

HB 2899 S

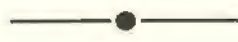
FILED

2002 APR -3 P 8:35

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

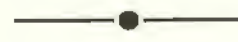


# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2899**

(By Delegates Amores, Fleischauer and J. Smith)



Passed March 9, 2002

In Effect Ninety Days from Passage

C

FILED

2002 APR -3 P 8:35

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 2899

(BY DELEGATES AMORES, FLEISCHAUER AND J. SMITH)

---

[Passed March 9, 2002; in effect ninety days from passage.]

---

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-one-e, all relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to nonprofit corporations generally; short title; reservation of powers and construction of chapter; filing requirements; fees; powers and duties of secretary of state; appeals; certificate of existence; criminal penalty for signing false document; venue; definitions; notice; incorporation; bylaws; powers and duties of corporation; corporate name; registered office and registered agent; service of process; membership rights and liabilities; meetings; waiver of notice; record date; voting; board of directors; qualifications, election, powers and duties of board; meetings and action of board; standards for conduct and liability of directors; officers; indemnification and advance of expenses; insurance; directors' conflict of interest transactions;

amendment of articles of incorporation; amendment of bylaws; mergers; disposition of assets; dissolutions; deposit of assets with state treasurer; foreign corporations - certificate of authority; service of process on foreign corporations; revocation of certificate of authority; records and reports; inspection of records; financial statements for members; transitional provisions; and operative date.

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

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter thirty-one-e, to read as follows:

**CHAPTER 31E. WEST VIRGINIA  
NONPROFIT CORPORATION ACT.**

**ARTICLE I. GENERAL PROVISIONS.**

**PART I. SHORT TITLE, RESERVATION OF POWERS AND  
CONSTRUCTION OF CHAPTER.**

**§31E-1-101. Short title.**

1 This chapter is and may be cited as the “West Virginia  
2 Nonprofit Corporation Act.”

**§31E-1-101a. Legislative acknowledgment.**

1 The Legislature acknowledges the work and contribution to  
2 the drafting of this chapter of the late Ann Maxey, Professor of  
3 Law at the West Virginia University College of Law.

**§31E-1-102. Reservation of powers.**

1 The West Virginia Legislature has power to amend or  
2 repeal all or part of this act at any time and all domestic and  
3 foreign corporations subject to this act are governed by the  
4 amendment or repeal.

**§31E-1-103. Construction of chapter.**

1 In the event of any inconsistency between any of the  
2 provisions of this chapter and the provisions made for particular  
3 classes of corporations by chapters thirty-one, thirty-one-a or  
4 thirty-three of this code, the provisions contained in chapter  
5 thirty-one, thirty-one-a or thirty-three prevail to the extent of  
6 the inconsistency.

PART 2. FILING DOCUMENTS.

**§31E-1-120. Filing requirements.**

1 (a) A document must satisfy the requirements of this  
2 section and any other provision of this code that adds to or  
3 varies these requirements to be entitled to filing by the secretary  
4 of state.

5 (b) The document to be filed must be typewritten or printed  
6 or, if electronically transmitted, it must be in a format that can  
7 be retrieved or reproduced in typewritten or printed form.

8 (c) The document to be filed must be in the English  
9 language: *Provided*, That a corporate name is not required to be  
10 in the English language if it is written in English letters or  
11 Arabic or Roman numerals: *Provided, however*, That the  
12 certificate of existence required of foreign corporations is not  
13 required to be in the English language if it is accompanied by  
14 a reasonably authenticated English translation.

15 (d) The document to be filed must be executed:

16 (1) By the chairman of the board of directors of a domestic  
17 or foreign corporation, by its president, or by another of its  
18 officers;

19 (2) If directors have not been selected or the corporation  
20 has not been formed, by an incorporator; or

21 (3) If the corporation is in the hands of a receiver, trustee,  
22 or other court-appointed fiduciary, by that fiduciary.

23 (e) The person executing the document to be filed shall sign  
24 it and state beneath or opposite his or her signature his or her  
25 name and the capacity in which he or she signs. The document  
26 may contain a corporate seal, attestation, acknowledgment or  
27 verification.

28 (f) The document to be filed must be delivered to the office  
29 of the secretary of state for filing. Delivery may be made by  
30 electronic transmission as permitted by the secretary of state.  
31 The secretary of state may require one exact or conformed copy  
32 to be delivered with the document to be filed if the document is  
33 filed in typewritten or printed form and not transmitted elec-  
34 tronically: *Provided*, That a document filed pursuant to section  
35 five hundred three, article five of this chapter and section one  
36 thousand four hundred nine, article fourteen of this chapter  
37 concerning the resignation of a registered agent must be  
38 accompanied by two exact or conformed copies as required by  
39 those sections.

40 (g) When a document is delivered to the office of the  
41 secretary of state for filing, the correct filing fee, and any  
42 franchise tax, license fee, or penalty required by this chapter or  
43 any other provision of this code must be paid or provision for  
44 payment made in a manner permitted by the secretary of state.

45 (h) In the case of service of notice and process as permitted  
46 by subsection (c), section five hundred four, article five and

47 subsections (d) and (e), section one thousand four hundred ten,  
48 article fourteen of this chapter, the notice and process must be  
49 filed with the secretary of state as one original, plus two copies  
50 for each person to be served or noticed.

**§31E-1-121. Forms.**

1 (a) The secretary of state may prescribe and, upon request,  
2 furnish forms for documents required or permitted to be filed  
3 by this chapter. Use of these forms is not mandatory.

4 (b) The secretary of state may adopt procedural rules in  
5 accordance with the provisions of this article governing the  
6 form for filing with and delivery of documents to the office of  
7 the secretary of state under this chapter by electronic means,  
8 including facsimile and computer transmission.

**§31E-1-122. Filing, service, and copying fees.**

1 The secretary of state shall collect all fees required to be  
2 charged and collected in accordance with the provisions of  
3 section two, article one, chapter fifty-nine, and section one,  
4 article twelve-c, chapter eleven of this code.

**§31E-1-123. Effective time and date of document.**

1 (a) Except as provided in subsection (b) of this section and  
2 subsection (c), section one hundred twenty-four of this article,  
3 a document accepted for filing is effective:

4 (1) At the date and time of filing, as evidenced by means  
5 the secretary of state may use for the purpose of recording the  
6 date and time of filing; or

7 (2) At the time specified in the document as its effective  
8 time on the date it is filed.

9 (b) A document may specify a delayed effective time and  
10 date, and if it does so the document becomes effective at the  
11 time and date specified. If a delayed effective date but no time  
12 is specified, the document is effective at the close of business  
13 on that date. A delayed effective date for a document may not  
14 be later than the ninetieth day after the date it is filed.

**§31E-1-124. Correcting filed document.**

1 (a) A domestic or foreign corporation may correct a  
2 document filed by the secretary of state if:

3 (1) The document contains an inaccuracy;

4 (2) The document was defectively executed, attested,  
5 sealed, verified or acknowledged; or

6 (3) The electronic transmission was defective.

7 (b) A document is corrected:

8 (1) By preparing articles of correction that:

9 (A) Describe the document, including its filing date, or  
10 attach a copy of the document to the articles;

11 (B) Specify the inaccuracy or defect to be corrected; and

12 (C) Correct the inaccuracy or defect; and

13 (2) By delivering the articles to the secretary of state for  
14 filing.

15 (c) Articles of correction are effective on the effective date  
16 of the document they correct: *Provided*, That articles of  
17 correction are effective when filed as to persons who have  
18 relied on the uncorrected document and have been adversely  
19 affected by the correction.

**§31E-1-125. Filing duty of secretary of state.**

1 (a) If a document delivered to the office of the secretary of  
2 state for filing satisfies the requirements of section one hundred  
3 twenty of this article, the secretary of state shall file it.

4 (b) The secretary of state files a document by recording it  
5 as filed on the date and time of receipt, unless a delayed  
6 effective time is specified in the document. After filing a  
7 document, except as provided in section five hundred three,  
8 article five of this chapter and section one thousand four  
9 hundred nine, article fourteen of this chapter, the secretary of  
10 state shall deliver to the domestic or foreign corporation or its  
11 representative a receipt for the record and the fees. Upon  
12 request and payment of a fee, the secretary of state shall send to  
13 the requester a certified copy of the requested record.

14 (c) If the secretary of state refuses to file a document, he or  
15 she shall return it to the domestic or foreign corporation or its  
16 representative within five days after the document was deliv-  
17 ered, together with a brief, written explanation of the reason for  
18 his or her refusal.

19 (d) The secretary of state's duty to file documents under  
20 this section is ministerial. His or her filing or refusing to file a  
21 document does not:

22 (1) Affect the validity or invalidity of the document in  
23 whole or part;

24 (2) Relate to the correctness or incorrectness of information  
25 contained in the document; or

26 (3) Create a presumption that the document is valid or  
27 invalid or that information contained in the document is correct  
28 or incorrect.



**§31E-1-126. Appeal from secretary of state's refusal to file document.**

1 (a) If the secretary of state refuses to file a document  
2 delivered to his or her office for filing, the domestic or foreign  
3 corporation may appeal the refusal to the circuit court within  
4 thirty days after the return of the document to the corporation.  
5 The appeal is commenced by petitioning the court to compel  
6 filing the document and by attaching to the petition the docu-  
7 ment and the secretary of state's explanation of his or her  
8 refusal to file.

9 (b) The circuit court may summarily order the secretary of  
10 state to file the document or take other action the court consid-  
11 ers appropriate.

12 (c) The circuit court's final decision may be appealed to the  
13 West Virginia supreme court of appeals as in other civil  
14 proceedings.

**§31E-1-127. Evidentiary effect of copy of filed document.**

1 All courts, public offices and official bodies shall take and  
2 receive copies of documents filed in the office of the secretary  
3 of state and certified by him or her, in accordance with the  
4 provisions of this article, as conclusive evidence that the  
5 original document is on file with the secretary of state.

**§31E-1-128. Certificate of existence.**

1 (a) Any person may request a certificate of existence for a  
2 domestic corporation or a certificate of authorization for a  
3 foreign corporation from the secretary of state.

4 (b) A certificate of existence or authorization provides the  
5 following information:

6 (1) The domestic corporation's corporate name or the  
7 foreign corporation's corporate name used in this state; and

8 (2) If the corporation is a domestic corporation, that the  
9 corporation is duly incorporated under the law of this state, the  
10 date of its incorporation, and the period of its duration if it is  
11 less than perpetual;

12 (3) If the corporation is a foreign corporation, that the  
13 corporation is authorized to transact business in this state; and

14 (4) If payment is reflected in the records of the secretary of  
15 state and if nonpayment affects the existence or authorization  
16 of the domestic or foreign corporation, whether all fees, taxes,  
17 and penalties owed to this state have been paid.

18 (c) Subject to any qualification stated in the certificate, a  
19 certificate of existence or authorization issued by the secretary  
20 of state may be relied upon as conclusive evidence that the  
21 domestic or foreign corporation is in existence or is authorized  
22 to transact business in this state.

**§31E-1-129. Penalty for signing false document.**

1 Any person who signs a document he or she knows is false  
2 in any material respect and knows that the document is to be  
3 delivered to the secretary of state for filing is guilty of a  
4 misdemeanor and, upon conviction thereof, shall be fined not  
5 more than one thousand dollars, or confined in the county or  
6 regional jail not more than one year, or both.

**PART 3. SECRETARY OF STATE.**

**§31E-1-130. Powers.**

1 The secretary of state has the power reasonably necessary  
2 to perform the duties required of him or her by this chapter. The

3 secretary of state has the power and authority to propose  
4 legislative rules for promulgation in accordance with the  
5 provisions of chapter twenty-nine-a of this code in order to  
6 carry out and implement the provisions of this chapter.

PART 4. VENUE.

**§31D-1-140. Venue.**

1 Unless otherwise provided by any provision of this code,  
2 any civil action or other proceeding brought pursuant to this  
3 chapter may be initiated in the circuit court of any county of  
4 this state as provided in section one, article one, chapter fifty-  
5 six of this code.

PART 5. DEFINITIONS.

**§31E-1-150. Chapter definitions.**

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

3 (1) "Articles of incorporation" includes, but is not limited  
4 to, amended and restated articles of incorporation and articles  
5 of merger.

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

8 (3) "Board" or "board of directors" means the group of  
9 persons vested with management of the affairs of the corpora-  
10 tion irrespective of the name by which the group is designated.

11 (4) "Business corporation" means a corporation with capital  
12 stock or shares incorporated for profit.

13 (5) "Conspicuous" means written so that a reasonable  
14 person against whom the writing is to operate should have

15 noticed including, but not limited to, printing in italics or  
16 boldface or contrasting color, or typing in capitals or under-  
17 lined.

18 (6) "Corporation" or "domestic corporation" means a  
19 corporation without capital stock or shares, which is not a  
20 foreign corporation, incorporated under the laws of this state:  
21 *Provided*, That "corporation" or "domestic corporation" does  
22 not include towns, cities, boroughs or any municipal corpora-  
23 tion or any department of any town, city, borough or municipal  
24 corporation.

25 (7) "Deliver" or "delivery" means any method of delivery  
26 used in conventional commercial practice, including, but not  
27 limited to, delivery by hand, mail, commercial delivery, and  
28 electronic transmission.

29 (8) "Distribution" means a direct or indirect transfer of  
30 money or other property, or incurrence of indebtedness by a  
31 corporation to or for the benefit of its members in respect of  
32 any of its membership interests, or to or for the benefit of its  
33 officers or directors: *Provided*, That the payment of reasonable  
34 compensation for services rendered, the reimbursement of  
35 reasonable expenses, the granting of benefits to members in  
36 conformity with the corporation's nonprofit purposes and the  
37 making of distributions upon dissolution or final liquidation as  
38 provided by article thirteen of this chapter may not be deemed  
39 a distribution.

40 (9) "Effective date of notice" means the date as determined  
41 pursuant to section one hundred fifty-one of this article.

42 (10) "Electronic transmission" or "electronically transmit-  
43 ted" means any process of communication not directly involv-  
44 ing the physical transfer of paper that is suitable for the

45 retention, retrieval, and reproduction of information by the  
46 recipient.

47 (11) "Employee" includes an officer and may include a  
48 director: *Provided*, That the director has accepted duties that  
49 make him or her also an employee.

50 (12) "Entity" includes corporation and foreign corporations;  
51 business corporations and foreign business corporations; profit  
52 and nonprofit unincorporated associations; limited liability  
53 companies and foreign limited liability companies; business  
54 trusts, estates, partnerships, trusts, and two or more persons  
55 having a joint or common economic interest; and state, United  
56 States, and foreign government.

57 (13) "Foreign corporation" means any nonprofit corpora-  
58 tion which is incorporated under a law other than the laws of  
59 this state.

60 (14) "Governmental subdivision" includes, but is not  
61 limited to, authorities, counties, districts, and municipalities.

62 (15) "Individual" includes, but is not limited to, the estate  
63 of an incompetent or deceased individual.

64 (16) "Member" means a person having membership rights  
65 in a corporation in accordance with the provisions of its  
66 certificate of incorporation or bylaws.

67 (17) "Nonprofit corporation" means a corporation which  
68 may not make distributions to its members, directors or officers.

69 (18) "Person" includes, but is not limited to, an individual  
70 and an entity.

71 (19) "Principal office" means the office so designated in the  
72 return required pursuant to section three, article twelve-c,

73 chapter eleven of this code where the principal executive  
74 offices of a domestic or foreign corporation are located.

75 (20) "Proceeding" includes, but is not limited to, civil suits  
76 and criminal, administrative, and investigatory actions.

77 (21) "Record date" means the date established under article  
78 six or seven of this chapter on which a corporation determines  
79 the identity of its members and their interests. The determina-  
80 tions are to be made as of the close of business on the record  
81 date unless another time for doing so is specified when the  
82 record date is fixed.

83 (22) "Registered agent" means the agent identified by the  
84 corporation pursuant to section five hundred one, article five of  
85 this chapter.

86 (23) "Registered office" means the address of the registered  
87 agent for the corporation, as provided in section five hundred  
88 one, article five of this chapter.

89 (24) "Secretary" means the corporate officer to whom the  
90 board of directors has delegated responsibility under subsection  
91 (c), section eight hundred forty, article eight of this chapter for  
92 custody of the minutes of the meetings of the board of directors  
93 and the meetings of the members and for authenticating records  
94 of the corporation.

95 (25) "Sign" or "signature" includes, but is not limited to,  
96 any manual, facsimile, conformed or electronic signature.

97 (26) "State," when referring to a part of the United States,  
98 includes a state, commonwealth and a territory and insular  
99 possession of the United States and their agencies and govern-  
100 mental subdivisions.

101 (27) "United States" includes, but is not limited to, districts,  
102 authorities, bureaus, commissions, departments, and any other  
103 agency of the United States.

**§31E-1-151. Notice.**

1 (a) Notice under this chapter must be in writing unless oral  
2 notice is reasonable under the circumstances. Notice by  
3 electronic transmission is to be considered written notice.

4 (b) Notice may be communicated in person; by mail or  
5 other method of delivery; or by telephone, voice mail or other  
6 electronic means. If these forms of personal notice are impracti-  
7 cable, notice may be communicated by a newspaper of general  
8 circulation in the area where published, or by radio, television,  
9 or other form of public broadcast communication.

10 (c) Written notice by a domestic or foreign corporation to  
11 its member, if in a comprehensible form, is effective: (1) Upon  
12 deposit in the United States mail, if mailed postpaid and  
13 correctly addressed to the member's address shown in the  
14 corporation's current record of members; or (2) when electroni-  
15 cally transmitted to the member in a manner authorized by the  
16 member.

17 (d) Written notice to a domestic or foreign corporation  
18 authorized to transact business in this state may be addressed to  
19 its registered agent at its registered office or to the corporation  
20 or its secretary at its principal office shown in its most recent  
21 return required pursuant to section three, article twelve-c,  
22 chapter eleven of this code or, in the case of a foreign corpora-  
23 tion that has not yet delivered a return, in its application for a  
24 certificate of authority.

25 (e) Except as provided in subsection (c) of this section,  
26 written notice, if in a comprehensible form, is effective at the  
27 earliest of the following:

28 (1) When received;

29 (2) Five days after its deposit in the United States mail, if  
30 mailed postpaid and correctly addressed; or

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

34 (f) Oral notice is effective when communicated, if commu-  
35 nicated in a comprehensible manner.

36 (g) If other provisions of this chapter prescribe notice  
37 requirements for particular circumstances, those requirements  
38 govern. If articles of incorporation or bylaws prescribe notice  
39 requirements, not inconsistent with this section or other  
40 provisions of this chapter, those requirements govern.

**§31E-1-152. Number of members.**

1 (a) For purposes of this chapter, the following identified as  
2 a member in a corporation's current record of members  
3 constitutes one member:

4 (1) Three or fewer co-owners;

5 (2) A corporation, partnership, trust, estate, or other entity;  
6 or

7 (3) The trustees, guardians, custodians, or other fiduciaries  
8 of a single trust, estate, or account.

9 (b) For purposes of this chapter, interests registered in  
10 substantially similar names constitute one member if it is  
11 reasonable to believe that the names represent the same person.

**ARTICLE 2. INCORPORATION.**



**§31E-2-201. Incorporators.**

1 One or more persons may act as the incorporator or  
2 incorporators of a corporation by delivering articles of incorpo-  
3 ration to the secretary of state for filing.

**§31E-2-202. Articles of incorporation.**

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the  
3 requirements of section four hundred one, article four of this  
4 chapter;

5 (2) A statement that the corporation is nonprofit and that  
6 the corporation may not have or issue shares of stock or make  
7 distributions;

8 (3) Whether the corporation is to have members and, if it is  
9 to have members, the provisions required by section six  
10 hundred one, article six of this chapter to be set forth in the  
11 certificate of incorporation;

12 (4) The mailing address of the corporation's initial regis-  
13 tered office, if any, and the name of its initial registered agent  
14 at that office, if any; and

15 (5) The name and address of each incorporator.

16 (b) The articles of incorporation may set forth:

17 (1) The names and addresses of the individuals who are to  
18 serve as the initial directors;

19 (2) Provisions not inconsistent with law regarding:

20 (A) Managing and regulating the affairs of the corporation;  
21 or

22 (B) Defining, limiting, and regulating the powers of the  
23 corporation, its board of directors, and members, or any class of  
24 members;

25 (3) Any provision that under this chapter is required or  
26 permitted to be set forth in the bylaws;

27 (4) A provision eliminating or limiting the personal liability  
28 of a director to the corporation or its members for monetary  
29 damages for any action taken, or any failure to take any action,  
30 as a director or member, except liability for: (A) The amount of  
31 a financial benefit received by a director or member to which he  
32 or she is not entitled; (B) an intentional infliction of harm on  
33 the corporation or the members; (C) a violation of section eight  
34 hundred thirty-three, article eight of this chapter regarding  
35 unlawful distributions; or (D) an intentional violation of  
36 criminal law; and

37 (5) A provision permitting or making obligatory indemnifi-  
38 cation of a director for liability as that term is defined in section  
39 eight hundred fifty, article eight of this chapter, to any person  
40 for any action taken, or any failure to take any action, as a  
41 director, except liability for: (A) Receipt of a financial benefit  
42 to which he or she is not entitled; (B) an intentional infliction  
43 of harm on the corporation or its members; (C) a violation of  
44 section eight hundred thirty-three, article eight of this chapter  
45 for unlawful distributions; or (D) an intentional violation of  
46 criminal law.

47 (c) The articles of incorporation need not set forth any of  
48 the corporate powers enumerated in this chapter.

**§31E-2-203. Incorporation.**

1 (a) Unless a delayed effective date is specified, the corpo-  
2 rate existence begins when the articles of incorporation are  
3 filed.

4 (b) The secretary of state's filing of the articles of incorpo-  
5 ration is conclusive proof that the incorporators satisfied all  
6 conditions precedent to incorporation except in a proceeding by  
7 the state to cancel or revoke the incorporation or involuntarily  
8 dissolve the corporation.

**§31E-2-204. Organization of corporation.**

1 (a) After incorporation:

2 (1) If initial directors are named in the articles of incorpora-  
3 tion, the initial directors shall hold an organizational meeting,  
4 at the call of a majority of the directors, to complete the  
5 organization of the corporation by appointing officers, adopting  
6 bylaws, and carrying on any other business brought before the  
7 meeting; or

8 (2) If initial directors are not named in the articles, the  
9 incorporator or incorporators shall hold an organizational  
10 meeting at the call of a majority of the incorporators:

11 (A) To elect directors and complete the organization of the  
12 corporation; or

13 (B) To elect a board of directors who shall complete the  
14 organization of the corporation.

15 (b) Action required or permitted by this chapter to be taken  
16 by incorporators at an organizational meeting may be taken  
17 without a meeting if the action taken is evidenced by one or  
18 more written consents describing the action taken and signed by  
19 each incorporator.

20 (c) An organizational meeting may be held in or out of this  
21 state.

**§31E-2-205. Bylaws.**

1 (a) The incorporators or board of directors of a corporation  
2 shall adopt initial bylaws for the corporation.

3 (b) The bylaws of a corporation may contain any provision  
4 for managing the business and regulating the affairs of the  
5 corporation that is not inconsistent with law or the articles of  
6 incorporation.

**§31E-2-206. Emergency bylaws.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 the board of directors of a corporation may adopt bylaws to be  
3 effective only in an emergency defined in subsection (d) of this  
4 section. The emergency bylaws, which are subject to amend-  
5 ment or repeal by the members, may make all provisions  
6 necessary for managing the corporation during the emergency,  
7 including:

8 (1) Procedures for calling a meeting of the board of  
9 directors;

10 (2) Quorum requirements for the meeting; and

11 (3) Designation of additional or substitute directors.

12 (b) All provisions of the regular bylaws consistent with the  
13 emergency bylaws remain effective during the emergency. The  
14 emergency bylaws are not effective after the emergency ends.

15 (c) Corporate action taken in good faith in accordance with  
16 the emergency bylaws:

17 (1) Binds the corporation; and

18 (2) May not be used to impose liability on a corporate  
19 director, officer, employee, or agent.

20 (d) An emergency exists for purposes of this section if a  
21 quorum of the corporation's directors cannot readily be  
22 assembled because of some catastrophic event.

**ARTICLE 3. PURPOSES AND POWERS.**

**§31E-3-301. Purposes.**

1 (a) Corporations may be organized under this chapter for  
2 any lawful purpose, including any one or more of the following  
3 purposes: Charitable, benevolent, eleemosynary, educational,  
4 civic, patriotic, political, social, fraternal, literary, cultural,  
5 athletic, scientific, agricultural, horticultural, animal husbandry,  
6 and professional commercial, industrial or trade association.

7 (b) No charters or certificates of incorporation may be  
8 granted or issued to any church or religious denomination.

**§31E-3-302. General powers.**

1 Unless its articles of incorporation provide otherwise, every  
2 corporation has perpetual duration and succession in its  
3 corporate name and has the same powers as an individual to do  
4 all things necessary or convenient to carry out its business and  
5 affairs, including without limitation, power:

6 (1) To sue and be sued, complain and defend in its corpo-  
7 rate name;

8 (2) To have a corporate seal, which may be altered at will,  
9 and to use it, or a facsimile of it, by impressing or affixing it or  
10 in any other manner reproducing it;

11 (3) To make and amend bylaws, not inconsistent with its  
12 articles of incorporation or with the laws of this state, for  
13 managing and regulating the affairs of the corporation;

14 (4) To purchase, receive, lease, or otherwise acquire, and  
15 own, hold, improve, use, and otherwise deal with, real or  
16 personal property, or any legal or equitable interest in property,  
17 wherever located;

18 (5) To sell, convey, mortgage, pledge, lease, exchange, and  
19 otherwise dispose of all or any part of its property;

20 (6) To purchase, receive, subscribe for, or otherwise  
21 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or  
22 otherwise dispose of; and deal in and with shares or other  
23 interests in, or obligations of, any other entity;

24 (7) To make contracts and guarantees; incur liabilities;  
25 borrow money; issue its notes, bonds, and other obligations,  
26 which may be convertible into or include the option to purchase  
27 other securities of the corporation; and secure any of its  
28 obligations by mortgage, deed of trust, or pledge of any of its  
29 property, franchises, or income;

30 (8) To lend money, invest and reinvest its funds, and  
31 receive and hold real and personal property as security for  
32 repayment;

33 (9) To be a promoter, partner, member, associate, or  
34 manager of any partnership, joint venture, trust, or other entity;

35 (10) To conduct its activities, locate offices, and exercise  
36 the powers granted by this chapter within or without this state;

37 (11) To elect directors and appoint officers, employees, and  
38 agents of the corporation, define their duties, and fix their  
39 compensation;

40 (12) To pay pensions and establish pension plans, pension  
41 trusts, profit sharing plans, share bonus plans, share option

42 plans, and benefit or incentive plans for any or all of its current  
43 or former directors, officers, employees, and agents;

44 (13) To make donations for the public welfare or for  
45 charitable, scientific, or educational purposes, and for other  
46 purposes that further the corporate interest;

47 (14) To transact any lawful activity that will aid govern-  
48 mental policy;

49 (15) To impose or levy fines, penalties, dues, assessments,  
50 admission and transfer fees upon its members;

51 (16) To establish conditions for admission of members,  
52 admit members and issue memberships and certificates evi-  
53 dencing membership;

54 (17) To carry on one or more businesses; and

55 (18) To make payments or donations, or do any other act,  
56 not inconsistent with law, that furthers the affairs of the  
57 corporation.

**§31E-3-303. Emergency powers.**

1 (a) In anticipation of or during an emergency defined in  
2 subsection (d) of this section, the board of directors of a  
3 corporation may:

4 (1) Modify lines of succession to accommodate the  
5 incapacity of any director, officer, employee, or agent; and

6 (2) Relocate the principal office, designate alternative  
7 principal offices or regional offices, or authorize the officers to  
8 do so.

9 (b) During an emergency defined in subsection (d) of this  
10 section, unless emergency bylaws provide otherwise:

11 (1) Notice of a meeting of the board of directors need be  
12 given only to those directors whom it is practicable to reach and  
13 may be given in any practicable manner, including by publica-  
14 tion and radio; and

15 (2) One or more officers of the corporation present at a  
16 meeting of the board of directors may be deemed to be directors  
17 for the meeting, in order of rank and within the same rank in  
18 order of seniority, as necessary to achieve a quorum.

19 (c) Corporate action taken in good faith during an emer-  
20 gency under this section to further the ordinary affairs of the  
21 corporation:

22 (1) Binds the corporation; and

23 (2) May not be used to impose liability on a corporate  
24 director, officer, employee, or agent.

25 (d) An emergency exists for purposes of this section if a  
26 quorum of the corporation's directors cannot readily be  
27 assembled because of some catastrophic event.

**§31E-3-304. Ultra vires.**

1 (a) Except as provided in subsection (b) of this section, the  
2 validity of corporate action may not be challenged on the  
3 ground that the corporation lacks or lacked power to act.

4 (b) A corporation's power to act may be challenged:

5 (1) In a proceeding by a member or director against the  
6 corporation to enjoin the act;

7 (2) In a proceeding by the corporation, directly, deriva-  
8 tively, or through a receiver, trustee, or other legal representa-



9 tive, against an incumbent or former director, officer, em-  
10 ployee, or agent of the corporation; or

11 (3) In a proceeding by the attorney general to dissolve the  
12 corporation or to enjoin the corporation from the conduct of  
13 unauthorized affairs.

14 (c) In a member's or director's proceeding under subdivi-  
15 sion (1), subsection (b) of this section to enjoin an unauthorized  
16 corporate act, the circuit court may enjoin or set aside the act,  
17 if equitable and if all affected persons are parties to the pro-  
18 ceeding, and may award damages for loss, except loss of  
19 anticipated profits, suffered by the corporation or another party  
20 because of enjoining the unauthorized act.

21 (d) The attorney general may, upon his or her own informa-  
22 tion or upon complaint of an interested party, bring an action in  
23 the name of the state to restrain any person from purporting to  
24 have, or exercising, corporate powers not granted.

**ARTICLE 4. NAME.**

**§31E-4-401. Corporate name.**

1 (a) A corporate name:

2 (1) Must contain the word "corporation," "incorporated,"  
3 "company," or "limited," or the abbreviation "corp.," "inc.,"  
4 "co.," or "ltd.," or words or abbreviations of like import in  
5 another language; and

6 (2) May not contain language stating or implying that the  
7 corporation is organized for a purpose other than that permitted  
8 by section three hundred one, article three of this chapter and its  
9 articles of incorporation.

10 (b) Except as authorized by subsections (c) and (d) of this  
11 section, a corporate name must be distinguishable upon the  
12 records of the secretary of state from:

13 (1) The corporate name of a corporation or business  
14 corporation incorporated or authorized to transact business in  
15 this state;

16 (2) A corporate name reserved or registered under section  
17 four hundred three or four hundred four, article four of this  
18 chapter;

19 (3) The fictitious name adopted by a foreign corporation  
20 authorized to transact business in this state because its real  
21 name is unavailable;

22 (4) The corporate name of any foreign corporation autho-  
23 rized to transact business or conduct affairs in this state; and

24 (5) The name of any other entity whose name is carried  
25 upon the records of the secretary of state.

26 (c) A corporation may apply to the secretary of state for  
27 authorization to use a name that is not distinguishable upon his  
28 or her records from one or more of the names described in  
29 subsection (b) of this section. The secretary of state shall  
30 authorize use of the name applied for if:

31 (1) The other corporation consents to the use in writing and  
32 submits an undertaking in form satisfactory to the secretary of  
33 state to change the name so that it is distinguishable upon the  
34 records of the secretary of state from the name applied for; or

35 (2) The applicant delivers to the secretary of state a  
36 certified copy of the final judgment of a court of competent  
37 jurisdiction establishing the applicant's right to use the name  
38 applied for in this state.

39 (d) A corporation may use the name, including the fictitious  
40 name, of another domestic or foreign corporation that is used in  
41 this state if the other corporation is incorporated or authorized  
42 to transact business in this state and the proposed user corpora-  
43 tion:

44 (1) Has merged with the other corporation;

45 (2) Has been formed by reorganization of the other corpora-  
46 tion; or

47 (3) Has acquired all or substantially all of the assets,  
48 including the corporate name, of the other corporation.

49 (e) This chapter does not control the use of fictitious names.

50 (f) Notwithstanding the provisions of subsection (a) of this  
51 section, any domestic nonprofit corporation and any foreign  
52 nonprofit corporation, if permitted by the law of the state of its  
53 incorporation, may include in its name the word "foundation"  
54 in lieu of or in addition to the word "corporation", "company",  
55 "incorporated" or "limited" or an abbreviation of these words.

**§31E-4-402. Use of the words "corporation", "incorporated" or  
"limited"; prohibitions; penalties.**

1 (a) No person may use the word "corporation" or "incorpo-  
2 rated" or any abbreviation of these words, in any trade name,  
3 business or other organization name unless the name is used by  
4 a domestic or foreign corporation authorized by the secretary of  
5 state to transact business in West Virginia under the provisions  
6 of this chapter or chapter thirty-one-d of this code.

7 (b) No person may use the word "limited" or any abbrevia-  
8 tion of the word "limited" in any trade name, business or other  
9 organization name unless the name is used by a domestic or  
10 foreign corporation authorized by the secretary of state to

11 transact business in West Virginia under the provisions of this  
12 chapter, chapters thirty-one-b, thirty-one-d or forty-seven of  
13 this code.

14 (c) The tax commissioner may not issue any business  
15 registration certificate under the provisions of article twelve,  
16 chapter eleven of this code to any business if the business name  
17 includes any of the words or their abbreviations as set forth in  
18 subsection (a) or (b) of this section unless the business is a  
19 domestic or foreign corporation or domestic or foreign business  
20 corporation.

21 (d) Any person who unlawfully uses any one or more of the  
22 prescribed words or their abbreviations as set forth in subsec-  
23 tion (a) or (b) of this section is to be deemed to be acting as a  
24 corporation without authority of law and subject to an action in  
25 quo warranto as provided in article two, chapter fifty-three of  
26 this code.

27 (e) Any person who violates the provisions of this section  
28 is guilty of a misdemeanor and, upon conviction thereof, shall  
29 be fined not less than five hundred dollars nor more than one  
30 thousand dollars, or confined in the county or regional jail not  
31 more than thirty days, or both.

32 (f) The provisions of this section do not apply to businesses  
33 in existence prior to the first day of July, one thousand nine  
34 hundred eighty-eight.

**§31E-4-403. Reserved name.**

1 (a) A person may reserve the exclusive use of a corporate  
2 name, including a fictitious name for a foreign corporation  
3 whose corporate name is not available, by delivering an  
4 application to the secretary of state for filing. The application  
5 must set forth the name and address of the applicant and the  
6 name proposed to be reserved. If the secretary of state finds that

7 the corporate name applied for is available, he or she shall  
8 reserve the name for the applicant's exclusive use for a  
9 nonrenewable one hundred twenty-day period.

10 (b) The owner of a reserved corporate name may transfer  
11 the reservation to another person by delivering to the secretary  
12 of state a signed notice of the transfer that states the name and  
13 address of the transferee.

**§31E-4-404. Registered name.**

1 (a) A foreign corporation may register its corporate name,  
2 or its corporate name with any addition required by section one  
3 thousand four hundred six, article fourteen of this chapter, if the  
4 name is distinguishable upon the records of the secretary of  
5 state from the corporate names that are not available under  
6 subsection (b), section four hundred one of this article.

7 (b) A foreign corporation registers its corporate name, or its  
8 corporate name with any addition required by section one  
9 thousand four hundred six, article fourteen of this chapter, by  
10 delivering to the secretary of state for filing an application:

11 (1) Setting forth its corporate name, or its corporate name  
12 with any addition required by section one thousand four  
13 hundred six, article fourteen of this chapter, the state or country  
14 and date of its incorporation, and a brief description of the  
15 nature of the business in which it is engaged; and

16 (2) Accompanied by a certificate of existence, or a docu-  
17 ment of similar import, from the state or country of incorpora-  
18 tion.

19 (c) The name is registered for the applicant's exclusive use  
20 upon the effective date of the application.

21 (d) A foreign corporation whose registration is effective  
22 may renew it for successive years by delivering to the secretary  
23 of state for filing a renewal application, which complies with  
24 the requirements of subsection (b) of this section, between the  
25 first day of October and the thirty-first day of December of the  
26 preceding year. The renewal application when filed renews the  
27 registration for the following calendar year.

28 (e) A foreign corporation whose registration is effective  
29 may qualify as a foreign corporation under the registered name  
30 or consent in writing to the use of that name by a corporation  
31 incorporated under this chapter or by another foreign corpora-  
32 tion authorized to transact business in this state. The registra-  
33 tion terminates when the domestic corporation is incorporated  
34 or the foreign corporation qualifies or consents to the qualifica-  
35 tion of another foreign corporation under the registered name.

**ARTICLE 5. OFFICE AND AGENT.**

**§31E-5-501. Registered office and registered agent.**

1 Each corporation may continuously maintain in this state:

2 (1) A registered office that may be the same as any of its  
3 places of business; and

4 (2) A registered agent, who may be:

5 (A) An individual who resides in this state and whose  
6 business office is identical with the registered office;

7 (B) A domestic corporation or domestic business corpora-  
8 tion whose business office is identical with the registered  
9 office;

10 (C) A foreign corporation or foreign business corporation  
11 authorized to transact business in this state whose business  
12 office is identical with the registered office; or

13 (D) A foreign limited liability company or domestic limited  
14 liability company authorized to transact business in this state  
15 whose business office is identical with the registered office.

**§31E-5-502. Change of registered office or registered agent.**

1 (a) A corporation may change its registered office or  
2 registered agent by delivering to the secretary of state for filing  
3 a statement of change that sets forth:

4 (1) The name of the corporation;

5 (2) The mailing address or description of physical location  
6 of its current registered office;

7 (3) If the current registered office is to be changed, the  
8 street address or description of physical location of the new  
9 registered office;

10 (4) The name of its current registered agent;

11 (5) If the current registered agent is to be changed, the  
12 name of the new registered agent and the new agent's written  
13 consent to the appointment either printed on the statement or  
14 attached to it; and

15 (6) That after the change or changes are made, the mailing  
16 addresses of its registered office and the business office of its  
17 registered agent will be identical.

18 (b) If a registered agent changes the mailing address of his  
19 or her business office, he or she may change the mailing  
20 address of the registered office of any corporation for which he  
21 or she is the registered agent by notifying the corporation in  
22 writing of the change and signing, either manually or in  
23 facsimile, and delivering to the secretary of state for filing a  
24 statement that complies with the requirements of subsection (a)

25 of this section and recites that the corporation has been notified  
26 of the change.

**§31E-5-503. Resignation of registered agent.**

1 (a) A registered agent may resign his or her agency appoint-  
2 ment by signing and delivering to the secretary of state for  
3 filing the signed original and two exact or conformed copies of  
4 a statement of resignation. The statement may include a  
5 statement that the registered office is also discontinued.

6 (b) After filing the statement the secretary of state shall  
7 mail one copy to the registered office if the registered office is  
8 not discontinued and the other copy to the corporation at its  
9 principal office.

10 (c) The agency appointment is terminated, and the regis-  
11 tered office is discontinued if provision for its discontinuation  
12 is made, on the thirty-first day after the date on which the  
13 statement was filed.

**§31E-5-504. Service on corporation.**

1 (a) A corporation's registered agent is the corporation's  
2 agent for service of process, notice, or demand required or  
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent  
5 cannot with reasonable diligence be served, the corporation  
6 may be served by registered or certified mail, return receipt  
7 requested, addressed to the secretary of the corporation at its  
8 principal office. Service is perfected under this subsection at the  
9 earliest of:

10 (1) The date the corporation receives the mail;



11 (2) The date shown on the return receipt, if signed on behalf  
12 of the corporation; or

13 (3) Five days after its deposit in the United States mail, as  
14 evidenced by the postmark, if mailed postpaid and correctly  
15 addressed.

16 (c) In addition to the methods of service on a corporation  
17 provided in subsections (a) and (b) of this section, the secretary  
18 of state is hereby constituted the attorney-in-fact for and on  
19 behalf of each corporation created pursuant to the provisions of  
20 this chapter. The secretary of state has the authority to accept  
21 service of notice and process on behalf of each corporation and  
22 is an agent of the corporation upon whom service of notice and  
23 process may be made in this state for and upon each corpora-  
24 tion. No act of a corporation appointing the secretary of state as  
25 attorney-in-fact is necessary. Service of any process, notice or  
26 demand on the secretary of state may be made by delivering to  
27 and leaving with the secretary of state the original process,  
28 notice or demand and two copies of the process, notice or  
29 demand for each defendant, along with the fee required by  
30 section two, article one, chapter fifty-nine of this code. Immedi-  
31 ately after being served with or accepting any process or notice,  
32 the secretary of state shall: (1) File in his or her office a copy of  
33 the process or notice, endorsed as of the time of service, or  
34 acceptance; and (2) transmit one copy of the process or notice  
35 by registered or certified mail, return receipt requested, to: (A)  
36 the corporation's registered agent; or (B) if there is no regis-  
37 tered agent, to the individual whose name and address was last  
38 given to the secretary of state's office as the person to whom  
39 notice and process are to be sent, and if no person has been  
40 named, to the principal office of the corporation as that address  
41 was last given to the secretary of state's office. Service or  
42 acceptance of process or notice is sufficient if return receipt is  
43 signed by an agent or employee of the corporation, or the  
44 registered or certified mail sent by the secretary of state is

45 refused by the addressee and the registered or certified mail is  
46 returned to the secretary of state, or to his or her office, showing  
47 the stamp of the United States postal service that delivery has  
48 been refused, and the return receipt or registered or certified  
49 mail is appended to the original process or notice and filed in  
50 the clerk's office of the court from which the process or notice  
51 was issued. No process or notice may be served on the secretary  
52 of state or accepted by him or her less than ten days before the  
53 return day of the process or notice. The court may order  
54 continuances as may be reasonable to afford each defendant  
55 opportunity to defend the action or proceedings.

56 (d) This section does not prescribe the only means, or  
57 necessarily the required means of serving a corporation.

**ARTICLE 6. MEMBERS - MEMBERSHIP RIGHTS AND LIABILITIES.**

**§31E-6-601. Classes of members.**

1 A corporation may have one or more classes of members or  
2 may have no members. If the corporation has one or more  
3 classes of members, the designation of a class or classes is to be  
4 set forth in the articles of incorporation and the manner of  
5 election or appointment and the qualifications and rights of the  
6 members of each class is to be set forth in the articles of  
7 incorporation or bylaws. If the corporation has no members, or  
8 only members not entitled to vote, that is to be set forth in the  
9 articles of incorporation and the corporation is to operate under  
10 the management of its board of directors. A corporation may  
11 issue articles evidencing membership.

**§31E-6-602. Rules for membership.**

1 (a) Membership is to be governed by rules of admission,  
2 retention, withdrawal and expulsion as the bylaws prescribe,  
3 provided all bylaws are to be reasonable, germane to the

4 purposes of the corporation, and equally enforced as to all  
5 members.

6 (b) Unless otherwise provided in the articles of incorpora-  
7 tion or the bylaws, another entity, foreign or domestic, may  
8 become a member of a corporation.

9 (c) Membership may be limited to persons who are mem-  
10 bers in good standing of another corporation, organization or  
11 association, if provided for in the articles of incorporation. If  
12 membership is limited, the articles of incorporation may  
13 provide that failure on the part of any member to keep in good  
14 standing with the other corporation, organization or association  
15 is sufficient cause for expulsion.

16 (d) Unless otherwise provided in the articles of incorpora-  
17 tion or bylaws, a member may not voluntarily or involuntarily  
18 transfer his or her membership or any rights arising from his or  
19 her membership.

20 (e) Unless otherwise provided in the articles of incorpora-  
21 tion or bylaws, membership is terminated by death, voluntary  
22 withdrawal or expulsion, and all rights and privileges of the  
23 member in the corporation and its property cease.

**§31E-6-603. Imposition of fines and penalties; levy of dues and assessments.**

1 (a) A corporation may impose fines or penalties on mem-  
2 bers if provided in bylaws duly adopted by a two-thirds vote of  
3 members entitled to vote and, if the fine or penalty applies to  
4 members not entitled to vote, by a two-thirds vote as a class of  
5 the members not otherwise entitled to vote. The fine or penalty  
6 may not exceed the higher of the: (1) Annual dues or assess-  
7 ment; or (2) initiation fee, if any.

8 (b) A corporation may levy dues or assessments against  
9 members if provided in a bylaw provision duly adopted: (1) By  
10 the affirmative vote of at least two thirds of the members of  
11 each class of members, voting as a class, to which the levy  
12 applies, even though a class of members is not otherwise  
13 entitled to vote; or (2) by the directors if the directors are  
14 authorized by a bylaw provision adopted by the affirmative vote  
15 of at least two thirds of the members of each class of members,  
16 voting as a class, to which a levy may apply, even though a  
17 class of members is not otherwise entitled to vote.

18 (c) For purposes of this section, the corporation's initial  
19 bylaws adopted by: (1) The incorporators; or (2) the board of  
20 directors is deemed to have been adopted by all the members  
21 entitled to vote thereon, if any.

22 (d) Notwithstanding any limitation on the amount of a fine  
23 or penalty set forth in subsection (a) of this section, a corpora-  
24 tion organized under this chapter, or any predecessor statutes,  
25 that is a trade association or other professional organization  
26 exempt from taxation under Section 501(c)(6) of the Internal  
27 Revenue Code may impose a fine on a member, not to exceed  
28 the amount set forth in the bylaws, for the violation of a code of  
29 ethics or other code of conduct upon majority vote of its board  
30 of directors in accordance with its bylaws, provided the articles  
31 of corporation or bylaws of the corporation contain a written  
32 provision whereby members agree to be bound by a code of  
33 ethics or code of conduct as a condition of membership.

#### **§31E-6-604. Liability of members.**

1 (a) A member of a corporation is not liable to the corpora-  
2 tion or its creditors with respect to his or her membership  
3 except for the obligation to pay in full any fines or penalties  
4 duly imposed against him or her and any dues and assessments  
5 levied against him or her to which he or she has assented, or

6 imposed or levied against him or her in accordance with the  
7 provisions of section six hundred three of this article.

8 (b) Any member who receives any distribution of income  
9 or assets from a corporation in violation of this chapter or of the  
10 articles of incorporation, whether by dividend, in liquidation or  
11 otherwise, and who accepted or received the distribution  
12 knowing it to be improper, is liable for the amount so received:  
13 (1) To any creditors existing at the time of the distribution who  
14 obtain a judgment against the corporation on which execution  
15 is returned unsatisfied; and (2) to the corporation.

**ARTICLE 7. MEMBERS – MEETINGS AND VOTING.**

**PART 1. MEETINGS.**

**§31E-7-701. Annual meeting; regular meeting.**

1 (a) A corporation that has members entitled to vote for the  
2 election of directors must hold a meeting of these members  
3 annually at a time stated in or fixed in accordance with the  
4 bylaws.

5 (b) Annual meetings of members may be held in or out of  
6 this state at the place stated in or fixed in accordance with the  
7 bylaws. If no place is stated in or fixed in accordance with the  
8 bylaws, annual meetings are to be held at the corporation's  
9 principal office.

10 (c) A corporation that has members entitled to vote may  
11 hold regular meetings of these members in or out of this state  
12 at the places and times stated in or fixed in accordance with the  
13 bylaws.

14 (d) The failure to hold an annual or regular meeting at the  
15 time stated in or fixed in accordance with a corporation's  
16 bylaws does not affect the validity of any corporate action.

**§31E-7-702. Special meeting.**

1 (a) A corporation that has members entitled to vote must  
2 hold a special meeting of members entitled to vote at the  
3 meeting: (1) On call of its board of directors or the person or  
4 persons authorized to do so by the articles of incorporation or  
5 the bylaws; or (2) if the members holding at least five percent,  
6 or other number or proportion as is provided in the bylaws, of  
7 all the votes entitled to be cast on any issue proposed to be  
8 considered at the proposed special meeting sign, date and  
9 deliver to the corporation one or more written demands for the  
10 meeting describing the purpose or purposes for which it is to be  
11 held. If a call for a special meeting is not issued within fifteen  
12 days after receipt of a members' request, members may call the  
13 meeting.

14 (b) If not otherwise fixed under section seven hundred three  
15 or seven hundred seven of this article, the record date for  
16 determining members entitled to demand a special meeting is  
17 the date the first member signs the demand.

18 (c) Special meetings of members may be held in or out of  
19 this state at the place stated in or fixed in accordance with the  
20 bylaws. If no place is stated or fixed in accordance with the  
21 bylaws, special meetings are to be held at the corporation's  
22 principal office.

23 (d) Only business within the purpose or purposes described  
24 in the meeting notice required by subsection (c), section seven  
25 hundred five of this article may be conducted at a special  
26 meeting of members.

**§31E-7-703. Court-ordered meeting.**

1 (a) The circuit court may summarily order a meeting to be  
2 held:

3 (1) On application of any member entitled to vote at an  
4 annual meeting if an annual meeting was not held within the  
5 earlier of six months after the end of the corporation's fiscal  
6 year or fifteen months after its last annual meeting; or

7 (2) On application of a member who signed a demand for  
8 a special meeting valid under section seven hundred two of this  
9 article, if:

10 (A) Notice of the special meeting was not given within  
11 thirty days after the date the demand was delivered to the  
12 corporation's secretary; or

13 (B) The special meeting was not held in accordance with  
14 the notice.

15 (b) The court may fix the time and place of the meeting;  
16 determine the members entitled to vote at the meeting; specify  
17 a record date for determining members entitled to notice of and  
18 to vote at the meeting; prescribe the form and content of the  
19 meeting notice; fix the quorum required for specific matters to  
20 be considered at the meeting, or direct that the votes repre-  
21 sented at the meeting constitute a quorum for action on those  
22 matters; and enter other orders necessary to accomplish the  
23 purpose or purposes of the meeting.

**§31E-7-704. Action without meeting; validity of actions at meet-  
ings not properly called.**

1 (a) Any action which, under any provision of this chapter,  
2 may be taken at a meeting of members may be taken without a  
3 meeting if one or more members consents in writing, setting  
4 forth the action taken or to be taken, signed by all of the persons  
5 who would be entitled to vote upon the action at a meeting, or  
6 by their duly authorized attorneys which action for purposes of  
7 this subsection is to be referred to as "unanimous written  
8 consent". The secretary shall file the consent or consents, or

9 certify the tabulation of the consents and file the articles, with  
10 the minutes of the meetings of the members. A unanimous  
11 written consent must have the same force and effect as a vote  
12 of the members at a meeting duly held, and may be stated as  
13 having the same force and effect as a vote of the members in  
14 any articles or document filed under this chapter.

15 (b) Where directors or officers are to be elected by mem-  
16 bers or any other action is to be voted upon by members, the  
17 articles of incorporation or bylaws may provide that the  
18 elections may be conducted and the actions voted upon by mail  
19 or electronic means in a manner provided in the articles of  
20 incorporation or bylaws. The vote of members, or of the  
21 members of any particular class, is to be determined from the  
22 total number of members who actually vote by mail, rather than  
23 from the total number of members entitled to vote, unless the  
24 articles of incorporation otherwise provide. A ballot signed  
25 under this section has the same force and effect as a vote of the  
26 member who signed it at a meeting duly held, and may be  
27 stated as having the same force and effect in any certificate or  
28 document filed under this chapter.

29 (c) If not otherwise fixed under section seven hundred three  
30 or seven hundred seven of this article, the record date for  
31 determining members entitled to take action without a meeting  
32 is the date the first member signs the consent or ballot under  
33 subsection (a) or (b) of this section.

34 (d) The absence from the minutes of any indication that a  
35 member objected to holding the meeting prima facie establishes  
36 that no objection was made.

### **§31E-7-705. Notice of meeting.**

1 (a) A corporation is to notify members entitled to vote of  
2 the date, time and place of each annual, regular and special  
3 meeting no fewer than ten nor more than sixty days before the



4 meeting date. Unless this chapter, or the articles of incorpora-  
5 tion require otherwise, the corporation is required to give notice  
6 only to members entitled to vote at the meeting.

7 (b) Unless this chapter, the articles of incorporation or  
8 bylaws require otherwise, notice of an annual or regular  
9 meeting need not include a description of the purpose or  
10 purposes for which the meeting is called, except that, unless  
11 stated in a written notice of the meeting: (1) No bylaw may be  
12 brought up for adoption, amendment or repeal; and (2) no  
13 matter, other than the election of directors at an annual meeting,  
14 may be brought up which expressly requires the vote of  
15 members.

16 (c) Notice of a special meeting of members must include a  
17 description of the purpose or purposes for which the meeting is  
18 called.

19 (d) If not otherwise fixed under section seven hundred three  
20 or seven hundred seven of this article, the record date for  
21 determining members entitled to notice of and to vote at an  
22 annual, regular or special meeting is the day before the first  
23 notice is delivered to members.

24 (e) Unless the bylaws require otherwise, if an annual,  
25 regular or special meeting of members is adjourned to a  
26 different date, time or place, notice need not be given of the  
27 new date, time or place if the new date, time or place is  
28 announced at the meeting before adjournment. If a new record  
29 date for the adjourned meeting is or must be fixed under section  
30 seven hundred seven of this article, notice of the adjourned  
31 meeting must be given under this section to persons who are  
32 members entitled to vote as of the new record date.

33 (f) Unless the articles of incorporation or bylaws provide  
34 otherwise, any member may participate in a regular or special  
35 meeting by any means of communication by which all members

36 participating may simultaneously hear each other during the  
37 meeting. A member participating in a meeting by this means is  
38 deemed to be present in person at the meeting.

**§31E-7-706. Waiver of notice.**

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

7 (b) A member's attendance at a meeting:

8 (1) Waives objection to lack of notice or defective notice of  
9 the meeting, unless the member at the beginning of the meeting  
10 objects to holding the meeting or transacting business at the  
11 meeting; and

12 (2) Waives objection to consideration of a particular matter  
13 at the meeting that is not within the purpose or purposes  
14 described in the meeting notice, unless the member objects to  
15 considering the matter when it is presented.

**§31E-7-707. Record date.**

1 (a) The bylaws may fix or provide the manner of fixing the  
2 record date for one or more classes of members in order to  
3 determine the members entitled to notice of a meeting of  
4 members, to demand a special meeting, to vote or to take any  
5 other action. If the bylaws do not fix or provide for fixing a  
6 record date, the board of directors of the corporation may fix a  
7 future date as the record date.

8 (b) A record date fixed under this section may not be more  
9 than seventy days before the meeting or action requiring a  
10 determination of members.

11 (c) A determination of members entitled to notice of or to  
12 vote at a meeting of members is effective for any adjournment  
13 of the meeting unless the board of directors fixes a new record  
14 date, which it must do if the meeting is adjourned to a date  
15 more than one hundred twenty days after the date fixed for the  
16 original meeting.

17 (d) If a court orders a meeting adjourned to a date more  
18 than one hundred twenty days after the date fixed for the  
19 original meeting, it may provide that the original record date  
20 continues in effect or it may fix a new record date.

**§31E-7-708. Conduct of the meeting.**

1 (a) At each meeting of members, a chair must preside. The  
2 chair is to be appointed as provided in the bylaws or, in the  
3 absence of a provision in the bylaws, by the board of directors.

4 (b) The chairperson, unless the articles of incorporation or  
5 bylaws provide otherwise, shall determine the order of business  
6 and has the authority to establish rules for the conduct of the  
7 meeting.

8 (c) Any rules adopted for, and the conduct of, the meeting  
9 are to be fair to members.

10 (d) The chair of the meeting shall announce at the meeting  
11 when the polls close for each matter voted upon. If no an-  
12 nouncement is made, the polls are to be deemed to have closed  
13 upon the final adjournment of the meeting. After the polls close,  
14 no ballots, proxies or votes, nor any revocations or changes to  
15 a ballot, proxy or vote, may be accepted.

16 (e) If the articles of incorporation or bylaws authorize the  
17 use of electronic communication for members' meetings, any  
18 or all of the members may participate in a regular or special  
19 meeting by, or conduct the meeting through the use of, any  
20 means of communication by which all members may simulta-  
21 neously hear each other during the meeting.

#### PART 2. VOTING.

##### **§31E-7-720. Members' list for meeting.**

1 (a) After fixing a record date for a meeting, a corporation  
2 must prepare an alphabetical list of the names of all its mem-  
3 bers who are entitled to notice of the meeting. The list must be  
4 arranged by classes of members, if any, and show the address  
5 of and number of votes to which each member is entitled.

6 (b) The members' list must be available for inspection by  
7 any member entitled to vote at the meeting, beginning two  
8 business days after notice of the meeting is given for which the  
9 list was prepared and continuing through the meeting, at the  
10 corporation's principal office or at a place identified in the  
11 meeting notice in the city where the meeting will be held. A  
12 member entitled to vote at the meeting or his or her agent or  
13 attorney is entitled on written demand to inspect and, subject to  
14 the requirements of section one thousand five hundred two,  
15 article fifteen of this chapter, to copy the list, during regular  
16 business hours and at his or her expense, during the period it is  
17 available for inspection.

18 (c) The corporation must make the members' list available  
19 at the meeting, and any member entitled to vote at the meeting  
20 or his or her agent or attorney is entitled to inspect the list at  
21 any time during the meeting or any adjournment.

22 (d) If the corporation refuses to allow a member entitled to  
23 vote at the meeting or his or her agent or attorney to inspect the

24 members' list before or at the meeting, or copy the list as  
25 permitted by subsection (b) of this section, the circuit court, on  
26 application of the member, may summarily order the inspection  
27 or copying at the corporation's expense and may postpone the  
28 meeting for which the list was prepared until the inspection or  
29 copying is complete.

30 (e) Refusal or failure to prepare or make available the  
31 members' list does not affect the validity of action taken at the  
32 meeting.

**§31E-7-721. Members' voting rights.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 each member, regardless of class, is entitled to one vote on each  
3 matter voted on at a meeting of members. Voting rights of  
4 members of any class may be increased, limited or denied by  
5 the articles of incorporation.

6 (b) Members otherwise entitled to vote, but disqualified  
7 from voting for any reason, may not be considered for the  
8 purpose of a quorum or of computing the voting power of the  
9 corporation or of members of any class.

10 (c) A corporate member's vote may be cast by the president  
11 of the member corporation or by any other officer of the  
12 corporation in the absence of express notice of the designation  
13 of some other person by the board of directors or bylaws of the  
14 member corporation.

**§31E-7-722. Proxies.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, a member entitled to vote may vote in person or by  
3 proxy.

4 (b) A member entitled to vote by proxy or his or her agent  
5 or attorney-in-fact may appoint a proxy to vote or otherwise act  
6 for the member by signing an appointment form or by an  
7 electronic transmission of the appointment. An electronic  
8 transmission must contain or be accompanied by information  
9 from which one can determine that the member, the member's  
10 agent or the member's attorney-in-fact authorized the electronic  
11 transmission.

12 (c) An appointment of a proxy is effective when a signed  
13 appointment form or an electronic transmission of the appoint-  
14 ment is received by the inspector of election or the officer or  
15 agent of the corporation authorized to tabulate votes. A photo-  
16 graphic or similar reproduction of an appointment, or a tele-  
17 gram, cablegram, facsimile transmission, wireless or similar  
18 transmission of an appointment received by the inspector of  
19 election or the officer or agent of the corporation authorized to  
20 tabulate votes is sufficient to effect an appointment. An  
21 appointment is valid for eleven months unless a longer period  
22 is expressly provided in the appointment form.

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

24 (e) The death or incapacity of the member appointing a  
25 proxy does not affect the right of the corporation to accept the  
26 proxy's authority unless notice of the death or incapacity is  
27 received by the secretary or other officer or agent authorized to  
28 tabulate votes before the proxy exercises his or her authority  
29 under the appointment.

30 (f) Subject to section seven hundred twenty-three of this  
31 article and to any express limitation on the proxy's authority  
32 stated in the appointment form or electronic transmission of the  
33 appointment, a corporation is entitled to accept the proxy's vote  
34 or other action as that of the member making the appointment.

**§31E-7-723. Corporation's acceptance or rejection of votes.**

1 (a) If the name signed on a vote, consent, waiver or proxy  
2 appointment corresponds to the name of a member, the corpora-  
3 tion if acting in good faith is entitled to accept the vote,  
4 consent, waiver or proxy appointment and give it effect as the  
5 act of the member.

6 (b) If the name signed on a vote, consent, waiver or proxy  
7 appointment does not correspond to the name of a member, the  
8 corporation if acting in good faith is entitled to accept the vote,  
9 consent, waiver or proxy appointment and give it effect as the  
10 act of the member if:

11 (1) The member is an entity and the name signed purports  
12 to be that of an officer or agent of the entity;

13 (2) The name signed purports to be that of an attorney-in-  
14 fact, administrator, executor, guardian or conservator represent-  
15 ing the member and, if the corporation requests, evidence of  
16 this status acceptable to the corporation has been presented with  
17 respect to the vote, consent, waiver or proxy appointment;

18 (3) The name signed purports to be that of a receiver or  
19 trustee in bankruptcy of the member and, if the corporation  
20 requests, evidence of this status acceptable to the corporation  
21 has been presented with respect to the vote, consent, waiver or  
22 proxy appointment; or

23 (4) Two or more persons are co-members or fiduciaries and  
24 the name signed purports to be the name of at least one of the  
25 co-members or fiduciaries and the person signing appears to be  
26 acting on behalf of all of the co-members or fiduciaries.

27 (c) The corporation is entitled to reject a vote, consent,  
28 waiver or proxy appointment if the secretary or other officer or  
29 agent authorized to tabulate votes, acting in good faith, has

30 reasonable basis for doubt about the validity of the signature on  
31 it or about the signatory's authority to sign for the member.

32 (d) The corporation and its officer or agent who accepts or  
33 rejects a vote, consent, waiver or proxy appointment in good  
34 faith and in accordance with the standards of this section or  
35 subsection (b), section seven hundred twenty-two of this article  
36 are not liable in damages to the member for the consequences  
37 of the acceptance or rejection.

38 (e) Corporate action based on the acceptance or rejection of  
39 a vote, consent, waiver or proxy appointment under this section  
40 or subsection (b), section seven hundred twenty-two is valid  
41 unless a court of competent jurisdiction determines otherwise.

**§31E-7-724. Quorum and voting requirements.**

1 (a) Members entitled to vote on a matter may take action on  
2 the matter at a meeting only if a quorum of those members  
3 exists with respect to that matter. If there are no members  
4 entitled to vote as a separate class, unless this chapter, the  
5 articles of incorporation or bylaws provide otherwise, the  
6 members entitled to vote on the matter who are present at the  
7 meeting, either in person or by proxy, if voting by proxy is  
8 permitted pursuant to section seven hundred twenty-two of this  
9 article, constitute a quorum for action on the matter. If there are  
10 members entitled to vote on a matter as a separate class, the  
11 members entitled to vote as a separate class may take action on  
12 the matter at a meeting only if a quorum of that class exists with  
13 respect to that matter. Unless this chapter, the articles of  
14 incorporation or bylaws provide otherwise, the members of a  
15 class entitled to vote on the matter who are present at the  
16 meeting, either in person or by proxy, if voting by proxy is  
17 permitted pursuant to section seven hundred twenty-two of this  
18 article constitute a quorum of that class for action on that  
19 matter.



20 (b) Once a member is represented for any purpose at a  
21 meeting, the member is deemed present for quorum purposes  
22 for the remainder of the meeting and for any adjournment of  
23 that meeting unless a new record date is or must be set for that  
24 adjourned meeting.

25 (c) Where any of this chapter, requires for any purpose the  
26 vote of a designated proportion of the voting power of members  
27 entitled to vote on a matter, or of the members of any particular  
28 class entitled to vote on a matter as a class, if a quorum exists,  
29 action on the matter, other than the election of directors, by  
30 these members or by the members of a class, is approved if the  
31 votes cast favoring the action by the members voting or by the  
32 members of a class voting, are in a designated proportion of the  
33 total votes cast by the members or by the members of a class,  
34 unless the articles of incorporation require a greater vote.

35 (d) Where subsection (c) of this section is not applicable, if  
36 a quorum exists, action on a matter, other than the election of  
37 directors, by the members entitled to vote on the matter, or by  
38 the members of any particular class entitled to vote on the  
39 matter as a class, is approved if the votes cast by the members  
40 voting, or by the members of a class voting, favoring the action  
41 exceed the votes cast by the members, or by the members of a  
42 class, opposing the action, unless the articles of incorporation  
43 require a greater vote.

44 (e) An amendment of the articles of incorporation adding,  
45 changing or deleting a voting requirement is governed by  
46 section seven hundred twenty-six of this article. An amendment  
47 of the articles of incorporation or bylaws adding, changing or  
48 deleting a quorum requirement is governed by section seven  
49 hundred twenty-six of this article.

50 (f) The election of directors is governed by section seven  
51 hundred twenty-seven of this article.

**§31E-7-725. Action by single and multiple classes of members.**

1 (a) If the articles of incorporation or this chapter, provide  
2 for voting by a single class on a matter, action on that matter is  
3 taken when voted upon by that class as provided in section  
4 seven hundred twenty-four of this article.

5 (b) If the articles of incorporation or this chapter, provide  
6 for voting by two or more classes on a matter, action on that  
7 matter is taken only when voted upon by each of those classes  
8 counted separately as provided in section seven hundred  
9 twenty-four of this article. Action may be taken by one class on  
10 a matter even though no action is taken by another class entitled  
11 to vote on the matter.

**§31E-7-726. Other quorum or voting requirement.**

1 (a) The articles of incorporation may provide for a greater  
2 voting requirement for members, or classes of members, than  
3 is provided by this chapter. The articles of incorporation or the  
4 bylaws may provide for a greater quorum requirement for  
5 members, or classes of members, than is provided by this  
6 chapter.

7 (b) The articles of incorporation may, except where  
8 expressly prohibited by this chapter, or where action is required  
9 by this chapter to be unanimous, provide for a lesser voting  
10 requirement, but unless expressly permitted by a particular  
11 section of this chapter, not less than a majority of the votes cast  
12 by the members, or by the members of a particular class,  
13 entitled to vote on the matter.

14 (c) An amendment to the articles of incorporation that adds,  
15 changes or deletes a greater quorum or voting requirement must  
16 meet the same quorum requirement and be adopted by the same  
17 vote and classes required to take action under the quorum and

18 voting requirements then in effect or proposed to be adopted,  
19 whichever is greater.

**§31E-7-727. Voting for directors; cumulative voting.**

1 (a) Unless otherwise provided in the articles of incorpora-  
2 tion, directors are elected by a plurality of the votes cast by the  
3 members entitled to vote in the election at a meeting at which  
4 a quorum is present, or if voting by mail is permitted pursuant  
5 to section seven hundred four of this article in an election in  
6 which the total number of members who vote is not less than  
7 the number required for a quorum.

8 (b) Members do not have a right to cumulate their votes for  
9 directors unless this is provided for in the articles of incorpora-  
10 tion.

11 (c) A statement included in the articles of incorporation that  
12 “all or a designated class of members are entitled to cumulate  
13 their votes for directors”, or words of similar import, means that  
14 the members designated are entitled to multiply the number of  
15 votes they are entitled to cast by the number of directors for  
16 whom they are entitled to vote and cast the product for a single  
17 candidate or distribute the product among two or more candi-  
18 dates.

19 (d) Members otherwise entitled to vote cumulatively may  
20 not vote cumulatively at a particular meeting unless: (1) The  
21 meeting notice states conspicuously that cumulative voting is  
22 authorized; (2) a member who has the right to cumulate his or  
23 her votes gives notice to the corporation not less than forty-  
24 eight hours before the time set for the meeting of his or her  
25 intent to cumulate his or her votes during the meeting, and if  
26 one member gives this notice all other members in the same  
27 class participating in the election are entitled to cumulate their  
28 votes without giving further notice; or (3) if voting is to be by  
29 mail or electronic means pursuant to section seven hundred four

30 of this article: (A) The bylaws specify how election of directors  
31 are to be conducted if members vote cumulatively by mail; (B)  
32 the notice of the meeting states conspicuously that cumulative  
33 voting is authorized and how the election is to be conducted;  
34 and (C) the mail ballot provides for cumulative voting.

**§31E-7-728. Inspectors of election.**

1 (a) A corporation may appoint one or more inspectors to act  
2 at a meeting of members and make a written report of the  
3 inspectors' determinations. Each inspector shall take and sign  
4 an oath faithfully to execute the duties of inspector with strict  
5 impartiality and according to the best of the inspector's ability.

6 (b) The inspectors shall: (1) Ascertain the number of  
7 members entitled to vote and the voting power of each; (2)  
8 determine the members represented at a meeting; (3) determine  
9 the validity of proxies and ballots; (4) count all votes; and (5)  
10 determine the result.

11 (c) An inspector may be an officer or employee of the  
12 corporation.

**ARTICLE 8. DIRECTORS AND OFFICERS.**

**PART 1. BOARD OF DIRECTORS.**

**§31E-8-801. Requirement for and duties of board of directors.**

1 (a) Each corporation must have a board of directors.

2 (b) All corporate powers are to be exercised by or under the  
3 authority of, and the activities, property and affairs of the  
4 corporation managed under the direction of, its board of  
5 directors, subject to any limitation set forth in the articles of  
6 incorporation.

**§31E-8-802. Qualifications of directors.**

1 (a) The articles of incorporation or bylaws may prescribe  
2 qualifications for directors. A director need not be a resident of  
3 this state or a member of the corporation unless the articles of  
4 incorporation or bylaws require he or she to be a member.

5 (b) The directors and board of directors may be designated  
6 by other names as may be provided in the articles of incorpora-  
7 tion or bylaws.

**§31E-8-803. Number and election of directors.**

1 (a) A board of directors must consist of three or more  
2 individuals, with the number specified in or fixed in accordance  
3 with the articles of incorporation or bylaws.

4 (b) The number of directors may be increased or decreased  
5 from time to time by amendment to, or in the manner provided  
6 in, the articles of incorporation or bylaws.

7 (c) The initial board of directors is to be designated in the  
8 articles of incorporation or elected at the organizational meeting  
9 of the corporation. Thereafter, if the corporation has members  
10 entitled to vote for directors, directors are to be elected at the  
11 first meeting of the members held for that purpose and at each  
12 subsequent annual meeting, except as provided in section eight  
13 hundred four of this article.

**§31E-8-804. Special provisions regarding directors.**

1 (a) The articles of incorporation may provide that the entire  
2 membership, or a certain class of members, shall constitute the  
3 board of directors.

4 (b) The articles of incorporation may provide that persons  
5 occupying certain positions within or without the corporation  
6 are ex-officio directors, but, unless otherwise provided in the  
7 articles of incorporation or bylaws, ex-officio directors may not

8 be counted in determining a quorum nor may they be entitled to  
9 a vote. An ex-officio director shall continue to be a director so  
10 long as he or she continues to hold the office from which his or  
11 her ex-officio status derives, and shall cease to be an ex-officio  
12 director immediately and automatically upon ceasing to hold  
13 the office, without the need for any action by the corporation,  
14 its directors or its members. The provisions of sections eight  
15 hundred six and eight hundred eight of this article do not apply  
16 to ex-officio directors.

17 (c) In the cases of corporations without members and  
18 corporations without members entitled to vote for directors, the  
19 articles of incorporation may provide for a self-perpetuating  
20 board of directors.

**§31E-8-805. Election of directors by certain classes of members.**

1 If the articles of incorporation authorize classes of mem-  
2 bers, the articles may also authorize the election of all or a  
3 specified number of directors by members in one or more  
4 authorized classes of members.

**§31E-8-806. Terms of directors generally.**

1 (a) The terms of the initial directors of a corporation expire  
2 at the first members' meeting at which directors are elected or,  
3 in the case of a corporation without members entitled to vote  
4 for directors, at the first annual meeting of the board of direc-  
5 tors, unless their terms are staggered pursuant to section eight  
6 hundred seven of this article.

7 (b) The terms of all other directors expire at the next annual  
8 meeting of members or the annual meeting of the directors if  
9 the corporation does not have members entitled to vote for  
10 directors, as the case may be, following their election unless  
11 their terms are staggered under section eight hundred seven of  
12 this article.

13 (c) A decrease in the number of directors does not shorten  
14 an incumbent director's term.

15 (d) The term of a director elected to fill a vacancy expires  
16 at the next meeting at which directors are elected.

17 (e) Despite the expiration of a director's term, he or she  
18 continues to serve until his or her successor is elected and  
19 qualifies or until there is a decrease in the number of directors.

**§31E-8-807. Staggered terms for directors.**

1 (a) The articles of incorporation may provide for staggering  
2 the terms of directors, other than ex-officio directors, by  
3 dividing the total number of directors, other than ex-officio  
4 directors, into up to five groups, with each group containing  
5 approximately the same percentage of the total number of  
6 directors, as possible. In that event, the terms of directors in the  
7 first group expire at the first annual meeting of members or, in  
8 the case of a corporation without members entitled to vote for  
9 directors, at the first annual meeting of the board of directors,  
10 after their election, the terms of the second group expire at the  
11 second annual meeting of members or directors after their  
12 election, the terms of the third group, if any, expire at the third  
13 annual meeting of members or directors after their election, the  
14 terms of the fourth group, if any, expire at the fourth annual  
15 meeting of members or directors after their election, and the  
16 terms of the fifth group, if any, expire at the fifth annual  
17 meeting of members or directors after their election. At each  
18 annual meeting thereafter, directors are to be chosen for a term  
19 of two years, three years, four years or five years, as the case  
20 may be, to succeed those whose terms expire.

21 (b) If a corporation has cumulative voting pursuant to  
22 section seven hundred twenty-seven, article seven of this

23 chapter, this section applies only if there are at least three  
24 directors in each group.

**§31E-8-808. Resignation of directors.**

1 (a) A director may resign at any time by delivering written  
2 notice to the board of directors, the chair of the board of  
3 directors or the corporation.

4 (b) A resignation is effective when the notice is delivered  
5 unless the board of directors agree to a later effective date.

**§31E-8-809. Removal of directors by members or directors.**

1 (a) The members entitled to vote for the election of  
2 directors or, if there are no members entitled to vote for the  
3 election of directors, the directors, may remove one or more  
4 directors with or without cause unless the articles of incorpora-  
5 tion provide that directors may be removed only for cause.

6 (b) If a director is elected by a class of members only the  
7 members of that class may participate in the vote to remove him  
8 or her.

9 (c) If cumulative voting is authorized, a director may not be  
10 removed if the number of votes sufficient to elect him or her  
11 under cumulative voting is voted against his or her removal. If  
12 cumulative voting is not authorized, a director may be removed  
13 only if the number of votes cast to remove him or her exceeds  
14 the number of votes cast not to remove him or her.

15 (d) A director may be removed by the members entitled to  
16 vote for directors or, if there are no members entitled to vote for  
17 directors, the directors, only at a meeting called for the purpose  
18 of removing him or her and the meeting notice must state that  
19 the purpose, or one of the purposes, of the meeting is removal  
20 of the director.



**§31E-8-810. Removal of directors by judicial proceeding.**

1 (a) The circuit court may remove a director of the corpora-  
2 tion from office in a proceeding commenced either by the  
3 corporation or by its members holding at least ten percent of the  
4 voting power of any class if the court finds that: (1) The  
5 director engaged in fraudulent or dishonest conduct or gross  
6 abuse of authority or discretion, with respect to the corporation;  
7 and (2) removal is in the best interest of the corporation.

8 (b) The court that removes a director may bar the director  
9 from serving on the board for a period prescribed by the court.

10 (c) If members commence a proceeding under subsection  
11 (a) of this section, they must make the corporation a party  
12 defendant.

**§31E-8-811. Vacancy on board.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 if a vacancy occurs on a board of directors, including a vacancy  
3 resulting from an increase in the number of directors:

4 (1) The members entitled to vote for directors may fill the  
5 vacancy;

6 (2) The board of directors may fill the vacancy; or

7 (3) If the directors remaining in office constitute fewer than  
8 a quorum of the board, they may fill the vacancy by the  
9 affirmative vote of a majority of all the directors remaining in  
10 office.

11 (b) If the vacant office was held by a director elected by a  
12 class of members and if the vacancy is to be filled by the  
13 members entitled to vote for directors as provided in subdivi-

14 sion (1), subsection (a) of this section, only the members of that  
15 class are entitled to vote to fill the vacancy.

16 (c) A vacancy that will occur at a specific later date, by  
17 reason of a resignation effective at a later date under subsection  
18 (b), section eight hundred eight of this article or otherwise, may  
19 be filled before the vacancy occurs but the new director may  
20 not take office until the vacancy occurs.

21 (d) If the board of directors ceases to exist and there are no  
22 members having the right to vote for the election of directors,  
23 members not entitled to vote are entitled to elect a new board of  
24 directors.

**§31E-8-812. Compensation of directors.**

1 Unless the articles of incorporation or bylaws provide  
2 otherwise, the board of directors may fix the compensation of  
3 directors, including reasonable allowance for expenses actually  
4 incurred in connection with their duties.

**PART 2. MEETINGS AND ACTION OF THE BOARD.**

**§31E-8-820. Meetings.**

1 (a) The board of directors may hold regular or special  
2 meetings in or out of this state.

3 (b) Unless the articles of incorporation or bylaws provide  
4 otherwise, the board of directors may permit any or all directors  
5 to participate in a regular or special meeting by, or conduct the  
6 meeting through the use of, any means of communication by  
7 which all directors participating may simultaneously hear each  
8 other during the meeting. A director participating in a meeting  
9 by this means is deemed to be present in person at the meeting.

**§31E-8-821. Action without meeting.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, action required or permitted by this chapter to be  
3 taken at a board of directors' meeting may be taken without a  
4 meeting if the action is taken by all members of the board. The  
5 action must be evidenced by one or more written consents  
6 describing the action taken, signed by each director, and  
7 included in the minutes or filed with the corporate records  
8 reflecting the action taken.

9 (b) Action taken under this section is effective when the last  
10 director signs the consent, unless the consent specifies a  
11 different effective date.

12 (c) A consent signed under this section has the effect of a  
13 meeting vote and may be described as having the effect of a  
14 meeting vote in any document.

**§31E-8-822. Notice of meeting.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, regular meetings of the board of directors may be  
3 held without notice of the date, time, place, or purpose of the  
4 meeting.

5 (b) Unless the articles of incorporation or bylaws provide  
6 for a longer or shorter period, special meetings of the board of  
7 directors must be preceded by at least two days' notice of the  
8 date, time, and place of the meeting. The notice need not  
9 describe the purpose of the special meeting unless required by  
10 the articles of incorporation or bylaws.

**§31E-8-823. Waiver of notice.**

1 (a) A director may waive any notice required by this  
2 chapter, the articles of incorporation, or bylaws before or after  
3 the date and time stated in the notice. Except as provided by  
4 subsection (b) of this section, the waiver must be in writing,

5 signed by the director entitled to the notice, and filed with the  
6 minutes or corporate records.

7 (b) A director's attendance at or participation in a meeting  
8 waives any required notice to him or her of the meeting unless  
9 the director at the beginning of the meeting or promptly upon  
10 his or her arrival objects to holding the meeting or transacting  
11 business at the meeting and does not thereafter vote for or  
12 assent to action taken at the meeting.

**§31E-8-824. Quorum and voting.**

1 (a) Unless the articles of incorporation or bylaws require a  
2 greater number or unless otherwise specifically provided in this  
3 chapter, a quorum of a board of directors consists of:

4 (1) A majority of the fixed number of directors if the  
5 corporation has a fixed board size; or

6 (2) A majority of the number of directors prescribed, or if  
7 no number is prescribed the number in office immediately  
8 before the meeting begins, if the corporation has a vari-  
9 able-range size board.

10 (b) The articles of incorporation or bylaws may authorize  
11 a quorum of a board of directors to consist of no fewer than one  
12 third of the fixed or prescribed number of directors determined  
13 under subsection (a) of this section.

14 (c) If a quorum is present when a vote is taken, the affirma-  
15 tive vote of a majority of directors present is the act of the  
16 board of directors unless the articles of incorporation or bylaws  
17 require the vote of a greater number of directors.

18 (d) A director who is present at a meeting of the board of  
19 directors or a committee of the board of directors when corpo-  
20 rate action is taken is deemed to have assented to the action

21 taken unless: (1) He or she objects at the beginning of the  
22 meeting or promptly upon his or her arrival to holding it or  
23 transacting business at the meeting; (2) his or her dissent or  
24 abstention from the action taken is entered in the minutes of the  
25 meeting; or (3) he or she delivers written notice of his or her  
26 dissent or abstention to the presiding officer of the meeting  
27 before its adjournment or to the corporation immediately after  
28 adjournment of the meeting. The right of dissent or abstention  
29 is not available to a director who votes in favor of the action  
30 taken.

**§31E-8-825. Committees.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, a board of directors may create one or more commit-  
3 tees and appoint members of the board of directors to serve on  
4 them. Each committee must have two or more members, who  
5 serve at the pleasure of the board of directors.

6 (b) The creation of a committee and appointment of  
7 members to it must be approved by the greater of: (1) A  
8 majority of all the directors in office when the action is taken;  
9 or (2) the number of directors required by the articles of  
10 incorporation or bylaws to take action under section eight  
11 hundred twenty-four of this article.

12 (c) Sections eight hundred twenty, eight hundred twenty-  
13 one, eight hundred twenty-two, eight hundred twenty-three and  
14 eight hundred twenty-four of this article, which govern meet-  
15 ings, action without meetings, notice and waiver of notice, and  
16 quorum and voting requirements of the board of directors, apply  
17 to committees and their members as well.

18 (d) To the extent specified by the board of directors or in  
19 the articles of incorporation or bylaws, each committee may  
20 exercise the authority of the board of directors under section  
21 eight hundred one of this article.

22 (e) A committee may not, however:

23 (1) Approve or propose to members action that this chapter  
24 requires be approved by members;

25 (2) Fill vacancies on the board of directors or on any of its  
26 committees;

27 (3) Amend articles of incorporation pursuant to section one  
28 thousand two, article ten of this chapter;

29 (4) Adopt, amend, or repeal bylaws;

30 (5) Approve a plan of merger;

31 (6) Approve a sale, lease, exchange or other disposition of  
32 all, or substantially all, of the property of a corporation; or

33 (7) Approve a proposal to dissolve.

34 (f) The creation of, delegation of authority to, or action by  
35 a committee does not alone constitute compliance by a director  
36 with the standards of conduct described in section eight  
37 hundred thirty of this article.

**§31E-8-826. Court-ordered meeting of directors.**

1 (a) The circuit court of the county where a corporation's  
2 principal office is located or, if none, where its registered office  
3 is located, or if the corporation has no principal or registered  
4 office in this state, the circuit court satisfying the venue  
5 requirements found in section one, article one, chapter fifty-six  
6 of this code, may summarily order a meeting of the board of  
7 directors to be held: (1) On application of any director of the  
8 corporation if no meeting of the board of directors has been  
9 held for a period of twelve months or more; or (2) on applica-  
10 tion of a director who signed a demand for a special meeting

11 valid under the bylaws if: (A) Notice of the special meeting was  
12 not given within thirty days after the date the demand was  
13 delivered to the corporation's secretary; or (B) the special  
14 meeting was not held in accordance with the notice.

15 (b) The circuit court may fix the time and place of the  
16 meeting, determine the directors entitled to participate in the  
17 meeting, prescribe the form and content of the meeting notice,  
18 fix the quorum required for specific matters to be considered at  
19 the meeting, or direct that the votes represented at the meeting  
20 constitute a quorum for action on those matters, and enter other  
21 orders necessary to accomplish the purpose or purposes of the  
22 meeting.

### PART 3. DIRECTORS.

#### **§31E-8-830. Standards of conduct for directors.**

1 (a) Each member of the board of directors, when discharg-  
2 ing the duties of a director, shall act: (1) In good faith; and (2)  
3 in a manner the director reasonably believes to be in the best  
4 interests of the corporation.

5 (b) The members of the board of directors or a committee  
6 of the board, when becoming informed in connection with their  
7 decision-making function or devoting attention to their over-  
8 sight function, shall discharge their duties with the care that a  
9 person in a like position would reasonably believe appropriate  
10 under similar circumstances.

11 (c) In discharging board or committee duties a director,  
12 who does not have knowledge that makes reliance unwarranted,  
13 is entitled to rely on the performance by any of the persons  
14 specified in subdivisions (1) or (3), subsection (e) of this  
15 section to whom the board may have delegated, formally or  
16 informally by course of conduct, the authority or duty to

17 perform one or more of the board's functions that are delegable  
18 under applicable law.

19 (d) In discharging board or committee duties a director,  
20 who does not have knowledge that makes reliance unwarranted,  
21 is entitled to rely on information, opinions, reports or state-  
22 ments, including financial statements and other financial data,  
23 prepared or presented by any of the persons specified in  
24 subsection (e) of this section.

25 (e) A director is entitled to rely, in accordance with  
26 subsection (c) or (d) of this section, on:

27 (1) One or more officers or employees of the corporation  
28 whom the director reasonably believes to be reliable and  
29 competent in the functions performed or the information,  
30 opinions, reports or statements provided;

31 (2) Legal counsel, public accountants, or other persons  
32 retained by the corporation as to matters involving skills or  
33 expertise the director reasonably believes are matters: (A)  
34 Within the particular person's professional or expert compe-  
35 tence; or (B) as to which the particular person merits confi-  
36 dence; or

37 (3) A committee of the board of directors of which the  
38 director is not a member if the director reasonably believes the  
39 committee merits confidence.

**§31E-8-831. Standards of liability for directors.**

1 (a) A director is not liable to the corporation or its members  
2 for any decision to take or not to take action, or any failure to  
3 take any action, as a director, unless the party asserting liability  
4 in a proceeding establishes that:



5 (1) Any provision in the articles of incorporation authorized  
6 by subdivision (4), subsection (b), section two hundred two,  
7 article two of this chapter or the protections afforded by section  
8 eight hundred sixty of this article or article seven-c, chapter  
9 fifty-five of this code, if interposed as a bar to the proceeding  
10 by the director, does not preclude liability; and

11 (2) The challenged conduct consisted or was the result of:

12 (A) Action not in good faith; or

13 (B) A decision: (i) Which the director did not reasonably  
14 believe to be in the best interests of the corporation; or (ii) as to  
15 which the director was not informed to an extent the director  
16 reasonably believed appropriate in the circumstances; or

17 (C) A lack of objectivity due to the director's familial,  
18 financial or business relationship with, or a lack of independ-  
19 ence due to the director's domination or control by, another  
20 person having a material interest in the challenged conduct: (i)  
21 Which relationship or which domination or control could  
22 reasonably be expected to have affected the director's judgment  
23 respecting the challenged conduct in a manner adverse to the  
24 corporation; and (ii) after a reasonable expectation has been  
25 established, the director does not establish that the challenged  
26 conduct was reasonably believed by the director to be in the  
27 best interests of the corporation; or

28 (D) A sustained failure of the director to devote attention to  
29 ongoing oversight of the affairs of the corporation, or a failure  
30 to devote timely attention, by making or causing to be made  
31 appropriate inquiry, when particular facts and circumstances of  
32 significant concern materialize that would alert a reasonably  
33 attentive director to the need to make inquiry; or

34 (E) Receipt of a financial benefit to which the director was  
35 not entitled or any other breach of the director's duties to deal

36 fairly with the corporation and its members that is actionable  
37 under applicable law.

38 (b) The party seeking to hold the director liable:

39 (1) For money damages, has the burden of establishing that:

40 (A) Harm to the corporation or its members has been  
41 suffered; and

42 (B) The harm suffered was proximately caused by the  
43 director's challenged conduct; or

44 (2) For other money payment under a legal remedy,  
45 including compensation for the unauthorized use of corporate  
46 assets, has whatever persuasion burden may be called for to  
47 establish that the payment sought is appropriate in the circum-  
48 stances; or

49 (3) For other money payment under an equitable remedy,  
50 including profit recovery by or disgorgement to the corporation,  
51 has whatever persuasion burden may be called for to establish  
52 that the equitable remedy sought is appropriate in the circum-  
53 stances.

54 (c) Nothing contained in this section may: (1) In any  
55 instance where fairness is at issue, including consideration of  
56 the fairness of a transaction to the corporation under section  
57 eight hundred sixty of this article, alter the burden of proving  
58 the fact or lack of fairness otherwise applicable; (2) alter the  
59 fact or lack of liability of a director under another section of  
60 this chapter, including the provisions governing the conse-  
61 quences of an unlawful distribution under section eight hundred  
62 thirty-three of this article or a transactional interest under  
63 section eight hundred sixty of this article; or (3) affect any  
64 rights to which the corporation or a member may be entitled  
65 under another provision of this code or the United States code.

**§31E-8-832. [RESERVED]**

**§31E-8-833. Directors' liability for unlawful distributions.**

1 (a) A director who votes for or assents to a distribution in  
2 violation of this chapter or the articles of incorporation is  
3 personally liable to the corporation for the amount of the  
4 distribution that exceeds what could have been distributed  
5 without violating this chapter if the party asserting liability  
6 establishes that when taking the action the director did not  
7 comply with section eight hundred thirty of this article.

8 (b) A director held liable under subsection (a) of this  
9 section for an unlawful distribution is entitled to:

10 (1) Contribution from every other director who could be  
11 held liable under subsection (a) of this section for the unlawful  
12 distribution; and

13 (2) Recoupment from each recipient for the amount the  
14 recipient accepted, knowing the distribution was made in  
15 violation of this chapter or the articles of incorporation.

16 (c) A proceeding to enforce the liability of a director under  
17 subsection (a) of this section is barred unless it is commenced  
18 within two years after the date on which the distribution was  
19 made.

20 (d) For purposes of this section, a director is deemed to  
21 have voted for a distribution if the director was present at the  
22 meeting of the board of directors at the time the distribution  
23 was authorized and did not vote in dissent, or if the director  
24 consented to the vote pursuant to section eight hundred twenty-  
25 one of this article.

**PART 4. OFFICERS.**

**§31E-8-840. Required officers.**

1 (a) A corporation has the officers described in its bylaws or  
2 appointed by the board of directors in accordance with the  
3 bylaws.

4 (b) A duly appointed officer may appoint one or more  
5 officers or assistant officers if authorized by the bylaws or the  
6 board of directors.

7 (c) The bylaws or the board of directors must delegate to  
8 one of the officers responsibility for preparing minutes of the  
9 directors' and members' meetings and for authenticating  
10 records of the corporation.

11 (d) The same individual may simultaneously hold more  
12 than one office in a corporation.

**§31E-8-841. Duties of officers.**

1 Each officer has the authority and shall perform the duties  
2 set forth in the bylaws or, to the extent consistent with the  
3 bylaws, the duties prescribed by the board of directors or by  
4 direction of an officer authorized by the board of directors to  
5 prescribe the duties of other officers.

**§31E-8-842. Standards of conduct for officers.**

1 (a) An officer, when performing in his or her official  
2 capacity, shall act:

3 (1) In good faith;

4 (2) With the care that a person in a like position would  
5 reasonably exercise under similar circumstances; and

6 (3) In a manner the officer reasonably believes to be in the  
7 best interests of the corporation.

**§31E-8-843. Resignation and removal of officers.**

1 (a) An officer may resign at any time by delivering notice  
2 to the corporation. A resignation is effective when the notice is  
3 delivered unless the board of directors agree to a later effective  
4 date. If a resignation is made effective at a later date and the  
5 corporation accepts the future effective date, its board of  
6 directors may fill the pending vacancy before the effective date  
7 if the board of directors provides that the successor does not  
8 take office until the effective date.

9 (b) A board of directors may remove any officer at any time  
10 with or without cause.

**§31E-8-844. Contract rights of officers.**

1 (a) The appointment of an officer does not itself create  
2 contract rights.

3 (b) An officer's removal does not affect the officer's  
4 contract rights, if any, with the corporation. An officer's  
5 resignation does not affect the corporation's contract rights, if  
6 any, with the officer.

**PART 5. INDEMNIFICATION AND ADVANCE FOR EXPENSES.**

**§31E-8-850. Part definitions.**

1 In this part:

2 (1) "Corporation" includes any domestic or foreign  
3 predecessor entity of a corporation in a merger.

4 (2) "Director" or "officer" means an individual who is or  
5 was a director or officer, respectively, of a corporation or who,  
6 while a director or officer of the corporation, is or was serving  
7 at the corporation's request as a director, officer, partner,

8 trustee, employee, or agent of another domestic or foreign  
9 corporation, partnership, joint venture, trust, employee benefit  
10 plan, or other entity. A director or officer is considered to be  
11 serving an employee benefit plan at the corporation's request if  
12 his or her duties to the corporation also impose duties on, or  
13 otherwise involve services by, him or her to the plan or to  
14 participants in or beneficiaries of the plan. "Director" or  
15 "officer" includes, unless the context requires otherwise, the  
16 estate or personal representative of a director or officer.

17 (3) "Disinterested director" means a director who, at the  
18 time of a vote referred to in subsection (c), section eight  
19 hundred fifty-three of this article or a vote or selection referred  
20 to in subsection (b) or (c), section eight hundred fifty-five of  
21 this article, is not: (A) A party to the proceeding; or (B) an  
22 individual having a familial, financial, professional or employ-  
23 ment relationship with the director whose indemnification or  
24 advance for expenses is the subject of the decision being made,  
25 which relationship would, in the circumstances, reasonably be  
26 expected to exert an influence on the director's judgment when  
27 voting on the decision being made.

28 (4) "Expenses" includes counsel fees.

29 (5) "Liability" means the obligation to pay a judgment;  
30 settlement; penalty; fine, including an excise tax assessed with  
31 respect to an employee benefit plan; or reasonable expenses  
32 incurred with respect to a proceeding.

33 (6) "Official capacity" means:

34 (A) When used with respect to a director, the office of  
35 director in a corporation; and

36 (B) When used with respect to an officer, as contemplated  
37 in section eight hundred fifty-six of this article, the office in a

38 corporation held by the officer. "Official capacity" does not  
39 include service for any other domestic or foreign corporation or  
40 any partnership, joint venture, trust, employee benefit plan, or  
41 other entity.

42 (7) "Party" means an individual who was, is, or is threat-  
43 ened to be made, a defendant or respondent in a proceeding.

44 (8) "Proceeding" means any threatened, pending, or  
45 completed action, suit, or proceeding, whether civil, criminal,  
46 administrative, arbitrative, or investigative and whether formal  
47 or informal.

**§31E-8-851. Permissible indemnification.**

1 (a) Except as otherwise provided in this section, a corpora-  
2 tion may indemnify an individual who is a party to a proceeding  
3 because he or she is a director against liability incurred in the  
4 proceeding if:

5 (1) (A) He or she conducted himself or herself in good  
6 faith; and

7 (B) He or she reasonably believed: (i) In the case of  
8 conduct in his or her official capacity, that his or her conduct  
9 was in the best interests of the corporation; and (ii) in all other  
10 cases, that his or her conduct was at least not opposed to the  
11 best interests of the corporation; and

12 (C) In the case of any criminal proceeding, he or she had no  
13 reasonable cause to believe his or her conduct was unlawful; or

14 (2) He or she engaged in conduct for which broader  
15 indemnification has been made permissible or obligatory under  
16 a provision of the articles of incorporation, as authorized by  
17 subdivision (5), subsection (b), section two hundred two, article  
18 two of this chapter.

19 (b) A director's conduct with respect to an employee  
20 benefit plan for a purpose he or she reasonably believed to be  
21 in the interests of the participants in, and the beneficiaries of,  
22 the plan is conduct that satisfies the requirement of subpara-  
23 graph (ii), paragraph (B), subdivision (1), subsection (a) of this  
24 section.

25 (c) The termination of a proceeding by judgment, order,  
26 settlement, or conviction, or upon a plea of nolo contendere or  
27 its equivalent, is not, determinative that the director did not  
28 meet the relevant standard of conduct described in this section.

29 (d) Unless ordered by a circuit court under subdivision (3),  
30 subsection (a), section eight hundred fifty-four of this article, a  
31 corporation may not indemnify a director:

32 (1) In connection with a proceeding by or in the right of the  
33 corporation, except for reasonable expenses incurred in  
34 connection with the proceeding if it is determined that the  
35 director has met the relevant standard of conduct under subsec-  
36 tion (a) of this section; or

37 (2) In connection with any proceeding with respect to  
38 conduct for which he or she was adjudged liable on the basis  
39 that he or she received a financial benefit to which he or she  
40 was not entitled, whether or not involving action in his or her  
41 official capacity.

**§31E-8-852. Mandatory indemnification.**

1 A corporation must indemnify a director who was wholly  
2 successful, on the merits or otherwise, in the defense of any  
3 proceeding to which he or she was a party because he or she  
4 was a director of the corporation against reasonable expenses  
5 incurred by him or her in connection with the proceeding.



**§31E-8-853. Advance for expenses.**

1 (a) A corporation may, before final disposition of a  
2 proceeding, advance funds to pay for or reimburse the reason-  
3 able expenses incurred by a director who is a party to a pro-  
4 ceeding because he or she is a director if he or she delivers to  
5 the corporation:

6 (1) A written affirmation of his or her good faith belief that  
7 he or she has met the relevant standard of conduct described in  
8 section eight hundred fifty-one of this article or that the  
9 proceeding involves conduct for which liability has been  
10 eliminated under a provision of the articles of incorporation as  
11 authorized by subdivision (4), subsection (b), section two  
12 hundred two, article two of this chapter; and

13 (2) His or her written undertaking to repay any funds  
14 advanced if he or she is not entitled to mandatory indemnifica-  
15 tion under section eight hundred fifty-two of this article and it  
16 is ultimately determined under sections eight hundred fifty-four  
17 or eight hundred fifty-five of this article that he or she has not  
18 met the relevant standard of conduct described in section eight  
19 hundred fifty-one of this article.

20 (b) The undertaking required by subdivision (2), subsection  
21 (a) of this section must be an unlimited general obligation of the  
22 director but need not be secured and may be accepted without  
23 reference to the financial ability of the director to make  
24 repayment.

25 (c) Authorizations under this section are to be made:

26 (1) By the board of directors:

27 (A) If there are two or more disinterested directors, by a  
28 majority vote of all the disinterested directors, a majority of  
29 whom constitute a quorum for this purpose, or by a majority of

30 the members of a committee of two or more disinterested  
31 directors appointed by a vote; or

32 (B) If there are fewer than two disinterested directors, by  
33 the vote necessary for action by the board in accordance with  
34 subsection (c), section eight hundred twenty-four of this article,  
35 in which authorization directors who do not qualify as disinter-  
36 ested directors may participate; or

37 (2) By special legal counsel:

38 (A) Selected in the manner prescribed in subdivision (1) of  
39 this subsection;

40 (B) If there are fewer than two disinterested directors,  
41 selected by the board of directors in which selection directors  
42 who do not qualify as disinterested directors may participate; or

43 (3) By the members, if the members have a right to vote.

**§31E-8-854. Circuit court-ordered indemnification and advance  
for expenses.**

1 (a) A director who is a party to a proceeding because he or  
2 she is a director may apply for indemnification or an advance  
3 for expenses to the circuit court conducting the proceeding or  
4 to another circuit court of competent jurisdiction. After receipt  
5 of an application and after giving any notice it considers  
6 necessary, the circuit court shall:

7 (1) Order indemnification if the circuit court determines  
8 that the director is entitled to mandatory indemnification under  
9 section eight hundred fifty-two of this article;

10 (2) Order indemnification or advance for expenses if the  
11 circuit court determines that the director is entitled to indemni-  
12 fication or advance for expenses pursuant to a provision

13 authorized by subsection (a), section eight hundred fifty-eight  
14 of this article; or

15 (3) Order indemnification or advance for expenses if the  
16 circuit court determines, in view of all the relevant circum-  
17 stances, that it is fair and reasonable:

18 (A) To indemnify the director; or

19 (B) To advance expenses to the director, even if he or she  
20 has not met the relevant standard of conduct set forth in  
21 subsection (a), section eight hundred fifty-one of this article,  
22 failed to comply with section eight hundred fifty-three of this  
23 article or was adjudged liable in a proceeding referred to in  
24 subdivisions (1) or (2), subsection (d), section eight hundred  
25 fifty-one of this article, but if he or she was adjudged so liable  
26 his or her indemnification is to be limited to reasonable  
27 expenses incurred in connection with the proceeding.

28 (b) If the circuit court determines that the director is  
29 entitled to indemnification under subdivision (1), subsection (a)  
30 of this section or to indemnification or advance for expenses  
31 under subdivision (2), subsection (a) of this section, it shall also  
32 order the corporation to pay the director's reasonable expenses  
33 incurred in connection with obtaining circuit court-ordered  
34 indemnification or advance for expenses. If the circuit court  
35 determines that the director is entitled to indemnification or  
36 advance for expenses under subdivision (3), subsection (a) of  
37 this section, it may also order the corporation to pay the direc-  
38 tor's reasonable expenses to obtain circuit court-ordered  
39 indemnification or advance for expenses.

**§31E-8-855. Determination and authorization of indemnification.**

1 (a) A corporation may not indemnify a director under  
2 section eight hundred fifty-one of this article unless authorized  
3 for a specific proceeding after a determination has been made

4 that indemnification of the director is permissible because he or  
5 she has met the relevant standard of conduct set forth in section  
6 eight hundred fifty-one of this article.

7 (b) The determination is to be made:

8 (1) If there are two or more disinterested directors, by the  
9 board of directors by a majority vote of all the disinterested  
10 directors, a majority of whom constitute a quorum for this  
11 purpose, or by a majority of the members of a committee of two  
12 or more disinterested directors appointed by a vote;

13 (2) By special legal counsel:

14 (A) Selected in the manner prescribed in subdivision (1) of  
15 this subsection; or

16 (B) If there are fewer than two disinterested directors,  
17 selected by the board of directors in which selection directors  
18 who do not qualify as disinterested directors may participate; or

19 (3) By the members, if the members have a right to vote.

20 (c) Authorization of indemnification is to be made in the  
21 same manner as the determination that indemnification is  
22 permissible, except that if there are fewer than two disinterested  
23 directors or if the determination is made by special legal  
24 counsel, authorization of indemnification is to be made by those  
25 entitled under paragraph (B), subdivision (2), subsection (b) of  
26 this section to select special legal counsel.

**§31E-8-856. Indemnification of officers.**

1 (a) A corporation may indemnify and advance expenses  
2 under this part to an officer of the corporation who is a party to  
3 a proceeding because he or she is an officer of the corporation:

4 (1) To the same extent as a director; and

5 (2) If he or she is an officer but not a director, to a further  
6 extent as may be provided by the articles of incorporation, the  
7 bylaws, a resolution of the board of directors, or contract except  
8 for:

9 (A) Liability in connection with a proceeding by or in the  
10 right of the corporation other than for reasonable expenses  
11 incurred in connection with the proceeding; or

12 (B) Liability arising out of conduct that constitutes:

13 (i) Receipt by him or her of a financial benefit to which he  
14 or she is not entitled;

15 (ii) An intentional infliction of harm on the corporation or  
16 the members; or

17 (iii) An intentional violation of criminal law.

18 (b) The provisions of subdivision (2), subsection (a) of this  
19 section apply to an officer who is also a director if the basis on  
20 which he or she is made a party to the proceeding is an act or  
21 omission solely as an officer.

22 (c) An officer of a corporation who is not a director is  
23 entitled to mandatory indemnification under section eight  
24 hundred fifty-two of this article, and may apply to a circuit  
25 court under section eight hundred fifty-four of this article for  
26 indemnification or an advance for expenses, in each case to the  
27 same extent to which a director may be entitled to indemnifica-  
28 tion or advance for expenses under those provisions.

**§31E-8-857. Insurance.**

1 A corporation may purchase and maintain insurance on  
2 behalf of an individual who is a director or officer of the  
3 corporation, or who, while a director or officer of the corpora-

4 tion, serves at the corporation's request as a director, officer,  
5 partner, trustee, employee, or agent of another domestic or  
6 foreign corporation, partnership, joint venture, trust, employee  
7 benefit plan, or other entity, against liability asserted against or  
8 incurred by him or her in that capacity or arising from his or her  
9 status as a director or officer, whether or not the corporation  
10 would have power to indemnify or advance expenses to him or  
11 her against the same liability under this part.

**§31E-8-858. Variation by corporate action; application of part.**

1 (a) A corporation may, by a provision in its articles of  
2 incorporation or bylaws or in a resolution adopted or a contract  
3 approved by its board of directors or members, obligate itself in  
4 advance of the act or omission giving rise to a proceeding to  
5 provide indemnification in accordance with section eight  
6 hundred fifty-one of this article or advance funds to pay for or  
7 reimburse expenses in accordance with section eight hundred  
8 fifty-three of this article. Any obligatory provision is deemed to  
9 satisfy the requirements for authorization referred to in subsec-  
10 tion (c), section eight hundred fifty-three and in subsection (c),  
11 section eight hundred fifty-five of this article. Any provision  
12 that obligates the corporation to provide indemnification to the  
13 fullest extent permitted by law is deemed to obligate the  
14 corporation to advance funds to pay for or reimburse expenses  
15 in accordance with section eight hundred fifty-three of this  
16 article to the fullest extent permitted by law, unless the provi-  
17 sion specifically provides otherwise.

18 (b) Any provision pursuant to subsection (a) of this section  
19 may not obligate the corporation to indemnify or advance  
20 expenses to a director of a predecessor of the corporation,  
21 pertaining to conduct with respect to the predecessor, unless  
22 otherwise specifically provided. Any provision for indemnifica-  
23 tion or advance for expenses in the articles of incorporation,  
24 bylaws, or a resolution of the board of directors or members of

25 a predecessor of the corporation in a merger or in a contract to  
26 which the predecessor is a party, existing at the time the merger  
27 takes effect, is to be governed by section one thousand one  
28 hundred and three, article eleven of this chapter.

29 (c) A corporation may, by a provision in its articles of  
30 incorporation, limit any of the rights to indemnification or  
31 advance for expenses created by or pursuant to this part.

32 (d) This part does not limit a corporation's power to pay or  
33 reimburse expenses incurred by a director or an officer in  
34 connection with his or her appearance as a witness in a proceed-  
35 ing at a time when he or she is not a party.

36 (e) This part does not limit a corporation's power to  
37 indemnify, advance expenses to or provide or maintain insur-  
38 ance on behalf of an employee or agent.

**§31E-8-859. Exclusivity of part.**

1 A corporation may provide indemnification or advance  
2 expenses to a director or an officer only as permitted by this  
3 part.

**PART 6. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS.**

**§31E-8-860. Directors' conflicting interest transactions.**

1 (a) No contract or transaction between a corporation and  
2 one or more of its directors or officers, or between a corporation  
3 and any other corporation, partnership, association, or other  
4 organization in which one or more of its directors or officers are  
5 directors or officers, or have a financial interest, is void or  
6 voidable solely for this reason, or solely because the director or  
7 officer is present at or participates in the meeting of the board  
8 or committee thereof which authorizes the contract or transac-

9 tion, or solely because any director's or officer's votes are  
10 counted for the purpose, if:

11 (1) The material facts as to the director's or officer's  
12 relationship or interest and as to the contract or transaction are  
13 disclosed or are known to the board of directors or the commit-  
14 tee, and the board or committee in good faith authorizes the  
15 contract or transaction by the affirmative votes of a majority of  
16 the disinterested directors, even though the disinterested  
17 directors be less than a quorum; or

18 (2) The material facts as to the director's or officer's  
19 relationship or interest and as to the contract or transaction are  
20 disclosed or are known to the members entitled to vote on the  
21 contract or transaction, and the contract or transaction is  
22 specifically approved in good faith by vote of the members  
23 entitled to vote; or

24 (3) The contract or transaction is fair as to the corporation  
25 as of the time it is authorized, approved or ratified, by the board  
26 of directors, a committee of the board of directors, or the  
27 members.

28 (b) Common or interested directors may be counted in  
29 determining the presence of a quorum at a meeting of the board  
30 of directors or of a committee which authorizes the contract or  
31 transaction.

**ARTICLE 9. RESERVED**

**ARTICLE 10. AMENDMENT OF ARTICLES OF INCORPORATION AND  
BYLAWS.**

**PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.**

**§31E-10-1001. Authority to amend.**



1 (a) A corporation may amend its articles of incorporation  
2 at any time to add or change a provision that is required or  
3 permitted in the articles of incorporation or to delete a provision  
4 not required in the articles of incorporation. Whether a provi-  
5 sion is required or permitted in the articles of incorporation is  
6 determined as of the effective date of the amendment.

7 (b) A member of the corporation does not have a vested  
8 property right resulting from any provision in the articles of  
9 incorporation, including provisions relating to management,  
10 control, purpose or duration of the corporation.

**§31E-10-1002. Certain amendments by board of directors.**

1 Unless the articles of incorporation provide otherwise, a  
2 corporation's board of directors may adopt one or more  
3 amendments to the corporation's articles of incorporation  
4 without member action:

5 (1) To extend the duration of the corporation if it was  
6 incorporated at a time when limited duration was required by  
7 law;

8 (2) To delete the names and addresses of the initial direc-  
9 tors;

10 (3) To delete the name and address of the initial registered  
11 agent or registered office, if any, if a statement of change is on  
12 file with the secretary of state;

13 (4) To change the corporate name by substituting the word  
14 "corporation," "incorporated" or "company", or the abbrevia-  
15 tion "corp.," "inc." or "co.," for a similar word or abbreviation  
16 in the name, or by adding, deleting or changing a geographical  
17 attribution to the name; or

18 (5) To make any other change expressly permitted by this  
19 chapter to be made without member action.

**§31E-10-1003. Amendment by board of directors and members.**

1 (a) A corporation's board of directors may propose one or  
2 more amendments to the articles of incorporation for submis-  
3 sion to those members who are entitled to vote on amendments,  
4 if any.

5 (b) For the amendment to be adopted: (1) The board of  
6 directors must approve the amendment; (2) the board of  
7 directors must recommend the amendment to the members  
8 entitled to vote on the amendment, if any, unless the board of  
9 directors determines that because of conflict of interest or other  
10 special circumstances it should make no recommendation and  
11 communicates the basis for its determination to the members  
12 entitled to vote on the amendment with the submission of the  
13 amendment; and (3) the members entitled to vote on the  
14 amendment must approve the amendment, either before or after  
15 the actions required in subdivisions (1) and (2) of this subsec-  
16 tion, as provided in subsection (e) of this section.

17 (c) The board of directors may condition its submission of  
18 the proposed amendment on any basis.

19 (d) The corporation shall notify each member entitled to  
20 vote on the amendment, if any, of the proposed meeting of  
21 members in accordance with section seven hundred five, article  
22 seven of this chapter. The notice of meeting must also state that  
23 the purpose, or one of the purposes, of the meeting is to  
24 consider the proposed amendment and contain or be accompa-  
25 nied by a copy or summary of the amendment.

26 (e) Unless this chapter, the articles of incorporation or the  
27 board of directors acting pursuant to subsection (c) of this  
28 section requires a greater vote or a vote by class of members,

29 the amendment to be adopted must be approved by: (1) If no  
30 class of members is entitled to vote separately on the amend-  
31 ment as a class, at least two thirds of the votes cast by the  
32 members entitled to vote on the amendment; and (2) if any class  
33 of members is entitled to vote on the amendment separately as  
34 a class, at least two thirds of the votes cast by the members of  
35 each class.

36 (f) If the corporation has no members, or no members  
37 entitled to vote, the proposed amendment must be adopted by  
38 vote of at least two thirds of the directors present at a meeting  
39 of the board of directors at which a quorum is present.

**§31E-10-1004. Amendment by incorporators.**

1 If a corporation has no members entitled to vote on the  
2 proposed amendment to the articles of incorporation, the  
3 incorporators may, at any time and from time to time, before  
4 the corporation has directors amend the articles of incorporation  
5 by resolution adopted by a vote of at least two thirds of the  
6 incorporators.

**§31E-10-1005. Articles of amendment.**

1 A corporation amending its articles of incorporation shall  
2 deliver to the secretary of state for filing articles of amendment  
3 setting forth:

4 (1) The name of the corporation;

5 (2) The text of each amendment adopted;

6 (3) The date of each amendment's adoption;

7 (4) A statement that the amendment was approved by the  
8 board of directors as required under section one thousand three  
9 of this article or, if approval of members was not required, a

10 statement to that effect and a statement that the amendment was  
11 approved by a sufficient vote of either: (A) The incorporators,  
12 if the vote was before the corporation had directors; or (B) the  
13 board of directors, in either case in accordance with section one  
14 thousand two or one thousand four of this article; and

15 (5) If approval by members was required: (A) The designa-  
16 tion of each class of members entitled to vote separately on the  
17 amendment; and (B) the total number of votes cast for and  
18 against the amendment by each class of members entitled to  
19 vote separately on the amendment and a statement that the  
20 number cast for the amendment by each class was sufficient for  
21 approval by that class.

**§31E-10-1006. Restated articles of incorporation.**

1 (a) A corporation's board of directors may restate its  
2 articles of incorporation at any time with or without member  
3 action.

4 (b) The restatement may include one or more amendments  
5 to the articles. If the restatement includes an amendment  
6 requiring member approval, it must be adopted as provided in  
7 section one thousand three of this article. If the restatement  
8 includes an amendment which does not require member  
9 approval, it must be adopted as provided in section one thou-  
10 sand two or one thousand four of this article.

11 (c) If the board of directors submits a restatement for  
12 member action, the corporation shall notify each member  
13 entitled to vote on the proposed amendment of the proposed  
14 members' meeting in accordance with section seven hundred  
15 five, article seven of this chapter. The notice of meeting must  
16 also state that the purpose, or one of the purposes, of the  
17 meeting is to consider the proposed restatement and contain or

18 be accompanied by a copy of the restatement that identifies any  
19 amendment or other change it would make in the articles.

20 (d) A corporation restating its articles of incorporation shall  
21 deliver to the secretary of state for filing articles of restatement  
22 setting forth the name of the corporation and the text of the  
23 restated articles of incorporation together with a statement  
24 setting forth: (1) Whether the restatement contains an amend-  
25 ment to the articles of incorporation requiring member approval  
26 and, if it does not, that the board of directors, or the incorpora-  
27 tors before the corporation had directors, adopted the restate-  
28 ment; or (2) if the restatement contains an amendment to the  
29 articles of incorporation requiring member approval, the  
30 information required by section one thousand five of this  
31 article.

32 (e) Duly adopted restated articles of incorporation super-  
33 sede the original articles of incorporation and all amendments  
34 to it.

35 (f) The secretary of state may certify a restated articles of  
36 incorporation, as the articles of incorporation currently in  
37 effect, without including the statement information required by  
38 subsection (d) of this section.

**§31E-10-1007. Amendment pursuant to reorganization.**

1 (a) A corporation's articles of incorporation may be  
2 amended without action by the board of directors or the  
3 members to carry out a plan of reorganization ordered or  
4 decreed by a court of competent jurisdiction under federal  
5 statute if the articles of incorporation after amendment contains  
6 only provisions required or permitted by section two hundred  
7 two, article two of this chapter.

8 (b) The individual or individuals designated by the court  
9 shall deliver to the secretary of state for filing articles of  
10 amendment setting forth:

11 (1) The name of the corporation;

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

13 (3) The date of the court's order or decree approving the  
14 articles of amendment;

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

17 (5) A statement that the court had jurisdiction of the  
18 proceeding under federal law.

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

**§31E-10-1008. Effect of amendment.**

1 An amendment to the articles of incorporation does not  
2 affect a cause of action existing against or in favor of the  
3 corporation, a proceeding to which the corporation is a party or  
4 the existing rights of persons other than members of the  
5 corporation. An amendment changing a corporation's name  
6 does not abate a proceeding brought by or against the corpora-  
7 tion in its former name.

PART 2. AMENDMENT OF BYLAWS.

**§31E-10-1020. Amendment by board of directors or members.**

1 (a) A corporation's members entitled to vote may amend or  
2 repeal the corporation's bylaws.

3 (b) A corporation's board of directors may amend or repeal  
4 the corporation's bylaws, unless:

5 (1) The articles of incorporation or section one thousand  
6 twenty-one of this article reserve that power exclusively to the  
7 members in whole or part; or

8 (2) The members in amending, repealing, or adopting a  
9 bylaw expressly provide that the board of directors may not  
10 amend, repeal, or reinstate that bylaw.

**§31E-10-1021. Bylaw increasing quorum or voting requirement  
for directors.**

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

3 (1) If adopted by the members, only by the members, unless  
4 the bylaw otherwise provides; or

5 (2) If adopted by the board of directors, either by the  
6 members or by the board of directors.

7 (b) A bylaw adopted or amended by the members that  
8 increases a quorum or voting requirement for the board of  
9 directors may provide that it can be amended or repealed only  
10 by a specified vote of either the members or the board of  
11 directors.

12 (c) Action by the board of directors under subsection (a) of  
13 this section to amend or repeal a bylaw that changes the quorum  
14 or voting requirement for the board of directors must meet the  
15 same quorum requirement and be adopted by the same vote  
16 required to take action under the quorum and voting require-  
17 ment then in effect or proposed to be adopted, whichever is  
18 greater.

**§31E-10-1022. Bylaw increasing quorum or voting requirement for members.**

1 (a) If authorized by the articles of incorporation, the  
2 members may adopt or amend a bylaw that fixes a greater  
3 quorum or voting requirement for members or classes of  
4 members than is required by this chapter. The adoption or  
5 amendment of a bylaw that adds, changes or deletes a greater  
6 quorum requirement for members must meet the same quorum  
7 requirement and be adopted by the same vote and classes of  
8 members required to take action under the quorum and voting  
9 requirement then in effect or proposed to be adopted, whichever  
10 is greater.

11 (b) A bylaw that fixes a greater quorum or voting require-  
12 ment for members under subsection (a) of this section may not  
13 be adopted, amended or repealed by the board of directors.

**ARTICLE 11. MERGERS.**

**§31E-11-1101. Merger.**

1 (a) One or more domestic corporations may merge with a  
2 domestic or foreign corporation or other entity pursuant to a  
3 plan of merger.

4 (b) A foreign corporation, or a domestic or foreign other  
5 entity, may be a party to the merger, or may be created by the  
6 terms of the plan of merger, only if:

7 (1) The merger is permitted by the laws under which the  
8 corporation or other entity is organized or by which it is  
9 governed; and

10 (2) In effecting the merger, the corporation or other entity  
11 complies with the laws under which the corporation or other



12 entity is organized or by which it is governed and with its  
13 articles of incorporation or organizational documents.

14 (c) The plan of merger must include:

15 (1) The name of each corporation or other entity that will  
16 merge and the name of the corporation or other entity that will  
17 be the survivor of the merger;

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

19 (3) The manner and basis of converting the memberships,  
20 if any, of each merging corporation and interests of each  
21 merging entity, interests, obligations, cash, other property, or  
22 any combination of the foregoing;

23 (4) The articles of incorporation of any corporation, or the  
24 organizational documents of any other entity, to be created by  
25 the merger, or if a new corporation or other entity is not to be  
26 created by the merger, any amendments to the survivor's  
27 articles of incorporation or organizational documents; and

28 (5) Any other provisions required by the laws under which  
29 any party to the merger is organized or by which it is governed,  
30 or by the articles of incorporation or organizational documents  
31 of any party to the merger.

32 (d) The terms described in subdivisions (2) and (3),  
33 subsection(c) of this section may be made dependent on facts  
34 ascertainable outside the plan of merger, provided that those  
35 facts are objectively ascertainable. The term "facts" includes,  
36 but is not limited to, the occurrence of any event, including a  
37 determination or action by any person or body, including the  
38 corporation.

39 (e) The plan of merger may also include a provision that the  
40 plan may be amended prior to filing the articles of merger with

41 the secretary of state: *Provided*, That if the members of a  
42 domestic corporation that is a party to the merger are required  
43 or permitted to vote on the plan, the plan must provide that  
44 subsequent to approval of the plan by the members the plan  
45 may not be amended to:

46 (1) Change the manner and basis of converting the member-  
47 ships, if any;

48 (2) Change the articles of incorporation of any corporation,  
49 or the organizational documents of any other entity, that will  
50 survive or be created as a result of the merger, except for  
51 changes permitted by section one thousand five, article ten of  
52 this chapter or by comparable provisions of the laws under  
53 which the foreign corporation or other entity is organized or  
54 governed; or

55 (3) Change any of the other terms or conditions of the plan  
56 if the change would adversely affect the members in any  
57 material respect.

**§31E-11-1102. Action on plan of merger.**

1 (a) After adopting a plan of merger, the board of directors  
2 of each corporation party to the merger shall submit the plan of  
3 merger, except as provided in subsection (h) of this section, for  
4 approval by those members who are entitled to vote on a plan  
5 of merger, if any.

6 (b) For a plan of merger to be approved: (1) The board of  
7 directors must approve the plan of merger; (2) the board of  
8 directors must recommend the plan of merger to the members  
9 entitled to vote on the plan of merger, if any, unless the board  
10 of directors determines that because of conflicts of interest or  
11 other special circumstances it should make no recommendation  
12 and communicates the basis for its determination to the  
13 members entitled to vote on the plan of merger with the

14 submission of the plan; and (3) the members entitled to vote on  
15 the plan must approve the plan, either before or after the actions  
16 required in subdivisions (1) and (2) of this subsection, as  
17 provided in subsection (e) of this section.

18 (c) The board of directors may condition its submission of  
19 the proposed merger on any basis.

20 (d) The corporation shall notify each member, entitled to  
21 vote on the plan, if any, of the proposed members' meeting in  
22 accordance with section seven hundred five, article seven of  
23 this chapter. The notice is also to state that the purpose, or one  
24 of the purposes, of the meeting is to consider the plan of merger  
25 and contain or be accompanied by a copy or summary of the  
26 plan.

27 (e) Unless this chapter, the articles of incorporation or the  
28 board of directors acting pursuant to subsection (c) of this  
29 section requires a greater vote or a vote by class of members,  
30 the plan of merger to be adopted must be approved by: (1) If no  
31 class of members is entitled to vote separately on the plan as a  
32 class, at least two thirds of the votes cast by the members  
33 entitled to vote; and (2) if any class of members is entitled to  
34 vote on the plan separately as a class, at least two thirds of the  
35 votes cast by the members of each class whose members are  
36 entitled to vote.

37 (f) Separate voting by class of members is required on a  
38 plan of merger if the plan contains a provision that, if contained  
39 in a proposed amendment to articles of incorporation, would  
40 require action by one or more separate classes of members on  
41 the proposed amendment under the articles of incorporation of  
42 the corporation.

43 (g) Approval of the plan of merger by the corporation  
44 requires a greater or additional vote if:

45 (1) In the case of the surviving corporation, a plan of  
46 merger contains any provision which, if contained in a proposed  
47 amendment to its articles of incorporation would require a  
48 greater vote than, or additional vote to, that otherwise required  
49 to approve the plan of merger; or

50 (2) In the case of any terminating corporation, a sale of all  
51 or substantially all assets, or dissolution, would under the  
52 circumstances require a greater vote than, or additional vote to,  
53 that otherwise required to approve the plan of merger.

54 (h) Action by the members of the surviving corporation on  
55 a plan of merger is not required if:

56 (1) The articles of incorporation of the surviving corpora-  
57 tion will not differ, except for amendments enumerated in  
58 section one thousand two, article ten of this chapter from its  
59 articles of incorporation before the merger; and

60 (2) Each member of the surviving corporation immediately  
61 before the effective date of the merger will be a member with  
62 identical designations, qualifications, privileges and rights  
63 immediately after the merger.

64 (i) After a merger is authorized, and at any time before the  
65 articles of merger is filed, the planned merger may be aban-  
66 doned, subject to any contractual rights, without further  
67 member action, in accordance with the procedure set forth in  
68 the plan of merger or, if none is set forth, in the manner  
69 determined by the board of directors.

70 (j) If any merging corporation has no members, or no  
71 members entitled to vote on the merger, a plan of merger is to  
72 be adopted by the board of directors.

**§31E-11-1103. Articles of merger.**

1 (a) After a plan of merger is approved as required by  
2 section one thousand one hundred two of this article, the  
3 surviving corporation shall deliver to the secretary of state for  
4 filing articles of merger setting forth: (1) The plan of merger;  
5 (2) a statement to the effect that the plan of merger was adopted  
6 by the board of directors of each corporation party to the  
7 merger; (3) if member approval was not required, a statement  
8 to that effect; and (4) if approval of members of one or more  
9 corporations party to the merger was required: (A) The designa-  
10 tion of each class of members entitled to vote separately on the  
11 plan as to each corporation; and (B) the total number of votes  
12 cast for and against the plan by each class of members entitled  
13 to vote separately on the plan as to each corporation and a  
14 statement that the number cast for the plan by each class of  
15 members was sufficient for approval by that class.

16 (b) A merger takes effect upon issuance by the secretary of  
17 state of a certificate of merger to the survivor corporation.

18 (c) The secretary of state shall withhold the issuance of any  
19 certificate of merger in the case where the new or surviving  
20 corporation will be a foreign corporation which has not  
21 qualified to conduct affairs or do or transact business or hold  
22 property in this state until the receipt by the secretary of state of  
23 a notice from the tax commissioner and bureau of employment  
24 programs to the effect that all taxes due from said corporation  
25 under the provisions of chapter eleven of this code, including,  
26 but not limited to, taxes withheld under the provisions of  
27 section seventy-one, article twenty-one, chapter eleven of this  
28 code, all business and occupation taxes, motor carrier and  
29 transportation privilege taxes, gasoline taxes, consumer sales  
30 taxes and any and all license franchise or other excise taxes and  
31 corporate net income taxes, and employment security payments  
32 levied or assessed against the corporation seeking to dissolve  
33 have been paid or that the payment has been provided for, or  
34 until the secretary of state received a notice from the tax

35 commissioner or bureau of employment programs stating that  
36 the corporation in question is not subject to payment of any  
37 taxes or to the making of any employment security payments or  
38 assessments.

**§31E-11-1104. Effect of merger.**

1 When a merger takes effect:

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

5 (2) All property owned by, and every contract right  
6 possessed by, each corporation or other entity that merges into  
7 the survivor is vested in the survivor without reversion or  
8 impairment;

9 (3) All real property located in the state owned by each  
10 corporation or other entity that merges into the survivor passes  
11 by operation of law and the transfer is evidenced by recording  
12 a confirmation deed in each county in which the real property  
13 is located. No transfer or excise taxes may be assessed for the  
14 recording of the confirmation deeds.

15 (4) The surviving corporation has all liabilities of each  
16 corporation party to the merger;

17 (5) A proceeding pending against any corporation party to  
18 the merger may be continued as if the merger did not occur or  
19 the surviving corporation may be substituted in the proceeding  
20 for the corporation whose existence ceased;

21 (6) The articles of incorporation of the surviving corpora-  
22 tion is amended to the extent provided in the plan of merger;

23 (7) The memberships, if any, of each corporation party to  
24 the merger that are to be converted into memberships of the  
25 surviving corporation are converted, and the former members  
26 in the membership classes are entitled only to the designation,  
27 qualifications, privileges and rights of the class of members to  
28 which they are converted, as provided in the articles of incorpo-  
29 ration of the surviving corporation as the articles may be  
30 amended by the plan of merger; and

31 (8) Any devise, bequest, gift or grant, contained in any will  
32 or in any other instrument, made before or after the merger, to  
33 or for the benefit of any of the merging corporations inures to  
34 the benefit of the surviving corporation, and so far as is  
35 necessary for that purpose, the existence of each merging  
36 corporation is deemed to continue in and through the surviving  
37 or new corporation.

#### ARTICLE 12. DISPOSITION OF ASSETS.

##### **§31E-12-1201. Disposition of assets not requiring member approval.**

1 No approval of the members of a corporation is required,  
2 unless the articles of incorporation otherwise provide:

3 (1) To sell, lease, exchange, or otherwise dispose of any or  
4 all of the corporation's assets in the usual and regular course of  
5 business;

6 (2) To mortgage, pledge, dedicate to the repayment of  
7 indebtedness with or without recourse, or otherwise encumber  
8 any or all of the corporation's assets, whether or not in the usual  
9 and regular course of business; or

10 (3) To transfer any or all of the corporation's assets to one  
11 or more corporations or other entities all of the shares or  
12 interests of which are owned by the corporation.

**§31E-12-1202. Member approval of certain dispositions.**

1 (a) If the corporation has members entitled to vote on the  
2 transaction, a sale, lease, exchange, or other disposition of  
3 assets, other than a disposition described in section one thou-  
4 sand two hundred one of this article, requires approval of the  
5 corporation's members if the disposition would leave the  
6 corporation without a significant continuing business activity.  
7 If a corporation retains an activity that represented at least  
8 twenty-five percent of total assets at the end of the most  
9 recently completed fiscal year, and twenty-five percent of either  
10 income from continuing operations before taxes or revenues  
11 from continuing operations for that fiscal year, in each case of  
12 the corporation and its subsidiaries on a consolidated basis, the  
13 corporation will conclusively be deemed to have retained a  
14 significant continuing activity.

15 (b) A disposition that requires approval of the members  
16 under subsection (a) of this section must be initiated by a  
17 resolution by the board of directors authorizing the disposition.  
18 After adoption of a resolution, the board of directors shall  
19 submit the proposed disposition to the members for their  
20 approval. The board of directors shall also transmit to the  
21 members a recommendation that the members approve the  
22 proposed disposition, unless the board of directors makes a  
23 determination that because of conflicts of interest or other  
24 special circumstances it should not make a recommendation  
25 that the members approve the disposition, in which case the  
26 board of directors shall transmit to the members the basis for  
27 that determination.

28 (c) The board of directors may condition its submission of  
29 a disposition to the members under subsection (b) of this  
30 section on any basis.



31 (d) If a disposition is required to be approved by the  
32 members under subsection (a) of this section, and if the  
33 approval is to be given at a meeting, the corporation shall notify  
34 each member entitled to vote of the meeting of members at  
35 which the disposition is to be submitted for approval. The  
36 notice must state that the purpose, or one of the purposes, of the  
37 meeting is to consider the disposition and is to contain a  
38 description of the disposition, including the terms and condi-  
39 tions of the disposition and the consideration to be received by  
40 the corporation.

41 (e) Unless this chapter or the articles of incorporation or the  
42 board of directors acting pursuant to subsection (c) of this  
43 section requires a greater vote, or a greater number of votes to  
44 be present, the approval of a disposition by the members  
45 requires the approval of the members at a meeting at which a  
46 quorum consisting of at least a majority of the votes entitled to  
47 be cast on the disposition exists.

48 (f) After a disposition has been approved by the members  
49 under subsection (b) of this section, and at any time before the  
50 disposition has been consummated, it may be abandoned by the  
51 corporation without action by the members, subject to any  
52 contractual rights of other parties to the disposition.

53 (g) A disposition of assets in the course of dissolution under  
54 article thirteen is not governed by this section.

55 (h) The assets of a direct or indirect consolidated subsidiary  
56 are to be deemed the assets of the parent corporation for the  
57 purposes of this section.

#### **ARTICLE 13. DISSOLUTION.**

##### **PART I. VOLUNTARY DISSOLUTION.**

#### **§31E-13-1301. Dissolution by incorporators or initial directors.**

1 A majority of the incorporators or initial directors of a  
2 corporation that has not commenced activities may dissolve the  
3 corporation by delivering to the secretary of state for filing  
4 articles of dissolution that set forth:

5 (1) The name of the corporation;

6 (2) The date of its incorporation;

7 (3) That the corporation has no member entitled to vote;

8 (4) That the corporation has not commenced the activities  
9 for which it was incorporated;

10 (5) That no debt of the corporation remains unpaid;

11 (6) That the net assets of the corporation remaining after  
12 winding up have been distributed as required by this chapter;  
13 and

14 (7) That a majority of the incorporators or initial directors  
15 authorized the dissolution.

**§31E-13-1302. Dissolution by board of directors and members.**

1 (a) A corporation's board of directors may propose dissolu-  
2 tion for submission to those members entitled to vote on the  
3 dissolution.

4 (b) For a proposal to dissolve to be adopted:

5 (1) The board of directors must recommend dissolution to  
6 the members unless the board of directors determines that  
7 because of conflict of interest or other special circumstances it  
8 should make no recommendation and communicates the basis  
9 for its determination to the members; and

10 (2) The members entitled to vote must approve the proposal  
11 to dissolve as provided in subsection (e) of this section.

12 (c) The board of directors may condition its submission of  
13 the proposal for dissolution on any basis.

14 (d) The corporation shall notify each member entitled to  
15 vote of the proposed members' meeting. The notice must also  
16 state that the purpose, or one of the purposes, of the meeting is  
17 to consider dissolving the corporation.

18 (e) Unless the articles of incorporation or the board of  
19 directors acting pursuant to subsection (c) of this section require  
20 a greater vote, adoption of the proposal to dissolve requires the  
21 approval of the members at a meeting at which a quorum  
22 consisting of at least a majority of the votes entitled to be cast  
23 exists.

24 (f) If the corporation has no members, or no members  
25 entitled to vote upon dissolution, dissolution must be authorized  
26 by resolution of the board of directors.

**§31E-13-1303. Articles of dissolution.**

1 (a) At any time after dissolution is authorized, the corpora-  
2 tion may dissolve by delivering to the secretary of state for  
3 filing articles of dissolution setting forth:

4 (1) The name of the corporation;

5 (2) The date dissolution was authorized; and

6 (3) If dissolution was approved by the members, a state-  
7 ment that the proposal to dissolve was duly approved by the  
8 members in the manner required by this chapter and by the  
9 articles of incorporation.

10 (b) A corporation is dissolved upon the receipt by the  
11 corporation of a certificate of dissolution from the secretary of  
12 state.

13 (c) The secretary of state shall issue a certificate of dissolu-  
14 tion to the corporation delivering articles of dissolution upon  
15 receipt by the secretary of state of a notice from the tax  
16 commissioner and bureau of employment programs to the effect  
17 that all taxes due from the corporation under the provisions of  
18 chapter eleven of this code, including, but not limited to, taxes  
19 withheld under the provisions of section seventy-one, article  
20 twenty-one of said chapter eleven of this code, all business and  
21 occupation taxes, motor carrier and transportation privilege  
22 taxes, gasoline taxes, consumer sales taxes and any and all  
23 license franchise or other excise taxes and corporate net income  
24 taxes, and employment security payments levied or assessed  
25 against the corporation seeking to dissolve have been paid or  
26 that the payment has been provided for, or until the secretary of  
27 state received a notice from the tax commissioner or bureau of  
28 employment programs, as the case may be, stating that the  
29 corporation in question is not subject to payment of any taxes  
30 or to the making of any employment security payments or  
31 assessments.

**§31E-13-1304. Revocation of dissolution.**

1 (a) A corporation may revoke its dissolution within one  
2 hundred twenty days of its effective date.

3 (b) Revocation of dissolution must be authorized in the  
4 same manner as the dissolution was authorized unless that  
5 authorization permitted revocation by action of the board of  
6 directors alone, in which event the board of directors may  
7 revoke the dissolution without member action.

8 (c) After the revocation of dissolution is authorized, the  
9 corporation may revoke the dissolution by delivering to the

10 secretary of state for filing articles of revocation of dissolution,  
11 together with a copy of its articles of dissolution, that set forth:

12 (1) The name of the corporation;

13 (2) The effective date of the dissolution that was revoked;

14 (3) The date that the revocation of dissolution was autho-  
15 rized;

16 (4) If the corporation's board of directors or incorporators  
17 revoked the dissolution, a statement to that effect;

18 (5) If the corporation's board of directors revoked a  
19 dissolution authorized by the members, a statement that  
20 revocation was permitted by action by the board of directors  
21 alone pursuant to that authorization; and

22 (6) If member action was required to revoke the dissolution,  
23 the information required by subdivision (3), subsection (a),  
24 section one thousand three hundred three of this article.

25 (d) Revocation of dissolution is effective upon the effective  
26 date of the articles of revocation of dissolution.

27 (e) When the revocation of dissolution is effective, it relates  
28 back to and takes effect as of the effective date of the dissolu-  
29 tion and the corporation resumes carrying on its activities as if  
30 dissolution had never occurred.

**§31E-13-1305. Effect of dissolution.**

1 (a) A dissolved corporation continues its corporate exis-  
2 tence but may not carry on any activities except those appropri-  
3 ate to wind up and liquidate its activities and affairs, including:

4 (1) Adopting a plan providing for the distribution of assets  
5 under section one thousand three hundred eight of this article.

6 (2) Collecting its assets;

7 (3) Disposing of its properties that will not be distributed in  
8 kind pursuant to the plan of distribution consistent with the  
9 requirements of section one thousand three hundred eight of  
10 this article;

11 (4) Discharging or making provision for discharging its  
12 liabilities;

13 (5) Distributing its remaining assets in accordance with  
14 sections one thousand three hundred eight and one thousand  
15 three hundred nine of this article; and

16 (6) Doing every other act necessary to wind up and liqui-  
17 date its activities and affairs.

18 (b) Dissolution of a corporation does not:

19 (1) Transfer title to the corporation's property;

20 (2) Prevent transfer of its transferable membership interests,  
21 if any, although the authorization to dissolve may provide for  
22 closing the corporation's membership records;

23 (3) Subject its directors or officers to standards of conduct  
24 different from those prescribed in article eight of this chapter;

25 (4) Change quorum or voting requirements for its board of  
26 directors or members; change provisions for selection, resigna-  
27 tion, or removal of its directors or officers or both; or change  
28 provisions for amending its bylaws;

29 (5) Prevent commencement of a proceeding by or against  
30 the corporation in its corporate name;

31 (6) Abate or suspend a proceeding pending by or against the  
32 corporation on the effective date of dissolution;

33 (7) Terminate the authority of the registered agent of the  
34 corporation; or

35 (8) Of itself, render the members liable for any liability or  
36 other obligations of the corporation or vest title to the property  
37 of the corporation in the members.

**§31E-13-1306. Known claims against dissolved corporation.**

1 (a) A dissolved corporation may dispose of the known  
2 claims against it by following the procedure described in this  
3 section.

4 (b) The dissolved corporation shall notify its known  
5 claimants in writing of the dissolution at any time after its  
6 effective date. The written notice must:

7 (1) Describe information that must be included in a claim;

8 (2) Provide a mailing address where a claim may be sent;

9 (3) State the deadline, which may not be fewer than one  
10 hundred twenty days from the effective date of the written  
11 notice, by which the dissolved corporation must receive the  
12 claim; and

13 (4) State that the claim will be barred if not received by the  
14 deadline.

15 (c) A claim against the dissolved corporation is barred:

16 (1) If a claimant who was given written notice under  
17 subsection (b) of this section does not deliver the claim to the  
18 dissolved corporation by the deadline; or

19 (2) If a claimant whose claim was rejected by the dissolved  
20 corporation does not commence a proceeding to enforce the

21 claim within ninety days from the effective date of the rejection  
22 notice.

23 (d) For purposes of this section, "claim" does not include  
24 a contingent liability or a claim based on an event occurring  
25 after the effective date of dissolution.

**§31E-13-1307. Unknown claims against dissolved corporation.**

1 (a) A dissolved corporation may also publish notice of its  
2 dissolution and request that persons with claims against the  
3 corporation present them in accordance with the notice.

4 (b) The notice must:

5 (1) Be published one time in a newspaper of general  
6 circulation in the county where the dissolved corporation's  
7 principal office, or if the corporation had no principal office in  
8 this state, in any county where it conducts its affairs;

9 (2) Describe the information that must be included in a  
10 claim and provide a mailing address where the claim may be  
11 sent; and

12 (3) State that a claim against the corporation will be barred  
13 unless a proceeding to enforce the claim is commenced within  
14 five years after the publication of the notice.

15 (c) If the dissolved corporation publishes a newspaper  
16 notice in accordance with subsection (b) of this section, the  
17 claim of each of the following claimants is barred unless the  
18 claimant commences a proceeding to enforce the claim against  
19 the dissolved corporation within five years after the publication  
20 date of the newspaper notice:

21 (1) A claimant who did not receive written notice under  
22 section one thousand three hundred six;



23 (2) A claimant whose claim was timely sent to the dis-  
24 solved corporation but not acted on; and

25 (3) A claimant whose claim is contingent or based on a  
26 event occurring after the effective date of dissolution.

27 (d) A claim may be enforced under this section:

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

30 (2) If the assets have been distributed in liquidation, against  
31 a member of the dissolved corporation to the extent of his or her  
32 pro rata share of the claim or the corporate assets distributed to  
33 him or her in liquidation, whichever is less, but a member's  
34 total liability for all claims under this section may not exceed  
35 the total amount of assets distributed to him or her.

**§31E-13-1308. Adoption of plan for distribution of assets.**

1 A plan providing for the distribution of assets, not inconsis-  
2 tent with the provisions of this chapter is to be adopted by a  
3 corporation for the purpose of authorizing any transfer or  
4 conveyance of assets for which section one thousand three  
5 hundred nine of this chapter requires a plan of distribution, in  
6 the following manner:

7 (1) Where there are members of any class entitled to vote  
8 on dissolution, the board of directors shall adopt a resolution  
9 recommending a plan of distribution and directing the submis-  
10 sion of the plan to a vote of each class of members entitled to  
11 vote. Written notice setting forth the proposed plan of distribu-  
12 tion or a summary of the plan is to be given to each member  
13 entitled to vote in accordance with section seven hundred five,  
14 article seven of this chapter. The plan of distribution is to be  
15 adopted upon receiving the approval of a majority of the votes  
16 cast by each class of members voting as a class.

17 (2) Where there are no members entitled to vote on  
18 dissolution, a plan of distribution is to be adopted by resolution  
19 of the board of directors, or, if directors have not yet been  
20 appointed, by resolution approved by a majority of the incorpo-  
21 rators.

**§31E-13-1309. Liquidating distribution of assets.**

1 (a) The assets of a corporation in the process of dissolution  
2 are to be applied and distributed as follows: (1) All liabilities  
3 and other obligations of the corporation are to be paid, satisfied  
4 and discharged, or adequate provision made for their payment,  
5 satisfaction and discharge; (2) assets held by the corporation  
6 upon condition requiring return, transfer or conveyance, which  
7 condition occurs by reason of the dissolution, are to be returned,  
8 transferred or conveyed in accordance with the conditions; (3)  
9 assets received and held by the corporation subject to limita-  
10 tions permitting their use only for charitable, religious, eleemo-  
11 synary, benevolent, educational or similar purposes, but not  
12 held upon a condition requiring return, transfer or conveyance  
13 by reason of the dissolution, are to be transferred or conveyed  
14 to one or more domestic or foreign corporations, societies or  
15 organizations engaged in activities substantially similar to those  
16 of the dissolving corporation, pursuant to a plan of distribution  
17 adopted as provided in section one thousand three hundred eight  
18 of this article; (4) other assets, if any, are to be distributed pro  
19 rata among the members of the corporation except to the extent  
20 that the articles of incorporation determines the distributive  
21 rights of members, or any class or classes of members, or  
22 provides for distribution to others; and (5) any remaining assets  
23 may be distributed to persons, societies, organizations or  
24 domestic or foreign corporations, whether for profit or non-  
25 profit, as may be specified in a plan of distribution adopted as  
26 provided in section one thousand three hundred eight of this  
27 article.

28 (b) No final liquidating distribution of assets may be made  
29 by a dissolved corporation until the corporation has obtained a  
30 current statement or statements from the tax commissioner and  
31 bureau of employment programs to the effect that all taxes due  
32 from the corporation under the provisions of chapter eleven of  
33 this code, including, but not limited to, taxes withheld under the  
34 provisions of section seventy-one, article twenty-one of said  
35 chapter eleven of this code, all business and occupation taxes,  
36 motor carrier and transportation privilege taxes, gasoline taxes,  
37 consumer sales taxes and any and all license franchise or other  
38 excise taxes and corporate net income taxes, and employment  
39 security payments levied or assessed against the corporation  
40 seeking to dissolve have been paid or that the payment has been  
41 provided for, or until the secretary of state received a notice  
42 from the tax commissioner or bureau of employment programs,  
43 as the case may be, stating that the corporation in question is  
44 not subject to payment of any taxes or to the making of any  
45 employment security payments or assessments.

## PART 2. ADMINISTRATIVE DISSOLUTION.

### **§31E-13-1320. Grounds for administrative dissolution.**

1 The secretary of state may commence a proceeding under  
2 section one thousand three hundred twenty-one of this article to  
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after  
5 they are due any franchise taxes or penalties imposed by this  
6 chapter or other law;

7 (2) The corporation does not notify the secretary of state  
8 within sixty days that its registered agent or registered office  
9 has been changed, that its registered agent has resigned, or that  
10 its registered office has been discontinued; or

11 (3) The corporation's period of duration stated in its articles  
12 of incorporation expires.

**§31E-13-1321. Procedure for and effect of administrative dissolution.**

1 (a) If the secretary of state determines that one or more  
2 grounds exist under section one thousand three hundred twenty  
3 of this article for dissolving a corporation, he or she shall serve  
4 the corporation with written notice of his or her determination  
5 pursuant to section five hundred four, article five of this  
6 chapter.

7 (b) If the corporation does not correct each ground for  
8 dissolution or demonstrate to the reasonable satisfaction of the  
9 secretary of state that each ground determined by the secretary  
10 of state does not exist within sixty days after service of the  
11 notice is perfected under section five hundred four, article five  
12 of this chapter, the secretary of state shall administratively  
13 dissolve the corporation by signing a certificate of dissolution  
14 that recites the ground or grounds for dissolution and its  
15 effective date. The secretary of state shall file the original of the  
16 certificate and serve a copy on the corporation pursuant to  
17 section five hundred four, article five of this chapter.

18 (c) A corporation administratively dissolved continues its  
19 corporate existence but may not carry on any activities except  
20 that necessary to wind up and liquidate its business and affairs  
21 under section one thousand three hundred five of this article and  
22 notify claimants pursuant to sections one thousand three  
23 hundred six and one thousand three hundred seven of this  
24 article.

25 (d) The administrative dissolution of a corporation does not  
26 terminate the authority of its registered agent.

**§31E-13-1322. Reinstatement following administrative dissolution.**

1 (a) A corporation administratively dissolved under section  
2 one thousand three hundred twenty-one of this article may  
3 apply to the secretary of state for reinstatement within two  
4 years after the effective date of dissolution. The application  
5 must:

6 (1) Recite the name of the corporation and the effective  
7 date of its administrative dissolution;

8 (2) State that the ground or grounds for dissolution either  
9 did not exist or have been eliminated;

10 (3) State that the corporation's name satisfies the require-  
11 ments of section four hundred one, article four of this chapter;  
12 and

13 (4) Contain a certificate from the tax commissioner reciting  
14 that all taxes owed by the corporation have been paid.

15 (b) If the secretary of state determines that the application  
16 contains the information required by subsection (a) of this  
17 section and that the information is correct, he or she shall  
18 cancel the certificate of dissolution and prepare a certificate of  
19 reinstatement that recites his or her determination and the  
20 effective date of reinstatement, file the original of the certifi-  
21 cate, and serve a copy on the corporation pursuant to section  
22 five hundred four, article five of this chapter.

23 (c) When the reinstatement is effective, it relates back to  
24 and takes effect as of the effective date of the administrative  
25 dissolution and the corporation resumes carrying on its activi-  
26 ties as if the administrative dissolution had never occurred.

**§31E-13-1323. Appeal from denial of reinstatement.**

1 (a) If the secretary of state denies a corporation's applica-  
2 tion for reinstatement following administrative dissolution, he  
3 or she shall serve the corporation pursuant to section five  
4 hundred four, article five of this chapter with a written notice  
5 that explains the reason or reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement  
7 to the circuit court within thirty days after service of the notice  
8 of denial is perfected. The corporation appeals by petitioning  
9 the circuit court to set aside the dissolution and attaching to the  
10 petition copies of the secretary of state's certificate of dissolu-  
11 tion, the corporation's application for reinstatement, and the  
12 secretary of state's notice of denial.

13 (c) The circuit court may summarily order the secretary of  
14 state to reinstate the dissolved corporation or may take other  
15 action the circuit court considers appropriate.

16 (d) The circuit court's final decision may be appealed as in  
17 other civil proceedings.

### PART 3. JUDICIAL DISSOLUTION.

#### **§31E-13-1330. Grounds for judicial dissolution.**

1 The circuit court may dissolve a corporation:

2 (1) In a proceeding by the attorney general if it is estab-  
3 lished that:

4 (A) The corporation obtained its articles of incorporation  
5 through fraud; or

6 (B) The corporation has continued to exceed or abuse the  
7 authority conferred upon it by law;

8 (2) In a proceeding by a member or director if it is estab-  
9 lished that:

10 (A) The directors are deadlocked in the management of the  
11 corporate affairs, the members are unable to break the deadlock,  
12 and irreparable injury to the corporation is threatened or being  
13 suffered, or the activities and affairs of the corporation can no  
14 longer be conducted in accordance with the corporation's  
15 purpose, because of the deadlock;

16 (B) The directors or those in control of the corporation have  
17 acted, are acting, or will act in a manner that is illegal, oppres-  
18 sive, or fraudulent; or

19 (C) The corporate assets are being misapplied or wasted;

20 (3) In a proceeding by a creditor if it is established that:

21 (A) The creditor's claim has been reduced to judgment, the  
22 execution on the judgment returned unsatisfied, and the  
23 corporation is insolvent; or

24 (B) The corporation has admitted in writing that the  
25 creditor's claim is due and owing and the corporation is  
26 insolvent; or

27 (4) In a proceeding by the corporation to have its voluntary  
28 dissolution continued under circuit court supervision.

**§31E-13-1331. Procedure for judicial dissolution.**

1 (a) It is not necessary to make members or directors parties  
2 to a proceeding to dissolve a corporation unless relief is sought  
3 against them individually.

4 (b) A circuit court in a proceeding brought to dissolve a  
5 corporation may issue injunctions, appoint a receiver or

6 custodian pendente lite with all powers and duties the circuit  
7 court directs, take other action required to preserve the corpo-  
8 rate assets wherever located, and carry on the activities of the  
9 corporation until a full hearing can be held.

**§31E-13-1332. Receivership or custodianship.**

1 (a) A circuit court in a judicial proceeding brought to  
2 dissolve a corporation may appoint one or more receivers to  
3 wind up and liquidate, or one or more custodians to manage, the  
4 activities and affairs of the corporation. The circuit court shall  
5 hold a hearing, after notifying all parties to the proceeding and  
6 any interested persons designated by the circuit court, before  
7 appointing a receiver or custodian. The circuit court appointing  
8 a receiver or custodian has exclusive jurisdiction over the  
9 corporation and all of its property wherever located.

10 (b) The circuit court may appoint an individual or a  
11 domestic or foreign corporation authorized to transact business  
12 in this state as a receiver or custodian. The circuit court may  
13 require the receiver or custodian to post bond, with or without  
14 sureties, in an amount the circuit court directs.

15 (c) The circuit court shall describe the powers and duties of  
16 the receiver or custodian in its appointing order, which may be  
17 amended from time to time. Among other powers:

18 (1) The receiver: (A) May dispose of all or any part of the  
19 assets of the corporation wherever located, at a public or private  
20 sale, if authorized by the circuit court; and (B) may sue and  
21 defend in his or her own name as receiver of the corporation in  
22 all circuit courts of this state; and

23 (2) The custodian may exercise all of the powers of the  
24 corporation, through or in place of its board of directors, to the  
25 extent necessary to manage the affairs of the corporation in the  
26 best interests of its members and creditors.



5 (d) The circuit court during a receivership may redesignate  
6 the receiver a custodian, and during a custodianship may  
7 redesignate the custodian a receiver, if doing it is in the best  
8 interests of the corporation, its members, if any, and creditors.

9 (e) The circuit court from time to time during the receiver-  
10 ship or custodianship may order compensation paid and  
11 expense disbursements or reimbursements made to the receiver  
12 or custodian and his or her counsel from the assets of the  
13 corporation or proceeds from the sale of the assets.

**§31E-13-1333. Decree of dissolution.**

1 (a) If after a hearing the circuit court determines that one or  
2 more grounds for judicial dissolution described in section one  
3 thousand three hundred thirty of this article exist, it may enter  
4 a decree dissolving the corporation and specifying the effective  
5 date of the dissolution, and the clerk of the circuit court shall  
6 deliver a certified copy of the decree to the secretary of state,  
7 who shall file it.

8 (b) After entering the decree of dissolution, the circuit court  
9 shall direct the winding up and liquidation of the corporation's  
10 activities and affairs in accordance with section one thousand  
11 three hundred five of this article and the notification of claim-  
12 ants in accordance with sections one thousand three hundred six  
13 and one thousand three hundred seven of this article.

PART 4. MISCELLANEOUS.

**§31E-13-1340. Deposit with state treasurer.**

1 Assets of a dissolved corporation that should be transferred  
2 to a creditor, claimant, or member of the corporation who  
3 cannot be found or who is not competent to receive them are to  
4 be reduced to cash and deposited with the state treasurer or  
5 other appropriate state official for safekeeping. When the

6 creditor, claimant, or member furnishes satisfactory proof of  
7 entitlement to the amount deposited, the state treasurer or other  
8 appropriate state official shall pay him or her or his or her  
9 representative that amount.

**ARTICLE 14. FOREIGN CORPORATIONS.**

**PART I. CERTIFICATE OF AUTHORITY.**

**§31E-14-1401. Authority to conduct affairs required.**

1 (a) A foreign corporation may not conduct affairs in this  
2 state until it obtains a certificate of authority from the secretary  
3 of state.

4 (b) The following activities, among others, do not constitute  
5 conducting affairs within the meaning of subsection (a) of this  
6 section:

7 (1) Maintaining, defending, or settling any proceeding;

8 (2) Holding meetings of the board of directors or members  
9 or carrying on other activities concerning internal corporate  
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or  
14 through employees or agents or otherwise, if the orders require  
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages, and  
17 security interests in real or personal property;

18 (7) Securing or collecting debts or enforcing mortgages and  
19 security interests in property securing the debts;

20 (8) Owning, without more, real or personal property;

21 (9) Conducting an isolated transaction that is completed  
22 within thirty days and that is not one in the course of repeated  
23 transactions of a like nature;

24 (10) Conducting affairs in interstate commerce;

25 (11) Granting funds or other gifts;

26 (12) Distributing information to its shareholders or mem-  
27 bers;

28 (13) Effecting sales through independent contractors;

29 (14) The acquisition by purchase of lands secured by  
30 mortgage or deeds;

31 (15) Physical inspection and appraisal of property in West  
32 Virginia as security for deeds of trust, or mortgages and  
33 negotiations for the purchase of loans secured by property in  
34 West Virginia; and

35 (16) The management, rental, maintenance and sale; or the  
36 operating, maintaining, renting or otherwise, dealing with  
37 selling or disposing of property acquired under foreclosure sale  
38 or by agreement in lieu of foreclosure sale.

39 (c) The list of activities in subsection (b) of this section is  
40 not exhaustive.

41 (d) A foreign corporation is to be deemed to be conducting  
42 affairs in this state if:

43 (1) The corporation makes a contract to be performed, in  
44 whole or in part, by any party thereto, in this state;

45 (2) The corporation commits a tort in whole or in part in  
46 this state; or

47 (3) The corporation manufactures, sells, offers for sale or  
48 supplies any product in a defective condition and that product  
49 causes injury to any person or property within this state  
50 notwithstanding the fact that the corporation had no agents,  
51 servants or employees or contacts within this state at the time  
52 of the injury.

53 (e) A foreign corporation's making of a contract, the  
54 committing of a manufacture or sale, offer of sale or supply of  
55 defective product as described in subsection (d) of this section  
56 is deemed to be the agreement of that foreign corporation that  
57 any notice or process served upon, or accepted by, the secretary  
58 of state in a proceeding against that foreign corporation arising  
59 from, or growing out of, contract, tort, or manufacture or sale,  
60 offer of sale or supply of the defective product has the same  
61 legal force and validity as process duly served on that corpora-  
62 tion in this state.

**§31E-14-1402. Consequences of conducting affairs without au-  
thority.**

1 (a) A foreign corporation conducting affairs in this state  
2 without a certificate of authority may not maintain a proceeding  
3 in any circuit court in this state until it obtains a certificate of  
4 authority.

5 (b) The successor to a foreign corporation that conducted  
6 affairs in this state without a certificate of authority and the  
7 assignee of a cause of action arising out of that business may  
8 not maintain a proceeding based on that cause of action in any  
9 circuit court in this state until the foreign corporation or its  
10 successor obtains a certificate of authority.

11 (c) A circuit court may stay a proceeding commenced by a  
12 foreign corporation, its successor, or assignee until it deter-  
13 mines whether the foreign corporation or its successor requires  
14 a certificate of authority. If it so determines, the circuit court  
15 may further stay the proceeding until the foreign corporation or  
16 its successor obtains the certificate.

17 (d) A foreign corporation which conducts affairs or does or  
18 transacts business in this State without a certificate of authority  
19 is liable to this state, for the years or parts of years during  
20 which it conducted affairs or did or transacted business in this  
21 State without a certificate of authority in an amount equal to all  
22 fees and taxes which would have been imposed by this chapter,  
23 or by any other provision of this code, upon the corporation had  
24 it duly applied for and received a certificate of authority to  
25 conduct affairs or do or transact business in this State as  
26 required by this article and had filed all reports, statements or  
27 returns required by this chapter or by any other chapter of this  
28 code, plus all penalties imposed for failure to pay any fees and  
29 taxes.

30 (e) Notwithstanding subsections (a) and (b) of this section,  
31 the failure of a foreign corporation to obtain a certificate of  
32 authority does not impair the validity of its corporate acts or  
33 prevent it from defending any proceeding in this state.

34 (f) A foreign corporation conducting affairs in this state  
35 without a certificate of authority is conclusively presumed to  
36 have appointed the secretary of state as its attorney-in-fact to  
37 accept service of process and notice on behalf of the foreign  
38 corporation as provided in subsection (d), section one thousand  
39 four hundred ten of this article.

**§31E-14-1403. Application for certificate of authority.**

1 (a) A foreign corporation may apply for a certificate of  
2 authority to conduct affairs in this state by delivering an

3 application to the secretary of state for filing. The application  
4 must set forth:

5 (1) The name of the foreign corporation or, if its name is  
6 unavailable for use in this state, a corporate name that satisfies  
7 the requirements of section one thousand four hundred six of  
8 this article;

9 (2) The name of the state or country under whose law it is  
10 incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The mailing address of its principal office;

13 (5) The address of its registered office in this state, if any,  
14 and the name of its registered agent at that office, if any;

15 (6) The names and usual addresses of its current directors  
16 and officers; and

17 (7) The purpose or purposes of the corporation which it  
18 proposes to pursue in conducting its affairs or doing or transact-  
19 ing its business in this state.

20 (b) The foreign corporation shall deliver with the completed  
21 application a certificate of existence, or a document of similar  
22 import, duly authenticated by the secretary of state or other  
23 official having custody of corporate records in the state or  
24 country under whose law it is incorporated.

**§31E-14-1404. Amended certificate of authority.**

1 (a) A foreign corporation authorized to conduct affairs in  
2 this state must obtain an amended certificate of authority from  
3 the secretary of state if it changes:

4 (1) Its corporate name;

5 (2) The period of its duration; or

6 (3) The state or country of its incorporation.

7 (b) The requirements of section one thousand four hundred  
8 three of this article for obtaining an original certificate of  
9 authority apply to obtaining an amended certificate under this  
10 section.

**§31E-14-1405. Effect of certificate of authority.**

1 (a) A certificate of authority authorizes the foreign corpora-  
2 tion to which it is issued to conduct affairs in this state subject  
3 to the right of the state to revoke the certificate as provided in  
4 this chapter.

5 (b) A foreign corporation with a valid certificate of author-  
6 ity has the same rights and has the same privileges as, and  
7 except as otherwise provided by this chapter is subject to the  
8 same duties, restrictions, penalties, and liabilities as, a domestic  
9 corporation of like character.

10 (c) This chapter does not authorize this state to regulate the  
11 organization or internal affairs of a foreign corporation autho-  
12 rized to conduct affairs in this state.

**§31E-14-1406. Corporate name of foreign corporation.**

1 (a) If the corporate name of a foreign corporation does not  
2 satisfy the requirements of section four hundred one, article  
3 four of this chapter, the foreign corporation to obtain or  
4 maintain a certificate of authority to conduct affairs in this  
5 state:

6 (1) May add the word "corporation," "incorporated,"  
7 "company," or "limited," or the abbreviation "corp.," "inc.,"  
8 "co.," or "ltd.," to its corporate name for use in this state; or

9 (2) May use a fictitious name to transact business in this  
10 state if its real name is unavailable and it delivers to the  
11 secretary of state for filing a copy of the resolution of its board  
12 of directors, certified by its secretary, adopting the fictitious  
13 name.

14 (b) Except as authorized by subsections (c) and (d) of this  
15 section, the corporate name, including a fictitious name, of a  
16 foreign corporation must be distinguishable upon the records of  
17 the secretary of state from:

18 (1) The corporate name of a corporation incorporated or  
19 authorized to conduct affairs in this state;

20 (2) A corporate name reserved or registered under sections  
21 four hundred three or four hundred four, article four of this  
22 chapter;

23 (3) The fictitious name of another foreign corporation  
24 authorized to transact business in this state;

25 (4) The corporate name of a business corporation incorpo-  
26 rated or authorized to transact business in this state; and

27 (5) The name of any other entity whose name is carried in  
28 the records of the secretary of state.

29 (c) A foreign corporation may apply to the secretary of state  
30 for authorization to use in this state the name of another  
31 corporation incorporated or authorized to transact business in  
32 this state that is not distinguishable upon his or her records from  
33 the name applied for. The secretary of state shall authorize use  
34 of the name applied for if:

35 (1) The other corporation consents to the use in writing and  
36 submits an undertaking in form satisfactory to the secretary of



37 state to change the name so that it is distinguishable upon the  
38 records of the secretary of state from the name applied for; or

39 (2) The applicant delivers to the secretary of state a  
40 certified copy of a final judgment of a circuit court of compe-  
41 tent jurisdiction establishing the applicant's right to use the  
42 name applied for in this state.

43 (d) A foreign corporation may use in this state the name,  
44 including the fictitious name, of another domestic or foreign  
45 corporation that is used in this state if the other corporation is  
46 incorporated or authorized to conduct affairs in this state and  
47 the foreign corporation:

48 (1) Has merged with the other corporation;

49 (2) Has been formed by reorganization of the other corpora-  
50 tion; or

51 (3) Has acquired all or substantially all of the assets,  
52 including the corporate name, of the other corporation.

53 (e) If a foreign corporation authorized to conduct affairs in  
54 this state changes its corporate name to one that does not satisfy  
55 the requirements of section four hundred one, article four of this  
56 chapter, it may not conduct affairs in this state under the  
57 changed name until it adopts a name satisfying the requirements  
58 of section four hundred one, article four of this chapter and  
59 obtains an amended certificate of authority under section one  
60 thousand four hundred four of this article.

**§31E-14-1407. Registered office and registered agent of foreign corporation.**

1 Each foreign corporation authorized to conduct affairs in  
2 this state may continuously maintain in this state:

3 (1) A registered office that may be the same as any of its  
4 places of business; and

5 (2) A registered agent, who may be:

6 (A) An individual who resides in this state and whose  
7 business office is identical with the registered office;

8 (B) A domestic corporation or domestic business corpora-  
9 tion whose business office is identical with the registered  
10 office; or

11 (C) A foreign corporation or foreign business corporation  
12 authorized to transact business in this state whose business  
13 office is identical with the registered office.

**§31E-14-1408. Change of registered office or registered agent of  
foreign corporation.**

1 (a) A foreign corporation authorized to conduct affairs in  
2 this state may change its registered office or registered agent by  
3 delivering to the secretary of state for filing a statement of  
4 change that sets forth:

5 (1) Its name;

6 (2) The mailing address of its current registered office;

7 (3) If the current registered office is to be changed, the  
8 mailing address of its new registered office;

9 (4) The name of its current registered agent;

10 (5) If the current registered agent is to be changed, the  
11 name of its new registered agent and the new agent's written  
12 consent, either on the statement or attached to it, to the appoint-  
13 ment; and

14 (6) That after the change or changes are made, the mailing  
15 addresses of its registered office and the business office of its  
16 registered agent will be identical.

17 (b) If a registered agent changes the mailing address of his  
18 or her business office, he or she may change the mailing  
19 address of the registered office of any foreign corporation for  
20 which he or she is the registered agent by notifying the corpora-  
21 tion in writing of the change and signing, either manually or in  
22 facsimile, and delivering to the secretary of state for filing a  
23 statement of change that complies with the requirements of  
24 subsection (a) of this section and recites that the corporation has  
25 been notified of the change.

**§31E-14-1409. Resignation of registered agent of foreign corpora-  
tion.**

1 (a) The registered agent of a foreign corporation may resign  
2 his or her agency appointment by signing and delivering to the  
3 secretary of state for filing the original and two exact or  
4 conformed copies of a statement of resignation. The statement  
5 of resignation may include a statement that the registered office  
6 is also discontinued.

7 (b) After filing the statement, the secretary of state shall  
8 attach the filing receipt to one copy and mail the copy and  
9 receipt to the registered office if not discontinued. The secretary  
10 of state shall mail the other copy to the foreign corporation at  
11 its principal office address shown in its most recent return  
12 required pursuant to section three, article twelve-c, chapter  
13 eleven of this code.

14 (c) The agency appointment is terminated, and the regis-  
15 tered office discontinued if provided in the statement of  
16 registration, on the thirty-first day after the date on which the  
17 statement was filed.

**§31E-14-1410. Service on foreign corporation.**

1 (a) The registered agent of a foreign corporation authorized  
2 to conduct activities in this state is the corporation's agent for  
3 service of process, notice, or demand required or permitted by  
4 law to be served on the foreign corporation.

5 (b) A foreign corporation may be served by registered or  
6 certified mail, return receipt requested, addressed to the  
7 secretary of the foreign corporation at its principal office shown  
8 in its application for a certificate of authority or in its most  
9 recent return required pursuant to section three, article twelve-c,  
10 chapter eleven of this code if the foreign corporation:

11 (1) Has no registered agent or its registered agent cannot  
12 with reasonable diligence be served;

13 (2) Has withdrawn from conducting activities in this state  
14 under section one thousand four hundred twenty of this article;  
15 or

16 (3) Has had its certificate of authority revoked under  
17 section one thousand four hundred thirty-one of this article.

18 (c) Service is perfected under subsection (b) of this section  
19 at the earliest of:

20 (1) The date the foreign corporation receives the mail;

21 (2) The date shown on the return receipt, if signed on behalf  
22 of the foreign corporation; or

23 (3) Five days after its deposit in the United States mail, as  
24 evidenced by the postmark, if mailed postpaid and correctly  
25 addressed.

26 (d) In addition to the methods of service on a foreign  
27 corporation provided in subsections (a) and (b) of this section,  
28 the secretary of state is hereby constituted the attorney-in-fact  
29 for and on behalf of each foreign corporation authorized to  
30 conduct affairs in this state pursuant to the provisions of this  
31 chapter. The secretary of state has the authority to accept  
32 service of notice and process on behalf of each corporation and  
33 is an agent of the corporation upon whom service of notice and  
34 process may be made in this state for and upon each corpora-  
35 tion. No act of a corporation appointing the secretary of state as  
36 attorney-in-fact is necessary. Service of any process, notice or  
37 demand on the secretary of state may be made by delivering to  
38 and leaving with the secretary of state the original process,  
39 notice or demand and two copies of the process, notice or  
40 demand for each defendant, along with the fee required by  
41 section two, article one, chapter fifty-nine of this code. Immedi-  
42 ately after being served with or accepting any process or notice,  
43 the secretary of state shall: (1) file in his or her office a copy of  
44 the process or notice, endorsed as of the time of service, or  
45 acceptance, and (2) transmit one copy of the process or notice  
46 by registered or certified mail, return receipt requested, to (A)  
47 the foreign corporation's registered agent; or (B) if there is no  
48 registered agent, to the individual whose name and address was  
49 last given to the secretary of state's office as the person to  
50 whom notice and process are to be sent, and if no person has  
51 been named, to the principal office of the foreign corporation as  
52 that address was last given to the secretary of state's office.  
53 Service or acceptance of process or notice is sufficient if return  
54 receipt is signed by an agent or employee of the corporation, or  
55 the registered or certified mail sent by the secretary of state is  
56 refused by the addressee and the registered or certified mail is  
57 returned to the secretary of state, or to his or her office, showing  
58 the stamp of the United States postal service that delivery has  
59 been refused, and the return receipt or registered or certified  
60 mail is appended to the original process or notice and filed in

61 the clerk's office of the court from which the process or notice  
62 was issued. No process or notice may be served on the secretary  
63 of state or accepted by him or her less than ten days before the  
64 return day of the process or notice. The court may order  
65 continuances as may be reasonable to afford each defendant  
66 opportunity to defend the action or proceedings.

67 (e) Any foreign corporation conducting affairs in this state  
68 without having been authorized to do so pursuant to the  
69 provisions of this chapter is conclusively presumed to have  
70 appointed the secretary of state as its attorney-in-fact with  
71 authority to accept service of notice and process on behalf of  
72 the corporation and upon whom service of notice and process  
73 may be made in this state for and upon the corporation in any  
74 action or proceeding arising from activities described in section  
75 one thousand four hundred one of this article. No act of a  
76 corporation appointing the secretary of state as its attorney-in-  
77 fact is necessary. Immediately after being served with or  
78 accepting any process or notice, of which process or notice two  
79 copies for each defendant are to be furnished to the secretary of  
80 state with the original notice or process, together with the fee  
81 required by section two, article one, chapter fifty-nine of this  
82 code, the secretary of state shall file in his or her office a copy  
83 of the process or notice, with a note endorsed of the time of  
84 service or acceptance, and transmit one copy of the process or  
85 notice by registered or certified mail, return receipt requested,  
86 to the corporation at the address of its principal office, which  
87 address shall be stated in the process or notice. The service or  
88 acceptance of process or notice is sufficient if the return receipt  
89 is signed by an agent or employee of the corporation, or the  
90 registered or certified mail sent by the secretary of state is  
91 refused by the addressee and the registered or certified mail is  
92 returned to the secretary of state, or to his or her office, showing  
93 thereon the stamp of the United States postal service that  
94 delivery thereof has been refused, and the return receipt or  
95 registered or certified mail is appended to the original process

96 or notice and filed therewith in the clerk's office of the court  
97 from which the process or notice was issued. No process or  
98 notice may be served on the secretary of state or accepted by  
99 him or her less than ten days before the return date thereof. The  
100 court may order continuances as may be reasonable to afford  
101 each defendant opportunity to defend the action or proceedings.

102 (f) This section does not prescribe the only means, or  
103 necessarily the required means, of serving a foreign corpora-  
104 tion.

#### PART 2. WITHDRAWAL.

#### **§31E-14-1420. Withdrawal of foreign corporation.**

1 (a) A foreign corporation authorized to conduct activities in  
2 this state may not withdraw from this state until it obtains a  
3 certificate of withdrawal from the secretary of state.

4 (b) A foreign corporation authorized to conduct activities  
5 in this state may apply for a certificate of withdrawal by  
6 delivering an application to the secretary of state for filing. The  
7 application must set forth:

8 (1) The name of the foreign corporation and the name of the  
9 state or country under whose law it is incorporated;

10 (2) That it is not conducting activities in this state and that  
11 it surrenders its authority to conduct activities in this state;

12 (3) That it revokes the authority of its registered agent to  
13 accept service on its behalf and appoints the secretary of state  
14 as its agent for service of process in any proceeding based on a  
15 cause of action arising during the time it was authorized to  
16 conduct activities in this state;

17 (4) A mailing address to which the secretary of state may  
18 mail a copy of any process served on him or her under subdivi-  
19 sion (3) of this subsection; and

20 (5) A commitment to notify the secretary of state in the  
21 future of any change in its mailing address.

22 (c) After the withdrawal of the corporation is effective,  
23 service of process on the secretary of state under this section is  
24 service on the foreign corporation. Upon receipt of process, the  
25 secretary of state shall mail a copy of the process to the foreign  
26 corporation at the mailing address set forth under subsection (b)  
27 of this section.

28 (d) The secretary of state shall withhold the issuance of any  
29 certificate of withdrawal until the receipt by the secretary of  
30 state of a notice from the tax commissioner and bureau of  
31 employment programs to the effect that all taxes due from the  
32 corporation under the provisions of chapter eleven of this code,  
33 including, but not limited to, taxes withheld under the provi-  
34 sions of section seventy-one, article twenty-one, chapter eleven  
35 of this code, all business and occupation taxes, motor carrier  
36 and transportation privilege taxes, gasoline taxes, consumer  
37 sales taxes and any and all license franchise or other excise  
38 taxes and corporate net income taxes, and employment security  
39 payments levied or assessed against the corporation seeking to  
40 dissolve have been paid or that payment has been provided for,  
41 or until the secretary of state received a notice from the tax  
42 commissioner or bureau of employment programs, as the case  
43 may be, stating that the corporation in question is not subject to  
44 payment of any taxes or to the making of any employment  
45 security payments or assessments.

### PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.

#### §31E-14-1430. Grounds for revocation.



1 The secretary of state may commence a proceeding under  
2 section one thousand four hundred thirty-one of this article to  
3 revoke the certificate of authority of a foreign corporation  
4 authorized to conduct activities in this state if:

5 (1) The foreign corporation does not pay within sixty days  
6 after they are due any franchise taxes or penalties imposed by  
7 this chapter or other law;

8 (2) The foreign corporation does not inform the secretary  
9 of state under sections one thousand four hundred eight or one  
10 thousand four hundred nine of this article that its registered  
11 agent or registered office has changed, that its registered agent  
12 has resigned, or that its registered office has been discontinued  
13 within sixty days of the change, resignation, or discontinuance;

14 (3) An incorporator, director, officer, or agent of the foreign  
15 corporation signed a document he or she knew was false in any  
16 material respect with intent that the document be delivered to  
17 the secretary of state for filing; or

18 (4) The secretary of state receives a duly authenticated  
19 certificate from the secretary of state or other official having  
20 custody of corporate records in the state or country under whose  
21 law the foreign corporation is incorporated stating that it has  
22 been dissolved or disappeared as the result of a merger.

**§31E-14-1431. Procedure for and effect of revocation.**

1 (a) If the secretary of state determines that one or more  
2 grounds exist under section one thousand four hundred thirty of  
3 this article for revocation of a certificate of authority, he or she  
4 shall serve the foreign corporation with written notice of his or  
5 her determination pursuant to section one thousand four  
6 hundred ten of this article.

7 (b) If the foreign corporation does not correct each ground  
8 for revocation or demonstrate to the reasonable satisfaction of  
9 the secretary of state that each ground determined by the  
10 secretary of state does not exist within sixty days after service  
11 of the notice is perfected pursuant to section one thousand four  
12 hundred ten of this article, the secretary of state may revoke the  
13 foreign corporation's certificate of authority by signing a  
14 certificate of revocation that recites the ground or grounds for  
15 revocation and its effective date. The secretary of state shall file  
16 the original of the certificate and serve a copy on the foreign  
17 corporation pursuant to section one thousand four hundred ten  
18 of this article.

19 (c) The authority of a foreign corporation to transact  
20 business in this state ceases on the date shown on the certificate  
21 revoking its certificate of authority.

22 (d) The secretary of state's revocation of a foreign corpora-  
23 tion's certificate of authority appoints the secretary of state the  
24 foreign corporation's agent for service of process in any  
25 proceeding based on a cause of action which arose during the  
26 time the foreign corporation was authorized to transact business  
27 in this state. Service of process on the secretary of state under  
28 this subsection is service on the foreign corporation. Upon  
29 receipt of process, the secretary of state shall mail a copy of the  
30 process to the secretary of the foreign corporation at its  
31 principal office shown in its most recent return required  
32 pursuant to section three, article twelve-c, chapter eleven of this  
33 code or in any subsequent communication received from the  
34 corporation stating the current mailing address of its principal  
35 office, or, if none are on file, in its application for a certificate  
36 of authority.

37 (e) Revocation of a foreign corporation's certificate of  
38 authority does not terminate the authority of the registered  
39 agent of the corporation.

**§31E-14-1432. Appeal from revocation.**

1 (a) A foreign corporation may appeal the secretary of  
2 state's revocation of its certificate of authority to the circuit  
3 court within thirty days after service of the certificate of  
4 revocation is perfected pursuant to section one thousand four  
5 hundred ten of this article. The foreign corporation appeals by  
6 petitioning the circuit court to set aside the revocation and  
7 attaching to the petition copies of its certificate of authority and  
8 the secretary of state's certificate of revocation.

9 (b) The circuit court may summarily order the secretary of  
10 state to reinstate the certificate of authority or may take any  
11 other action the circuit court considers appropriate.

12 (c) The circuit court's final decision may be appealed as in  
13 other civil proceedings.

**ARTICLE 15. RECORDS AND REPORTS.**

**PART 1. RECORDS.**

**§31E-15-1501. Corporate records.**

1 (a) A corporation shall keep as permanent records minutes  
2 of all meetings of its members and board of directors, a record  
3 of all actions taken by the members or board of directors  
4 without a meeting, and a record of all actions taken by a  
5 committee of the board of directors in place of the board of  
6 directors on behalf of the corporation.

7 (b) A corporation shall maintain appropriate accounting  
8 records.

9 (c) A corporation or its agent shall maintain a record of its  
10 members, if any, in a form that permits preparation of a list of  
11 the names and addresses of all members, in alphabetical order.

12 (d) A corporation shall maintain its records in written form  
13 or in another form capable of conversion into written form  
14 within a reasonable time.

15 (e) A corporation shall keep a copy of the following records  
16 at its principal office:

17 (1) Its articles or restated articles of incorporation and all  
18 amendments to them currently in effect;

19 (2) Its bylaws or restated bylaws and all amendments to  
20 them currently in effect;

21 (3) Resolutions adopted by its board of directors;

22 (4) The minutes of all members' meetings, and records of  
23 all action taken by members without a meeting, for the past  
24 three years;

25 (5) All written communications to members generally  
26 within the past three years, including the financial statements  
27 furnished for the past three years under section one thousand  
28 five hundred twenty of this article; and

29 (6) A list of the names and business addresses of its current  
30 directors and officers.

**§31E-15-1502. Inspection of records by members.**

1 (a) A member of a corporation is entitled to inspect, during  
2 regular business hours at the corporation's principal office, any  
3 of the records of the corporation described in subsection (e),  
4 section one thousand five hundred one of this article if he or she  
5 gives the corporation written notice of his or her demand at  
6 least five business days before the date on which he or she  
7 wishes to inspect.

8 (b) A member of a corporation is entitled to inspect, during  
9 regular business hours at a reasonable location specified by the  
10 corporation, any of the following records of the corporation if  
11 the member meets the requirements of subsection (c) of this  
12 section and gives the corporation written notice of his or her  
13 demand at least five business days before the date on which he  
14 or she wishes to inspect and copy:

15 (1) Excerpts from minutes of any meeting of the board of  
16 directors, records of any action of a committee of the board of  
17 directors while acting in place of the board of directors on  
18 behalf of the corporation, minutes of any meeting of the  
19 members, and records of action taken by the members or board  
20 of directors without a meeting, to the extent not subject to  
21 inspection under subsection (a), section one thousand five  
22 hundred two of this article;

23 (2) Accounting records of the corporation; and

24 (3) The record of members.

25 (c) A member may inspect and copy the records described  
26 in subdivisions (1) and (2), subsection (b) of this section and  
27 may inspect the records described in subdivision (3), subsection  
28 (b) of this section only if:

29 (1) His or her demand is made in good faith and for a  
30 proper purpose;

31 (2) He or she describes with reasonable particularity his or  
32 her purpose and the records he or she desires to inspect; and

33 (3) The records are directly connected with his or her  
34 purpose.

35 (d) A member may not copy the records described in  
36 subdivision (3), subsection (b) of this section unless provided  
37 for in the corporation's articles of incorporation or bylaws.

38 (e) The right of inspection granted by this section may not  
39 be abolished or limited by a corporation's articles of incorpora-  
40 tion or bylaws.

41 (f) This section does not affect:

42 (1) The right of a member to inspect records under section  
43 seven hundred twenty, article seven of this chapter or, if the  
44 member is in litigation with the corporation, to the same extent  
45 as any other litigant; or

46 (2) The power of a circuit court, independently of this  
47 chapter, to compel the production of corporate records for  
48 examination.

**§31E-15-1503. Scope of inspection right.**

1 (a) A member's agent or attorney has the same inspection  
2 and copying rights as the member represented.

3 (b) The right to copy records under section one thousand  
4 five hundred two of this article includes, if reasonable, the right  
5 to receive copies by xerographic or other means, including  
6 copies through an electronic transmission if available and  
7 requested by the member.

8 The term "inspect" for purposes of section one thousand  
9 five hundred two of this article includes the making of extracts  
10 from the records reviewed.

11 (c) The corporation may comply at its expense with a  
12 member's demand to inspect the record of members under  
13 subdivision (3), subsection (b), section one thousand five

14 hundred two of this article by providing the member with a list  
15 of members that was compiled no earlier than the date of the  
16 member's demand.

17 (d) The corporation may impose a reasonable charge,  
18 covering the costs of labor and material, for copies of any  
19 documents provided to the member. The charge may not exceed  
20 the estimated cost of production, reproduction or transmission  
21 of the records.

**§31E-15-1504. Circuit court-ordered inspection.**

1 (a) If a corporation does not allow a member who complies  
2 with subsection (a), section one thousand five hundred two of  
3 this article to inspect and copy any records required by that  
4 subsection to be available for inspection, the circuit court may  
5 summarily order inspection and copying of the records de-  
6 manded at the corporation's expense upon application of the  
7 member.

8 (b) If a corporation does not within a reasonable time allow  
9 a member to inspect and copy any other record, the member  
10 who complies with subsections (b) and (c), section one thou-  
11 sand five hundred two of this article may apply to the circuit  
12 court for an order to permit inspection and copying of the  
13 records demanded. The circuit court shall dispose of an  
14 application under this subsection on an expedited basis.

15 (c) If the circuit court orders inspection and copying of the  
16 records demanded, it shall also order the corporation to pay the  
17 member's costs, including reasonable counsel fees, incurred to  
18 obtain the order unless the corporation proves that it refused  
19 inspection in good faith because it had a reasonable basis for  
20 doubt about the right of the member to inspect the records  
21 demanded.

22 (d) If the circuit court orders inspection and copying of the  
23 records demanded, it may impose reasonable restrictions on the  
24 use or distribution of the records by the demanding member.

**§31E-15-1505. Inspection of records by directors.**

1 (a) A director of a corporation is entitled to inspect and  
2 copy the books, records and documents of the corporation at  
3 any reasonable time to the extent reasonably related to the  
4 performance of the director's duties as a director, including  
5 duties as a member of a committee, but not for any other  
6 purpose or in any manner that would violate any duty to the  
7 corporation.

8 (b) The circuit court may order inspection and copying of  
9 the books, records and documents at the corporation's expense,  
10 upon application of a director who has been refused inspection  
11 rights, unless the corporation establishes that the director is not  
12 entitled to inspection rights. The circuit court shall dispose of  
13 an application under this subsection on an expedited basis.

14 (c) If an order is issued, the circuit court may include  
15 provisions protecting the corporation from undue burden or  
16 expense, and prohibiting the director from using information  
17 obtained upon exercise of the inspection rights in a manner that  
18 would violate a duty to the corporation, and may also order the  
19 corporation to reimburse the director for the director's costs,  
20 including reasonable counsel fees, incurred in connection with  
21 the application.

**§31E-15-1506. Exception to notice requirement.**

1 (a) Whenever notice is required to be given under any  
2 provision of this chapter to any member, notice may not be  
3 required to be given if notice of two consecutive annual  
4 meetings, and all notices of meetings during the period between  
5 two consecutive annual meetings, have been sent to the member



6 at the member's address as shown on the records of the  
7 corporation and have been returned undeliverable.

8 (b) If a member delivers to the corporation a written notice  
9 setting forth the member's then-current address, the require-  
10 ment that notice be given to the member is to be reinstated.

PART 2. CORPORATE RECORDS.

**§31E-15-1520. Financial statements for members.**

1 (a) A corporation shall furnish its members annual financial  
2 statements, which may be consolidated or combined statements  
3 of the corporation and one or more of its subsidiaries, as  
4 appropriate, that include a balance sheet as of the end of the  
5 fiscal year, and an income statement for that year. If financial  
6 statements are prepared for the corporation on the basis of  
7 generally accepted accounting principles, the annual financial  
8 statements must also be prepared on that basis.

9 (b) If the annual financial statements are reported upon by  
10 a public accountant, his or her report must accompany them. If  
11 not, the statements must be accompanied by a statement of the  
12 president or the person responsible for the corporation's  
13 accounting records:

14 (1) Stating his or her reasonable belief whether the state-  
15 ments were prepared on the basis of generally accepted  
16 accounting principles and, if not, describing the basis of  
17 preparation; and

18 (2) Describing any respects in which the statements were  
19 not prepared on a basis of accounting consistent with the  
20 statements prepared for the preceding year.

21 (c) A corporation shall mail the annual financial statements  
22 to each member within one hundred twenty days after the close

23 of each fiscal year. On written request from a member who was  
24 not mailed the statements, the corporation shall mail him or her  
25 the latest financial statements.

**ARTICLE 16. TRANSITION PROVISIONS.**

**§31E-16-1601. Application to existing domestic corporations.**

1 This chapter applies to all domestic corporations in  
2 existence on its effective date that were incorporated under any  
3 general statute of this state providing for incorporation of  
4 nonprofit corporations.

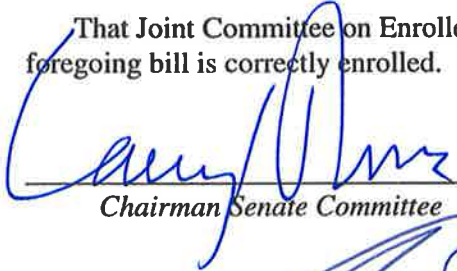
**§31E-16-1602. Application to qualified foreign corporations.**

1 A foreign corporation authorized to transact business in this  
2 state on the effective date of this chapter is subject to this  
3 chapter but is not required to obtain a new certificate of  
4 authority to transact business under this chapter.

**§31E-16-1603. Effective date.**

1 This chapter takes effect on the first day of October, two  
2 thousand two.

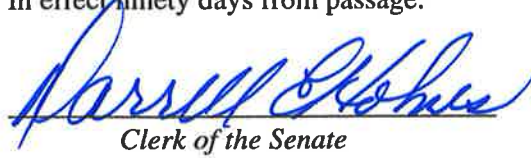
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

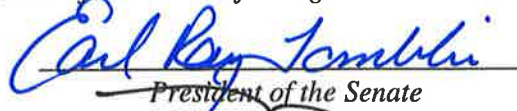
  
Chairman House Committee

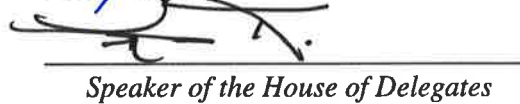
Originating in the House.

In effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 2nd  
day of April, 2002.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/02

Time 3:50 pm