quired to be filed and its contents; limitations.**

1 (a) A reduction of the stated capital of a corpora-  
2 tion, where such reduction is not accompanied by any  
3 action requiring an amendment of the articles of incor-  
4 poration and not accompanied by a cancellation of shares,  
5 may be made in the following manner:

6 (1) The board of directors shall adopt a resolution  
7 setting forth the amount of the proposed reduction and  
8 the manner in which the reduction shall be effected, and  
9 directing that the question of such reduction be sub-  
10 mitted to a vote at a meeting of shareholders, which may  
11 be either an annual or a special meeting.

12 (2) Written notice, stating that the purpose or one  
13 of the purposes of such meeting is to consider the ques-  
14 tion of reducing the stated capital of the corporation in  
15 the amount and manner proposed by the board of direc-  
16 tors, shall be given to each shareholder of record entitled  
17 to vote thereon within the time and in the manner pro-  
18 vided in this article for the giving of notice of meetings  
19 of shareholders.

20 (3) At such meeting a vote of the shareholders en-  
21 titled to vote thereon shall be taken on the question of  
22 approving the proposed reduction of stated capital, which  
23 shall require for its adoption the affirmative vote of the  
24 holders of a majority of the shares entitled to vote  
25 thereon.

26 (b) When a reduction of the stated capital of a cor-  
27 poration has been approved as provided in subsection

28 (a) of this section, a statement shall be executed in  
29 duplicate by the corporation by its president or a vice  
30 president and by its secretary or an assistant secretary,  
31 and verified by one of the officers signing such statement,  
32 and shall set forth:

33 (1) The name of the corporation.

34 (2) A copy of the resolution of the shareholders ap-  
35 proving such reduction, and the date of its adoption.

36 (3) The number of shares outstanding, and the num-  
37 ber of shares entitled to vote thereon.

38 (4) The number of shares voted for and against such  
39 reduction, respectively.

40 (5) A statement of the manner in which such reduc-  
41 tion is effected and a statement expressed in dollars, of  
42 the amount of stated capital of the corporation after  
43 giving effect to such reduction.

44 (c) Duplicate originals of such statement shall be  
45 delivered to the secretary of state. If the secretary of  
46 state finds that such statement conforms to law, he shall,  
47 when all fees have been paid as prescribed by law, (i)  
48 endorse on each of such duplicate originals the word  
49 "Filed," and the month, day and year of the filing thereof;  
50 (ii) file one of such duplicate originals in his office;  
51 and (iii) return the other duplicate original to the cor-  
52 poration or its representative.

53 Upon the filing of such statement, the stated capital  
54 of the corporation shall be reduced as therein set  
55 forth.

56 (d) No reduction of stated capital shall be made  
57 under the provisions of this section which would reduce  
58 the amount of the aggregate stated capital of the cor-  
59 poration to an amount equal to or less than the aggre-  
60 gate preferential amounts payable upon all issued shares  
61 having a preferential right in the assets of the corporation  
62 in the event of involuntary liquidation, plus the aggregate  
63 par value of all issued shares having a par value but no  
64 preferential rights in the assets of the corporation in the  
65 event of involuntary liquidation.

**§31-1-116. Special provisions relating to surplus and reserves.**

1 The surplus, if any, created by or arising out of a  
2 reduction of the stated capital of a corporation shall  
3 be capital surplus. The capital surplus of a corporation  
4 may be increased from time to time by a resolution of  
5 the board of directors directing that all or a part of the  
6 earned surplus of the corporation be transferred to cap-  
7 ital surplus.

8 A corporation may, by resolution of its board of direc-  
9 tors, apply any part or all of its capital surplus to the  
10 reduction or elimination of any deficit arising from  
11 losses, however incurred, but only after first eliminating  
12 the earned surplus, if any, of the corporation by apply-  
13 ing such losses against earned surplus and only to the  
14 extent that such losses exceed the earned surplus, if any.  
15 Each such application of capital surplus shall, to the  
16 extent thereof, effect a reduction of capital surplus.

17 A corporation may, by resolution of its board of direc-  
18 tors, create a reserve or reserves out of its earned surplus  
19 for any proper purpose or purposes, and may abolish  
20 any such reserve in the same manner. Earned surplus of  
21 the corporation to the extent so reserved shall not be  
22 available for the payment of dividends or other dis-  
23 tributions by the corporation except as expressly per-  
24 mitted by this article.

**§31-1-117. Merger or consolidation; approval by shareholders; abandonment.**

1 The board of directors of each corporation intending  
2 to merge or consolidate with another corporation, upon  
3 approving such plan of merger or plan of consolidation,  
4 shall, by resolution, direct that the plan be submitted to  
5 a vote at a meeting of shareholders, which may be either  
6 an annual or a special meeting. Written notice shall be  
7 given to each shareholder of record, whether or not  
8 entitled to vote at such meeting, not less than twenty days  
9 before such meeting, in the manner provided in this  
10 article for the giving of notice of meetings of share-  
11 holders, and, whether the meeting be an annual or a  
12 special meeting, shall state that the purpose or one of

13 the purposes is to consider the proposed plan of merger  
14 or consolidation. A copy or a summary of the plan of  
15 merger or plan of consolidation, as the case may be,  
16 shall be included in or enclosed with such notice.

17 At each such meeting, a vote of the shareholders shall  
18 be taken on the proposed plan of merger or consolida-  
19 tion. The plan of merger or consolidation shall be ap-  
20 proved upon receiving the affirmative vote of the holders  
21 of a majority of the shares entitled to vote thereon of  
22 each such corporation, unless any class of shares of any  
23 such corporation is entitled to vote thereon as a class,  
24 in which event, as to such corporation, the plan of merger  
25 or consolidation shall be approved upon receiving the  
26 affirmative vote of the holders of a majority of the  
27 shares of each class of shares entitled to vote thereon  
28 as a class and of the total shares entitled to vote thereon.  
29 Any class of shares of any such corporation shall be  
30 entitled to vote as a class if the plan of merger or con-  
31 solidation, as the case may be, contains any provision  
32 which, if contained in a proposed amendment to articles  
33 of incorporation, would entitle such class of shares to  
34 vote as a class.

35 After such approval by a vote of the shareholders of  
36 each corporation, and at any time prior to the filing of  
37 the articles of merger or consolidation, the merger or  
38 consolidation may be abandoned pursuant to provisions  
39 therefor, if any, set forth in the plan of merger or con-  
40 solidation.

**§31-1-118. Contents required in articles of merger or consoli-  
dation.**

1 Articles of merger or articles of consolidation shall,  
2 in addition to any other matters deemed appropriate, set  
3 forth:

4 (1) The plan of merger or the plan of consolidation.

5 (2) As to each corporation, the number of shares out-  
6 standing, and, if the shares of any class are entitled to  
7 vote as a class, the designation and number of outstand-  
8 ing shares of each such class.

9 (3) As to each corporation, the number of shares  
10 voted for and against such plan respectively, and, if the

11 shares of any class are entitled to vote as a class, the  
12 number of shares of each class voted for and against  
13 such plan, respectively.

**§31-1-119. Merger of subsidiary corporation; procedures; articles of merger; recordation; admission in evidence.**

1 (a) Any corporation owning at least ninety percent  
2 of the outstanding shares of each class of another corpor-  
3 ation may merge such other corporation into itself with-  
4 out approval by a vote of the shareholders of either  
5 corporation. Its board of directors shall, by resolution,  
6 approve a plan of merger setting forth (i) the name of  
7 the subsidiary corporation and the name of the corpor-  
8 ation owning at least ninety percent of its shares, which  
9 is hereinafter designated as the surviving corporation;  
10 and (ii) the manner and basis of converting the shares  
11 of the subsidiary corporation into shares, obligations or  
12 other securities of the surviving corporation or of any  
13 other corporation or, in whole or in part, into cash or  
14 other property. A copy of such plan of merger shall be  
15 mailed to each shareholder of record of the subsidiary  
16 corporation.

17 (b) Articles of merger shall be executed in duplicate  
18 by the surviving corporation by its president or a vice  
19 president and by its secretary or an assistant secretary,  
20 and verified by one of its officers signing such articles,  
21 and shall set forth:

22 (1) The plan of merger;

23 (2) The number of outstanding shares of each class  
24 of the subsidiary corporation and the number of such  
25 shares of each class owned by the surviving corporation;  
26 and

27 (3) The date of the mailing to shareholders of the  
28 subsidiary corporation of a copy of the plan of merger.

29 (c) On and after the thirtieth day after the mailing  
30 of a copy of the plan of merger to shareholders of the  
31 subsidiary corporation or upon the waiver thereof by  
32 the holders of all outstanding shares, duplicate originals  
33 of the articles of merger shall be delivered to the secre-  
34 tary of state. If the secretary of state finds that such

35 articles conform to law, he shall, when all fees have been  
36 paid as prescribed by law, (i) endorse on each of such  
37 duplicate originals the word "Filed," and the month, day  
38 and year of the filing thereof; (ii) file one of such dupli-  
39 cate originals in his office; and (iii) issue a certificate of  
40 merger to which he shall affix the other duplicate  
41 original.

42 The certificate of merger, together with the duplicate  
43 original of the articles of merger affixed thereto by the  
44 secretary of state, shall be returned to the surviving  
45 corporation or its representative.

46 (d) The certificate of merger, or certified copy thereof,  
47 shall be recorded in the office of the appropriate county  
48 clerk in the same manner as original certificates of in-  
49 corporation are required to be recorded, in accordance  
50 with the provisions of subsection (b) of section twenty-  
51 eight of this article and received in evidence to the  
52 same extent as an original certificate of incorporation  
53 or a certified copy of such original.

**§31-1-120. Sale of assets in regular course of business and mortgage or pledge of assets.**

1 The sale, lease, exchange or other disposition of all,  
2 or substantially all, the property and assets of a corpor-  
3 ation in the usual and regular course of its business,  
4 and the mortgage or pledge of any or all property and  
5 assets of a corporation whether or not in the usual and  
6 regular course of business, may be made upon such  
7 terms and conditions and for such consideration, which  
8 may consist in whole or in part of cash or other property,  
9 including shares, obligations or other securities of any  
10 other corporation, domestic or foreign, as shall be author-  
11 ized by its board of directors; and in any such case no  
12 authorization or consent of the shareholders shall be  
13 required.

**§31-1-121. Sale of assets other than in regular course of business.**

1 A sale, lease, exchange or other disposition of all, or  
2 substantially all, the property and assets, with or with-  
3 out the good will, of a corporation, if not in the usual



4 and regular course of its business, may be made upon  
5 such terms and conditions and for such consideration,  
6 which may consist in whole or in part of cash or other  
7 property, including shares, obligations or other securities  
8 of any other corporation, domestic or foreign, as may  
9 be authorized in the following manner:

10 (a) The board of directors shall adopt a resolution  
11 recommending such sale, lease, exchange or other dis-  
12 position and directing the submission thereof to a vote  
13 at a meeting of shareholders, which may be either an  
14 annual or a special meeting.

15 (b) Written notice shall be given to each shareholder  
16 of record, whether or not entitled to vote at such meet-  
17 ing, not less than twenty days before such meeting, in  
18 the manner provided in this article for the giving of  
19 notice of meetings of shareholders, and, whether the meet-  
20 ing be an annual or a special meeting, shall state that  
21 the purpose, or one of the purposes is to consider the  
22 proposed sale, lease, exchange or other disposition.

23 (c) At such meeting the shareholders may authorize  
24 such sale, lease, exchange or other disposition and may  
25 fix, or may authorize the board of directors to fix, any  
26 or all of the terms and conditions thereof and the con-  
27 sideration to be received by the corporation therefor.  
28 Such authorization shall require the affirmative vote of  
29 the holders of a majority of the shares of the corporation  
30 entitled to vote thereon, unless any class of shares is  
31 entitled to vote thereon as a class, in which event such  
32 authorization shall require the affirmative vote of the  
33 holders of a majority of the shares of each class of shares  
34 entitled to vote as a class thereon and of the total shares  
35 entitled to vote thereon.

36 (d) After such authorization by a vote of share-  
37 holders, the board of directors nevertheless, in its dis-  
38 cretion, may abandon such sale, lease, exchange or other  
39 disposition of assets, subject to the rights of third parties  
40 under any contracts relating thereto, without further  
41 action or approval by shareholders.

**§31-1-122. Right of shareholders to dissent.**

1 Any shareholder of a corporation shall have the right  
2 to dissent from any of the following corporate actions:

3 (a) Any plan of merger or consolidation to which  
4 the corporation is a party; or

5 (b) Any sale or exchange of all or substantially all  
6 of the property and assets of the corporation not made  
7 in the usual and regular course of its business, including  
8 a sale in dissolution, but not including a sale pursuant  
9 to an order of a court having jurisdiction in the premises  
10 or a sale for cash on terms requiring that all or sub-  
11 stantially all of the net proceeds of sale be distributed  
12 to the shareholders in accordance with their respective  
13 interests within one year after the date of sale.

14 A shareholder may dissent as to less than all of the  
15 shares registered in his name. In that event, his rights  
16 shall be determined as if the shares as to which he has  
17 dissented and his other shares were registered in the  
18 names of different shareholders.

**§31-1-123. Rights of dissenting shareholders; procedure for purchasing of dissenting shareholders' shares; civil action for determining value of shares; procedure for transferring of such shares to corporation and payment therefor.**

1 (a) Any shareholder electing to exercise his right to  
2 dissent, pursuant to section one hundred twenty-two of  
3 this article, shall file with the corporation, prior to or  
4 at the meeting of shareholders at which such proposed  
5 corporate action is submitted to a vote, a written ob-  
6 jection to such proposed corporate action. If such pro-  
7 posed corporate action be approved by the required vote  
8 and such shareholder shall not have voted in favor  
9 thereof, such shareholder may, within ten days after  
10 the date on which the vote was taken or if a corpora-  
11 tion is to be merged without a vote of its shareholders  
12 into another corporation, any of its shareholders may,  
13 within fifteen days after the plan of such merger shall  
14 have been mailed to such shareholders, make written  
15 demand on the corporation, or, in the case of a merger  
16 or consolidation, on the surviving or new corporation,

17 domestic or foreign, for payment of the fair value of  
18 such shareholder's shares, and, if such proposed corporate  
19 action is effected, such corporation shall pay to such  
20 shareholder, upon surrender of the certificate or certifi-  
21 cates representing such shares, the fair value thereof  
22 as of the day prior to the date on which the vote was  
23 taken approving the proposed corporate action, exclud-  
24 ing any appreciation or depreciation in anticipation of  
25 such corporate action. Any shareholder failing to make  
26 demand within the ten-day period shall be bound by  
27 the terms of the proposed corporate action. Any share-  
28 holder making such demand shall thereafter be entitled  
29 only to payment as in this section provided and shall  
30 not be entitled to vote or to exercise any other rights  
31 of a shareholder.

32 (b) No such demand may be withdrawn unless the  
33 corporation shall consent thereto. If, however, such de-  
34 mand shall be withdrawn upon consent, or if the pro-  
35 posed corporate action shall be abandoned or rescinded  
36 or the shareholders shall revoke the authority to effect  
37 such action, or if, in the case of a merger, on the date  
38 of the filing of the articles of merger the surviving  
39 corporation, is the owner of all the outstanding shares  
40 of the other corporations, domestic and foreign, that  
41 are parties to the merger, or if no demand or petition  
42 for the determination of fair value by a court of general  
43 civil jurisdiction have been made or filed within the  
44 time provided in subsection (e) of this section, or if a  
45 court of general civil jurisdiction shall determine that  
46 such shareholder is not entitled to the relief provided  
47 by this section, then the right of such shareholder to  
48 be paid the fair value of his shares shall cease and his  
49 status as a shareholder shall be restored, without preju-  
50 dice to any corporate proceedings which may have been  
51 taken during the interim.

52 (c) Within ten days after such corporate action is  
53 effected, the corporation, or, in the case of a merger or  
54 consolidation, the surviving or new corporation, domestic  
55 or foreign, shall give written notice thereof to each  
56 dissenting shareholder who has made demand as herein  
57 provided, and shall make a written offer to each share-

58 holder to pay for such shares at a specified price deemed  
59 by such corporation to be fair value thereof. Such  
60 notice and offer shall be accompanied by a balance  
61 sheet of the corporation the shares of which the dis-  
62 senting shareholder holds, as of the latest available date  
63 and not more than twelve months prior to the making  
64 of such offer, and a profit and loss statement of such  
65 corporation for the twelve months' period ended on  
66 the date of such balance sheet.

67 (d) If within thirty days after the date on which  
68 such corporate action is effected the fair value of such  
69 shares is agreed upon between any such dissenting share-  
70 holder and the corporation, payment therefor shall be  
71 made within ninety days after the date on which such  
72 corporate action was effected, upon surrender of the  
73 certificate or certificates representing such shares. Upon  
74 payment of the agreed value the dissenting shareholder  
75 shall cease to have any interest in such shares.

76 (e) If within such period of thirty days, a dissenting  
77 shareholder and the corporation do not so agree, then  
78 the corporation shall within thirty days after receipt of  
79 written demand from any dissenting shareholder, which  
80 written demand must be given within sixty days after  
81 the date on which such corporate action was effected,  
82 file a complaint in a court of general civil jurisdiction  
83 requesting that the fair value of such shares be found  
84 and determined, or the corporation may file such com-  
85 plaint at any time within such sixty-day period at its  
86 own election. Such complaint shall be filed in any court  
87 of general civil jurisdiction in the county in which the  
88 principal office of the corporation is situated, or, if there  
89 be no such office in this state, in the county in which  
90 any dissenting shareholder resides or is found or in  
91 which the property of such corporation, or any part  
92 of it, may be. If the corporation shall fail to institute  
93 such proceedings, any dissenting shareholder may do so  
94 in the name of the corporation. All dissenting share-  
95 holders wherever residing, may be made parties to the  
96 proceedings as an action against their shares quasi in  
97 rem. A copy of the complaint shall be served on each  
98 dissenting shareholder who is a resident of this state in

99 the same manner as in other civil actions. Dissenting  
100 shareholders who are nonresidents of this state shall  
101 be served a copy of the complaint by registered or certi-  
102 fied mail, return receipt requested. In addition, service  
103 upon such nonresident shareholders shall be made by  
104 publication, as provided in Rule 4 (e) (2) of the West  
105 Virginia Rules of Civil Procedure. All shareholders  
106 who are parties to the proceeding shall be entitled to  
107 judgement against the corporation for the amount of  
108 the fair value of their shares. The court may, if it so  
109 elects, appoint one or more persons as appraisers to  
110 receive evidence and recommend a decision on the ques-  
111 tion of fair value. The appraisers shall have such power  
112 and authority as shall be specified in the order of their  
113 appointment or any subsequent appointment. The judg-  
114 ment shall be payable only upon and concurrently with  
115 the surrender to the corporation of the certificate or  
116 certificates representing such shares. Upon payment of  
117 the judgment, the dissenting shareholder shall cease to  
118 have any interest in such shares.

119 The judgement shall include an allowance for interest  
120 at such rate as the court may find to be fair and equi-  
121 table in all the circumstances, from the date on which  
122 the vote was taken on the proposed corporate action to  
123 the date of payment.

124 The costs and expenses of any such proceeding shall be  
125 determined by the court and shall be assessed against the  
126 corporation, but all or any part of such costs and expenses  
127 may be apportioned and assessed as the court may deem  
128 equitable against any or all of the dissenting shareholders  
129 who are parties to the proceeding to whom the corpora-  
130 tion shall have made an offer to pay for the shares if the  
131 court shall find that the action of such shareholders in  
132 failing to accept such offer was arbitrary or vexatious or  
133 not in good faith. Such expenses shall include reasonable  
134 compensation for and reasonable expenses of the ap-  
135 praisers, but shall exclude the fees and expenses of  
136 counsel for and experts employed by any party; but if the  
137 fair value of the shares as determined materially ex-  
138 ceeds the amount which the corporation offered to pay  
139 therefor, or if no offer was made, the court in its discre-

140 tion may award to any shareholder who is a party to the  
141 proceeding such sum as the court may determine to be  
142 reasonable compensation to any expert or experts em-  
143 ployed by the shareholder in the proceeding. Any party  
144 to the proceeding may appeal any judgment or ruling of  
145 the court as in other civil cases.

146 (f) Within twenty days after demanding payment for  
147 his shares, each shareholder demanding payment shall  
148 submit the certificate or certificates representing his  
149 shares to the corporation for notation thereon that such  
150 demand has been made. His failure to do so shall, at the  
151 option of the corporation, terminate his rights under this  
152 section unless a court of general civil jurisdiction, for  
153 good and sufficient cause shown, shall otherwise direct. If  
154 shares represented by a certificate on which notation has  
155 been so made shall be transferred, each new certificate  
156 issued therefor shall bear similar notation, together with  
157 the name of the original dissenting holder of such shares,  
158 and a transferee of such shares shall acquire by such  
159 transfer no rights in the corporation other than those  
160 which the original dissenting shareholder had after mak-  
161 ing demand for payment of the fair value thereof.

162 (g) Shares acquired by a corporation pursuant to  
163 payment of the agreed value therefor or to payment of  
164 the judgment entered therefor, as in this section provided,  
165 may be held and disposed of by such corporation as in  
166 the case of other treasury shares, except that, in the case  
167 of a merger or consolidation, they may be held and dis-  
168 posed of as the plan of merger or consolidation may other-  
169 wise provide.

**§31-1-124. Voluntary dissolution by incorporators.**

1 A corporation which has not commenced business and  
2 which has not issued any shares, may be voluntarily  
3 dissolved by its incorporators at any time in the follow-  
4 ing manner:

5 (a) Articles of dissolution shall be executed in dupli-  
6 cate by a majority of the incorporators and verified by  
7 them, and shall set forth:

8 (1) The name of the corporation.

9 (2) The date of issuance of its certificate of incor-  
10 poration.

11 (3) That none of its shares has been issued.

12 (4) That the corporation has not commenced busi-  
13 ness.

14 (5) That the amount, if any, actually paid in on sub-  
15 scriptions for its shares, less any part thereof disbursed  
16 for necessary expenses, has been returned to those en-  
17 titled thereto.

18 (6) That no debts of the corporation remain unpaid.

19 (7) That a majority of the incorporators elect that  
20 the corporation be dissolved.

21 (b) Duplicate originals of the articles of dissolution  
22 shall be delivered to the secretary of state. If the sec-  
23 retary of state finds that the articles of dissolution con-  
24 form to law, he shall, subject to the provisions of section  
25 sixty-one of this article, and when all fees have been  
26 paid as prescribed by law, (i) endorse on each of such  
27 duplicate originals the word "Filed," and the month,  
28 day and year of the filing thereof; (ii) file one of such  
29 duplicate originals in his office; and (iii) issue a cer-  
30 tificate of dissolution to which he shall affix the other  
31 duplicate original.

32 (c) The certificate of dissolution, together with the  
33 duplicate original of the articles of dissolution affixed  
34 thereto by the secretary of state, shall be returned to  
35 the incorporators or their representative.

36 (d) If the certificate of incorporation shall have been  
37 recorded in the office of the clerk of the county court  
38 of any county in the state, the incorporators or their  
39 representative shall record the certificates of dissolution  
40 in the office of the clerk of the county court in which  
41 the certificate of incorporation is recorded, and the clerk  
42 shall note on the margin of the record book in which  
43 the certificate of incorporation is engrossed the fact of  
44 the dissolution of the corporation, and upon such recor-  
45 dation the existence of the corporation shall cease.

**§31-1-125. Voluntary dissolution by consent of shareholders.**

1 A corporation may be voluntarily dissolved by the  
2 written consent of all its shareholders.

3 Upon the execution of such written consent, a state-  
4 ment of intent to dissolve shall be executed in duplicate  
5 by the corporation by its president or a vice president  
6 and by its secretary or an assistant secretary, and verified  
7 by one of the officers signing such statement, which state-  
8 ment shall set forth:

9 (a) The name of the corporation.

10 (b) The names and respective addresses of its offi-  
11 cers.

12 (c) The names and respective addresses of its direc-  
13 tors.

14 (d) A copy of the written consent signed by all share-  
15 holders of the corporation.

16 (e) A statement that such written consent has been  
17 signed by all shareholders of the corporation or signed  
18 in their names by their attorneys thereunto duly au-  
19 thorized.

**§31-1-126. Voluntary dissolution by act of corporation.**

1 A corporation may be dissolved by the act of the  
2 corporation, when authorized in the following manner:

3 (a) The board of directors shall adopt a resolution  
4 recommending that the corporation be dissolved, and  
5 directing that the question of such dissolution be sub-  
6 mitted to a vote at a meeting of shareholders, which  
7 may be either an annual or a special meeting.

8 (b) Written notice shall be given to each shareholder  
9 of record entitled to vote at such meeting within the  
10 time and in the manner provided in this article for the  
11 giving of notice of meetings of shareholders, and, whether  
12 the meeting be an annual or special meeting, shall state  
13 that the purpose, or one of the purposes, of such meeting  
14 is to consider the advisability of dissolving the cor-  
15 poration.

16 (c) At such meeting a vote of shareholders entitled  
17 to vote thereat shall be taken on a resolution to dissolve  
18 the corporation. Such resolution shall be adopted upon  
19 receiving the affirmative vote of the holders of a ma-  
20 jority of the shares of the corporation entitled to vote  
21 thereon, unless any class of shares is entitled to vote  
22 thereon as a class, in which event the resolution shall be



23 adopted upon receiving the affirmative vote of the hold-  
24 ers of a majority of the shares of each class of shares  
25 entitled to vote thereon as a class and of the total shares  
26 entitled to vote thereon.

27 (d) Upon the adoption of such resolution, a state-  
28 ment of intent to dissolve shall be executed in duplicate  
29 by the corporation by its president or a vice president  
30 and by its secretary or an assistant secretary, and veri-  
31 fied by one of the officers signing such statement, which  
32 statement shall set forth:

33 (1) The name of the corporation.

34 (2) The names and respective addresses of its offi-  
35 cers.

36 (3) The names and respective addresses of its direc-  
37 tors.

38 (4) A copy of the resolution adopted by the share-  
39 holders authorizing the dissolution of the corporation.

40 (5) The number of shares outstanding, and, if the  
41 shares of any class are entitled to vote as a class, the  
42 designation and number of outstanding shares of each  
43 such class.

44 (6) The number of shares voted for and against the  
45 resolution, respectively, and, if the shares of any class  
46 are entitled to vote as a class, the number of shares of  
47 each such class voted for and against the resolution,  
48 respectively.

**§31-1-127. Filing of statement of intent to dissolve.**

1 Duplicate originals of the statement of intent to dis-  
2 solve, whether by consent of shareholders or by act of  
3 the corporation, shall be delivered to the secretary of  
4 state. If the secretary of state finds that such statement  
5 conforms to law, he shall, subject to the provisions of sec-  
6 tion sixty-one of this article, and when all fees have been  
7 paid as prescribed by law, (i) endorse on each of such  
8 duplicate originals the word "Filed," and the month, day  
9 and year of the filing thereof; (ii) file one of such duplicate  
10 originals in his office; and (iii) return the other dupli-  
11 cate original to the corporation or its representative.

**§31-1-128. Effect of statement of intent to dissolve.**

1 Upon the filing by the secretary of state of a statement  
2 of intent to dissolve, whether by consent of shareholders  
3 or by act of the corporation, the corporation shall cease  
4 to carry on its business, except insofar as may be neces-  
5 sary for the winding up thereof, but its corporate exist-  
6 tence shall continue until a certificate of dissolution has  
7 been issued by the secretary of state or until an order  
8 dissolving the corporation has been entered by a court  
9 of competent jurisdiction as in this article provided.

**§31-1-129. Procedure after filing of statement of intent to dissolve.**

1 After the filing by the secretary of state of a statement  
2 of intent to dissolve:

3 (a) The corporation shall immediately cause notice  
4 thereof to be mailed to each known creditor of the cor-  
5 poration.

6 (b) The corporation shall proceed to collect its assets,  
7 convey and dispose of such of its properties as are not  
8 to be distributed in kind to its shareholders, pay, satisfy  
9 and discharge its liabilities and obligations and do all  
10 other acts required to liquidate its business and affairs,  
11 and, after paying or adequately providing for the pay-  
12 ment of all its obligations, distribute the remainder of  
13 its assets, either in cash or in kind, among its share-  
14 holders according to their respective rights and  
15 interests.

16 (c) The corporation, at any time during the liquida-  
17 tion of its business and affairs, may make application to a  
18 court of competent jurisdiction within this state to have  
19 the liquidation continued under the supervision of the  
20 court as provided in this article. Such application shall  
21 be made by filing a complaint in the appropriate circuit  
22 court specified in section one hundred thirty-four of this  
23 article.

**§31-1-130. Revocation of voluntary dissolution proceedings by consent of shareholders.**

1 By the written consent of all of its shareholders, a cor-  
2 poration may, at any time prior to the issuance of a cer-

3 tificate of dissolution by the secretary of state, revoke  
4 voluntary dissolution proceedings theretofore taken.

5 Upon the execution of such written consent, a statement  
6 of revocation of voluntary dissolution proceedings shall be  
7 executed in duplicate by the corporation by its president  
8 or a vice president and by its secretary or an assistant  
9 secretary, and verified by one of the officers signing such  
10 statement, which statement shall set forth:

11 (a) The name of the corporation.

12 (b) The names and respective addresses of its officers.

13 (c) The names and respective addresses of its direc-  
14 tors.

15 (d) A copy of the written consent signed by all share-  
16 holders of the corporation revoking such voluntary dis-  
17 solution proceedings.

18 (e) That such written consent has been signed by all  
19 shareholders of the corporation or signed in their names  
20 by their attorneys thereunto duly authorized.

**§31-1-131. Revocation of voluntary dissolution proceedings by  
act of corporation.**

1 By the act of the corporation, a corporation may, at any  
2 time prior to the issuance of a certificate of dissolution by  
3 the secretary of state, revoke voluntary dissolution pro-  
4 ceedings theretofore taken, in the following manner:

5 (a) The board of directors shall adopt a resolution  
6 recommending that the voluntary dissolution proceedings  
7 be revoked, and directing that the question of such revoca-  
8 tion be submitted to a vote at a special meeting of share-  
9 holders.

10 (b) Written notice, stating that the purpose or one of  
11 the purposes of such meeting is to consider the advis-  
12 ability of revoking the voluntary dissolution proceedings,  
13 shall be given to each shareholder of record entitled to  
14 vote at such meeting within the time and in the manner  
15 provided in this article for the giving of notice of special  
16 meetings of shareholders.

**§31-1-132. Filing of statement of revocation of voluntary dis-  
solution proceedings.**

1 Duplicate originals of the statement of revocation of  
2 voluntary dissolution proceedings, whether by consent of

3 shareholders or by act of the corporation, shall be de-  
4 livered to the secretary of state. If the secretary of state  
5 finds that such statement conforms to law, he shall, when  
6 all fees have been paid as prescribed by law, (i) endorse  
7 on each of such duplicate originals the word "Filed," and  
8 the month, day and year of the filing thereof; (ii) file one  
9 of such duplicate originals in his office; and (iii) return  
10 the other duplicate original to the corporation or its rep-  
11 resentative.

**§31-1-133. Effect of statement of revocation of voluntary dissolution proceedings.**

1 Upon the filing by the secretatry of state of a statement  
2 of revocation of voluntary dissolution proceedings, whet-  
3 her by consent of shareholders or by act of the corpora-  
4 tion, the revocation of the voluntary dissolution proceed-  
5 ings shall become effective and the corporation may  
6 again carry on its business.

**§31-1-134. Actions for dissolution by shareholders; right of majority shareholders to purchase plaintiffs' shares; appeal.**

1 If not less than one fifth in interest of the shareholders  
2 of a corporation desire to wind up its affairs, they may  
3 apply by complaint to the circuit court of the county in  
4 which the principal office of such corporation is situ-  
5 ated, or, if there be no such office in this state, to the  
6 circuit court of the county in which the other sharehol-  
7 ders, or any one or more of them, reside or are found, or  
8 in which the property of such corporation or any part of it  
9 may be, setting forth in the complaint the grounds of their  
10 application, and the court may thereupon proceed accord-  
11 ing to the principles and usages of law and equity to  
12 hear the matter, and, if sufficient cause therefor be shown,  
13 to order a dissolution of the corporation and make such  
14 orders and judgments, and award such injunctions in the  
15 cause as justice and right may require. In any such action  
16 the defendant holders of a majority of the shares of the  
17 outstanding stock of such corporation shall have the right  
18 to avoid the appointment of a receiver or the dissolution  
19 of such corporation by purchasing the shares of stock  
20 owned by the plaintiffs at their fair cash value. If the

21 defendant shareholders shall elect to purchase the shares  
22 of stock owned by the plaintiffs and are unable to agree  
23 with the plaintiffs upon the fair cash value of such shares,  
24 and shall give bond with sufficient security to protect the  
25 interests and rights of the plaintiffs and to assure unto  
26 the plaintiffs the payment of the value of their shares of  
27 stock, the court shall stay the action or proceeding and  
28 shall proceed to ascertain and fix the value of the shares of  
29 stock owned by the plaintiffs. For such purpose the court  
30 shall appoint three disinterested commissioners to appraise  
31 the fair value of such shares of stock, and shall make an  
32 order referring the matter to the commissioners so ap-  
33 pointed for the purpose of ascertaining such value; and  
34 such order shall prescribe the time and manner of pro-  
35 ducing evidence, if evidence be required. The award of  
36 such commissioners, or of a majority of them, when con-  
37 firmed by the court shall be final and conclusive upon all  
38 parties, and the court shall enter a judgment for the  
39 amount of such award against such defendant sharehol-  
40 ders and the surety or sureties on such bond, and such  
41 judgment may be enforced in the same manner as other  
42 orders and judgments of such court. Any shareholder,  
43 feeling aggrieved by such action of the court, may appeal  
44 to the supreme court of appeals of this state, as otherwise  
45 provided by law. The defendant shareholders shall pay to  
46 the plaintiff shareholders the value of their stock ascer-  
47 tained and ordered as aforesaid, or, in case of an appeal,  
48 as fixed on such appeal; and, on receiving such payment or  
49 the tender thereof, such plaintiff shareholders shall trans-  
50 fer their stock to the defendant shareholders.

**§31-1-135. Application of assets in liquidation of corporation  
by court.**

1 In all proceedings to liquidate the assets and business  
2 or affairs of a business corporation, pursuant to section  
3 forty-one of this article, the assets of such corporation  
4 or the proceeds resulting from a sale, conveyance or other  
5 disposition thereof shall be applied to the expenses of such  
6 liquidation and to the payment of the liabilities and  
7 obligations of the corporation, and any remaining assets or  
8 proceeds shall be distributed among its shareholders  
9 according to their respective rights and interests.

## PART IV—NONPROFIT CORPORATIONS.

**§31-1-136. Use of term "corporation."**

1 As used in Part IV of this article, the term "corpora-  
2 tion" shall refer exclusively to nonprofit corporations.

**§31-1-137. Members.**

1 A corporation may have one or more classes of members  
2 or may have no members. If the corporation has one or  
3 more classes of members, the designation of such class or  
4 classes, the manner of election or appointment and the  
5 qualifications and rights of the members of each class  
6 shall be set forth in the articles of incorporation or the  
7 bylaws. If the corporation has no members, that fact shall  
8 be set forth in the articles of incorporation or the bylaws.  
9 A corporation may issue certificates evidencing member-  
10 ship therein.

11 The directors, officers, employees and members of the  
12 corporation shall not, as such, be liable on its obligations.

**§31-1-138. Voting.**

1 The right of the members, or any class or classes of  
2 members, to vote may be limited, enlarged or denied to  
3 the extent specified in the articles of incorporation or the  
4 bylaws. Unless so limited, enlarged or denied, each mem-  
5 ber, regardless of class, shall be entitled to one vote on  
6 each matter submitted to a vote of members.

7 A member entitled to vote may vote in person or, unless  
8 the articles of incorporation or the bylaws otherwise pro-  
9 vide, may vote by proxy executed in writing by the mem-  
10 ber or by his duly authorized attorney-in-fact. No proxy  
11 shall be valid after eleven months from the date of its  
12 execution, unless otherwise provided in the proxy. Where  
13 directors or officers are to be elected by members, the  
14 bylaws may provide that such elections may be conducted  
15 by mail.

16 The articles of incorporation or the bylaws may provide  
17 that in all elections for directors every member entitled to  
18 vote shall have the right to cumulate his vote and to give  
19 one candidate a number of votes equal to his vote multi-  
20 plied by the number of directors to be elected, or by

21 distributing such votes on the same principle among any  
22 number of such candidates.

23 If a corporation has no members or its members have no  
24 right to vote, the directors shall have the sole voting  
25 power.

**§31-1-139. Board of directors.**

1 The affairs of a corporation shall be managed by a  
2 board of directors. Directors need not be residents of this  
3 state or members of the corporation unless the articles of  
4 incorporation or the bylaws so require. The articles of  
5 incorporation or the bylaws may prescribe other qualifi-  
6 cations for directors.

**§31-1-140. Removal of directors.**

1 A director may be removed from office pursuant to any  
2 procedure therefor provided in the articles of incorpora-  
3 tion or bylaws.

**§31-1-141. Committees; authority; limitations of authority.**

1 If the articles of incorporation or the bylaws so provide,  
2 the board of directors, by resolution adopted by a majority  
3 of the directors in office, may designate and appoint one  
4 or more committees each of which shall consist of two  
5 or more directors, which committees, to the extent pro-  
6 vided in such resolution, in the articles of incorporation  
7 or in the bylaws of the corporation, shall have and exer-  
8 cise all the authority of the board of directors, except that  
9 no such committee shall have the authority of the board  
10 of directors in reference to (i) amending, altering or  
11 repealing the bylaws; (ii) electing, appointing or remov-  
12 ing any member of any such committees or any director  
13 or officer of the corporation; (iii) amending the articles  
14 of incorporation, restating articles of incorporation, adopt-  
15 ing a plan of merger or adopting a plan of consolidation  
16 with another corporation; (iv) authorizing the sale, lease,  
17 exchange or mortgage of all or substantially all of the  
18 property and assets of the corporation; (v) authorizing  
19 the voluntary dissolution of the corporation or revoking  
20 proceedings therefor; (vi) adopting a plan for the dis-  
21 tribution of the assets of the corporation; or (vii) amend-  
22 ing, altering or repealing any resolution of the board of

23 directors which by its terms provides that it shall not be  
24 amended, altered or repealed by such committee. The  
25 designation and appointment of any such committee and  
26 the delegation thereto of authority shall not operate to  
27 relieve the board of directors, or any individual director  
28 of any responsibility imposed upon it or him by law.

**§31-1-142. Officers; removal of officers.**

1 (a) The officers of a corporation shall consist of a  
2 president, one or more vice presidents, a secretary, a  
3 treasurer and such other officers and assistant officers as  
4 may be deemed necessary, each of whom shall be elected  
5 or appointed at such time and in such manner and for  
6 such terms not exceeding three years as may be prescribed  
7 in the articles of incorporation or the bylaws. In the  
8 absence of any such provision, all officers shall be elected  
9 or appointed annually by the board of directors. If the  
10 bylaws so provide, any two or more offices may be held  
11 by the same person, except the offices of president and  
12 secretary.

13 The articles of incorporation or the bylaws may provide  
14 that any one or more officers of the corporation shall be  
15 ex officio members of the board of directors.

16 The officers of a corporation may be designated by such  
17 additional titles as may be provided in the articles of  
18 incorporation or the bylaws.

19 (b) Any officer elected or appointed may be removed  
20 by the persons authorized to elect or appoint such officer  
21 whenever in their judgment the best interests of the  
22 corporation will be served thereby. The removal of an  
23 officer shall be without prejudice to the contract rights,  
24 if any, of the officer so removed. Election or appointment  
25 of an officer or agent shall not of itself create contract  
26 rights.

**§31-1-143. Books and records.**

1 Each corporation shall keep correct and complete books  
2 and records of account and shall keep minutes of the  
3 proceedings of its members, board of directors and com-  
4 mittees having any of the authority of the board of  
5 directors; and shall keep at its principal office in this  
6 state a record of the names and addresses of its members



7 entitled to vote. All books and records of a corporation  
8 may be inspected by any member, or his agent or attor-  
9 ney, for any proper purpose at any reasonable time.

**§31-1-144. Shares of stock permitted; dividends prohibited.**

1 Corporations may have or issue shares of stock. No  
2 dividend shall be paid and no part of the income or profit  
3 of a corporation shall be distributed to its members,  
4 directors or officers. A corporation may pay compensation  
5 in a reasonable amount to its members, directors, or  
6 officers for services rendered, may confer benefits upon its  
7 members in conformity with its purposes, and upon  
8 dissolution or final liquidation may make distributions to  
9 its members as permitted by this article, and no such  
10 payment, benefit or distribution shall be deemed to be a  
11 dividend or a distribution of income or profit.

**§31-1-145. Loans to directors and officers prohibited.**

1 No loans shall be made by a corporation to its directors  
2 or officers. Any director or officer who assents to or  
3 participates in the making of any such loan shall be  
4 liable to the corporation for the amount of such loan until  
5 the repayment thereof.

**§31-1-146. Right to amend articles of incorporation.**

1 A corporation may amend its articles of incorporation  
2 from time to time, in any and as many respects as may be  
3 desired, so long as its articles of incorporation as amended  
4 contain only such provisions as are lawful under this  
5 article.

**§31-1-147. Procedure to amend articles of incorporation.**

1 Amendments to the articles of incorporation shall be  
2 made in the following manner:  
3 (a) If there are members entitled to vote thereon, the  
4 board of directors shall adopt a resolution setting forth  
5 the proposed amendments and directing that they be sub-  
6 mitted to a vote at a meeting of members entitled to vote  
7 thereon, which may be either an annual or a special meet-  
8 ing. Written notice setting forth the proposed amendment  
9 or a summary of the changes to be effected thereby shall  
10 be given to each member entitled to vote at such meeting

11 within the time and in the manner provided in this article  
12 for the giving of notice of meetings of members. The pro-  
13 posed amendment shall be adopted upon receiving a  
14 majority of the votes which members present at  
15 such meeting or represented by proxy are entitled to  
16 cast.

17 (b) If there are no members, or no members entitled to  
18 vote thereon, an amendment shall be adopted at a meeting  
19 of the board of directors upon receiving the vote of a  
20 majority of the directors in office.

21 Any number of amendments may be submitted and  
22 voted upon at any one meeting.

**§31-1-148. Articles of amendment.**

1 The articles of amendment shall be executed in dupli-  
2 cate by the corporation by its president or a vice president  
3 and by its secretary or an assistant secretary and shall  
4 set forth:

5 (a) The name of the corporation.

6 (b) The amendment so adopted.

7 (c) If there are members entitled to vote thereon, (1)  
8 a statement setting forth the date of the meeting of mem-  
9 bers at which the amendment was adopted, that a quorum  
10 was present at such meeting, and that such amendment  
11 received a majority of the votes which members  
12 present at such meeting or represented by proxy were  
13 entitled to cast, or (2) a statement that such amendment  
14 was adopted by a consent in writing signed by all mem-  
15 bers entitled to vote with respect thereto.

16 (d) If there are no members, or no members entitled to  
17 vote thereon, a statement of such fact, the date of the  
18 meeting of the board of directors at which the amendment  
19 was adopted, and a statement of the fact that such amend-  
20 ment received the vote of a majority of the directors in  
21 office.

**§31-1-149. Restated articles of incorporation; procedures for adoption; contents.**

1 (a) A domestic corporation may at any time restate its  
2 articles of incorporation as theretofore amended, in the  
3 following manner:

4 (1) If there are members entitled to vote thereon, the

5 board of directors shall adopt a resolution setting forth  
6 the proposed restated articles of incorporation and direct-  
7 ing that they be submitted to a vote at a meeting of  
8 members entitled to vote thereon, which may be either an  
9 annual or a special meeting.

10 (2) Written notice setting forth the proposed restated  
11 articles or a summary of the provisions thereof shall be  
12 given to each member entitled to vote thereon, within the  
13 time and in the manner provided in this article for the  
14 giving of notice of meetings of members. If the meeting be  
15 an annual meeting, the proposed restated articles or a  
16 summary of the provisions thereof may be included in the  
17 notice of such annual meeting.

18 (3) At such meeting a vote of the members entitled to  
19 vote thereon shall be taken on the proposed restated  
20 articles, which shall be adopted upon receiving the  
21 affirmative vote of a majority of the members entitled to  
22 vote thereon present at such meeting or represented by  
23 proxy.

24 (4) If there are no members, or no members entitled to  
25 vote thereon, the proposed restated articles shall be  
26 adopted at a meeting of the board of directors upon  
27 receiving the affirmative vote of a majority of the direc-  
28 tors in office.

29 (b) Upon such approval, restated articles of incorpora-  
30 tion shall be executed in duplicate by the corporation by  
31 its president or vice president and by its secretary or  
32 assistant secretary and shall set forth.

33 (1) The name of the corporation.

34 (2) The period of its duration.

35 (3) The purpose or purposes which the corporation is  
36 authorized to pursue.

37 (4) Any other provisions, not inconsistent with law,  
38 which are then set forth in the articles of incorporation as  
39 theretofore amended, except that it shall not be necessary  
40 to set forth in the restated articles of incorporation the  
41 address of the principal office of the corporation, its di-  
42 rectors or its incorporators.

43 The restated articles of incorporation shall state that  
44 they correctly set forth the provisions of the articles of  
45 incorporation as theretofore amended, that they have been

46 duly adopted as required by law and that they supersede  
47 the original articles of incorporation and all amendments  
48 thereto.

**§31-1-150. Approval of merger or consolidation; abandonment.**

1 A plan of merger or consolidation shall be adopted in  
2 the following manner:

3 (a) If the members of any merging or consolidating  
4 corporation are entitled to vote thereon, the board of  
5 directors of such corporation shall adopt a resolution  
6 approving the proposed plan and directing that it be  
7 submitted to a vote at a meeting of members entitled to  
8 vote thereon, which may be either an annual or a special  
9 meeting. Written notice setting forth the proposed plan  
10 or a summary thereof shall be given to each member  
11 entitled to vote at such meeting within the time and in  
12 the manner provided in this article for the giving of  
13 notice of meetings of members. The proposed plan shall  
14 be adopted upon receiving the approval of the majority  
15 of the votes which members present at each such meeting  
16 or represented by proxy are entitled to cast.

17 (b) If any merging or consolidating corporation has  
18 no members, or no members entitled to vote thereon, a  
19 plan of merger or consolidation shall be adopted at a  
20 meeting of the board of directors of such corporation  
21 upon receiving the vote of a majority of the directors in  
22 office.

23 After such approval, and at any time prior to the filing  
24 of the articles of merger or consolidation, the merger or  
25 consolidation may be abandoned pursuant to provisions  
26 therefor, if any, set forth in the plan of merger or  
27 consolidation.

**§31-1-151. Contents required in articles of merger or consolidation.**

1 Articles of merger or articles of consolidation shall,  
2 in addition to any other matters deemed appropriate, set  
3 forth:

4 (1) The plan of merger or the plan of consolidation.

5 (2) If the members of any merging or consolidating  
6 corporation are entitled to vote thereon, then as to each

7 such corporation (i) a statement setting forth the date  
8 of the meeting of members at which the plan was  
9 adopted, that a quorum was present at such meeting,  
10 and that such plan received a majority of the votes  
11 which members present at such meeting or represented  
12 by proxy were entitled to cast, or (ii) a statement that  
13 such amendment was adopted by a consent in writing  
14 signed by all members entitled to vote with respect  
15 thereto.

16 (3) If any merging or consolidating corporation has  
17 no members, or no members entitled to vote thereon,  
18 then as to each such corporation a statement of such  
19 fact, the date of the meeting of the board of directors at  
20 which the plan was adopted and a statement of the fact  
21 that such plan received the vote of a majority of the di-  
22 rectors in office.

**§31-1-152. Sale, lease, exchange or mortgage of assets.**

1 A sale, lease, exchange, mortgage, pledge or other dis-  
2 position of all, or substantially all, the property and as-  
3 sets of a corporation may be made upon such terms and  
4 conditions and for such consideration, which may consist  
5 in whole or in part of money or property, real or personal,  
6 including shares of any corporation, domestic or foreign,  
7 whether stock or nonstock and whether or not organized  
8 for profit, as may be authorized in the following manner:

9 (a) If there are members entitled to vote thereon, the  
10 board of directors shall adopt a resolution recommend-  
11 ing such sale, lease, exchange, mortgage, pledge or other  
12 disposition and directing that it be submitted to a vote at  
13 a meeting of members entitled to vote thereon, which  
14 may be either an annual or a special meeting. Written  
15 notice stating that the purpose, or one of the purposes,  
16 of such meeting is to consider the sale, lease, exchange,  
17 mortgage, pledge or other disposition of all, or substan-  
18 tially all, the property and assets of the corporation shall  
19 be given to each member entitled to vote at such meeting,  
20 within the time and in the manner provided by this article  
21 for the giving of notice of meetings of members. At such  
22 meeting the members may authorize such sale, lease, ex-  
23 change, mortgage, pledge or other disposition and may

24 fix, or may authorize the board of directors to fix, any or  
25 all of the terms and conditions thereof and the considera-  
26 tion to be received by the corporation therefor. Such  
27 authorization shall require the approval of the majority  
28 of the votes which members present at such meeting or  
29 represented by proxy are entitled to cast. After such  
30 authorization by a vote of members, the board of directors  
31 nevertheless, in its discretion, may abandon such sale,  
32 lease, exchange, mortgage, pledge or other disposition of  
33 assets, subject to the rights of third parties under any con-  
34 tracts relating thereto, without further action or approval  
35 by members.

36 (b) If there are no members, or no members entitled  
37 to vote thereon, a sale, lease, exchange, mortgage, pledge  
38 or other disposition of all or substantially all of the prop-  
39 erty and assets of a corporation shall be authorized upon  
40 receiving the vote of a majority of the directors in office.

**§31-1-153. Right of members to dissent; procedures for de-  
termining value of dissenting members' interests.**

1 (a) Any member of a corporation who holds shares of  
2 or owns an interest in such corporation shall have the  
3 right to dissent from any of the following corporate ac-  
4 tions:

5 (1) Any plan or merger or consolidation to which the  
6 corporation is a party; or

7 (2) Any sale or exchange of all or substantially all of  
8 the property and assets of the corporation not made in the  
9 usual and regular course of its business, including a sale  
10 in dissolution but not including a sale pursuant to an order  
11 of a court having jurisdiction in the premises or a sale for  
12 cash on terms requiring that all or substantially all of the  
13 net proceeds of sale be distributed to the members in ac-  
14 cordance with their respective interests within one year  
15 after the date of sale.

16 (b) All of the rights enjoyed by dissenting sharehold-  
17 ers, as provided in section one hundred twenty-three of  
18 this article, shall apply to and be enjoyed by any mem-  
19 ber electing to exercise his right of dissent, and all of the  
20 procedures relating to the valuation and purchase of such  
21 dissenting member's shares or interest in the corporation

22 and to the payment therefore as are contained in said sec-  
23 tion one hundred twenty-three shall apply to such dis-  
24 senting member's shares or interest to the same extent  
25 as if said section one hundred twenty-three were set forth  
26 in extenso in this section. Similarly, the right to judicial  
27 relief, as provided for dissenting shareholders in said sec-  
28 tion one hundred twenty-three, shall be available to the  
29 same extent as specified in such section, and the same  
30 procedures therein outlined shall apply to any civil action  
31 instituted under this section one hundred fifty-three.

§31-1-154. Voluntary dissolution.

1 (a) A corporation may dissolve and wind up its  
2 affairs in the following manner:

3 (1) If there are members entitled to vote thereon, the  
4 board of directors shall adopt a resolution recommending  
5 that the corporation be dissolved, and directing that the  
6 question of such dissolution be submitted to a vote at a  
7 meeting of members entitled to vote thereon, which may  
8 be either an annual or a special meeting. Each member  
9 entitled to vote at such meeting shall be given written  
10 notice stating that the purpose, or one of the purposes,  
11 of such meeting is to consider the advisability of dissolv-  
12 ing the corporation. Such notice shall be given within the  
13 time and in the manner provided in this article for the  
14 giving of notice of meetings of members. A resolution to  
15 dissolve the corporation shall be adopted upon receiving  
16 the approval of the majority of the votes which members  
17 present at such meeting or represented by proxy are en-  
18 titled to cast.

19 (2) If there are no members, or no members entitled  
20 to vote thereon, the dissolution of the corporation shall  
21 be authorized at a meeting of the board of directors upon  
22 the adoption of a resolution to dissolve by the vote of a  
23 majority of the directors in office.

24 (b) Upon the adoption of a resolution to dissolve by  
25 the members, or by the board of directors if there are no  
26 members or no members entitled to vote thereon, the  
27 corporation shall cease to conduct its affairs except in-  
28 sofar as may be necessary for the winding up thereof.  
29 The corporation shall immediately cause a notice of the

30 proposed dissolution to be mailed to each known creditor  
31 of the corporation by registered or certified mail, return  
32 receipt requested, and the corporation shall proceed to  
33 collect its assets and apply and distribute them as pro-  
34 vided in this article.

35 (c) As soon as practicable after the passage of a  
36 resolution to dissolve, the directors and officers of the  
37 corporation shall cause the corporate assets to be dis-  
38 tributed in the manner provided in this article, but no such  
39 distribution shall be made to the members of the cor-  
40 poration until notice of the resolution of dissolution shall  
41 have been published as a Class II legal advertisement in  
42 compliance with the provisions of article three, chapter  
43 fifty-nine of this code. The publication area for such pub-  
44 lication shall be the county in which its principal office  
45 in this state is located, or if there be no such office in this  
46 state, then any county in this state where it conducts its  
47 affairs or transacts its business.

**§31-1-155. Distribution of assets.**

1 The assets of a corporation in the process of dissolution  
2 shall be applied and distributed as follows:

3 (a) All liabilities and obligations of the corporation  
4 shall be paid and discharged, or adequate provisions shall  
5 be made therefor.

6 (b) Assets held by the corporation upon condition  
7 requiring return, transfer or conveyance, which condition  
8 occurs by reason of the dissolution, shall be returned,  
9 transferred or conveyed in accordance with such require-  
10 ments.

11 (c) Assets received and held by the corporation sub-  
12 ject to limitations permitting their use only for charit-  
13 able, religious, eleemosynary, benevolent, educational or  
14 similar purposes, but not held upon a condition requir-  
15 ing return, transfer or conveyance by reason of the dis-  
16 solution, shall be transferred or conveyed to one or more  
17 domestic or foreign corporations, societies or organiza-  
18 tions engaged in activities substantially similar to those  
19 of the dissolving corporation, pursuant to a plan of dis-  
20 tribution adopted as provided in this article.

21 (d) Other assets, if any, shall be distributed in ac-



22 cordance with the provisions of the articles of incorpora-  
23 tion or the bylaws to the extent that the articles of in-  
24 corporation or bylaws determine the distributive rights  
25 of members, or any class or classes of members, or pro-  
26 vide for distribution to others.

27 (e) Any remaining assets may be distributed to such  
28 persons, societies, organizations or domestic or foreign  
29 corporations, whether stock or nonstock and whether or  
30 not organized for profit, as may be specified in a plan of  
31 distribution adopted as provided in this article.

**§31-1-156. Plan of distribution.**

1 A plan providing for the distribution of assets, not  
2 inconsistent with the provisions of this article, may be  
3 adopted by a corporation in the process of dissolution and  
4 shall be adopted by a corporation for the purpose of  
5 authorizing any transfer or conveyance of assets for which  
6 this article requires a plan of distribution, in the following  
7 manner:

8 (a) If there are members entitled to vote thereon, the  
9 board of directors shall adopt a resolution recommending  
10 a plan of distribution and directing the submission thereof  
11 to a vote at a meeting of members entitled to vote thereon,  
12 which may be either an annual or a special meeting.  
13 Written notice setting forth the proposed plan of distri-  
14 bution or a summary thereof shall be given to each mem-  
15 ber entitled to vote at such meeting, within the time and  
16 in the manner provided in this article for the giving of  
17 notice of meetings of members. Such plan of distribution  
18 shall be adopted upon receiving the approval of a majority  
19 of the votes which members present at such meeting or  
20 represented by proxy are entitled to cast.

21 (b) If there are no members or no members entitled to  
22 vote thereon, a plan of distribution shall be adopted at a  
23 meeting of the board of directors upon receiving a vote of  
24 a majority of the directors in office.

**§31-1-157. Revocation of voluntary dissolution proceedings.**

1 A corporation may, at any time prior to the issuance of  
2 a certificate of dissolution by the secretary of state,  
3 revoke the action theretofore taken to dissolve the  
4 corporation, in the following manner:

5 (a) If there are members entitled to vote thereon, the  
6 board of directors shall adopt a resolution recommending  
7 that the voluntary dissolution proceedings be revoked, and  
8 directing that the question of such revocation be submit-  
9 ted to a vote at a meeting of members entitled to vote  
10 thereon, which may be either an annual or a special meet-  
11 ing. Each member entitled to vote at such meeting shall  
12 be given written notice stating that the purpose, or one of  
13 the purposes of such meeting, is to consider the advisa-  
14 bility of dissolving the corporation. Such notice shall be  
15 given within the time and in the manner provided in this  
16 article for the giving of notice of meetings of members. A  
17 resolution to revoke the voluntary dissolution proceedings  
18 shall be adopted upon receiving the approval of a majority  
19 of the votes which members present at such meeting or  
20 represented by proxy are entitled to cast.

21 (b) If there are no members, or no members entitled to  
22 vote thereon, a resolution to revoke the voluntary disso-  
23 lution proceedings shall be adopted at a meeting of the  
24 board of directors upon receiving the vote of a majority of  
25 the directors in office.

26 Upon the adoption of such resolution by the members,  
27 or by the board of directors where there are no members  
28 or no members entitled to vote thereon, the corporation  
29 may thereupon again do or transact business or conduct  
30 its affairs.

**§31-1-158. Application of assets in liquidation of corporation  
by court.**

1 In all proceedings to liquidate the assets and business  
2 or affairs of a nonprofit corporation, pursuant to section  
3 forty-one of this article, the assets of such corporation  
4 or the proceeds resulting from a sale, conveyance or other  
5 disposition thereof shall be applied and distributed as  
6 follows:

7 (a) All costs and expenses of the court proceedings and  
8 all liabilities and obligations of the corporation shall be  
9 paid, satisfied and discharged, or adequate provision shall  
10 be made therefor;

11 (b) Assets held by the corporation upon condition  
12 requiring return, transfer or conveyance, which condition  
13 occurs by reason of the dissolution or liquidation, shall be

14 returned, transferred or conveyed in accordance with such  
15 requirements;

16 (c) Assets received and held by the corporation subject  
17 to limitations permitting their use only for charitable,  
18 religious, eleemosynary, benevolent, educational or simi-  
19 lar purposes, but not held upon a condition requiring re-  
20 turn, transfer or conveyance by reason of the dissolution  
21 or liquidation, shall be transferred or conveyed to one or  
22 more domestic or foreign corporations, societies or organi-  
23 zations engaged in activities substantially similar to those  
24 of the dissolving or liquidating corporation as the court  
25 may direct;

26 (d) Other assets, if any, shall be distributed in  
27 accordance with the provisions of the articles of incorpora-  
28 tion or the bylaws to the extent that the articles of  
29 incorporation or bylaws determine the distributive right  
30 of members, or any class or classes of members, or provide  
31 for distribution to others;

32 (e) Any remaining assets may be distributed to such  
33 persons, societies, organizations or domestic or foreign  
34 corporation, whether stock or nonstock and whether or  
35 not organized for profit, specified in the plan of distribu-  
36 tion adopted as provided in this article, or where no plan  
37 of distribution has been adopted, as the court may direct.

**§31-1-159. Annual report of domestic and foreign corporations;  
filing.**

1 (a) Each domestic corporation, and each foreign cor-  
2 poration authorized to conduct affairs or do or transact  
3 business in this state, shall file, within the time prescribed  
4 by this article, an annual report setting forth:

5 (1) The name of the corporation and the state or coun-  
6 try under the laws of which it is incorporated.

7 (2) In the case of a domestic corporation, the address  
8 of the principal office of the corporation in this state, if  
9 any, and, in the case of a foreign corporation, the address  
10 of its principal office in this state, if any, and the address  
11 of its principal office in the state or country under the laws  
12 of which it is incorporated.

13 (3) A brief statement of the character of the affairs  
14 which the corporation is actually conducting, or the busi-  
15 ness it is doing or transacting, in this state.

16 (4) The names and respective addresses of the di-  
17 rectors and officers of the corporation.

18 (b) Such annual report shall be made on forms pre-  
19 scribed and furnished by the secretary of state, and the  
20 information therein contained shall be given as of the date  
21 of the execution of the report. It shall be executed by the  
22 corporation by its president, a vice president, secretary,  
23 an assistant secretary or treasurer, or, if the corporation  
24 is in the hands of a receiver or trustee, it shall be executed  
25 on behalf of the corporation by such receiver or trustee.

26 (c) Such annual report of a domestic or foreign cor-  
27 poration shall be delivered to the secretary of state be-  
28 tween the first day of January and the first day of March  
29 of each year, except that the first annual report of a do-  
30 mestic or foreign corporation shall be filed between the  
31 first day of January and the first day of March of the year  
32 next succeeding the calendar year in which its certificate  
33 of incorporation or its certificate of authority, as the case  
34 may be, was issued by the secretary of state. Proof to the  
35 satisfaction of the secretary of state that prior to the first  
36 day of March such report was deposited in the United  
37 States mail in a sealed envelope, properly addressed, with  
38 postage prepaid, shall be deemed compliance with this  
39 requirement. If the secretary of state finds that such re-  
40 port conforms to the requirements of this article, he shall  
41 file the same. If he finds that it does not so conform, he  
42 shall promptly return the same to the corporation for any  
43 necessary corrections in which event the penalties here-  
44 after prescribed in this article for failure to file such  
45 report within the time hereinabove provided shall not  
46 apply, if such report is corrected to conform to the re-  
47 quirements of this article and returned to the secretary of  
48 state within thirty days from the date on which it was  
49 mailed to the corporation by the secretary of state.

**§31-1-160. Penalties imposed for failure to file annual report;  
notice; hearings conducted by secretary of state;  
appeal.**

1 Each corporation, domestic or foreign, which fails or  
2 refuses to file its annual report for three successive years,  
3 as required by the provisions of section one hundred

4 fifty-nine of this article, shall be notified by registered  
5 or certified mail, return receipt requested, of its failure  
6 to file such annual report. Such notice shall be mailed to  
7 the address of its last known principal office in this state  
8 or if it has no such principal office in this state, then  
9 such notice shall be mailed to the address of its last known  
10 principal office, wherever situated.

11 Such notice shall also advise the corporation that its  
12 failure to file all of the annual reports within thirty days  
13 of receipt of the notice shall subject such corporation to  
14 an order of dissolution or an order revoking its certificate  
15 of authority, as the case may be. Such order shall also  
16 advise the corporation of its right to a hearing and shall  
17 set forth the date and time of the hearing, which hearing  
18 shall be held in the office of the secretary of state by the  
19 secretary of state or his designee. At such hearing, the  
20 corporation shall be afforded an opportunity to explain  
21 its reasons for failure to file the required reports.

22 If the corporation fails to file the required reports  
23 within such thirty-day period or fails to appear at the  
24 hearing, as set by the secretary of state, or fails to ex-  
25 plain to the satisfaction of the secretary of state its rea-  
26 sons for not filing the reports, then the secretary of state  
27 shall issue an order dissolving the corporation or shall  
28 issue an order revoking its certificate of authority as the  
29 case may be.

30 Any person or corporation aggrieved by the action of  
31 the secretary of state with respect to dissolving the cor-  
32 poration or revoking its certificate of authority under this  
33 section shall have the same right of appeal as set forth in  
34 subsection (b) of section sixty-eight of this article.

## CHAPTER 11. TAXATION.

### ARTICLE 12. LICENSE TAXES.

#### §11-12-77. Relief from assessment of corporate license tax.

1 Any corporation feeling aggrieved at the assessment of  
2 its license tax by the tax commissioner, under the provi-  
3 sions of this article, may apply to the board of public  
4 works for relief; and the board shall have authority  
5 to consider such case, and also cases of the insolvency or

6 financial distress of any corporation or any other case  
7 involving such license tax. In any such case the board  
8 may fix the amount to be paid by such corporation in  
9 full discharge of the license tax, interest and penalties  
10 due the state for the period named in the order made  
11 therein. Every such order shall be entered in the record  
12 of the board and a certified copy thereof shall be delivered  
13 to the tax commissioner by the secretary of the board.

**§11-12-78. Amount of license tax on domestic corporations.**

1 Every domestic corporation shall pay an annual license  
2 tax on its charter for the fiscal year beginning on the  
3 first day of July of each year, based on its authorized  
4 capital stock as follows: If the authorized capital stock  
5 be five thousand dollars, or less, twenty dollars; if more  
6 than five thousand dollars, and not more than ten thou-  
7 sand dollars, thirty dollars; if more than ten thousand  
8 dollars and not more than twenty-five thousand dol-  
9 lars, forty dollars; if more than twenty-five thousand  
10 dollars, and not more than fifty thousand dollars, fifty  
11 dollars; if more than fifty thousand dollars and not  
12 more than seventy-five thousand dollars, eighty dollars;  
13 if more than seventy-five thousand dollars and not  
14 more than one hundred thousand dollars, one hundred  
15 dollars; if more than one hundred thousand dollars  
16 and not more than one hundred and twenty-five thou-  
17 sand dollars, one hundred and ten dollars; if more than  
18 one hundred and twenty-five thousand dollars and not  
19 more than one hundred and fifty thousand dollars, one  
20 hundred and twenty dollars; if more than one hun-  
21 dred and fifty thousand dollars and not more than  
22 one hundred and seventy-five thousand dollars, one  
23 hundred and forty dollars; if more than one hundred  
24 and seventy-five thousand dollars and not more than  
25 two hundred thousand dollars, one hundred and fifty  
26 dollars; if more than two hundred thousand dollars  
27 and not more than one million dollars, one hundred and  
28 eighty dollars, and an additional twenty cents on each  
29 one thousand dollars, or fraction thereof, in excess of two  
30 hundred thousand dollars; if more than one million  
31 dollars and not more than fifteen million dollars, three

32 hundred and forty dollars, and an additional fifteen cents  
33 on each one thousand dollars, or fraction thereof, in ex-  
34 cess of one million dollars; if more than fifteen million  
35 dollars, twenty-five hundred dollars. The license tax col-  
36 lected hereunder shall be in addition to the annual fee,  
37 if any, payable to the secretary of state as statutory at-  
38 torney in fact. For the purpose of the assessment of the  
39 license tax provided by this section, and that provided by  
40 sections eighty and eighty-one of this article, and for no  
41 other purpose, shares of stock having no par value shall  
42 be presumed to be of the par value of twenty-five dollars  
43 each: *Provided, however,* That if such stock was original-  
44 ly issued for a consideration greater than twenty-five  
45 dollars per share, such license taxes as are required to  
46 be paid to the tax commissioner under the provisions of  
47 sections seventy-nine, eighty and eighty-one of this ar-  
48 ticle shall be computed upon the basis of the consideration  
49 for which such stock was issued.

**§11-12-79. Assessments and collection of tax on domestic cor-  
poration.**

1 When application is made to the secretary of state for  
2 a certificate of incorporation, it shall be his duty to make  
3 the assessment and collect the license tax for the first  
4 year before issuing such certificate. If such certificate be  
5 issued after the last day of the third month of the license  
6 year, he shall assess one tenth of the amount of the annual  
7 tax for each month, or fractional part of a month, to  
8 ensue before the first day of the next license tax year; but  
9 in no case shall the amount assessed and collected be less  
10 than ten dollars in addition to the fee, if any, payable to  
11 the secretary of state as statutory attorney in fact. There-  
12 after, on or before the first day of the license tax year  
13 next following the date of the certificate of incorporation,  
14 and on or before the first day of each succeeding license  
15 tax year, the tax commissioner shall collect such tax for  
16 a full year together with the statutory attorney fee; ex-  
17 cept that if the certificate of incorporation be issued on  
18 or after the first day of the second month preceding the  
19 beginning of the license tax year, and before the first day  
20 of the ensuing license tax year, the secretary of state

21 shall assess and collect the tax for the full year beginning  
22 on such first day of the license tax year in addition to the  
23 initial tax, together with the statutory attorney fee. The  
24 money so received by the secretary of state and the tax  
25 commissioner shall be paid by them into the state treas-  
26 ury. Any corporation authorized by its articles of incor-  
27 poration to issue stock having no par value shall, within  
28 sixty days after its board of directors shall have autho-  
29 rized the issue of all or a portion of such stock under the  
30 provisions of article one, chapter thirty-one of this code,  
31 make a report to the tax commissioner stating the number  
32 of shares of stock so authorized to be issued and the con-  
33 sideration for which such stock is authorized to be issued.  
34 Such report shall be verified by the affidavit of the presi-  
35 dent, secretary or other executive officer of such corpora-  
36 tion.

37 The payment of the tax and statutory attorney fee,  
38 payable under the provisions of this section, shall be ac-  
39 companied by a report on forms provided by the tax  
40 commissioner for the purpose, and shall be submitted in  
41 duplicate. The tax commissioner shall forward a copy of  
42 such report to the secretary of state, together with a list  
43 of all corporations which have paid such tax. Such report  
44 shall contain, in addition to such information as the tax  
45 commissioner deems appropriate, the name and address of  
46 the corporation, the date of incorporation, the place of its  
47 principal office and the names and post-office addresses of  
48 its president, secretary and other officers.

**§11-12-80. License tax on foreign corporations.**

1 Every foreign corporation which has qualified to hold  
2 property or to do business in this state shall make a report  
3 in duplicate to the tax commissioner annually in the third  
4 month preceding the beginning of the license tax year, in  
5 which report shall be set out: (a) The name of such  
6 corporation, the name of the state or country by which  
7 incorporated, the date of the incorporation, the date of the  
8 certificate of the secretary of state authorizing it to do  
9 business in this state, the place of its principal office,  
10 the names and post-office addresses of its president, secre-  
11 tary and its officers, if any, charged with the duty of



12 making returns of its property for taxation and the name  
13 and post-office address of its attorney of record in this  
14 state; (b) the number of shares of its authorized capital  
15 stock having a par value and the par value of each share,  
16 and the number of its issued and outstanding shares and  
17 the par value of each share; (c) the number of shares of  
18 its authorized capital stock having no par value, the num-  
19 ber of shares of such stock authorized to be issued and the  
20 considerations fixed for the issue of each share of the same  
21 by its articles of incorporation or board of directors, and  
22 the number of shares thereof issued and outstanding; (d)  
23 the value of the property owned and used by such corpor-  
24 ation within this state, where situate, of what it consists,  
25 and the number of acres of land it holds in this state, and  
26 the value of its property owned and used without this  
27 state; and (e) the proportion of its capital stock which is  
28 represented by property owned and used in the state of  
29 West Virginia. Such report shall be verified by the  
30 affidavit of the president, secretary or other executive  
31 officers of such corporation.

32 It shall be the duty of the tax commissioner to assess  
33 and fix the license tax of such corporation according to the  
34 proportion of its issued and outstanding capital stock  
35 which is represented by its property owned and used in  
36 this state, which license tax shall be at the rate prescribed  
37 in section seventy-eight of this article, plus seventy-five  
38 percent of such tax. In no event shall any such corpora-  
39 tion pay an annual license tax of less than two hundred  
40 fifty dollars, which shall be in addition to the fee of the  
41 secretary of state as statutory attorney in fact. The tax  
42 commissioner may in any case require such additional  
43 information as he may deem necessary to enable him  
44 to assess and fix the just amount of license tax of such  
45 corporation; and it shall be his duty to notify every such  
46 corporation of the amount so assessed by him and it  
47 shall be the duty of the corporation to pay the same to  
48 the tax commissioner within thirty days thereafter, and  
49 if it fails to do so it shall be liable to the penalties pre-  
50 scribed in sections eighty-six and eighty-seven of this  
51 article.

**§11-12-81. Preliminary report by foreign corporations; assessment; collection of license taxes.**

1 Every foreign corporation at the time of its application  
2 for a certificate of authority under the provisions of article  
3 one of chapter thirty-one of this code, shall file with the  
4 secretary of state a report preliminary to the annual  
5 report hereinbefore provided for, which preliminary  
6 report shall contain sufficient information upon which to  
7 base an assessment of its license tax for the then current  
8 year. It shall be the duty of the secretary of state to make  
9 assessment of its license tax for such year, and he may  
10 require such further information as he may deem neces-  
11 sary for that purpose. Before issuing such certificate the  
12 secretary of state shall collect the amount of license tax  
13 he finds to be proper for the license tax year ending with  
14 the thirtieth day of the last month of the license tax  
15 year. If the certificate be issued after the last day of the  
16 third month of the license tax year and before the first  
17 day of the ensuing license tax year, the secretary of state  
18 shall assess and collect such taxes at the rate of one tenth  
19 the amount of the annual license tax for each month or  
20 fractional part of a month to ensue before the first day of  
21 the ensuing license tax year. Thereafter on or before the  
22 first day of the license tax year next following the date of  
23 the certificate of authority and on or before every succeed-  
24 ing first day of the license tax year the tax commissioner  
25 shall collect such tax for a full year: *Provided*, That if the  
26 certificate be issued in either of the last two months of the  
27 license tax year, the secretary of state shall assess and  
28 collect the license tax for such month or months, as well as  
29 for a full year beginning with the first day of the ensuing  
30 license tax year. When the tax commissioner shall assess  
31 and collect the tax on any such foreign corporation, he  
32 may include in the tax for any year any amount that such  
33 corporation should have paid for any previous year and  
34 failed to pay. The collections hereunder shall be in addi-  
35 tion to the annual fee of the secretary of state as statutory  
36 attorney in fact. All moneys collected by the secretary of  
37 state and the tax commissioner shall be paid into the state  
38 treasury in the manner prescribed by law.

**§11-12-82. Annual fee of secretary of state as attorney in fact.**

1 Every foreign corporation, and every domestic corpora-  
2 tion whose principal place of business or chief works is  
3 located without the state, shall pay an annual fee of ten  
4 dollars for the services of the secretary of state as  
5 attorney in fact for such corporation, which fee shall be  
6 due and payable at the same time, collected by the same  
7 officers, and accounted for in the same way, as the annual  
8 license tax, payable to the secretary of state as statutory  
9 attorney in fact.

**§11-12-83. Notice to corporations taxable; statement on payment; tax as lien.**

1 It shall be the duty of the tax commissioner, between  
2 the fifteenth day of the third month next preceding the  
3 first day of the license tax year and the fifteenth day of  
4 the second month next preceding the first day of the  
5 license tax year, in each year, to notify each corporation,  
6 liable to the tax imposed by this article, of the time of  
7 payment of such tax and the amount thereof, together  
8 with the statutory attorney fee, if any. Such notices may  
9 be sent through the mails, addressed to the corporation  
10 at its last known post-office address as shown by the  
11 records in the office of the secretary of state. If the tax  
12 commissioner shall make a mistake in the amount of such  
13 tax such corporation may file a sworn certificate of the  
14 president, vice president or secretary of the corporation,  
15 showing such mistake, or showing the actual amount of  
16 tax due; and, in that event, it shall be the duty of the tax  
17 commissioner to accept the amount due as shown by such  
18 certificate, unless contrary to provisions of this article.  
19 At the time of making payment to the tax commissioner  
20 every domestic corporation shall deliver to him a state-  
21 ment, in duplicate, which shall show the name of the  
22 corporation, the date of its certificate of incorporation, the  
23 name and post-office address of its attorney of record in  
24 this state, if any, the names and post-office addresses of its  
25 president, secretary and treasurer, the amount of its au-  
26 thorized capital stock, the number of acres of land it holds  
27 in this state if the number exceeds ten thousand acres,  
28 and such other facts as the tax commissioner may require.  
29 Such statement shall be signed by the president, secretary

30 or treasurer of the corporation. The amount of such tax  
31 shall be deemed a debt due the state, and shall be a lien  
32 as to an innocent purchaser for value, on the property and  
33 assets of the corporation prior to all other liens, except  
34 the lien of the taxes levied on its property for state, county  
35 and district purposes, from the time a notice of such lien,  
36 specifying the year and the amount for which the lien is  
37 claimed, is filed in the office of the clerk of the county  
38 court of the county in which the property subject to such  
39 liens is situated. Such clerk shall, upon the filing in his  
40 office of any such notice, record such notice in a separate  
41 docket in his office to be known as "Corporation License  
42 Tax Lien Docket," and index the same in the name of the  
43 corporation against whom the lien is claimed. Upon pay-  
44 ment of such lien debt there shall be executed by the tax  
45 commissioner and delivered to the clerk of the county  
46 court in whose office notice of such lien is filed a release  
47 thereof, which said release shall be filed and recorded by  
48 such clerk in like manner as releases of judgment liens  
49 are filed and recorded. Such tax shall be a preferred debt  
50 in case of insolvency.

51 The tax commissioner shall forward to the secretary of  
52 state a copy of the statement required by this section,  
53 together with a list of all corporations which have  
54 delivered such statements and which have paid their  
55 taxes. Such list shall contain, in addition to such infor-  
56 mation as the tax commissioner deems appropriate, the  
57 name and address of the corporation, the place of its prin-  
58 cipal office, and the names and post-office addresses of its  
59 president, secretary and other officers.

**§11-12-84. Publication of list of delinquent corporations.**

1 The tax commissioner shall, between the first and fif-  
2 teenth day of the second month of the license tax year in  
3 every year, publish a list of all corporations failing to  
4 pay the license tax, or any part thereof, due therefrom on  
5 or before the first day of the first month of the license  
6 tax year, as a Class I legal advertisement in compliance  
7 with the provisions of article three, chapter fifty-nine of  
8 this code, and the publication area for such publication  
9 shall be the state. Such list shall contain the names of  
10 such delinquent corporations, arranged in two classes,

11 domestic and foreign. The cost of such publication shall  
12 be paid by the tax commissioner when allowed by the  
13 board of public works, out of the moneys in the treasury.  
14 Any such delinquent corporation may, on or before the  
15 first day of the fifth month of the license tax year follow-  
16 ing or at any time before judgment or order is entered as  
17 hereinafter provided, pay the amount of such tax and a  
18 penalty of one per cent per month for each month or  
19 fractional part thereof that such failure continued, but  
20 the amount of such penalty shall not be less than five  
21 dollars. After the publication of the list of delinquent  
22 corporations by the tax commissioner, he shall mail to  
23 the last known post-office address of each of such corpora-  
24 tions a supplemental notice, together with a statement of  
25 the total amount of tax and penalties due therefrom,  
26 which notice shall be mailed at least thirty days before  
27 the first day of the fifth month of the license tax year.

**§11-12-85. Investigation of corporations' delinquencies.**

1 The tax commissioner, with the approval of the gover-  
2 nor, may appoint agents to investigate all violations of the  
3 provisions of this article concerning landholding or char-  
4 ter license taxes on corporations, and also for the purpose  
5 of collecting such taxes from all corporations which have  
6 not paid the same, whether due from domestic or foreign  
7 corporations. The compensation of all such agents shall  
8 be fixed by the tax commissioner.

**§11-12-86. Action to enforce payment of corporate license tax;  
forfeiture of charter or revocation of right to do  
business.**

1 Within thirty days after such first day of the fifth  
2 month of the license tax year, the tax commissioner shall  
3 certify to the governor and the secretary of state a list  
4 of all such delinquent corporations, domestic and foreign.  
5 The secretary of state shall preserve the list in his office,  
6 and a certificate from him that the name of any corpora-  
7 tion mentioned in such certificate is delinquent in the  
8 payment of the license tax imposed by this article shall  
9 be prima facie evidence thereof. Within thirty days after  
10 receiving such list from the tax commissioner the gov-

ernor shall issue his proclamation, in which he shall declare the delinquency of every such corporation. A copy of such proclamation shall be filed and recorded in the office of the secretary of state, and be published in such newspapers as the governor may designate, not exceeding one in each congressional district; the costs of such publication shall be paid by the governor. Sixty days after the date of the publication of such proclamation, it shall be the duty of the attorney general to institute in the circuit court, in the county in which the seat of government is, an action or actions, in the name of the state, in which such delinquent corporations shall be made defendants; in the complaint so filed it shall only be necessary to allege that the corporations therein made defendants have failed to pay such license tax, and that each of them justly owes to the state the amount of license tax, penalty and fines stated therein, in connection with the name of the corporation, which amount shall be computed up to the first day of the month succeeding that in which such complaint is filed. No such corporation shall interpose as a plea or defense in such action the fact that the tax commissioner failed to notify it as prescribed in this article, or that it failed to receive such notice, or that its name was not included in the list or proclamation hereinbefore mentioned. Upon the hearing of such action, if it shall appear to the court that any such corporation has failed to pay any such license tax and the penalties and fines assessed against it, the court shall enter an order of judgment against such corporation for the amount due, including the costs of the proceeding, or such portion of such costs as the court shall apportion to be paid by such corporation, and, if the same be not then and there paid, the court shall enter an order if it be a domestic corporation, forfeiting its charter or certificate of incorporation, rights and franchises; and if it be a foreign corporation, revoking its rights and privileges to hold property and transact business in this state. The amount of the judgment, including costs, entered against any corporation, and interest thereon until paid, may be collected by the attorney general, or be collected by the tax commissioner in the same manner that other

52 claims due the state are collected. In any such action  
53 the court may upon payment of the judgment herein-  
54 above mentioned together with interest and costs and  
55 the payment of any and all license taxes which may have  
56 accrued since the institution of such action, reinstate any  
57 corporation to its former rights as if it had not been  
58 delinquent and proceeded against under this section, and  
59 make such other orders as it shall deem necessary and  
60 proper; and may appoint a receiver for any such cor-  
61 poration and order its assets marshalled and distributed  
62 among its creditors; and may, on motion of the attorney  
63 general, grant an injunction against any such corporation  
64 restraining it from the exercise of any franchise or the  
65 transaction of any business within this state, until such tax  
66 and the costs be paid. Any person or persons who shall  
67 exercise or attempt to exercise any powers under the ar-  
68 ticles of incorporation, charter or certificate of incorpora-  
69 tion of any such corporation, after the issuing of the gov-  
70 ernor's proclamation, shall be guilty of a misdemeanor,  
71 and shall be punished by imprisonment not exceeding one  
72 year, or a fine not exceeding one thousand dollars, or both  
73 such fine and imprisonment, in the discretion of the court.  
74 The words "license tax" used in this section include, in  
75 addition to the amount of license tax proper, all penalties  
76 and fines accruing for failure to pay such tax, the annual  
77 fee of the secretary of state as statutory attorney in fact,  
78 and the cost of any action to enforce the collection of  
79 the same. When two or more corporations are included  
80 in one action, the court shall apportion the cost thereof  
81 among them as it may deem just.

82 If in any such action the court shall order the sale  
83 of the property of any delinquent corporation without  
84 ordering that its assets be marshalled and distributed  
85 among its creditors, the purchaser at the sale shall acquire  
86 title to the property subject to any rights which the cred-  
87 itors of the corporation would have had if no action had  
88 been brought by the state for collection of delinquent  
89 license taxes. In any subsequent action, however, brought  
90 by the creditors of the corporation to subject the prop-  
91 erty in the hands of the purchaser to the payment of their

92 claims against the corporation, the purchaser shall be  
93 given a preference over any creditor for the payment of  
94 the purchase price, including costs with interest at six  
95 percent per annum from the date of sale.

**§11-12-87. Limitation on institution of actions to set aside sales in prior actions or proceedings.**

1 No action shall be instituted in any court of this state on  
2 and after the first day of January, one thousand nine hun-  
3 dred and fifty, for the purpose of setting aside the sale of  
4 all or any of the assets of any corporation heretofore sold  
5 by order of the court in any former action or proceeding  
6 instituted under the preceding section on the ground that  
7 process was served on the auditor or the secretary of state,  
8 or that service thereof was accepted by either of them.

**§11-12-88. Process in such action; record of forfeiture, revocation or dissolution.**

1 In any such action process shall be served in the man-  
2 ner provided by law. The attorney general may cause a  
3 copy of any order of publication to be mailed to each cor-  
4 poration at its last known post-office address as aforesaid.  
5 It shall be the duty of the clerk of every court of this state  
6 in which any proceedings are had which result in the for-  
7 feiture of the charter or certificate of incorporation of any  
8 corporation issued under the laws of this state, or result  
9 in the dissolution or extinction of any such corporation,  
10 or in the revocation of the rights and privileges, of any  
11 foreign corporation to do business in this state, to notify  
12 the secretary of state of any such forfeiture, dissolution,  
13 extinction or revocation, in which report he shall state  
14 the name of the court, the name of the corporation, the  
15 nature of the actions and the date of the order or judg-  
16 ment, and such other pertinent matter as may be required  
17 by the secretary of state; and the secretary of state shall  
18 file and record such report in his office, and aptly note the  
19 same in the indexes of corporation kept in his office. If any  
20 clerk fail to make such report he shall be liable to a fine  
21 of not exceeding one hundred dollars.



**§11-12-89. Corporations exempt from license tax.**

1 Nothing in sections seventy-five through ninety  
2 inclusive of this article shall be construed as imposing  
3 license tax on corporations chartered strictly for  
4 educational, literary, agricultural, scientific, religious  
5 or charitable purposes, or upon charters, or certificates of  
6 incorporation incorporating cemetaries or lodges of Ma-  
7 sons, Odd Fellows, or the like, or other charitable, fra-  
8 ternal or patriotic societies not incorporated for profit to  
9 the stockholders; but the secretary of state shall require  
10 full proof as to the character of any such corporation  
11 claiming such exemption from the payment of license tax.  
12 Every such corporation, however, shall, in the third month  
13 preceding the first day of the license tax year in each year,  
14 deliver to the tax commissioner the statement required  
15 in section eighty-three of this article.

**§11-12-90. Monthly report by secretary of state to tax commissioner as to corporations.**

1 The secretary of state shall within twenty days after  
2 the close of each month make a report to the tax com-  
3 missioner for the preceding month, in which he shall set  
4 out the name of every corporation to which he issued a  
5 certificate of incorporation during the month, as well as  
6 the name of each corporation to which he issued a cer-  
7 tificate under section fifty-four, article one, chapter  
8 thirty-one of this code with the amount of license tax paid  
9 to him by each; also he shall set out in such report the  
10 names of all corporations to which he issued, during such  
11 preceding month, certificates of increase or decrease of  
12 stock, or of shares of stock, or of par value of shares of  
13 stock; certificates of change of name or of change of  
14 location of principal office; and a statement of all moneys  
15 received by him during such preceding month from all  
16 sources and due to the state, and pay the same into the  
17 treasury; if he fail to do so it shall be the duty of the tax  
18 commissioner to report such failure to the governor.

## CHAPTER 59. FEES, ALLOWANCES AND COSTS.

## ARTICLE 1. FEES AND ALLOWANCES.

## §59-1-2. Fees to be charged by secretary of state.

1 Except as may be otherwise provided in article one,  
 2 chapter thirty-one of this code, the secretary of state  
 3 shall charge for services rendered in his office the follow-  
 4 ing fees to be paid by the person to whom the service is  
 5 rendered at the time it is done:

6 For each certificate of incorporation or copy thereof,  
 7 including restatements of any such certificates  
 8 issued on new agreements, and/or consolidations  
 9 or all certificates of merger or consolidation or  
 10 certificates authorizing a foreign corporation to  
 11 do business within this state ..... \$10.00

12 For each certified copy of certificate of incorpora-  
 13 tion, not to exceed ten pages ..... 10.00

14 If such copy contains in excess of ten pages, for  
 15 each additional page ..... .20

16 For filing and recording a trademark ..... 5.00

17 For each certificate of change of name, of increase  
 18 or decrease of authorized capital stock, of change  
 19 of principal office, or of amendment to certificate  
 20 of incorporation ..... 5.00

21 For recording a power of attorney and certificate  
 22 thereof ..... 3.00

23 For any other certificate, whether required by law  
 24 or made at the request of any person ..... 5.00

25 The foregoing fees shall include the tax on the  
 26 great seal or the less seal impressed on any such  
 27 document, as well as the filing, recording and in-  
 28 dexing of the same.

29 For endorsing and filing reports of corporations,  
 30 and all other papers, which shall include the in-  
 31 dexing of the same, for each report or paper filed ..... 1.00

32 For any search, not less than ..... 1.00

33 For searches of more than one hour, for each hour  
 34 or fraction thereof consumed in making such  
 35 search ..... 1.00

36 The cost of the search shall be in addition to the

37	cost of any certificate issued pursuant thereto or	
38	based thereon.	
39	For entering statement of satisfaction of conditional	
40	sale contract .....	1.00
41	For filing each financing, continuation or termina-	
42	tion statement or other statement or writing per-	
43	mitted to be filed under chapter forty-six of the	
44	code .....	1.00
45	For filing, preserving and indexing a security agree-	
46	ment filed under chapter forty-six of the code .....	2.00
47	For recording any paper for which no specific fee	
48	is prescribed .....	1.00
49	Or at the rate, for each one hundred words re-	
50	corded, of .....	.20
51	For issuing commission to a notary public, or to a	
52	commissioner of deeds, which shall include the	
53	tax on the state seal thereon and other charges .....	5.00
54	For a testimonial .....	1.50
55	For a copy of any paper, if one sheet .....	1.00
56	For each sheet of copy after the first .....	.75
57	For issuing a commission to a commissioner in any	
58	other state .....	5.00
59	For making out a requisition for a fugitive from	
60	justice demanded of the executive authority of	
61	another state .....	2.00
62	For issuing a warrant for the arrest of a fugitive	
63	from justice demanded by the executive authority	
64	of another state .....	2.00
65	For any other work or service not herein enu-	
66	merated, such fee as may be elsewhere prescribed.	

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Darby  
Chairman Senate Committee

Clarence B. Johnston Jr.  
Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

Howard W. Carson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

H. T. Brotherton Jr.  
President of the Senate

Leah A. W. W. W.  
Speaker House of Delegates

The within approved this the 26th  
day of March, 1974.

Arch A. Phares Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/14/74

Time 2:15 p.m.