WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 107

(By Mr. Moreland and Mr.)

PASSED March 9, 1974

In Effect July 1, 1975

FILED IN THE OFFICE

EDGAR F. HEISKELL, M.
SECRETARY OF STATE

THIS DATE 3-27-74
ENROLLED

Senate Bill No. 107
(By Mr. Moreland and Mr. Poffenbarger)

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

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 share-
holders' 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 direc-
tors, their classification and removal; relating to the man-
ner 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 secre-
try of state and other requirements with respect there-
to; 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 re-
ating 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; establish-
ing 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 consolida-
tion 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 prom-
ulgate rules and regulations with respect thereto; pro-
viding 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; authoriz-
ing 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 meet-
ing and prescribing procedures therefor; requiring cor-
porate acknowledgment or other acknowledgment on forms
filed with secretary of state and in other instances; pre-
scribing penalties for failure to record certain documents
issued by the secretary of state in the office of the appro-
priate 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, con-
sideration and payment for corporate shares; establishing
certain stock rights and options for the purchase of busi-
ess corporation stock; establishing the manner of deter-
mining the amount of stated capital of a business corpora-
tion; 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 tive as of the effective date hereof, and the provi-
sions thereof shall apply to and govern all corporations
then existing or thereafter formed, and all corporate
acts thereafter done: Provided, That nothing contained
in this article shall be construed to affect the existence
of any then existing corporation or to impair the
validity of any corporate act done and performed in
accordance with the preexisting law. In the event of
any inconsistency between any of the provisions of this
article and the rights conferred by any special act of
the Legislature of the state of Virginia before the forma-
tion of the state of West Virginia, or the Legislature of the
state of West Virginia subsequent to such date, the pro-
vocations of such special act shall prevail to the extent of
such inconsistency.

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

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

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

§31-1-5. Severability.

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

PART II—CORPORATIONS GENERALLY.

§31-1-6. Definitions.

As used in this article, unless the context otherwise
requires a different meaning, the term:
(a) "Articles of incorporation" means the original or
restated articles of incorporation or articles of consolida-
tion and all amendments thereto including articles of
merger.
(b) "Authorized shares" means the shares of all classes which a business corporation is authorized to issue.

(c) "Business corporation" means a corporation organized for profit.

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

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

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

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

(h) "Earned surplus" means the portion of the surplus of a business corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portions of surplus allocated to earn surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(i) "Employee" includes officers but not directors. A director may accept duties which make him also an employee.

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

(k) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.
(l) "Member" means one having membership in a nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws and shall include shareholders where such corporation issues shares.

(m) "Net assets" means the amount by which the total assets of a corporation exceed the total debt of the corporation.

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

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

(p) "Shares" means the units into which the proprietary interests in a corporation are divided.

(q) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares of a business corporation having a par value that have been issued, (2) the amount of the consideration received by a business corporation for all shares of such corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (3) such amounts not included in clauses (1) and (2) of this subdivision as have been transferred to stated capital of such corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges prescribed by law.

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

(s) "Surplus" means the excess of the net assets of a business corporation over its stated capital.
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"Treasury shares" means shares of a business corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be issued shares, but not outstanding shares.

§31-1-7. Purposes of incorporation.

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

(b) Nonprofit corporations may be organized under this article for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association.

(c) No charters or certificates of incorporation shall be granted or issued to any church or religious denomination.


Every corporation shall have the power:

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

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

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
(d) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

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

(f) To lend money and use its credit to assist its employees.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, joint partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state territory, governmental district or municipality or of any instrumentality thereof.

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

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

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

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

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

(m) To make donations for the public welfare or for charitable, scientific or educational purposes.
(n) To transact any lawful business which the board of directors shall find will be in the aid of governmental policy.

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

(p) To be a promoter, partner, member, associate, or manager of any partnership, joint partnership, joint venture, trust or other enterprise.

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

(r) To have and exercise all powers necessary or convenient to effect its purposes.

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

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was of another corporation, partnership, joint partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, taxes and penalties and interest thereon, and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in
good faith and in a manner which he reasonably believed
to be in or not opposed to the best interest of the corpora-
tion, and, with respect to any criminal action or proceed-
ing, that such person did have reasonable cause to be-
lieve that his conduct was unlawful.

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

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

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

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

(a) In a proceeding by a shareholder, member or director against the corporation to enjoin the doing of any act or the continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

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

(c) In any proceeding by the state, or by any of its agencies or departments or by the attorney general, as provided in this article, or as provided or authorized by any other provisions of this code, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or transacting unauthorized business or in any other proceeding brought by or in the name of or for the benefit of the state.
§31-1-11. Corporate name; requirements; certain names prohibited.

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

1. Shall contain the word “corporation,” “company,” “incorporated” or “limited,” or shall contain an abbreviation of one of such words.

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

3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether stock or nonstock and whether or not organized for profit, existing under the laws of this state or of any foreign corporation, whether stock or nonstock and whether or not organized for profit, authorized to conduct affairs or do or transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this article, or the name of a corporation which has in effect a registration of its corporate name as provided in this article, except that this provision shall not apply if the applicant files with the secretary of state either (i) the written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or (ii) a certified copy of a final order of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

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

(b) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corpora-
tions if such other corporation was organized under the laws of, or is authorized to conduct affairs or do or transact business in this state.

(c) After the effective date of this section, no corporation shall be chartered in this state under any name which includes the word “engineer,” “engineers,” “engineering” or any combination of same unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as therein defined.

§31-1-12. Reserved name.

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

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

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

(c) Any foreign corporation intending to make application for a certificate of authority to conduct affairs or do or transact business in this state.

(d) Any foreign corporation authorized to conduct affairs or do or transact business in this state and intending to change its name.

(e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs or do or transact business.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.
§31-1-13. Registered name.

Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this article, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to conduct affairs or do or transact business in this state, or any corporate name reserved or registered under this article.

Such registration shall be made by:

(a) Filing with the secretary of state (1) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and (2) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

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

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

§31-1-14. Renewal of registered name.

A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of five dollars. A renewal application may be filed between the first day of April and the thirtieth day of
June in each year, and shall extend the registration for
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 trans­
acting business in this state for purposes of this
section.

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

Any foreign corporation which shall conduct affairs or
do or transact business in this state without having been
authorized so to do pursuant to the provisions of this
article shall be conclusively presumed to have appointed
the secretary of state as its attorney in fact with authority
to accept service of notice and process on behalf of such
corporation and upon whom service of notice and process
may be made in this state for and upon every such cor-
poration in any action or proceeding described in the next
following paragraph of this section. No act of such cor-
poration appointing the secretary of state such attorney
in fact shall be necessary. Immediately after being served
with or accepting any such process or notice, of which
process or notice two copies for each defendant shall be
furnished the secretary of state with the original notice or
process, together with a fee of two dollars, the secretary
of state shall file in his office a copy of such process or
notice, with a note thereon endorsed of the time of service
or acceptance, as the case may be, and transmit one copy
of such process or notice by registered or certified mail,
return receipt requested, to such corporation at the address
of its principal office, which address shall be stated in such
process or notice. Such service or acceptance of such
process or notice shall be sufficient if such return receipt
shall be signed by an agent or employee of such corpora-
tion, or the registered or certified mail so sent by the
secretary of state is refused by the addressee and the
registered or certified mail is returned to the secretary
of state, or to his office, showing thereon the stamp of the
United States postal service that delivery thereof has been
refused, and such return receipt or registered or certified
mail is appended to the original process or notice and filed
therewith in the clerk's office of the court from which
such process or notice was issued. No process or notice
shall be served on the secretary of state or accepted by
him less than ten days before the return date thereof. The
court may order such continuances as may be reasonable
to afford each defendant opportunity to defend the action
or proceedings.

For the purpose of this section, a foreign corporation
not authorized to conduct affairs or do or transact business
in this state pursuant to the provisions of this article
shall nevertheless be deemed to be conducting affairs or
doing or transacting business herein (a) if such corpo-
tion makes a contract to be performed, in whole or in part,
by any party thereto, in this state, (b) if such corporation
commits a tort in whole or in part in this state, or (c) if
such corporation manufactures, sells, offers for sale or
supplies any product in a defective condition and such
product causes injury to any person or property within
this state notwithstanding the fact that such corporation
had no agents, servants or employees or contacts within
this state at the time of said injury. The making of such
contract, the committing of such tort or the manufacture
or sale, offer of sale or supply of such defective product as
hereinabove described shall be deemed to be the agree-
ment of such corporation that any notice or process served
upon, or accepted by, the secretary of state pursuant to
the next preceding paragraph of this section in any action
or proceeding against such corporation arising from, or
growing out of, such contract, tort, or manufacture or
sale, offer of sale or supply of such defective product shall
be of the same legal force and validity as process duly
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
corporations seeking to exercise the rights conferred by
this article, or against which any proceeding is instituted
thereunder, do not have or maintain any office, own any
property or conduct affairs or do or transact any business
in this state, the circuit court of the county in which the
seat of government is located shall have original juris-
diction, except in cases in which jurisdiction is expressly
conferred upon some other court by this chapter.

§31-1-17. Bylaws.

1 The initial bylaws of a corporation shall be adopted by
its board of directors. The power to alter, amend or repeal
the bylaws or adopt new bylaws, subject to repeal or
change by action of the shareholders or members, shall
be vested in the board of directors unless reserved to the
shareholders or members by the articles of incorporation.
The bylaws may contain any provisions for the regula-
tion and management of the affairs of the corporation
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
at such place, either within or without this state, as may
(b) An annual meeting of the shareholders or members shall be held at such time as may be stated in, or fixed in accordance with, the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

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

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

(e) In the case of a nonprofit corporation, special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the provision fixing the number or proportion of members entitled to call a meeting. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

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

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder.
of record or member entitled to vote at such meeting. If
mailed, such notice shall be deemed to be delivered when
deposited in the United States mail addressed to the
shareholder or member at his address as it appears on the
corporate records, with postage thereon prepaid.

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

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

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

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

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

(a) The board of directors of a corporation shall con­
sist of one or more persons. The number of directors shall
be fixed by, or in the manner provided in, the articles of
incorporation or the bylaws. The number of directors may
be increased or decreased from time to time by amend­
ment to, or in the manner provided in, the articles of incorporation or by the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. The names and addresses of the members of the first board of directors may be stated in the articles of incorporation. Such persons, if stated, shall hold office until their successors shall have been elected and qualified. At the first annual meeting of shareholders or members and at each annual meeting thereafter the shareholders or members shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this article. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(b) The directors of any corporation may, by the articles of incorporation or any amendment thereto, or by a vote of the shareholders or members, be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

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

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.
A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

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

§31-1-23. Quorum of directors.

A majority of the number of directors fixed by or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

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

(a) Meetings of the board of directors, regular or special, may be held either within or without this state. (b) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws except that notice shall be required to be given to every director when the meeting is being called for the purpose of amending the bylaws or for the purpose of authorizing the sale of all or substantially all of the assets of the corporation, in which case such notice shall set forth the nature of the business intended to be transacted. (c) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Except as provided in subsection (b) of this section, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need
§31-1-25. Action by directors without a meeting.

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

§31-1-26. Incorporators.

1 One or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the secretary of state articles of incorporation for such corporation.

§31-1-27. Articles of incorporation; contents; matters not required 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 is organized.
5 (4) The address of its initial principal office.
6 (5) The name and address of each incorporator.
8 (b) In the case of a business corporation, in addition to those matters required to be set forth by the provisions of subsection (a) of this section, the articles of incorporation shall set forth:
12 (1) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes,
the number of shares of each class, and a statement of
the par value of the shares of each such class or that such
shares are to be without par value.

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

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

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

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

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

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

(f) The agreement of incorporation shall be acknowled-
ged by the incorporators before a notary public and
transmitted with the proper fees to, and shall be filed
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.**

(a) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the 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 his office; and (iii) issue a certificate of incorporation to which he shall affix the other duplicate original. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

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

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

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this article, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.
§31-1-30. Organization meeting; notice, waiver of notice.

1. After the issuance of the certificate of incorporation an organizational meeting shall be held, either within or without this state, at the call of a majority of the directors, if named in the articles of incorporation, or at the call of a majority of the shareholders, members or incorporators named in the articles of incorporation, for the purpose of adopting bylaws, electing officers and a board of directors, if not named in the articles of incorporation, and for transacting such other business as may come before the meeting. The shareholders, members, incorporators or directors calling the meeting shall give at least three days' notice thereof by mail to each shareholder, member or incorporator so named in the articles of incorporation, stating the time and place of the meeting, unless such notice is waived in accordance with the provisions of this article.

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

1. Upon adoption of the articles of amendment, in accordance with the provisions of section one hundred seven or section one hundred forty-seven of this article, whichever is applicable, duplicate originals of such articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment 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 such filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of amendment to which he shall affix the other duplicate original.

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

The certificate of amendment, or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as certificates of incorporation 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, whichever 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-
§31-1-34. Procedure for merger.

Any two or more domestic corporations, whether stock or nonstock, or whether or not organized for profit, may merge into one of such corporations, irrespective of whether the surviving corporation is a stock or nonstock corporation and irrespective of whether or not it is organized for profit, pursuant to a plan of merger approved in the manner provided in this article. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

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

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

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

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

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

§31-1-35. Procedure for consolidation.

Any two or more domestic corporations, whether stock or nonstock, or whether or not organized for profit, may consolidate into a new corporation, irrespective of whether the new corporation is a stock or nonstock corporation.
and irrespective of whether or not it is organized for
profit, pursuant to a plan of consolidation approved in the
manner provided in this article.

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

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

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

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

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

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

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

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

(b) Duplicate originals of the articles of merger or
articles of consolidation shall be delivered to the secre-
tary of state. If the secretary of state finds that such
articles 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 dupli-
cate originals in his office; and (iii) issue a certificate of
merger or a certificate of consolidation to which he shall
affix the other duplicate original.
The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

(c) The certificate of merger or certificate of consolidation, or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of incorporation are required to be recorded, in accordance with the provisions 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.

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

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

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

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

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, if any, and all other choses in action, and all and
every other interest of or belonging to or due to each of
the corporations so merged or consolidated, shall be taken
and deemed to be transferred to and vested in such single
corporation without further act or deed; and the title to
any real estate, or any interest therein, vested in any of
such corporations shall not revert or be in any way im-
paired by reason of such merger or consolidation.

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

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

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

(a) One or more domestic corporations, whether stock or nonstock, and whether or not organized for profit, and one or more foreign corporations, whether stock or nonstock, and whether or not organized for profit, may merge or consolidate into one of such corporations, irrespective of whether the surviving or new corporation is a stock or nonstock corporation and irrespective of whether or not it is organized for profit, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized. Any such merger or consolidation shall be completed in the following manner:

1. Each domestic corporation shall comply with the provisions of this article with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this article with respect to foreign corporations if it is to conduct its affairs or do or transact business in this state, and in every case it shall file with the secretary of state of this state (i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such domestic corporation against the surviving or new corporation; (ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and (iii) an agreement that it will promptly pay to the dissenting shareholders or members of any such domestic corporation the amount, if any, to
which they shall be entitled under the provisions of this article with respect to the rights of dissenting shareholders.

(b) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state and the provisions of section thirty-seven of this article shall apply in every such instance. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation of domestic corporation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

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

(d) Irrespective of whether such surviving or new corporation is to be governed by the laws of this state or by the laws of any other state, any constituent corporation thereof owning or holding real estate in West Virginia shall further evidence the title thereto in the surviving or new corporation by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerks of the county courts of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger or consolidation and shall be deemed confirmatory of the title of such real estate in the surviving or new corporation.

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

(a) If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders in the case of a busi-
ness corporation, or, in the case of a nonprofit corporation,
when all of the remaining property and assets of the cor-
poration shall have been transferred, conveyed or dis-
tributed in accordance with the provisions of sections one
hundred fifty-five and one hundred fifty-six of this article,
articles of dissolution shall be executed in duplicate by the
corporation by its president or a vice president and by its
secretary or an assistant secretary, and verified by one of
the officers signing such statement, which statement shall
set forth:

(1) The name of the corporation,
(2) That all debts, obligations and liabilities of the
corporation have been paid and discharged or that ade-
quate provision has been made therefor.
(3) That all the remaining property and assets of the
corporation have been distributed among its shareholders
in accordance with their respective rights and interests, in
the case of a business corporation, or, in the case of a
nonprofit corporation, that all the remaining property and
assets of the corporation have been transferred, conveyed
or distributed in accordance with the provisions of sections
one hundred fifty-five and one hundred fifty-six of this
article.

(4) That there are no actions pending against the
corporation in any court, or that adequate provision has
been made for the satisfaction of any judgment or order
which may be entered against it in any pending action.
(b) In the case of a business corporation, such state-
ment, in addition to the matters required to be set forth
under the provisions of subsection (a) of this section, shall
contain a statement that the secretary of state has here-
tofore filed a statement of intent to dissolve the corpora-
tion, and the date on which such statement was filed.
(c) In the case of a nonprofit corporation, such state-
ment in addition to the matters required to be set forth,
under the provisions of subsection (a) of this section, shall
set forth:
(1) If there are members entitled to vote thereon, a
statement setting forth the date of the meeting of mem-
bers at which the resolution to dissolve was adopted, that
a quorum was present at such meeting and that such reso-
lution received the approval of a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

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

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

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

(a) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law and if the provisions of section sixty-one have been fully satisfied, 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 his office; and (iii) issue a certificate of dissolution to which he shall affix the other duplicate original.

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

(c) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators or to the representatives of the dissolved corporation. If the certificate of incorporation shall have
been recorded in the office of the clerk of the county court of any county in this state, the incorporators or their representative shall record the certificate of dissolution in the office of the clerk of the county court in which the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation, and upon such recordation the existence of the corporation shall cease, except for the purpose of actions, other proceedings and appropriate corporate action by shareholders or members, directors 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.

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

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the shareholders or members are unable to break the deadlock or there are no shareholders or members having voting rights; or

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

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

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

(5) In addition, in the case of a nonprofit corporation, that such corporation is unable to carry out its purposes.
(b) Such courts shall also have full power to liquidate the assets and business or affairs of a corporation in an action by a creditor:

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

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

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

(1) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this article, to have its liquidation continued under the supervision of the court; or

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

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

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

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

In proceedings to liquidate the assets and business or affairs of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other action
as may be requisite to preserve the corporate assets wherever situated, and carry on the business or affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers, if any. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

§31-1-43. Qualifications of receivers.

A receiver appointed pursuant to the provisions of section forty-two of this article shall in all cases be a natural person who is a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to conduct affairs or do or transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.
§31-1-44. Filing of claims in liquidation proceedings.

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

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

The liquidation of the assets and business or affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to deliver to the corporation all its remaining property and assets.

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

In proceedings to liquidate the assets and business or affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in the case of a nonprofit corporation, in accordance with the provisions of sections one hundred fifty-five and one hundred fifty-six of this article, the court shall enter an order dissolving the corporation, whereupon the existence of the corporation shall cease. In case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations and all the property and assets have been applied so far as
they will go to their payment, the court shall likewise enter an order dissolving the corporation, whereupon the existence of the corporation shall cease.

If the court shall enter an order dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the order to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

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

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any creditor, shareholder, member or person who is unknown or who cannot be found, or who is under disability and for whom there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the state treasurer in accordance with the provisions of article eight, chapter thirty-six of this code, and shall be paid over to such creditor, shareholder, member or person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto, in accordance with the provisions of said article eight, chapter thirty-six.


The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by an order of court when the court has not liquidated the assets and business or affairs of the corporation as provided in this article, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its shareholders or members, directors and officers, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The share-
holders or members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

The board of directors and the executive officers in office at the date of such expiration or dissolution, and their successors in office, shall have the right to fill any vacancy in any executive office and of the board of directors by appointment; and they and their successors in office may cause actions or proceedings to be brought, conducted, prosecuted or defended, the real and personal property of the corporation to be conveyed or transferred under the common seal or otherwise, further assurances of previous conveyances to be made, and all lawful acts to be done, in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper to do and perform every act and thing which should have been or should be done and performed by the corporation, and for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting, defending and protecting its rights, enforcing all claims in its favor, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto.

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

1 (a) No foreign corporation shall have the right to conduct affairs or do or transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this article to conduct affairs or do or transact any business in this state which would not be permitted to be conducted, done or transacted by a corporation organized under this article. A foreign corporation shall not be denied a certificate of authority by reason of the
fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this article contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

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

(1) Maintaining or defending any legal action or proceeding or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

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

(3) Maintaining bank accounts;

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

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

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

(7) Granting funds or other gifts;

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

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

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

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

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

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

(1) Shall contain the word “corporation,” “company,” “incorporated” or “limited,” or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of incorporation, or if the corporate name of corporation indicates or implies that it is authorized or empowered to conduct the business of banking or insurance unless
such corporation is so authorized or empowered under
the laws of this state.
(3) Shall not be the same as, or deceptively similar
to, the name of any corporation existing under the laws
of this state, whether stock or nonstock and whether or not
organized for profit, or any foreign corporation, authorized
to conduct affairs or do or transact business in this state,
whether stock or nonstock and whether or not organized
for profit, or a corporate name reserved or registered as
permitted by the laws of this state.
(4) Shall be transliterated into letters of the English
alphabet, if it is not in English.
(b) The provisions of subsection (a) (3) of this section
shall not apply if the foreign corporation applying for a
certificate of authority files with the secretary of state
any one of the following:
(1) A resolution of its board of directors adopting a
fictitious name for use in conducting affairs or doing or
transacting business in this state, which fictitious name is
not deceptively similar to the name of any domestic cor-
poration or of any foreign corporation authorized to con-
duct affairs or do or transact business in this state or to any
name reserved or registered as provided in this article, or
(2) The written consent of such other corporation
or holder of a reserved or registered name to use the
same or deceptively similar name and one or more words
are added to make such name distinguishable from such
other name, or
(3) A certified copy of a final order of a court of
competent jurisdiction establishing the prior right of such
foreign corporation to the use of such name in this state.

§31-1-52. Change of name by foreign corporation.
Whenever a foreign corporation which is authorized
to conduct affairs or do or transact business in this state
shall change its name to one under which a certificate
of authority would not be granted to it on application
therefor, the certificate of authority of such corporation
shall be suspended and it shall not thereafter conduct
any affairs or do or transact any business in this state
until it has changed its name to a name which is avail-
§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs, or do or transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

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

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

3. The date of incorporation and the period of duration of the corporation.

4. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

5. The address of the principal office of the corporation in this state if such corporation has or intends to have a principal office located in this state.

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

7. The names and respective addresses of the directors and officers of the corporation.

8. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct its affairs or do or transact business in this state and to determine and assess the fees payable as prescribed by law.

9. The county wherein the corporation intends to record its articles of incorporation, amendments or restatement of such articles of incorporation, pursuant to
the provisions of subsection (c) of section fifty-four of
this article.

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

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

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

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

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

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

(d) No church, religious sect or denomination incor-
porated by the laws of any other state or territory of
the United States, the District of Columbia or of any
foreign country shall be qualified to conduct affairs or
do or transact business in this state in a corporate
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 foreign corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, or a proper restatement thereof, duly certified by the proper officer of the state or country under the laws of which it is incorporated, and a statement or certificate from such officer that the corporation is in good standing with the state or country under the laws of which it is incorporated.

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

(b) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(c) The certificate of authority, together with a copy of the articles of incorporation and all amendments thereto, or a proper restatement thereof, shall be recorded in the office of the county court of the county where the principal office of the corporation in this state is located. If such corporation does not maintain a principal office in this state, such recordation may be completed in any county in which it is conducting its affairs or doing or transacting business. A failure to comply with the provisions of this subsection within six months from the date of issuance of a certificate of authority shall subject such corporation to a fine of not more than one thousand dollars.
§31-1-55. Effect of certificate of authority.

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

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

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

1. The name of the corporation.
2. The address of its then principal office.
3. The address to which the principal office is to be changed.
4. That such change was authorized by resolution duly adopted by its board of directors.

(b) Such statement shall be executed by the corporation by its president or a vice president, and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this article, he shall file such statement in his office, and upon such filing the change of address of the principal office shall become effective. If such foreign corporation maintains a principal office in this state and changes the place of such principal office or moves its principal office out of this state, or if such corporation does not maintain a principal office in this state and moves or changes the place of its principal office, the statement required by this section to be filed with the secretary of state shall be filed within ten days after such move, and no such move or change of the place of its principal office shall be deemed to be com-
§31-1-57. Amendment to articles of incorporation of foreign corporation; filing; recordation; penalty for failure to record.

(a) Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs or do or transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs or in doing or transacting its business in this state, nor authorize such corporation to conduct affairs or do or transact business in this state under any other name than the name set forth in its certificate of authority.

(b) The secretary of state shall issue to such corporation a certificate showing the filing of such amendment and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of the amendment, shall be recorded in the office of the clerk of the county court of the county in which its original certificate of authority was recorded, pursuant to the provisions of subsection (c) of section fifty-four of this article.

A failure to comply with the provisions of this subsection within six months from the date of such amendment shall subject such corporation to a fine of not more 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.

(a) Whenever a foreign corporation authorized to conduct affairs or do or transact business in this state
shall be a party to a merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger become effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs or do or transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

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

A failure to comply with the provisions of this subsection within six months from the date of such merger shall subject such corporation to a fine of not more than one thousand dollars.

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

A foreign corporation authorized to conduct affairs or do or transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state purposes other than or in addition to those purposes set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.
The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, and the recordation requirements for such amended certificate of authority shall be the same as in the case of an original application for a certificate of authority.

A failure to comply with the provisions of this section within six months from the date of such change of corporate name or purposes shall subject such corporation 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 certificate; recordation.

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

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

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

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

(3) That the corporation surrenders its authority to conduct affairs or do or transact business in this state.
(4) A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

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

(c) In the case of a business corporation, in addition to those matters required to be set forth under the provisions of subsection (b) of this section, such application shall set forth:

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

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

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

The application for a certificate of withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. Such application shall be accompanied by a copy of the notice required to be published under the provisions of subsection (a) of this section and the publisher's certificate of such publication.

(e) Duplicate originals of such application for a certificate of withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms 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 his office; and (iii) subject to the
provisions of section sixty-one of this article, issue a
certificate of withdrawal to which he shall affix the other
duplicate original.

(f) The certificate of withdrawal, together with the
duplicate original of the application for withdrawal
affixed thereto by the secretary of state, shall be returned
to the corporation or its representative. The corporation
or its representative shall record the certificate of with-
drawal in the office of the clerk of the county court in
which the corporation's certificate of authority is re-
corded, and the clerk shall note on the margin of the
record book in which such certificate of authority is en-
grossed the fact of the withdrawal of the corporation,
and upon the recordation of such certificate of with-
drawal, the authority of the corporation to conduct affairs
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

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

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

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

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

(4) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to the provisions of this article.

(b) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(1) He shall have given the corporation not less than sixty days' notice thereof by registered or certified mail, return receipt requested, addressed to its principal office in this state, or if the corporation has no such principal
office in this state, then to its principal office outside
this state, and
(2) The corporation shall fail, prior to revocation,
to file the required statement of change of principal
office or shall fail to file any amendment to its articles
of incorporation or shall fail to file any articles of merger
or shall fail to correct any such misrepresentation.

§31-1-63. Issuance of order of revocation; period of appeal.
(a) Upon revoking any certificate of authority, the
secretary of state shall issue an order of revocation in
duplicate, one of which shall be filed in his office and
the other shall be mailed by registered or certified
mail, return receipt requested, to the corporation at
its principal office in this state, or if the corporation
has no such principal office in this state, then to its
principal office outside this state, and a copy of the
notice required by the provisions of subsection (b) of
section sixty-two of this article shall be attached
thereto.
(b) Such corporation shall have thirty days from
the date of receipt of such order of revocation to appeal
the action of the secretary of state in accordance with
the provisions of section sixty-eight of this article, and
if such appeal be not taken within such thirty-day period,
then the order of the secretary of state revoking the
certificate of authority of such corporation shall be final
and the authority of the corporation to conduct affairs
or do or transact business in this state shall cease.

§31-1-64. Conditions of expiration of corporate existence.
Irrespective of any provisions of any articles of in-
corporation or amendment thereto, no corporation shall
expire by virtue of its own articles of incorporation or
amendment thereto until such time as such corporation
has fully complied with all of the provisions of this
article relating to the voluntary dissolution of corpora-
tions, and the existence of any such corporation shall
continue beyond the expiration date established in its
charter or amendment thereto for all intents and pur-
poses until such corporation shall have been dissolved in accordance with the provisions of this article.

When any such corporation has fully complied with the provisions of this article relating to the voluntary dissolution of corporations, the secretary of state shall issue a certificate of dissolution which shall be recorded in the same county and in the same manner as would 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.

Subject to the limitations set forth in their respective certificates of authority, foreign corporations which are duly authorized to conduct affairs or do or transact business in this state at the time this article takes effect, for a purpose or purposes for which a corporation might secure such authority under this article, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs or do or transact business in this state under this article, and shall not be required to make reapplication for authority to conduct affairs or do or transact business in this state by reason of the adoption of this article. From the time this article takes effect such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs or do or transact business in this state.

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

No foreign corporation which is conducting affairs or doing or transacting business in this state without a certificate of authority shall be permitted to maintain any action or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conducting of affairs or the
doing or transacting of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs or do or transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this state.

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

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

The secretary of state shall have the power and authority reasonably necessary to enable him to administer this article efficiently and to perform the duties therein imposed upon him.

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

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

(a) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or shall fail to issue any certificate
of authority to any foreign corporation seeking to conduct affairs or do or transact business in this state, or shall fail to issue any certificate of withdrawal to any foreign corporation, or shall revoke any such certificate of authority, or shall fail to permit the expiration of any corporation, or shall fail to approve any other document required by this article to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his ruling, disapproval or decision to the person or corporation, domestic or foreign, delivering or desiring the same, specifying the reasons therefor. Such notice shall be given by registered or certified mail, return receipt requested, to the principal office of the corporation or to the address where such principal office is proposed to be situated.

(b) Any person or corporation aggrieved by any such ruling, disapproval or decision may appeal to the circuit court of the county in which the principal office of such corporation is situated, or is proposed to be situated, or if such principal office is to be located outside this state, then such appeal will be to the circuit court of Kanawha county. Such appeal shall be taken within thirty days from the date of receipt of the notice of the ruling, disapproval or decision of the secretary of state by filing a petition for a writ of certiorari in the appropriate court, together with a copy of the notice of the secretary of state and such other matters as may be deemed appropriate. Upon any such appeal, such court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

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

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

All certificates issued by the secretary of state in accordance with the provisions of this article, and all copies of documents filed in his office in accordance with
the provisions of this article when certified by him, shall
be taken and received in all courts, public offices and
official bodies as prima facie evidence of the facts therein
stated. A certificate by the secretary of state under the
great seal of this state, as to the existence or nonexistence
of the facts relating to corporations shall be taken and
received in all courts, public offices, and official bodies
as prima facie evidence of the existence or nonexistence
of the facts therein stated.

§31-1-70. Forms to be furnished by secretary of state.
. 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-
quired by the provisions of this article or by the bylaws of the corporation may be dispensed with if every shareholder or member shall attend either in person or by proxy, or if every director shall attend in person.

§31-1-73. Action by shareholders, members or directors without a meeting.

(a) Whenever the vote of shareholders or members at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of such shareholders or members may be dispensed with if all of the shareholders or members who would have been entitled to vote upon the action, if such meeting were held, shall agree in writing to such corporate action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all shareholders or members entitled to vote at a meeting of such shareholders or members duly called and legally held.

(b) Whenever the vote of directors at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of such directors may be dispensed with if all the directors shall agree in writing to such corporate action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all directors at a meeting of such directors duly called and legally held.

(c) In the event that the action which is agreed to, as provided for in subsection (a) or (b) of this section, is such as would have required the filing of any articles, document or certificate with the secretary of state under any provision of this article, if such action had been voted upon by the shareholders or members or by the directors at a meeting, the articles, document or certificate so filed shall state that written agreement has been executed in lieu of stating that the shareholders, members or directors voted upon the corporate action in question and such articles, document or certificate shall have the same force and effect under all provisions of law as if the action had been taken by the unanimous
vote of all shareholders or members entitled to vote, or of all the directors, at a meeting duly called and legally held.

§31-1-74. Corporate acknowledgments.

A corporation may acknowledge any instrument required by law to be acknowledged by its attorney appointed under seal, and such appointment may be embodied in the deed or instrument to be acknowledged, or be made by a separate instrument; or such deed or other instrument may be acknowledged by the president or any vice president of such corporation without such appointment.

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

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

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

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

PART III—BUSINESS CORPORATIONS

§31-1-77. Use of term “corporation.”

As used in Part III of this article, the term “corporation” shall refer exclusively to business corporations.

§31-1-78. Authorized shares.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares
with par value or shares without par value, with such
designations, preferences, limitations and relative rights
as shall be stated in the articles of incorporation. The
articles of incorporation may limit or deny the voting
rights of or provide special voting rights for the shares
of any class to the extent not inconsistent with the provi-
sions of this article.

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

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

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

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

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

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

(a) If the articles of incorporation so provide, the
shares of any preferred or special class may be divided
into and issued in series. If the shares of any such class
are to be issued in series, then each series shall be so
designed as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

1. The rate of dividend.
2. Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.
3. The amount payable upon shares in event of voluntary and involuntary liquidation.
4. Sinking fund provisions, if any, for the redemption or purchase of shares.
5. The terms and conditions, if any, on which shares may be converted.
6. Voting rights if any.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:
§31-1-80. Subscription for shares.

A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription. Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in
§31-1-81. Consideration for shares.

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

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

3 Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

4 That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

5 In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares, the consideration for the shares so issued shall be (1) the principal sum of, and accrued interest on, the indebtedness so
exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, and
(2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (3) any additional consideration paid to the corporation upon the issuance of shares 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 paid, in whole or in part, in cash, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

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

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration 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 code and unless otherwise prohibited by law, a corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and
upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(a) Eliminating fractional shares.
(b) Collecting or compromising indebtedness to the corporation.
(c) Paying dissenting shareholders entitled to payment for their shares under the provisions of this article.
(d) Effecting, subject to the other provisions of this article, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

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

§31-1-84. Stock rights and options.

Subject to the provisions of section ninety of this article and further subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be
conclusive. The price or prices to be received for any
shares having a par value, other than treasury shares
to be issued upon the exercise of such rights or options,
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-
ing a par value, the consideration received therefor
shall constitute stated capital to the extent of the par
value of such shares, and the excess, if any, of such
consideration shall constitute capital surplus.
2 In case of the issuance by a corporation of shares with-
out par value, the entire consideration received therefor
shall constitute stated capital unless the corporation shall
determine as provided in this section that only a part
thereof shall be stated capital. Within a period of sixty
days after the issuance of any shares without par value,
the board of directors may allocate to capital surplus
any portion of the consideration received for the issuance
of such shares. No such allocation shall be made of any
portion of the consideration received for shares without
par value having a preference in the assets of the corpo-
ration in the event of involuntary liquidation except
the amount, if any, of such consideration in excess of such
preference.
3 If shares have been or shall be issued by a corporation
in merger or consolidation or in acquisition of all or
substantially all of the outstanding shares or of the
property and assets of another corporation, whether
domestic or foreign, any amount that would otherwise
constitute capital surplus under the foregoing provi-
sions of this section may instead be allocated to earned
surplus by the board of directors of the issuing corpo-
ration except that its aggregate earned surplus shall not
exceed the sum of the earned surpluses as defined in this
article of the issuing corporation and all other corpora-
tions, domestic or foreign, which were merged or consoli-
dated or of which the shares or assets were acquired.
4 The stated capital of a corporation may be increased
from time to time by resolution of the board of directors
directing that all or a part of the surplus of the corpo-
ration be transferred to stated capital. The board of
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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 financ-
ing.

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-
ing of its shares, may be paid or allowed by such corpo-
4 ration out of the consideration received by it in pay-
5 ment for its shares without thereby rendering such
6 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
been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

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

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

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

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

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

§31-1-88. Fractional shares.

A corporation may (1) issue fractions of a share, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.
§31-1-89. **Liability of subscribers and shareholders.**

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

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

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

4. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

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

1. The articles of incorporation may contain such provisions as may be desired limiting or denying to the shareholders of a corporation the preemptive right to acquire unissued or treasury shares of any or all classes or securities convertible into such shares or carrying a right to 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 to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the
absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.


1. The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

13. An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.
§31-1-93. Voting of shares.

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

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

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

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

5. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

6. Shares held by an administrator, executor, guardian, committee, curator or conservator may be voted by him, either in person or by proxy, without a transfer of such
shares into his name. Shares standing in the name of
a trustee may be voted by him, either in person or by
proxy, but no trustee shall be entitled to vote shares
held by him without a transfer of such shares into his
name.

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

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

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

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

Any number of shareholders of a corporation may
create a voting trust for the purpose of conferring upon
a trustee or trustees the right to vote or otherwise rep-
resent their shares, for a period of not to exceed ten
years, by entering into a written voting trust agreement
specifying the terms and conditions of the voting trust,
by depositing a counterpart of the agreement with the
corporation at its principal office, and by transferring
their shares to such trustee or trustees for the purposes
of the agreement. Such trustee or trustees shall keep
a record of the holders of voting trust certificates evi-
dencing a beneficial interest in the voting trust, giving
the names and addresses of all such holders and the
number and class of the shares in respect of which the
voting trust certificates held by each are issued, and
shall deposit a copy of such record with the corporation
at its principal office. The counterpart of the voting
trust agreement and the copy of such record so deposited
with the corporation shall be subject to the same right
of examination by a shareholder of the corporation, in
person or by agent or attorney, as are the books and
records of the corporation, and such counterpart and
such copy of such record shall be subject to examination
by any holder of record of a voting trust certificate, either
in person or by agent or attorney, at any reasonable
time for any proper purpose.

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

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

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

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

§31-1-96. Removal of directors.

At a meeting of shareholders called expressly for that
purpose, directors may be removed in the manner pro-
vide in this section. Any director or the entire board
of directors may be removed, with or without cause,
by a vote of the holders of a majority of the shares then
entitled to vote at an election of directors.
If less than the entire board is to be removed, no one
of the directors may be removed if the votes cast against
his removal would be sufficient to elect him.
Whenever the holders of the shares of any class are
entitled to elect one or more directors by the provisions
of the articles of incorporation, the provisions of this
section shall apply, in respect to the removal of a direc­
tor or directors so elected, to the vote of the holders of
the outstanding shares of that class and not to the vote
of the outstanding shares as a whole.
§31-1-97. Director conflicts of interest.
(a) No contract or other transaction between a cor-
poration and one or more of its directors or any other
corporation, firm, association or entity in which one or
more of its directors are directors or officers or are finan-
cially interested, shall be either void or voidable because
of such relationship or interest or because such director
or directors are present at the meeting of the board of
directors or a committee thereof which authorizes, ap-
proves or ratifies such contract or transaction or because
his or their votes are counted for such purpose, if:
(1) The fact of such relationship or interest is dis-
closed or known to the board of directors or committee
which authorizes, approves or ratifies the contract or
transaction by a vote or consent sufficient for the purpose
without counting the votes or consents of such interested
directors; or
(2) The fact of such relationship or interest is dis-
closed or known to the shareholders entitled to vote and
they authorize, approve or ratify such contract or trans-
action by vote or written consent; or
(3) The contract or transaction is fair and reasonable
to the corporation.
(b) Common or interested directors may be counted
in determining the presence of a quorum at a meeting
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:
(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

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

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

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

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

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

(e) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.
A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

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

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

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

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

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

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation
§31-1-101. Loans to employees and directors.

1 A corporation shall not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

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

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

2 (a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this article or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this article or the restrictions in the article of incorporation.

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

4 (c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making ade-
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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
§31-1-103. Provisions relating to actions by shareholders.

No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificate therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

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

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon 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
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-
ten form or in any other form capable of being converted into written form within a reasonable time.

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

Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which
such shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation.

Upon the written request of any shareholder or holder or voting trust certificates for shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

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

1 A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

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

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
(f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

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

(h) To change shares having par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

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

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

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

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designation of such series and the variations in the relative rights and preferences as between the shares of such series.

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

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or
the relative rights and preferences theretofore fixed and
determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of
the board of directors to establish series out of authorized
but unissued shares of any preferred or special class and
fix and determine the relative rights and preferences of
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
made in the following manner:

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

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

(c) At such meeting a vote of the shareholders enti-
tled to vote thereon shall be taken on the proposed
amendment. The proposed amendment shall be adopted
upon receiving the affirmative vote of the holders of a
majority of the shares entitled to vote thereon, unless
any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

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

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

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

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

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

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

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

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

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.
(i) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

§31-1-109. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such articles, and shall set forth:

(a) The name of the corporation.
(b) The amendments so adopted.
(c) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.
(d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.
(e) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.
(f) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.
(g) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

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

A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.
Upon the adoption of such resolution, restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such articles and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

§31-1-111. Amendment of articles of incorporation in reorganization proceedings; contents; purposes; procedure for filing; issuance; recordation; admission in evidence.

(a) Whenever a plan of reorganization of a corporation has been confirmed by order of a court of competent jurisdiction in proceedings for the reorganization of such corporations, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(b) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(1) Change the corporate name, period of duration or corporate purposes of the corporation;
(2) Repeal, alter or amend the bylaws of the corporation;
(3) Change the aggregate number of shares or shares of any class which the corporation has authority to issue;
(4) Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued.

(5) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(6) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

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

(1) Articles of amendment approved by order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the order approving the articles of amendment, the title of the proceedings in which the order was entered, and a statement that such order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(2) Duplicate originals of the articles of amendments shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment 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 his office; and (iii) issue a certificate of amendment to which he shall affix the other duplicate original.
The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative. 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, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

(d) The certificate of amendment issued by the secretary of state pursuant to this section, or certified copy thereof, shall be recorded in the office of the appropriate county clerk in the same manner as original certificates of incorporation are required to be recorded, in accordance with the provisions 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.

§31-1-112. Restriction on redemption or purchase of redeemable shares.

1 No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary 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 redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless
the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

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

(1) The name of the corporation.

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

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

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

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

(c) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms 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 his office; and (iii) return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was,
at the time of such cancellation, represented by the shares so cancelled.
(d) Nothing contained in this section shall be con-
strued to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this article.

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

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

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

(1) The name of the corporation.

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

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

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such can-
cellation.

(c) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms 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 there-
of; (ii) file one of such duplicate originals in his office; and (iii) return the other duplicate original to the cor-
poration or its representative.
Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this article.

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

(a) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

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

(2) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this article for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(b) When a reduction of the stated capital of a corporation has been approved as provided in subsection
28 (a) of this section, a statement shall be executed in
duplicate by the corporation by its president or a vice
president and by its secretary or an assistant secretary,
and verified by one of the officers signing such statement,
and shall set forth:

(1) The name of the corporation.

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

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

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

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

(c) Duplicate originals of such statement shall be
delivered to the secretary of state. If the secretary of
state finds that such statement conforms 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 his office;
and (iii) return the other duplicate original to the cor-
poration or its representative.

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

(d) No reduction of stated capital shall be made
under the provisions of this section which would reduce
the amount of the aggregate stated capital of the cor-
poration to an amount equal to or less than the aggre-
gate preferential amounts payable upon all issued shares
having a preferential right in the assets of the corporation
in the event of involuntary liquidation, plus the aggregate
par value of all issued shares having a par value but no
preferential rights in the assets of the corporation in the
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 reduction of the stated capital of a corporation shall be capital surplus. The capital surplus of a corporation may be increased from time to time by a resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

2 A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

3 A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this article.

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

1 The board of directors of each corporation intending to merge or consolidate with another corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this article for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of
§31-1-118. Contents required in articles of merger or consolidation.

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

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

5 (2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

9 (3) As to each corporation, the number of shares voted for and against such plan respectively, and, if the
§31-1-119. Merger of subsidiary corporation; procedures; articles of merger; recordation; admission in evidence.

(a) Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth (i) the name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the surviving corporation; and (ii) the manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property. A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

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

(1) The plan of merger;

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

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

(c) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such
articles 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 dupli-
cate originals in his office; and (iii) issue a certificate of
merger to which he shall affix the other duplicate
original.

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

(d) The certificate of merger, or certified copy thereof,
shall be recorded in the office of the appropriate county
clerk in the same manner as original certificates of in-
corporation are required to be recorded, in accordance
with the provisions 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.

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

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

§31-1-121. Sale of assets other than in regular course of busi-
ness.

A sale, lease, exchange or other disposition of all, or
substantially all, the property and assets, with or with-
out the good will, of a corporation, if not in the usual
and regular course of its business, may be made upon
such terms and conditions and for such consideration,
which may consist in whole or in part of cash or other
property, including shares, obligations or other securities
of any other corporation, domestic or foreign, as may
be authorized in the following manner:

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

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

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

(d) After such authorization by a vote of share-
holders, the board of directors nevertheless, in its dis-
cretion, may abandon such sale, lease, exchange or other
disposition of assets, subject to the rights of third parties
under any contracts relating thereto, without further
action or approval by shareholders.
§31-1-122. Right of shareholders to dissent.

1 Any shareholder of a corporation shall have the right
to dissent from any of the following corporate actions:
2 (a) Any plan of merger or consolidation to which
the corporation is a party; or
3 (b) Any sale or exchange of all or substantially all
of the property and assets of the corporation not made
in the usual and regular course of its business, including
a sale in dissolution, but not including a sale pursuant
to an order of a court having jurisdiction in the premises
or a sale for cash on terms requiring that all or sub-
stantially all of the net proceeds of sale be distributed
to the shareholders in accordance with their respective
interests within one year after the date of sale.
4 A shareholder may dissent as to less than all of the
5 shares registered in his name. In that event, his rights
6 shall be determined as if the shares as to which he has
7 dissented and his other shares were registered in the
8 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; pro-
cedure for transferring of such shares to corpora-
tion and payment therefor.

1 (a) Any shareholder electing to exercise his right to
dissent, pursuant to section one hundred twenty-two of
this article, shall file with the corporation, prior to or
at the meeting of shareholders at which such proposed
 corporate action is submitted to a vote, a written ob-
2 jection to such proposed corporate action. If such pro-
3 posed corporate action be approved by the required vote
4 and such shareholder shall not have voted in favor
5 thereof, such shareholder may, within ten days after
6 the date on which the vote was taken or if a corpora-
tion is to be merged without a vote of its shareholders
7 into another corporation, any of its shareholders may,
8 within fifteen days after the plan of such merger shall
9 have been mailed to such shareholders, make written
demand on the corporation, or, in the case of a merger
10 or consolidation, on the surviving or new corporation,
domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

(b) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation, is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court of general civil jurisdiction have been made or filed within the time provided in subsection (e) of this section, or if a court of general civil jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(c) Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each share-
holder to pay for such shares at a specified price deemed
by such corporation to be fair value thereof. Such
notice and offer shall be accompanied by a balance
sheet of the corporation the shares of which the dis-
senting shareholder holds, as of the latest available date
and not more than twelve months prior to the making
of such offer, and a profit and loss statement of such
corporation for the twelve months' period ended on
the date of such balance sheet.
(d) If within thirty days after the date on which
such corporate action is effected the fair value of such
shares is agreed upon between any such dissenting share-
holder and the corporation, payment therefor shall be
made within ninety days after the date on which such
corporate action was effected, upon surrender of the
certificate or certificates representing such shares. Upon
payment of the agreed value the dissenting shareholder
shall cease to have any interest in such shares.
(e) If within such period of thirty days, a dissenting
shareholder and the corporation do not so agree, then
the corporation shall within thirty days after receipt of
written demand from any dissenting shareholder, which
written demand must be given within sixty days after
the date on which such corporate action was effected,
file a complaint in a court of general civil jurisdiction
requesting that the fair value of such shares be found
and determined, or the corporation may file such com-
plaint at any time within such sixty-day period at its
own election. Such complaint shall be filed in any court
of general civil jurisdiction in the county in which the
principal office of the corporation is situated, or, if there
be no such office in this state, in the county in which
any dissenting shareholder resides or is found or in
which the property of such corporation, or any part
of it, may be. If the corporation shall fail to institute
such proceedings, any dissenting shareholder may do so
in the name of the corporation. All dissenting share-
holders wherever residing, may be made parties to the
proceedings as an action against their shares quasi in
rem. A copy of the complaint shall be served on each
dissenting shareholder who is a resident of this state in
the same manner as in other civil actions. Dissenting shareholders who are nonresidents of this state shall be served a copy of the complaint by registered or certified mail, return receipt requested. In addition, service upon such nonresident shareholders shall be made by publication, as provided in Rule 4 (e) (2) of the West Virginia Rules of Civil Procedure. All shareholders who are parties to the proceeding shall be entitled to judgement against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or any subsequent appointment. The judgement shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. The judgement shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discre-
tion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding. Any party to the proceeding may appeal any judgment or ruling of the court as in other civil cases.

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

g) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

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

1 A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators and verified by them, and shall set forth:

(1) The name of the corporation.
(2) The date of issuance of its certificate of incorporation.
(3) That none of its shares has been issued.
(4) That the corporation has not commenced business.
(5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
(6) That no debts of the corporation remain unpaid.
(7) That a majority of the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, subject to the provisions of section sixty-one of this article, and 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 his office; and (iii) issue a certificate of dissolution to which he shall affix the other duplicate original.

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

(d) If the certificate of incorporation shall have been recorded in the office of the clerk of the county court of any county in the state, the incorporators or their representative shall record the certificates of dissolution in the office of the clerk of the county court in which the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation, and upon such recordation the existence of the corporation shall cease.

§31-1-125. Voluntary dissolution by consent of shareholders.
A corporation may be voluntarily dissolved by the written consent of all its shareholders.
Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

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

(c) The names and respective addresses of its directors.

(d) A copy of the written consent signed by all shareholders of the corporation.

(e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

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

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

(a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this article for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(c) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be
adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(d) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) The names and respective addresses of its officers.

(3) The names and respective addresses of its directors.

(4) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.

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

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

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

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, subject to the provisions of section sixty-one of this article, and 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 his office; and (iii) return the other duplicate 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 of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until an order dissolving the corporation has been entered by a court 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 of intent to dissolve:

(a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

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

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

1 By the written consent of all of its shareholders, a corporation 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
shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms 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 his office; and (iii) return the other duplicate original to the corporation or its representative.

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

Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

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

If not less than one fifth in interest of the shareholders of a corporation desire to wind up its affairs, they may apply by complaint to the circuit court of the county in which the principal office of such corporation is situated, or, if there be no such office in this state, to the circuit court of the county in which the other shareholders, or any one or more of them, reside or are found, or in which the property of such corporation or any part of it may be, setting forth in the complaint the grounds of their application, and the court may thereupon proceed according to the principles and usages of law and equity to hear the matter, and, if sufficient cause therefor be shown, to order a dissolution of the corporation and make such orders and judgments, and award such injunctions in the cause as justice and right may require. In any such action the defendant holders of a majority of the shares of the outstanding stock of such corporation shall have the right to avoid the appointment of a receiver or the dissolution of such corporation by purchasing the shares of stock owned by the plaintiffs at their fair cash value. If the
21 defendant shareholders shall elect to purchase the shares of stock owned by the plaintiffs and are unable to agree with the plaintiffs upon the fair cash value of such shares, and shall give bond with sufficient security to protect the interests and rights of the plaintiffs and to assure unto the plaintiffs the payment of the value of their shares of stock, the court shall stay the action or proceeding and shall proceed to ascertain and fix the value of the shares of stock owned by the plaintiffs. For such purpose the court shall appoint three disinterested commissioners to appraise the fair value of such shares of stock, and shall make an order referring the matter to the commissioners so appointed for the purpose of ascertaining such value; and such order shall prescribe the time and manner of producing evidence, if evidence be required. The award of such commissioners, or of a majority of them, when confirmed by the court shall be final and conclusive upon all parties, and the court shall enter a judgment for the amount of such award against such defendant shareholders and the surety or sureties on such bond, and such judgment may be enforced in the same manner as other orders and judgments of such court. Any shareholder, feeling aggrieved by such action of the court, may appeal to the supreme court of appeals of this state, as otherwise provided by law. The defendant shareholders shall pay to the plaintiff shareholders the value of their stock ascertained and ordered as aforesaid, or, in case of an appeal, as fixed on such appeal; and, on receiving such payment or the tender thereof, such plaintiff shareholders shall transfer 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 or affairs of a business corporation, pursuant to section forty-one of this article, the assets of such corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders 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 “corporation” shall refer exclusively to nonprofit corporations.

§31-1-137. Members.

1 A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws.

2 A corporation may issue certificates evidencing membership therein.

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


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

2 A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

3 The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by
§31-1-139. Board of directors.
1 The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

§31-1-140. Removal of directors.
1 A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws.

§31-1-141. Committees; authority; limitations of authority.
1 If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to (i) amending, altering or repealing the bylaws; (ii) electing, appointing or removing any member of any such committees or any director or officer of the corporation; (iii) amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger or adopting a plan of consolidation with another corporation; (iv) authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; (v) authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; (vi) adopting a plan for the distribution of the assets of the corporation; or (vii) amending, altering or repealing any resolution of the board of
§31-1-142. Officers; removal of officers.

(a) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(b) Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§31-1-143. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its principal office in this state a record of the names and addresses of its members.
entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

§31-1-144. Shares of stock permitted; dividends prohibited.

Corporations may have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this article, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

§31-1-145. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

§31-1-146. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this article.

§31-1-147. Procedure to amend articles of incorporation.

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

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendments and directing that they be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting.
within the time and in the manner provided in this article for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

§31-1-148. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and shall set forth:

(a) The name of the corporation.

(b) The amendment so adopted.

(c) If there are members entitled to vote thereon, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(d) If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

§31-1-149. Restated articles of incorporation; procedures for adoption; contents.

(a) A domestic corporation may at any time restate its articles of incorporation as theretofore amended, in the following manner:

(1) If there are members entitled to vote thereon, the
board of directors shall adopt a resolution setting forth
the proposed restated articles of incorporation and direct-
ing that they be submitted to a vote at a meeting of
members entitled to vote thereon, which may be either an
annual or a special meeting.

(2) Written notice setting forth the proposed restated
articles or a summary of the provisions thereof shall be
given to each member entitled to vote thereon, within the
time and in the manner provided in this article for the
giving of notice of meetings of members. If the meeting be
an annual meeting, the proposed restated articles or a
summary of the provisions thereof may be included in the
notice of such annual meeting.

(3) At such meeting a vote of the members entitled to
vote thereon shall be taken on the proposed restated
articles, which shall be adopted upon receiving the
affirmative vote of a majority of the members entitled to
vote thereon present at such meeting or represented by
proxy.

(4) If there are no members, or no members entitled to
vote thereon, the proposed restated articles shall be
adopted at a meeting of the board of directors upon
receiving the affirmative vote of a majority of the direc-
tors in office.

(b) Upon such approval, restated articles of incorpora-
tion shall be executed in duplicate by the corporation by
its president or vice president and by its secretary or
assistant secretary and shall set forth:

(1) The name of the corporation.
(2) The period of its duration.
(3) The purpose or purposes which the corporation is
authorized to pursue.
(4) Any other provisions, not inconsistent with law,
which are then set forth in the articles of incorporation as
theretofore amended, except that it shall not be necessary
to set forth in the restated articles of incorporation the
address of the principal office of the corporation, its di-
rectors or its incorporators.

The restated articles of incorporation shall state that
they correctly set forth the provisions of the articles of
incorporation as theretofore amended, that they have been
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(duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

§31-1-150. Approval of merger or consolidation; abandonment.
1 A plan of merger or consolidation shall be adopted in the following manner:
2 (a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this article for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving the approval of the majority of the votes which members present at each such meeting or represented by proxy are entitled to cast.
(b) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.
3 After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

§31-1-151. Contents required in articles of merger or consolidation.
1 Articles of merger or articles of consolidation shall, in addition to any other matters deemed appropriate, set forth:
2 (1) The plan of merger or the plan of consolidation.
3 (2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each
such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

§31-1-152. Sale, lease, exchange or mortgage of assets.

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation, domestic or foreign, whether stock or nonstock and whether or not organized for profit, as may be authorized in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this article for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may
fix, or may authorize the board of directors to fix, any or
all of the terms and conditions thereof and the considera-
tion to be received by the corporation therefor. Such
authorization shall require the approval of the majority
of the votes which members present at such meeting or
represented by proxy are entitled to cast. After such
authorization by a vote of members, the board of directors
nevertheless, in its discretion, may abandon such sale,
lease, exchange, mortgage, pledge or other disposition of
assets, subject to the rights of third parties under any con-
tracts relating thereto, without further action or approval
by members.

(b) If there are no members, or no members entitled
to vote thereon, a sale, lease, exchange, mortgage, pledge
or other disposition of all or substantially all of the prop-
erty and assets of a corporation shall be authorized upon
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.

(a) Any member of a corporation who holds shares of
or owns an interest in such corporation shall have the
right to dissent from any of the following corporate ac-
tions:

(1) Any plan or merger or consolidation to which the
corporation is a party; or

(2) Any sale or exchange of all or substantially all of
the property and assets of the corporation not made in the
usual and regular course of its business, including a sale
in dissolution but not including a sale pursuant to an order
of a court having jurisdiction in the premises or a sale for
cash on terms requiring that all or substantially all of the
net proceeds of sale be distributed to the members in ac-
cordance with their respective interests within one year
after the date of sale.

(b) All of the rights enjoyed by dissenting sharehold-
ers, as provided in section one hundred twenty-three of
this article, shall apply to and be enjoyed by any mem-
ber electing to exercise his right of dissent, and all of the
procedures relating to the valuation and purchase of such
dissenting member’s shares or interest in the corporation
and to the payment therefore as are contained in said sec-
section one hundred twenty-three shall apply to such dis-
senting member's shares or interest to the same extent
as if said section one hundred twenty-three were set forth
in extenso in this section. Similarly, the right to judicial
relief, as provided for dissenting shareholders in said sec-
tion one hundred twenty-three, shall be available to the
same extent as specified in such section, and the same
procedures therein outlined shall apply to any civil action
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
proposed dissolution to be mailed to each known creditor of the corporation by registered or certified mail, return receipt requested, and the corporation shall proceed to collect its assets and apply and distribute them as provided in this article.

(c) As soon as practicable after the passage of a resolution to dissolve, the directors and officers of the corporation shall cause the corporate assets to be distributed in the manner provided in this article, but no such distribution shall be made to the members of the corporation until notice of the resolution of dissolution shall have been published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county in which its principal office is located, or if there be no such office in this state, then any county in this state where it conducts its affairs or transacts its business.

§31-1-155. Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provisions shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this article.

(d) Other assets, if any, shall be distributed in ac-
cordance with the provisions of the articles of incorpora-

cion or the bylaws to the extent that the articles of in-
corporation or bylaws determine the distributive rights
of members, or any class or classes of members, or pro-
vide for distribution to others.

(e) Any remaining assets may be distributed to such
persons, societies, organizations or domestic or foreign
corporations, whether stock or nonstock and whether or
not organized for profit, as may be specified in a plan of
distribution adopted as provided in this article.

§31-1-156. Plan of distribution.

A plan providing for the distribution of assets, not
inconsistent with the provisions of this article, may be
adopted by a corporation in the process of dissolution and
shall be adopted by a corporation for the purpose of
authorizing any transfer or conveyance of assets for which
this article requires a plan of distribution, in the following
manner:

(a) If there are members entitled to vote thereon, the
board of directors shall adopt a resolution recommending
a plan of distribution and directing the submission thereof
to a vote at a meeting of members entitled to vote thereon,
which may be either an annual or a special meeting.
Written notice setting forth the proposed plan of distri-
bution or a summary thereof shall be given to each mem-
ber entitled to vote at such meeting, within the time and
in the manner provided in this article for the giving of
notice of meetings of members. Such plan of distribution
shall be adopted upon receiving the approval of a majority
of the votes which members present at such meeting or
represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to
vote thereon, a plan of distribution shall be adopted at a
meeting of the board of directors upon receiving a vote of
a majority of the directors in office.

§31-1-157. Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of
a certificate of dissolution by the secretary of state,
revoke the action theretofore taken to dissolve the
corporation, in the following manner:
(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Each member entitled to vote at such meeting shall be given written notice stating that the purpose, or one of the purposes of such meeting, is to consider the advisability of dissolving the corporation. Such notice shall be given within the time and in the manner provided in this article for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving the approval of a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again do or transact business or conduct its affairs.

§31-1-158. Application of assets in liquidation of corporation by court.

In all proceedings to liquidate the assets and business or affairs of a nonprofit corporation, pursuant to section forty-one of this article, the assets of such corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be
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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, eleemosynaary, 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.
(4) The names and respective addresses of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

(c) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this article, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections in which event the penalties hereafter prescribed in this article for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this article and returned to the secretary of state within thirty days from the date on which it was 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 refuses to file its annual report for three successive years, as required by the provisions of section one hundred
fifty-nine of this article, shall be notified by registered
or certified mail, return receipt requested, of its failure
to file such annual report. Such notice shall be mailed to
the address of its last known principal office in this state
or if it has no such principal office in this state, then
such notice shall be mailed to the address of its last known
principal office, wherever situated.
Such notice shall also advise the corporation that its
failure to file all of the annual reports within thirty days
of receipt of the notice shall subject such corporation to
an order of dissolution or an order revoking its certificate
of authority, as the case may be. Such order shall also
advise the corporation of its right to a hearing and shall
set forth the date and time of the hearing, which hearing
shall be held in the office of the secretary of state by the
secretary of state or his designee. At such hearing, the
corporation shall be afforded an opportunity to explain
its reasons for failure to file the required reports.
If the corporation fails to file the required reports
within such thirty-day period or fails to appear at the
hearing, as set by the secretary of state, or fails to ex-
plain to the satisfaction of the secretary of state its rea-
sons for not filing the reports, then the secretary of state
shall issue an order dissolving the corporation or shall
issue an order revoking its certificate of authority as the
case may be.
Any person or corporation aggrieved by the action of
the secretary of state with respect to dissolving the cor-
poration or revoking its certificate of authority under this
section shall have the same right of appeal as set forth in
subsection (h) of section sixty-eight of this article.

CHAPTER 11. TAXATION.

ARTICLE 12. LICENSE TAXES.

§11-12-77. Relief from assessment of corporate license tax.

Any corporation feeling aggrieved at the assessment of
its license tax by the tax commissioner, under the provi-
sions of this article, may apply to the board of public
works for relief; and the board shall have authority
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
hundred and forty dollars, and an additional fifteen cents on each one thousand dollars, or fraction thereof, in excess of one million dollars; if more than fifteen million dollars, twenty-five hundred dollars. The license tax collected hereunder shall be in addition to the annual fee, if any, payable to the secretary of state as statutory attorney in fact. For the purpose of the assessment of the license tax provided by this section, and that provided by sections eighty and eighty-one of this article, and for no other purpose, shares of stock having no par value shall be presumed to be of the par value of twenty-five dollars each: Provided, however, That if such stock was originally issued for a consideration greater than twenty-five dollars per share, such license taxes as are required to be paid to the tax commissioner under the provisions of sections seventy-nine, eighty and eighty-one of this article shall be computed upon the basis of the consideration for which such stock was issued.

§11-12-79. Assessments and collection of tax on domestic corporation.

When application is made to the secretary of state for a certificate of incorporation, it shall be his duty to make the assessment and collect the license tax for the first year before issuing such certificate. If such certificate be issued after the last day of the third month of the license year, he shall assess one tenth of the amount of the annual tax for each month, or fractional part of a month, to ensue before the first day of the next license tax year; but in no case shall the amount assessed and collected be less than ten dollars in addition to the fee, if any, payable to the secretary of state as statutory attorney in fact. Thereafter, on or before the first day of the license tax year next following the date of the certificate of incorporation, and on or before the first day of each succeeding license tax year, the tax commissioner shall collect such tax for a full year together with the statutory attorney fee; except that if the certificate of incorporation be issued on or after the first day of the second month preceding the beginning of the license tax year, and before the first day of the ensuing license tax year, the secretary of state
shall assess and collect the tax for the full year beginning
on such first day of the license tax year in addition to the
initial tax, together with the statutory attorney fee. The
money so received by the secretary of state and the tax
commissioner shall be paid by them into the state treas-
ury. Any corporation authorized by its articles of incor-
poration to issue stock having no par value shall, within
sixty days after its board of directors shall have autho-
ized the issue of all or a portion of such stock under the
provisions of article one, chapter thirty-one of this code,
make a report to the tax commissioner stating the number
of shares of stock so authorized to be issued and the con-
sideration for which such stock is authorized to be issued.
Such report shall be verified by the affidavit of the presi-
dent, secretary or other executive officer of such corpora-
tion.

The payment of the tax and statutory attorney fee,
payable under the provisions of this section, shall be ac-
accompanied by a report on forms provided by the tax
commissioner for the purpose, and shall be submitted in
duplicate. The tax commissioner shall forward a copy of
such report to the secretary of state, together with a list
of all corporations which have paid such tax. Such report
shall contain, in addition to such information as the tax
commissioner deems appropriate, the name and address of
the corporation, the date of incorporation, the place of its
principal office and the names and post-office addresses of
its president, secretary and other officers.

§11-12-80. License tax on foreign corporations.

Every foreign corporation which has qualified to hold
property or to do business in this state shall make a report
in duplicate to the tax commissioner annually in the third
month preceding the beginning of the license tax year, in
which report shall be set out: (a) The name of such
corporation, the name of the state or country by which
incorporated, the date of the incorporation, the date of the
certificate of the secretary of state authorizing it to do
business in this state, the place of its principal office,
the names and post-office addresses of its president, secre-
tary and its officers, if any, charged with the duty of
making returns of its property for taxation and the name
and post-office address of its attorney of record in this
state; (b) the number of shares of its authorized capital
stock having a par value and the par value of each share,
and the number of its issued and outstanding shares and
the par value of each share; (c) the number of shares of
its authorized capital stock having no par value, the num-
ber of shares of such stock authorized to be issued and the
considerations fixed for the issue of each share of the same
by its articles of incorporation or board of directors, and
the number of shares thereof issued and outstanding; (d)
the value of the property owned and used by such corpor-
ation within this state, where situate, of what it consists,
and the number of acres of land it holds in this state, and
the value of its property owned and used without this
state; and (e) the proportion of its capital stock which is
represented by property owned and used in the state of
West Virginia. Such report shall be verified by the
affidavit of the president, secretary or other executive
officers of such corporation.

It shall be the duty of the tax commissioner to assess
and fix the license tax of such corporation according to the
proportion of its issued and outstanding capital stock
which is represented by its property owned and used in
this state, which license tax shall be at the rate prescribed
in section seventy-eight of this article, plus seventy-five
percent of such tax. In no event shall any such corpora-
tion pay an annual license tax of less than two hundred
fifty dollars, which shall be in addition to the fee of the
secretary of state as statutory attorney in fact. The tax
commissioner may in any case require such additional
information as he may deem necessary to enable him
to assess and fix the just amount of license tax of such
corporation; and it shall be his duty to notify every such
corporation of the amount so assessed by him and it
shall be the duty of the corporation to pay the same to
the tax commissioner within thirty days thereafter, and
if it fails to do so it shall be liable to the penalties pre-
scribed in sections eighty-six and eighty-seven of this
article.
§11-12-81. Preliminary report by foreign corporations; assessment; collection of license taxes.

Every foreign corporation at the time of its application for a certificate of authority under the provisions of article one of chapter thirty-one of this code, shall file with the secretary of state a report preliminary to the annual report hereinbefore provided for, which preliminary report shall contain sufficient information upon which to base an assessment of its license tax for the then current year. It shall be the duty of the secretary of state to make assessment of its license tax for such year, and he may require such further information as he may deem necessary for that purpose. Before issuing such certificate the secretary of state shall collect the amount of license tax he finds to be proper for the license tax year ending with the thirtieth day of the last month of the license tax year. If the certificate be issued after the last day of the third month of the license tax year and before the first day of the ensuing license tax year, the secretary of state shall assess and collect the amount of the annual license tax for each month or fractional part of a month to ensue before the first day of the ensuing license tax year. Thereafter on or before the first day of the license tax year next following the date of the certificate of authority and on or before every succeeding first day of the license tax year the tax commissioner shall assess and collect such tax for a full year: Provided, That if the certificate be issued in either of the last two months of the license tax year, the secretary of state shall assess and collect the license tax for such month or months, as well as for a full year beginning with the first day of the ensuing license tax year. When the tax commissioner shall assess and collect the tax on any such foreign corporation, he may include in the tax for any year any amount that such corporation should have paid for any previous year and failed to pay. The collections hereunder shall be in addition to the annual fee of the secretary of state as statutory attorney in fact. All moneys collected by the secretary of state and the tax commissioner shall be paid into the state 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 corporation whose principal place of business or chief works is located without the state, shall pay an annual fee of ten dollars for the services of the secretary of state as attorney in fact for such corporation, which fee shall be due and payable at the same time, collected by the same officers, and accounted for in the same way, as the annual license tax, payable to the secretary of state as statutory 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 the fifteenth day of the third month next preceding the first day of the license tax year and the fifteenth day of the second month next preceding the first day of the license tax year, in each year, to notify each corporation, liable to the tax imposed by this article, of the time of payment of such tax and the amount thereof, together with the statutory attorney fee, if any. Such notices may be sent through the mails, addressed to the corporation at its last known post-office address as shown by the records in the office of the secretary of state. If the tax commissioner shall make a mistake in the amount of such tax such corporation may file a sworn certificate of the president, vice president or secretary of the corporation, showing such mistake, or showing the actual amount of tax due; and, in that event, it shall be the duty of the tax commissioner to accept the amount due as shown by such certificate, unless contrary to provisions of this article.
2 At the time of making payment to the tax commissioner every domestic corporation shall deliver to him a statement, in duplicate, which shall show the name of the corporation, the date of its certificate of incorporation, the name and post-office address of its attorney of record in this state, if any, the names and post-office addresses of its president, secretary and treasurer, the amount of its authorized capital stock, the number of acres of land it holds in this state if the number exceeds ten thousand acres, and such other facts as the tax commissioner may require.
3 Such statement shall be signed by the president, secretary
or treasurer of the corporation. The amount of such tax shall be deemed a debt due the state, and shall be a lien as to an innocent purchaser for value, on the property and assets of the corporation prior to all other liens, except the lien of the taxes levied on its property for state, county and district purposes, from the time a notice of such lien, specifying the year and the amount for which the lien is claimed, is filed in the office of the clerk of the county court of the county in which the property subject to such liens is situated. Such clerk shall, upon the filing in his office of any such notice, record such notice in a separate docket in his office to be known as “Corporation License Tax Lien Docket,” and index the same in the name of the corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the tax commissioner and delivered to the clerk of the county court in whose office notice of such lien is filed a release thereof, which said release shall be filed and recorded by such clerk in like manner as releases of judgment liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.

The tax commissioner shall forward to the secretary of state a copy of the statement required by this section, together with a list of all corporations which have delivered such statements and which have paid their taxes. Such list shall contain, in addition to such information as the tax commissioner deems appropriate, the name and address of the corporation, the place of its principal office, and the names and post-office addresses of its president, secretary and other officers.

§11-12-84. Publication of list of delinquent corporations.

The tax commissioner shall, between the first and fifteenth day of the second month of the license tax year in every year, publish a list of all corporations failing to pay the license tax, or any part thereof, due therefrom on or before the first day of the first month of the license tax year, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. Such list shall contain the names of such delinquent corporations, arranged in two classes,
domestic and foreign. The cost of such publication shall be paid by the tax commissioner when allowed by the board of public works, out of the moneys in the treasury. Any such delinquent corporation may, on or before the first day of the fifth month of the license tax year following or at any time before judgment or order is entered as hereinafter provided, pay the amount of such tax and a penalty of one per cent per month for each month or fractional part thereof that such failure continued, but the amount of such penalty shall not be less than five dollars. After the publication of the list of delinquent corporations by the tax commissioner, he shall mail to the last known post-office address of each of such corporations a supplemental notice, together with a statement of the total amount of tax and penalties due therefrom, which notice shall be mailed at least thirty days before the first day of the fifth month of the license tax year.

§11-12-86. Action to enforce payment of corporate license tax; forfeiture of charter or revocation of right to do business.

Within thirty days after such first day of the fifth month of the license tax year, the tax commissioner shall certify to the governor and the secretary of state a list of all such delinquent corporations, domestic and foreign. The secretary of state shall preserve the list in his office, and a certificate from him that the name of any corporation mentioned in such certificate is delinquent in the payment of the license tax imposed by this article shall be prima facie evidence thereof. Within thirty days after receiving such list from the tax commissioner the gov-
The governor 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
claims due the state are collected. In any such action
the court may upon payment of the judgment herein-
above mentioned together with interest and costs and
the payment of any and all license taxes which may have
accrued since the institution of such action, reinstate any
corporation to its former rights as if it had not been
delinquent and proceeded against under this section, and
make such other orders as it shall deem necessary and
proper; and may appoint a receiver for any such cor-
poration and order its assets marshalled and distributed
among its creditors; and may, on motion of the attorney
general, grant an injunction against any such corporation
restraining it from the exercise of any franchise or the
transaction of any business within this state, until such tax
and the costs be paid. Any person or persons who shall
exercise or attempt to exercise any powers under the ar-
ticles of incorporation, charter or certificate of incorpor-
ation of any such corporation, after the issuing of the gov-
ernor's proclamation, shall be guilty of a misdemeanor,
and shall be punished by imprisonment not exceeding one
year, or a fine not exceeding one thousand dollars, or both
such fine and imprisonment, in the discretion of the court.
The words "license tax" used in this section include, in
addition to the amount of license tax proper, all penalties
and fines accruing for failure to pay such tax, the annual
fee of the secretary of state as statutory attorney in fact,
and the cost of any action to enforce the collection of
the same. When two or more corporations are included
in one action, the court shall apportion the cost thereof
among them as it may deem just.

If in any such action the court shall order the sale
of the property of any delinquent corporation without
ordering that its assets be marshalled and distributed
among its creditors, the purchaser at the sale shall acquire
title to the property subject to any rights which the cred-
itors of the corporation would have had if no action had
been brought by the state for collection of delinquent
license taxes. In any subsequent action, however, brought
by the creditors of the corporation to subject the prop-
erty in the hands of the purchaser to the payment of their
92 claims against the corporation, the purchaser shall be
given a preference over any creditor for the payment of
the purchase price, including costs with interest at six
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-
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, revoca-
tion 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,
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 inclusive of this article shall be construed as imposing license tax on corporations chartered strictly for educational, literary, agricultural, scientific, religious or charitable purposes, or upon charters, or certificates of incorporation incorporating cemeteries or lodges of Masons, Odd Fellows, or the like, or other charitable, fraternal or patriotic societies not incorporated for profit to the stockholders; but the secretary of state shall require full proof as to the character of any such corporation claiming such exemption from the payment of license tax.

2 Every such corporation, however, shall, in the third month preceding the first day of the license tax year in each year, deliver to the tax commissioner the statement required 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 the close of each month make a report to the tax commissioner for the preceding month, in which he shall set out the name of every corporation to which he issued a certificate of incorporation during the month, as well as the name of each corporation to which he issued a certificate under section fifty-four, article one, chapter thirty-one of this code with the amount of license tax paid to him by each; also he shall set out in such report the names of all corporations to which he issued, during such preceding month, certificates of increase or decrease of stock, or of shares of stock, or of par value of shares of stock; certificates of change of name or of change of location of principal office; and a statement of all moneys received by him during such preceding month from all sources and due to the state, and pay the same into the treasury; if he fail to do so it shall be the duty of the tax 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, chapter thirty-one of this code, the secretary of state shall charge for services rendered in his office the following fees to be paid by the person to whom the service is rendered at the time it is done:

2 For each certificate of incorporation or copy thereof, including restatements of any such certificates issued on new agreements, and/or consolidations or all certificates of merger or consolidation or certificates authorizing a foreign corporation to do business within this state $10.00

3 For each certified copy of certificate of incorporation, not to exceed ten pages $10.00

4 If such copy contains in excess of ten pages, for each additional page $20

5 For filing and recording a trademark $5.00

6 For each certificate of change of name, of increase or decrease of authorized capital stock, of change of principal office, or of amendment to certificate of incorporation $5.00

7 For recording a power of attorney and certificate thereof $3.00

8 For any other certificate, whether required by law or made at the request of any person $5.00

9 The foregoing fees shall include the tax on the great seal or the less seal impressed on any such document, as well as the filing, recording and indexing of the same.

10 For endorsing and filing reports of corporations, and all other papers, which shall include the indexing of the same, for each report or paper filed $1.00

11 For any search, not less than $1.00

12 For searches of more than one hour, for each hour or fraction thereof consumed in making such search $1.00

13 The cost of the search shall be in addition to the
cost of any certificate issued pursuant thereto or
based thereon.

For entering statement of satisfaction of conditional
sale contract .............................................. 1.00

For filing each financing, continuation or termina-
tion statement or other statement or writing per-
mitted to be filed under chapter forty-six of the
code .................................................. 1.00

For filing, preserving and indexing a security agree-
ment filed under chapter forty-six of the code ...... 2.00

For recording any paper for which no specific fee
is prescribed ........................................... 1.00

Or at the rate, for each one hundred words re-
corded, of ............................................ 2.00

For issuing commission to a notary public, or to a
commissioner of deeds, which shall include the
tax on the state seal thereon and other charges .... 5.00

For a testimonial ........................................ 1.50

For a copy of any paper, if one sheet .................. 1.00

For each sheet of copy after the first .................. .75

For issuing a commission to a commissioner in any
other state ............................................. 5.00

For making out a requisition for a fugitive from
justice demanded of the executive authority of
another state ........................................... 2.00

For issuing a warrant for the arrest of a fugitive
from justice demanded by the executive authority
of another state ........................................ 2.00

For any other work or service not herein enu-
merated, such fee as may be elsewhere prescribed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within批准 this the 26th day of March, 1974.

Governor