

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 107

(By Mr. Meredith and Mr. Paffenbarger)

PASSED March 9 1974

In Effect July 1, 1975 Passage



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

THIS DATE 3-27-74

107

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

CHAPTER 31. CORPORATIONS

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

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

§31-1-1. Short title.

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

§31-1-2. Construction of article.

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

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

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

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

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

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

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

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

§31-1-5. Severability.

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

PART II—CORPORATIONS GENERALLY.

§31-1-6. Definitions.

1 As used in this article, unless the context otherwise
2 requires a different meaning, the term:
3 (a) "Articles of incorporation" means the original or
4 restated articles of incorporation or articles of consolida-
5 tion and all amendments thereto including articles of
6 merger.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-7. Purposes of incorporation.

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

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

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

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

1 Every corporation shall have the power:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-10. Defense of ultra vires.

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-12. Reserved name.

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

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

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

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

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

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

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

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

§31-1-13. Registered name.

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

10 Such registration shall be made by:

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

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

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

§31-1-14. Renewal of registered name.

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

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

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

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

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

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

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

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

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

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

§31-1-17. Bylaws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-23. Quorum of directors.

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

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

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

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

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

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

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

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

§31-1-26. Incorporators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Upon the issuance of the certificate of amendment by
2 the secretary of state, the amendment shall become effec-
3 tive and the articles of incorporation shall be deemed to be
4 amended accordingly.

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

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

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

14 The restated certificate of incorporation, together with
15 the duplicate original of the restated articles of incorpora-
16 tion affixed thereto by the secretary of state, shall be
17 returned to the corporation or its representative.

18 Upon the issuance of the restated certificate of in-
19 corporation by the secretary of state, the restated articles
20 of incorporation shall become effective and shall super-

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

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

§31-1-34. Procedure for merger.

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

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

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

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

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

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

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

§31-1-35. Procedure for consolidation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-43. Qualifications of receivers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (3) Maintaining bank accounts;

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

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

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

38 (7) Granting funds or other gifts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-71. Greater voting requirements.

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

§31-1-72. Waiver of notice.

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

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

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

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

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

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

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

§31-1-74. Corporate acknowledgments.

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

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

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

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

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

PART III—BUSINESS CORPORATIONS

§31-1-77. Use of term "corporation."

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

§31-1-78. Authorized shares.

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

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

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

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

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

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

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

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

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

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

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

14 (1) The rate of dividend.

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

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

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

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

24 (6) Voting rights if any.

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

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

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

46 (1) The name of the corporation.

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

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

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

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

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

§31-1-80. Subscription for shares.

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

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

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

§31-1-81. Consideration for shares.

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

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

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

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

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

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

§31-1-82. Payment for shares.

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

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

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

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

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

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

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

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

22 (a) Eliminating fractional shares.

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

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

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

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

§31-1-84. Stock rights and options.

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

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

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

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

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

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

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

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

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

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

§31-1-87. Certificates representing shares.

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

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

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

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

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

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

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

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

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

§31-1-88. Fractional shares.

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

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

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

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

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

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

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

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

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

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

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

§31-1-92. Voting record.

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

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

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

§31-1-93. Voting of shares.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-96. Removal of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-99. Dividends.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-105. Books and records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-1-109. Articles of amendment.

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

6 (a) The name of the corporation.

7 (b) The amendments so adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

12 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) The plan of merger;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

33 (1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (a) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV—NONPROFIT CORPORATIONS.

§31-1-136. Use of term "corporation."

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

§31-1-137. Members.

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

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

§31-1-138. Voting.

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

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

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

21 distributing such votes on the same principle among any
22 number of such candidates.
23 If a corporation has no members or its members have no
24 right to vote, the directors shall have the sole voting
25 power.

§31-1-139. Board of directors.

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

§31-1-140. Removal of directors.

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

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

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

23 directors which by its terms provides that it shall not be
24 amended, altered or repealed by such committee. The
25 designation and appointment of any such committee and
26 the delegation thereto of authority shall not operate to
27 relieve the board of directors, or any individual director
28 of any responsibility imposed upon it or him by law.

§31-1-142. Officers; removal of officers.

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

13 The articles of incorporation or the bylaws may provide
14 that any one or more officers of the corporation shall be
15 ex officio members of the board of directors.

16 The officers of a corporation may be designated by such
17 additional titles as may be provided in the articles of
18 incorporation or the bylaws.

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

§31-1-143. Books and records.

1 Each corporation shall keep correct and complete books
2 and records of account and shall keep minutes of the
3 proceedings of its members, board of directors and com-
4 mittees having any of the authority of the board of
5 directors; and shall keep at its principal office in this
6 state a record of the names and addresses of its members

7 entitled to vote. All books and records of a corporation
8 may be inspected by any member, or his agent or attor-
9 ney, for any proper purpose at any reasonable time.

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

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

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

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

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

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

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

1 Amendments to the articles of incorporation shall be
2 made in the following manner:
3 (a) If there are members entitled to vote thereon, the
4 board of directors shall adopt a resolution setting forth
5 the proposed amendments and directing that they be sub-
6 mitted to a vote at a meeting of members entitled to vote
7 thereon, which may be either an annual or a special meet-
8 ing. Written notice setting forth the proposed amendment
9 or a summary of the changes to be effected thereby shall
10 be given to each member entitled to vote at such meeting

11 within the time and in the manner provided in this article
12 for the giving of notice of meetings of members. The pro-
13 posed amendment shall be adopted upon receiving a
14 majority of the votes which members present at
15 such meeting or represented by proxy are entitled to
16 cast.

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

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

§31-1-148. Articles of amendment.

1 The articles of amendment shall be executed in dupli-
2 cate by the corporation by its president or a vice president
3 and by its secretary or an assistant secretary and shall
4 set forth:

5 (a) The name of the corporation.

6 (b) The amendment so adopted.

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

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

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

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

4 (1) If there are members entitled to vote thereon, the

5 board of directors shall adopt a resolution setting forth
6 the proposed restated articles of incorporation and direct-
7 ing that they be submitted to a vote at a meeting of
8 members entitled to vote thereon, which may be either an
9 annual or a special meeting.

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

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

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

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

33 (1) The name of the corporation.

34 (2) The period of its duration.

35 (3) The purpose or purposes which the corporation is
36 authorized to pursue.

37 (4) Any other provisions, not inconsistent with law,
38 which are then set forth in the articles of incorporation as
39 theretofore amended, except that it shall not be necessary
40 to set forth in the restated articles of incorporation the
41 address of the principal office of the corporation, its di-
42 rectors or its incorporators.

43 The restated articles of incorporation shall state that
44 they correctly set forth the provisions of the articles of
45 incorporation as theretofore amended, that they have been

46 duly adopted as required by law and that they supersede
47 the original articles of incorporation and all amendments
48 thereto.

§31-1-150. Approval of merger or consolidation; abandonment.

1 A plan of merger or consolidation shall be adopted in
2 the following manner:

3 (a) If the members of any merging or consolidating
4 corporation are entitled to vote thereon, the board of
5 directors of such corporation shall adopt a resolution
6 approving the proposed plan and directing that it be
7 submitted to a vote at a meeting of members entitled to
8 vote thereon, which may be either an annual or a special
9 meeting. Written notice setting forth the proposed plan
10 or a summary thereof shall be given to each member
11 entitled to vote at such meeting within the time and in
12 the manner provided in this article for the giving of
13 notice of meetings of members. The proposed plan shall
14 be adopted upon receiving the approval of the majority
15 of the votes which members present at each such meeting
16 or represented by proxy are entitled to cast.

17 (b) If any merging or consolidating corporation has
18 no members, or no members entitled to vote thereon, a
19 plan of merger or consolidation shall be adopted at a
20 meeting of the board of directors of such corporation
21 upon receiving the vote of a majority of the directors in
22 office.

23 After such approval, and at any time prior to the filing
24 of the articles of merger or consolidation, the merger or
25 consolidation may be abandoned pursuant to provisions
26 therefor, if any, set forth in the plan of merger or
27 consolidation.

§31-1-151. Contents required in articles of merger or consolidation.

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

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

5 (2) If the members of any merging or consolidating
6 corporation are entitled to vote thereon, then as to each

7 such corporation (i) a statement setting forth the date
8 of the meeting of members at which the plan was
9 adopted, that a quorum was present at such meeting,
10 and that such plan received a majority of the votes
11 which members present at such meeting or represented
12 by proxy were entitled to cast, or (ii) a statement that
13 such amendment was adopted by a consent in writing
14 signed by all members entitled to vote with respect
15 thereto.

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

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

1 A sale, lease, exchange, mortgage, pledge or other dis-
2 position of all, or substantially all, the property and as-
3 sets of a corporation may be made upon such terms and
4 conditions and for such consideration, which may consist
5 in whole or in part of money or property, real or personal,
6 including shares of any corporation, domestic or foreign,
7 whether stock or nonstock and whether or not organized
8 for profit, as may be authorized in the following manner:

9 (a) If there are members entitled to vote thereon, the
10 board of directors shall adopt a resolution recommend-
11 ing such sale, lease, exchange, mortgage, pledge or other
12 disposition and directing that it be submitted to a vote at
13 a meeting of members entitled to vote thereon, which
14 may be either an annual or a special meeting. Written
15 notice stating that the purpose, or one of the purposes,
16 of such meeting is to consider the sale, lease, exchange,
17 mortgage, pledge or other disposition of all, or substan-
18 tially all, the property and assets of the corporation shall
19 be given to each member entitled to vote at such meeting,
20 within the time and in the manner provided by this article
21 for the giving of notice of meetings of members. At such
22 meeting the members may authorize such sale, lease, ex-
23 change, mortgage, pledge or other disposition and may

24 fix, or may authorize the board of directors to fix, any or
25 all of the terms and conditions thereof and the considera-
26 tion to be received by the corporation therefor. Such
27 authorization shall require the approval of the majority
28 of the votes which members present at such meeting or
29 represented by proxy are entitled to cast. After such
30 authorization by a vote of members, the board of directors
31 nevertheless, in its discretion, may abandon such sale,
32 lease, exchange, mortgage, pledge or other disposition of
33 assets, subject to the rights of third parties under any con-
34 tracts relating thereto, without further action or approval
35 by members.

36 (b) If there are no members, or no members entitled
37 to vote thereon, a sale, lease, exchange, mortgage, pledge
38 or other disposition of all or substantially all of the prop-
39 erty and assets of a corporation shall be authorized upon
40 receiving the vote of a majority of the directors in office.

**§31-1-153. Right of members to dissent; procedures for de-
termining value of dissenting members' interests.**

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

5 (1) Any plan or merger or consolidation to which the
6 corporation is a party; or

7 (2) Any sale or exchange of all or substantially all of
8 the property and assets of the corporation not made in the
9 usual and regular course of its business, including a sale
10 in dissolution but not including a sale pursuant to an order
11 of a court having jurisdiction in the premises or a sale for
12 cash on terms requiring that all or substantially all of the
13 net proceeds of sale be distributed to the members in ac-
14 cordance with their respective interests within one year
15 after the date of sale.

16 (b) All of the rights enjoyed by dissenting sharehold-
17 ers, as provided in section one hundred twenty-three of
18 this article, shall apply to and be enjoyed by any mem-
19 ber electing to exercise his right of dissent, and all of the
20 procedures relating to the valuation and purchase of such
21 dissenting member's shares or interest in the corporation

22 and to the payment therefore as are contained in said sec-
23 tion one hundred twenty-three shall apply to such dis-
24 senting member's shares or interest to the same extent
25 as if said section one hundred twenty-three were set forth
26 in extenso in this section. Similarly, the right to judicial
27 relief, as provided for dissenting shareholders in said sec-
28 tion one hundred twenty-three, shall be available to the
29 same extent as specified in such section, and the same
30 procedures therein outlined shall apply to any civil action
31 instituted under this section one hundred fifty-three.

§31-1-154. Voluntary dissolution.

1 (a) A corporation may dissolve and wind up its
2 affairs in the following manner:

3 (1) If there are members entitled to vote thereon, the
4 board of directors shall adopt a resolution recommending
5 that the corporation be dissolved, and directing that the
6 question of such dissolution be submitted to a vote at a
7 meeting of members entitled to vote thereon, which may
8 be either an annual or a special meeting. Each member
9 entitled to vote at such meeting shall be given written
10 notice stating that the purpose, or one of the purposes,
11 of such meeting is to consider the advisability of dissolv-
12 ing the corporation. Such notice shall be given within the
13 time and in the manner provided in this article for the
14 giving of notice of meetings of members. A resolution to
15 dissolve the corporation shall be adopted upon receiving
16 the approval of the majority of the votes which members
17 present at such meeting or represented by proxy are en-
18 titled to cast.

19 (2) If there are no members, or no members entitled
20 to vote thereon, the dissolution of the corporation shall
21 be authorized at a meeting of the board of directors upon
22 the adoption of a resolution to dissolve by the vote of a
23 majority of the directors in office.

24 (b) Upon the adoption of a resolution to dissolve by
25 the members, or by the board of directors if there are no
26 members or no members entitled to vote thereon, the
27 corporation shall cease to conduct its affairs except in-
28 sofar as may be necessary for the winding up thereof.
29 The corporation shall immediately cause a notice of the

30 proposed dissolution to be mailed to each known creditor
31 of the corporation by registered or certified mail, return
32 receipt requested, and the corporation shall proceed to
33 collect its assets and apply and distribute them as pro-
34 vided in this article.

35 (c) As soon as practicable after the passage of a
36 resolution to dissolve, the directors and officers of the
37 corporation shall cause the corporate assets to be dis-
38 tributed in the maner provided in this article, but no such
39 distribution shall be made to the members of the cor-
40 poration until notice of the resolution of dissolution shall
41 have been published as a Class II legal advertisement in
42 compliance with the provisions of article three, chapter
43 fifty-nine of this code. The publication area for such pub-
44 lication shall be the county in which its principal office
45 in this state is located, or if there be no such office in this
46 state, then any county in this state where it conducts its
47 affairs or transacts its business.

§31-1-155. Distribution of assets.

1 The assets of a corporation in the process of dissolution
2 shall be applied and distributed as follows:

3 (a) All liabilities and obligations of the corporation
4 shall be paid and discharged, or adequate provisions shall
5 be made therefor.

6 (b) Assets held by the corporation upon condition
7 requiring return, transfer or conveyance, which condition
8 occurs by reason of the dissolution, shall be returned,
9 transferred or conveyed in accordance with such require-
10 ments.

11 (c) Assets received and held by the corporation sub-
12 ject to limitations permitting their use only for charit-
13 able, religious, eleemosynary, benevolent, educational or
14 similar purposes, but not held upon a condition requir-
15 ing return, transfer or conveyance by reason of the dis-
16 solution, shall be transferred or conveyed to one or more
17 domestic or foreign corporations, societies or organiza-
18 tions engaged in activities substantially similar to those
19 of the dissolving corporation, pursuant to a plan of dis-
20 tribution adopted as provided in this article.

21 (d) Other assets, if any, shall be distributed in ac-

22 cordance with the provisions of the articles of incorpora-
23 tion or the bylaws to the extent that the articles of in-
24 corporation or bylaws determine the distributive rights
25 of members, or any class or classes of members, or pro-
26 vide for distribution to others.

27 (e) Any remaining assets may be distributed to such
28 persons, societies, organizations or domestic or foreign
29 corporations, whether stock or nonstock and whether or
30 not organized for profit, as may be specified in a plan of
31 distribution adopted as provided in this article.

§31-1-156. Plan of distribution.

1 A plan providing for the distribution of assets, not
2 inconsistent with the provisions of this article, may be
3 adopted by a corporation in the process of dissolution and
4 shall be adopted by a corporation for the purpose of
5 authorizing any transfer or conveyance of assets for which
6 this article requires a plan of distribution, in the following
7 manner:

8 (a) If there are members entitled to vote thereon, the
9 board of directors shall adopt a resolution recommending
10 a plan of distribution and directing the submission thereof
11 to a vote at a meeting of members entitled to vote thereon,
12 which may be either an annual or a special meeting.
13 Written notice setting forth the proposed plan of distri-
14 bution or a summary thereof shall be given to each mem-
15 ber entitled to vote at such meeting, within the time and
16 in the manner provided in this article for the giving of
17 notice of meetings of members. Such plan of distribution
18 shall be adopted upon receiving the approval of a majority
19 of the votes which members present at such meeting or
20 represented by proxy are entitled to cast.

21 (b) If there are no members or no members entitled to
22 vote thereon, a plan of distribution shall be adopted at a
23 meeting of the board of directors upon receiving a vote of
24 a majority of the directors in office.

§31-1-157. Revocation of voluntary dissolution proceedings.

1 A corporation may, at any time prior to the issuance of
2 a certificate of dissolution by the secretary of state,
3 revoke the action theretofore taken to dissolve the
4 corporation, in the following manner:

5 (a) If there are members entitled to vote thereon, the
6 board of directors shall adopt a resolution recommending
7 that the voluntary dissolution proceedings be revoked, and
8 directing that the question of such revocation be submit-
9 ted to a vote at a meeting of members entitled to vote
10 thereon, which may be either an annual or a special meet-
11 ing. Each member entitled to vote at such meeting shall
12 be given written notice stating that the purpose, or one of
13 the purposes of such meeting, is to consider the advisa-
14 bility of dissolving the corporation. Such notice shall be
15 given within the time and in the manner provided in this
16 article for the giving of notice of meetings of members. A
17 resolution to revoke the voluntary dissolution proceedings
18 shall be adopted upon receiving the approval of a majority
19 of the votes which members present at such meeting or
20 represented by proxy are entitled to cast.

21 (b) If there are no members, or no members entitled to
22 vote thereon, a resolution to revoke the voluntary disso-
23 lution proceedings shall be adopted at a meeting of the
24 board of directors upon receiving the vote of a majority of
25 the directors in office.

26 Upon the adoption of such resolution by the members,
27 or by the board of directors where there are no members
28 or no members entitled to vote thereon, the corporation
29 may thereupon again do or transact business or conduct
30 its affairs.

**§31-1-158. Application of assets in liquidation of corporation
by court.**

1 In all proceedings to liquidate the assets and business
2 or affairs of a nonprofit corporation, pursuant to section
3 forty-one of this article, the assets of such corporation
4 or the proceeds resulting from a sale, conveyance or other
5 disposition thereof shall be applied and distributed as
6 follows:

7 (a) All costs and expenses of the court proceedings and
8 all liabilities and obligations of the corporation shall be
9 paid, satisfied and discharged, or adequate provision shall
10 be made therefor;

11 (b) Assets held by the corporation upon condition
12 requiring return, transfer or conveyance, which condition
13 occurs by reason of the dissolution or liquidation, shall be

14 returned, transferred or conveyed in accordance with such
15 requirements;

16 (c) Assets received and held by the corporation subject
17 to limitations permitting their use only for charitable,
18 religious, eleemosynary, benevolent, educational or simi-
19 lar purposes, but not held upon a condition requiring re-
20 turn, transfer or conveyance by reason of the dissolution
21 or liquidation, shall be transferred or conveyed to one or
22 more domestic or foreign corporations, societies or organi-
23 zations engaged in activities substantially similar to those
24 of the dissolving or liquidating corporation as the court
25 may direct;

26 (d) Other assets, if any, shall be distributed in
27 accordance with the provisions of the articles of incorpora-
28 tion or the bylaws to the extent that the articles of
29 incorporation or bylaws determine the distributive right
30 of members, or any class or classes of members, or provide
31 for distribution to others;

32 (e) Any remaining assets may be distributed to such
33 persons, societies, organizations or domestic or foreign
34 corporation, whether stock or nonstock and whether or
35 not organized for profit, specified in the plan of distribu-
36 tion adopted as provided in this article, or where no plan
37 of distribution has been adopted, as the court may direct.

**§31-1-159. Annual report of domestic and foreign corporations;
filing.**

1 (a) Each domestic corporation, and each foreign cor-
2 poration authorized to conduct affairs or do or transact
3 business in this state, shall file, within the time prescribed
4 by this article, an annual report setting forth:

5 (1) The name of the corporation and the state or coun-
6 try under the laws of which it is incorporated.

7 (2) In the case of a domestic corporation, the address
8 of the principal office of the corporation in this state, if
9 any, and, in the case of a foreign corporation, the address
10 of its principal office in this state, if any, and the address
11 of its principal office in the state or country under the laws
12 of which it is incorporated.

13 (3) A brief statement of the character of the affairs
14 which the corporation is actually conducting, or the busi-
15 ness it is doing or transacting, in this state.

16 (4) The names and respective addresses of the di-
17 rectors and officers of the corporation.

18 (b) Such annual report shall be made on forms pre-
19 scribed and furnished by the secretary of state, and the
20 information therein contained shall be given as of the date
21 of the execution of the report. It shall be executed by the
22 corporation by its president, a vice president, secretary,
23 an assistant secretary or treasurer, or, if the corporation
24 is in the hands of a receiver or trustee, it shall be executed
25 on behalf of the corporation by such receiver or trustee.

26 (c) Such annual report of a domestic or foreign cor-
27 poration shall be delivered to the secretary of state be-
28 tween the first day of January and the first day of March
29 of each year, except that the first annual report of a do-
30 mestic or foreign corporation shall be filed between the
31 first day of January and the first day of March of the year
32 next succeeding the calendar year in which its certificate
33 of incorporation or its certificate of authority, as the case
34 may be, was issued by the secretary of state. Proof to the
35 satisfaction of the secretary of state that prior to the first
36 day of March such report was deposited in the United
37 States mail in a sealed envelope, properly addressed, with
38 postage prepaid, shall be deemed compliance with this
39 requirement. If the secretary of state finds that such re-
40 port conforms to the requirements of this article, he shall
41 file the same. If he finds that it does not so conform, he
42 shall promptly return the same to the corporation for any
43 necessary corrections in which event the penalties here-
44 after prescribed in this article for failure to file such
45 report within the time hereinabove provided shall not
46 apply, if such report is corrected to conform to the re-
47 quirements of this article and returned to the secretary of
48 state within thirty days from the date on which it was
49 mailed to the corporation by the secretary of state.

**§31-1-160. Penalties imposed for failure to file annual report;
notice; hearings conducted by secretary of state;
appeal.**

1 Each corporation, domestic or foreign, which fails or
2 refuses to file its annual report for three successive years,
3 as required by the provisions of section one hundred

4 fifty-nine of this article, shall be notified by registered
5 or certified mail, return receipt requested, of its failure
6 to file such annual report. Such notice shall be mailed to
7 the address of its last known principal office in this state
8 or if it has no such principal office in this state, then
9 such notice shall be mailed to the address of its last known
10 principal office, wherever situated.

11 Such notice shall also advise the corporation that its
12 failure to file all of the annual reports within thirty days
13 of receipt of the notice shall subject such corporation to
14 an order of dissolution or an order revoking its certificate
15 of authority, as the case may be. Such order shall also
16 advise the corporation of its right to a hearing and shall
17 set forth the date and time of the hearing, which hearing
18 shall be held in the office of the secretary of state by the
19 secretary of state or his designee. At such hearing, the
20 corporation shall be afforded an opportunity to explain
21 its reasons for failure to file the required reports.

22 If the corporation fails to file the required reports
23 within such thirty-day period or fails to appear at the
24 hearing, as set by the secretary of state, or fails to ex-
25 plain to the satisfaction of the secretary of state its rea-
26 sons for not filing the reports, then the secretary of state
27 shall issue an order dissolving the corporation or shall
28 issue an order revoking its certificate of authority as the
29 case may be.

30 Any person or corporation aggrieved by the action of
31 the secretary of state with respect to dissolving the cor-
32 poration or revoking its certificate of authority under this
33 section shall have the same right of appeal as set forth in
34 subsection (b) of section sixty-eight of this article.

CHAPTER 11. TAXATION.

ARTICLE 12. LICENSE TAXES.

§11-12-77. Relief from assessment of corporate license tax.

1 Any corporation feeling aggrieved at the assessment of
2 its license tax by the tax commissioner, under the provi-
3 sions of this article, may apply to the board of public
4 works for relief; and the board shall have authority
5 to consider such case, and also cases of the insolvency or

6 financial distress of any corporation or any other case
7 involving such license tax. In any such case the board
8 may fix the amount to be paid by such corporation in
9 full discharge of the license tax, interest and penalties
10 due the state for the period named in the order made
11 therein. Every such order shall be entered in the record
12 of the board and a certified copy thereof shall be delivered
13 to the tax commissioner by the secretary of the board.

§11-12-78. Amount of license tax on domestic corporations.

1 Every domestic corporation shall pay an annual license
2 tax on its charter for the fiscal year beginning on the
3 first day of July of each year, based on its authorized
4 capital stock as follows: If the authorized capital stock
5 be five thousand dollars, or less, twenty dollars; if more
6 than five thousand dollars, and not more than ten thou-
7 sand dollars, thirty dollars; if more than ten thousand
8 dollars and not more than twenty-five thousand dol-
9 lars, forty dollars; if more than twenty-five thousand
10 dollars, and not more than fifty thousand dollars, fifty
11 dollars; if more than fifty thousand dollars and not
12 more than seventy-five thousand dollars, eighty dollars;
13 if more than seventy-five thousand dollars and not
14 more than one hundred thousand dollars, one hundred
15 dollars; if more than one hundred thousand dollars
16 and not more than one hundred and twenty-five thou-
17 sand dollars, one hundred and ten dollars; if more than
18 one hundred and twenty-five thousand dollars and not
19 more than one hundred and fifty thousand dollars, one
20 hundred and twenty dollars; if more than one hun-
21 dred and fifty thousand dollars and not more than
22 one hundred and seventy-five thousand dollars, one
23 hundred and forty dollars; if more than one hundred
24 and seventy-five thousand dollars and not more than
25 two hundred thousand dollars, one hundred and fifty
26 dollars; if more than two hundred thousand dollars
27 and not more than one million dollars, one hundred and
28 eighty dollars, and an additional twenty cents on each
29 one thousand dollars, or fraction thereof, in excess of two
30 hundred thousand dollars; if more than one million
31 dollars and not more than fifteen million dollars, three

32 hundred and forty dollars, and an additional fifteen cents
33 on each one thousand dollars, or fraction thereof, in ex-
34 cess of one million dollars; if more than fifteen million
35 dollars, twenty-five hundred dollars. The license tax col-
36 lected hereunder shall be in addition to the annual fee,
37 if any, payable to the secretary of state as statutory at-
38 torney in fact. For the purpose of the assessment of the
39 license tax provided by this section, and that provided by
40 sections eighty and eighty-one of this article, and for no
41 other purpose, shares of stock having no par value shall
42 be presumed to be of the par value of twenty-five dollars
43 each: *Provided, however,* That if such stock was original-
44 ly issued for a consideration greater than twenty-five
45 dollars per share, such license taxes as are required to
46 be paid to the tax commissioner under the provisions of
47 sections seventy-nine, eighty and eighty-one of this ar-
48 ticle shall be computed upon the basis of the consideration
49 for which such stock was issued.

**§11-12-79. Assessments and collection of tax on domestic cor-
poration.**

1 When application is made to the secretary of state for
2 a certificate of incorporation, it shall be his duty to make
3 the assessment and collect the license tax for the first
4 year before issuing such certificate. If such certificate be
5 issued after the last day of the third month of the license
6 year, he shall assess one tenth of the amount of the annual
7 tax for each month, or fractional part of a month, to
8 ensue before the first day of the next license tax year; but
9 in no case shall the amount assessed and collected be less
10 than ten dollars in addition to the fee, if any, payable to
11 the secretary of state as statutory attorney in fact. There-
12 after, on or before the first day of the license tax year
13 next following the date of the certificate of incorporation,
14 and on or before the first day of each succeeding license
15 tax year, the tax commissioner shall collect such tax for
16 a full year together with the statutory attorney fee; ex-
17 cept that if the certificate of incorporation be issued on
18 or after the first day of the second month preceding the
19 beginning of the license tax year, and before the first day
20 of the ensuing license tax year, the secretary of state

21 shall assess and collect the tax for the full year beginning
22 on such first day of the license tax year in addition to the
23 initial tax, together with the statutory attorney fee. The
24 money so received by the secretary of state and the tax
25 commissioner shall be paid by them into the state treas-
26 ury. Any corporation authorized by its articles of incor-
27 poration to issue stock having no par value shall, within
28 sixty days after its board of directors shall have autho-
29 rized the issue of all or a portion of such stock under the
30 provisions of article one, chapter thirty-one of this code,
31 make a report to the tax commissioner stating the number
32 of shares of stock so authorized to be issued and the con-
33 sideration for which such stock is authorized to be issued.
34 Such report shall be verified by the affidavit of the presi-
35 dent, secretary or other executive officer of such corpora-
36 tion.

37 The payment of the tax and statutory attorney fee,
38 payable under the provisions of this section, shall be ac-
39 companied by a report on forms provided by the tax
40 commissioner for the purpose, and shall be submitted in
41 duplicate. The tax commissioner shall forward a copy of
42 such report to the secretary of state, together with a list
43 of all corporations which have paid such tax. Such report
44 shall contain, in addition to such information as the tax
45 commissioner deems appropriate, the name and address of
46 the corporation, the date of incorporation, the place of its
47 principal office and the names and post-office addresses of
48 its president, secretary and other officers.

§11-12-80. License tax on foreign corporations.

1 Every foreign corporation which has qualified to hold
2 property or to do business in this state shall make a report
3 in duplicate to the tax commissioner annually in the third
4 month preceding the beginning of the license tax year, in
5 which report shall be set out: (a) The name of such
6 corporation, the name of the state or country by which
7 incorporated, the date of the incorporation, the date of the
8 certificate of the secretary of state authorizing it to do
9 business in this state, the place of its principal office,
10 the names and post-office addresses of its president, secre-
11 tary and its officers, if any, charged with the duty of

12 making returns of its property for taxation and the name
13 and post-office address of its attorney of record in this
14 state; (b) the number of shares of its authorized capital
15 stock having a par value and the par value of each share,
16 and the number of its issued and outstanding shares and
17 the par value of each share; (c) the number of shares of
18 its authorized capital stock having no par value, the num-
19 ber of shares of such stock authorized to be issued and the
20 considerations fixed for the issue of each share of the same
21 by its articles of incorporation or board of directors, and
22 the number of shares thereof issued and outstanding; (d)
23 the value of the property owned and used by such corpor-
24 ation within this state, where situate, of what it consists,
25 and the number of acres of land it holds in this state, and
26 the value of its property owned and used without this
27 state; and (e) the proportion of its capital stock which is
28 represented by property owned and used in the state of
29 West Virginia. Such report shall be verified by the
30 affidavit of the president, secretary or other executive
31 officers of such corporation.

32 It shall be the duty of the tax commissioner to assess
33 and fix the license tax of such corporation according to the
34 proportion of its issued and outstanding capital stock
35 which is represented by its property owned and used in
36 this state, which license tax shall be at the rate prescribed
37 in section seventy-eight of this article, plus seventy-five
38 percent of such tax. In no event shall any such corpora-
39 tion pay an annual license tax of less than two hundred
40 fifty dollars, which shall be in addition to the fee of the
41 secretary of state as statutory attorney in fact. The tax
42 commissioner may in any case require such additional
43 information as he may deem necessary to enable him
44 to assess and fix the just amount of license tax of such
45 corporation; and it shall be his duty to notify every such
46 corporation of the amount so assessed by him and it
47 shall be the duty of the corporation to pay the same to
48 the tax commissioner within thirty days thereafter, and
49 if it fails to do so it shall be liable to the penalties pre-
50 scribed in sections eighty-six and eighty-seven of this
51 article.

§11-12-81. Preliminary report by foreign corporations; assessment; collection of license taxes.

1 Every foreign corporation at the time of its application
2 for a certificate of authority under the provisions of article
3 one of chapter thirty-one of this code, shall file with the
4 secretary of state a report preliminary to the annual
5 report hereinbefore provided for, which preliminary
6 report shall contain sufficient information upon which to
7 base an assessment of its license tax for the then current
8 year. It shall be the duty of the secretary of state to make
9 assessment of its license tax for such year, and he may
10 require such further information as he may deem neces-
11 sary for that purpose. Before issuing such certificate the
12 secretary of state shall collect the amount of license tax
13 he finds to be proper for the license tax year ending with
14 the thirtieth day of the last month of the license tax
15 year. If the certificate be issued after the last day of the
16 third month of the license tax year and before the first
17 day of the ensuing license tax year, the secretary of state
18 shall assess and collect such taxes at the rate of one tenth
19 the amount of the annual license tax for each month or
20 fractional part of a month to ensue before the first day of
21 the ensuing license tax year. Thereafter on or before the
22 first day of the license tax year next following the date of
23 the certificate of authority and on or before every succeed-
24 ing first day of the license tax year the tax commissioner
25 shall collect such tax for a full year: *Provided*, That if the
26 certificate be issued in either of the last two months of the
27 license tax year, the secretary of state shall assess and
28 collect the license tax for such month or months, as well as
29 for a full year beginning with the first day of the ensuing
30 license tax year. When the tax commissioner shall assess
31 and collect the tax on any such foreign corporation, he
32 may include in the tax for any year any amount that such
33 corporation should have paid for any previous year and
34 failed to pay. The collections hereunder shall be in addi-
35 tion to the annual fee of the secretary of state as statutory
36 attorney in fact. All moneys collected by the secretary of
37 state and the tax commissioner shall be paid into the state
38 treasury in the manner prescribed by law.

§11-12-82. Annual fee of secretary of state as attorney in fact.

1 Every foreign corporation, and every domestic corpora-
2 tion whose principal place of business or chief works is
3 located without the state, shall pay an annual fee of ten
4 dollars for the services of the secretary of state as
5 attorney in fact for such corporation, which fee shall be
6 due and payable at the same time, collected by the same
7 officers, and accounted for in the same way, as the annual
8 license tax, payable to the secretary of state as statutory
9 attorney in fact.

**§11-12-83. Notice to corporations taxable; statement on pay-
ment; tax as lien.**

1 It shall be the duty of the tax commissioner, between
2 the fifteenth day of the third month next preceding the
3 first day of the license tax year and the fifteenth day of
4 the second month next preceding the first day of the
5 license tax year, in each year, to notify each corporation,
6 liable to the tax imposed by this article, of the time of
7 payment of such tax and the amount thereof, together
8 with the statutory attorney fee, if any. Such notices may
9 be sent through the mails, addressed to the corporation
10 at its last known post-office address as shown by the
11 records in the office of the secretary of state. If the tax
12 commissioner shall make a mistake in the amount of such
13 tax such corporation may file a sworn certificate of the
14 president, vice president or secretary of the corporation,
15 showing such mistake, or showing the actual amount of
16 tax due; and, in that event, it shall be the duty of the tax
17 commissioner to accept the amount due as shown by such
18 certificate, unless contrary to provisions of this article.
19 At the time of making payment to the tax commissioner
20 every domestic corporation shall deliver to him a state-
21 ment, in duplicate, which shall show the name of the
22 corporation, the date of its certificate of incorporation, the
23 name and post-office address of its attorney of record in
24 this state, if any, the names and post-office addresses of its
25 president, secretary and treasurer, the amount of its au-
26 thorized capital stock, the number of acres of land it holds
27 in this state if the number exceeds ten thousand acres,
28 and such other facts as the tax commissioner may require.
29 Such statement shall be signed by the president, secretary

30 or treasurer of the corporation. The amount of such tax
31 shall be deemed a debt due the state, and shall be a lien
32 as to an innocent purchaser for value, on the property and
33 assets of the corporation prior to all other liens, except
34 the lien of the taxes levied on its property for state, county
35 and district purposes, from the time a notice of such lien,
36 specifying the year and the amount for which the lien is
37 claimed, is filed in the office of the clerk of the county
38 court of the county in which the property subject to such
39 liens is situated. Such clerk shall, upon the filing in his
40 office of any such notice, record such notice in a separate
41 docket in his office to be known as "Corporation License
42 Tax Lien Docket," and index the same in the name of the
43 corporation against whom the lien is claimed. Upon pay-
44 ment of such lien debt there shall be executed by the tax
45 commissioner and delivered to the clerk of the county
46 court in whose office notice of such lien is filed a release
47 thereof, which said release shall be filed and recorded by
48 such clerk in like manner as releases of judgment liens
49 are filed and recorded. Such tax shall be a preferred debt
50 in case of insolvency.

51 The tax commissioner shall forward to the secretary of
52 state a copy of the statement required by this section,
53 together with a list of all corporations which have
54 delivered such statements and which have paid their
55 taxes. Such list shall contain, in addition to such infor-
56 mation as the tax commissioner deems appropriate, the
57 name and address of the corporation, the place of its prin-
58 cipal office, and the names and post-office addresses of its
59 president, secretary and other officers.

§11-12-84. Publication of list of delinquent corporations.

1 The tax commissioner shall, between the first and fif-
2 teenth day of the second month of the license tax year in
3 every year, publish a list of all corporations failing to
4 pay the license tax, or any part thereof, due therefrom on
5 or before the first day of the first month of the license
6 tax year, as a Class I legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine of
8 this code, and the publication area for such publication
9 shall be the state. Such list shall contain the names of
10 such delinquent corporations, arranged in two classes,

11 domestic and foreign. The cost of such publication shall
12 be paid by the tax commissioner when allowed by the
13 board of public works, out of the moneys in the treasury.
14 Any such delinquent corporation may, on or before the
15 first day of the fifth month of the license tax year follow-
16 ing or at any time before judgment or order is entered as
17 hereinafter provided, pay the amount of such tax and a
18 penalty of one per cent per month for each month or
19 fractional part thereof that such failure continued, but
20 the amount of such penalty shall not be less than five
21 dollars. After the publication of the list of delinquent
22 corporations by the tax commissioner, he shall mail to
23 the last known post-office address of each of such corpora-
24 tions a supplemental notice, together with a statement of
25 the total amount of tax and penalties due therefrom,
26 which notice shall be mailed at least thirty days before
27 the first day of the fifth month of the license tax year.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the gover-
2 nor, may appoint agents to investigate all violations of the
3 provisions of this article concerning landholding or char-
4 ter license taxes on corporations, and also for the purpose
5 of collecting such taxes from all corporations which have
6 not paid the same, whether due from domestic or foreign
7 corporations. The compensation of all such agents shall
8 be fixed by the tax commissioner.

**§11-12-86. Action to enforce payment of corporate license tax;
forfeiture of charter or revocation of right to do
business.**

1 Within thirty days after such first day of the fifth
2 month of the license tax year, the tax commissioner shall
3 certify to the governor and the secretary of state a list
4 of all such delinquent corporations, domestic and foreign.
5 The secretary of state shall preserve the list in his office,
6 and a certificate from him that the name of any corpora-
7 tion mentioned in such certificate is delinquent in the
8 payment of the license tax imposed by this article shall
9 be prima facie evidence thereof. Within thirty days after
10 receiving such list from the tax commissioner the gov-

11 ernor shall issue his proclamation, in which he shall de-
12 clare the delinquency of every such corporation. A copy
13 of such proclamation shall be filed and recorded in the
14 office of the secretary of state, and be published in such
15 newspapers as the governor may designate, not exceed-
16 ing one in each congressional district; the costs of such
17 publication shall be paid by the governor. Sixty days
18 after the date of the publication of such proclamation,
19 it shall be the duty of the attorney general to institute
20 in the circuit court, in the county in which the seat of
21 government is, an action or actions, in the name of the
22 state, in which such delinquent corporations shall be
23 made defendants; in the complaint so filed it shall only
24 be necessary to allege that the corporations therein made
25 defendants have failed to pay such license tax, and that
26 each of them justly owes to the state the amount of license
27 tax, penalty and fines stated therein, in connection with
28 the name of the corporation, which amount shall be com-
29 puted up to the first day of the month succeeding that
30 in which such complaint is filed. No such corporation
31 shall interpose as a plea or defense in such action the
32 fact that the tax commissioner failed to notify it as pre-
33 scribed in this article, or that it failed to receive such
34 notice, or that its name was not included in the list or
35 proclamation hereinbefore mentioned. Upon the hearing
36 of such action, if it shall appear to the court that any
37 such corporation has failed to pay any such license tax
38 and the penalties and fines assessed against it, the court
39 shall enter an order of judgment against such corporation
40 for the amount due, including the costs of the proceeding,
41 or such portion of such costs as the court shall apportion
42 to be paid by such corporation, and, if the same be not
43 then and there paid, the court shall enter an order if it
44 be a domestic corporation, forfeiting its charter or cer-
45 tificate of incorporation, rights and franchises; and if it
46 be a foreign corporation, revoking its rights and priv-
47 ileges to hold property and transact business in this state.
48 The amount of the judgment, including costs, entered
49 against any corporation, and interest thereon until paid,
50 may be collected by the attorney general, or be collected
51 by the tax commissioner in the same manner that other

52 claims due the state are collected. In any such action
53 the court may upon payment of the judgment herein-
54 above mentioned together with interest and costs and
55 the payment of any and all license taxes which may have
56 accrued since the institution of such action, reinstate any
57 corporation to its former rights as if it had not been
58 delinquent and proceeded against under this section, and
59 make such other orders as it shall deem necessary and
60 proper; and may appoint a receiver for any such cor-
61 poration and order its assets marshalled and distributed
62 among its creditors; and may, on motion of the attorney
63 general, grant an injunction against any such corporation
64 restraining it from the exercise of any franchise or the
65 transaction of any business within this state, until such tax
66 and the costs be paid. Any person or persons who shall
67 exercise or attempt to exercise any powers under the ar-
68 ticles of incorporation, charter or certificate of incorpora-
69 tion of any such corporation, after the issuing of the gov-
70 ernor's proclamation, shall be guilty of a misdemeanor,
71 and shall be punished by imprisonment not exceeding one
72 year, or a fine not exceeding one thousand dollars, or both
73 such fine and imprisonment, in the discretion of the court.
74 The words "license tax" used in this section include, in
75 addition to the amount of license tax proper, all penalties
76 and fines accruing for failure to pay such tax, the annual
77 fee of the secretary of state as statutory attorney in fact,
78 and the cost of any action to enforce the collection of
79 the same. When two or more corporations are included
80 in one action, the court shall apportion the cost thereof
81 among them as it may deem just.

82 If in any such action the court shall order the sale
83 of the property of any delinquent corporation without
84 ordering that its assets be marshalled and distributed
85 among its creditors, the purchaser at the sale shall acquire
86 title to the property subject to any rights which the cred-
87 itors of the corporation would have had if no action had
88 been brought by the state for collection of delinquent
89 license taxes. In any subsequent action, however, brought
90 by the creditors of the corporation to subject the prop-
91 erty in the hands of the purchaser to the payment of their

92 claims against the corporation, the purchaser shall be
93 given a preference over any creditor for the payment of
94 the purchase price, including costs with interest at six
95 percent per annum from the date of sale.

§11-12-87. Limitation on institution of actions to set aside sales in prior actions or proceedings.

1 No action shall be instituted in any court of this state on
2 and after the first day of January, one thousand nine hun-
3 dred and fifty, for the purpose of setting aside the sale of
4 all or any of the assets of any corporation heretofore sold
5 by order of the court in any former action or proceeding
6 instituted under the preceding section on the ground that
7 process was served on the auditor or the secretary of state,
8 or that service thereof was accepted by either of them.

§11-12-88. Process in such action; record of forfeiture, revocation or dissolution.

1 In any such action process shall be served in the man-
2 ner provided by law. The attorney general may cause a
3 copy of any order of publication to be mailed to each cor-
4 poration at its last known post-office address as aforesaid.
5 It shall be the duty of the clerk of every court of this state
6 in which any proceedings are had which result in the for-
7 feiture of the charter or certificate of incorporation of any
8 corporation issued under the laws of this state, or result
9 in the dissolution or extinction of any such corporation,
10 or in the revocation of the rights and privileges, of any
11 foreign corporation to do business in this state, to notify
12 the secretary of state of any such forfeiture, dissolution,
13 extinction or revocation, in which report he shall state
14 the name of the court, the name of the corporation, the
15 nature of the actions and the date of the order or judg-
16 ment, and such other pertinent matter as may be required
17 by the secretary of state; and the secretary of state shall
18 file and record such report in his office, and aptly note the
19 same in the indexes of corporation kept in his office. If any
20 clerk fail to make such report he shall be liable to a fine
21 of not exceeding one hundred dollars.

§11-12-89. Corporations exempt from license tax.

1 Nothing in sections seventy-five through ninety
2 inclusive of this article shall be construed as imposing
3 license tax on corporations chartered strictly for
4 educational, literary, agricultural, scientific, religious
5 or charitable purposes, or upon charters, or certificates of
6 incorporation incorporating cemetaries or lodges of Ma-
7 sons, Odd Fellows, or the like, or other charitable, fra-
8 ternal or patriotic societies not incorporated for profit to
9 the stockholders; but the secretary of state shall require
10 full proof as to the character of any such corporation
11 claiming such exemption from the payment of license tax.
12 Every such corporation, however, shall, in the third month
13 preceding the first day of the license tax year in each year,
14 deliver to the tax commissioner the statement required
15 in section eighty-three of this article.

§11-12-90. Monthly report by secretary of state to tax commissioner as to corporations.

1 The secretary of state shall within twenty days after
2 the close of each month make a report to the tax com-
3 missioner for the preceding month, in which he shall set
4 out the name of every corporation to which he issued a
5 certificate of incorporation during the month, as well as
6 the name of each corporation to which he issued a cer-
7 tificate under section fifty-four, article one, chapter
8 thirty-one of this code with the amount of license tax paid
9 to him by each; also he shall set out in such report the
10 names of all corporations to which he issued, during such
11 preceding month, certificates of increase or decrease of
12 stock, or of shares of stock, or of par value of shares of
13 stock; certificates of change of name or of change of
14 location of principal office; and a statement of all moneys
15 received by him during such preceding month from all
16 sources and due to the state, and pay the same into the
17 treasury; if he fail to do so it shall be the duty of the tax
18 commissioner to report such failure to the governor.

CHAPTER 59. FEES, ALLOWANCES AND COSTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1	Except as may be otherwise provided in article one,	
2	chapter thirty-one of this code, the secretary of state	
3	shall charge for services rendered in his office the follow-	
4	ing fees to be paid by the person to whom the service is	
5	rendered at the time it is done:	
6	For each certificate of incorporation or copy thereof,	
7	including restatements of any such certificates	
8	issued on new agreements, and/or consolidations	
9	or all certificates of merger or consolidation or	
10	certificates authorizing a foreign corporation to	
11	do business within this state	\$10.00
12	For each certified copy of certificate of incorpora-	
13	tion, not to exceed ten pages	10.00
14	If such copy contains in excess of ten pages, for	
15	each additional page20
16	For filing and recording a trademark	5.00
17	For each certificate of change of name, of increase	
18	or decrease of authorized capital stock, of change	
19	of principal office, or of amendment to certificate	
20	of incorporation	5.00
21	For recording a power of attorney and certificate	
22	thereof	3.00
23	For any other certificate, whether required by law	
24	or made at the request of any person	5.00
25	The foregoing fees shall include the tax on the	
26	great seal or the less seal impressed on any such	
27	document, as well as the filing, recording and in-	
28	dexing of the same.	
29	For endorsing and filing reports of corporations,	
30	and all other papers, which shall include the in-	
31	dexing of the same, for each report or paper filed	1.00
32	For any search, not less than	1.00
33	For searches of more than one hour, for each hour	
34	or fraction thereof consumed in making such	
35	search	1.00
36	The cost of the search shall be in addition to the	

37	cost of any certificate issued pursuant thereto or	
38	based thereon.	
39	For entering statement of satisfaction of conditional	
40	sale contract	1.00
41	For filing each financing, continuation or termina-	
42	tion statement or other statement or writing per-	
43	mitted to be filed under chapter forty-six of the	
44	code	1.00
45	For filing, preserving and indexing a security agree-	
46	ment filed under chapter forty-six of the code	2.00
47	For recording any paper for which no specific fee	
48	is prescribed	1.00
49	Or at the rate, for each one hundred words re-	
50	corded, of20
51	For issuing commission to a notary public, or to a	
52	commissioner of deeds, which shall include the	
53	tax on the state seal thereon and other charges	5.00
54	For a testimonial	1.50
55	For a copy of any paper, if one sheet	1.00
56	For each sheet of copy after the first75
57	For issuing a commission to a commissioner in any	
58	other state	5.00
59	For making out a requisition for a fugitive from	
60	justice demanded of the executive authority of	
61	another state	2.00
62	For issuing a warrant for the arrest of a fugitive	
63	from justice demanded by the executive authority	
64	of another state	2.00
65	For any other work or service not herein enu-	
66	merated, such fee as may be elsewhere prescribed.	

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Starby
Chairman Senate Committee

Lawrence C. Johnston Jr.
Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. T. Brotherton Jr.
President of the Senate

Leah A. W. Wynn
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Arch A. Benson Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/14/74

Time 2:15 p.m.