

FILED

2002 MAR 21 P 3:09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

—●—
ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2900

(By Delegates Amores, Fleischauer and J. Smith)

—●—
Passed March 9, 2002

In Effect Ninety Days from Passage

FILED

2007 MAR 21 P 3:09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2900

(BY DELEGATES AMORES, FLEISCHAUER AND J. SMITH)

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

AN ACT to repeal article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said code by adding thereto a new chapter, designated chapter thirty-one-d, all relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to business 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; shares and distributions; issuance of shares; liability of shareholders; dividends; certificates; shareholders' preemptive rights; corporation's acquisitions of its own shares; distributions; shareholders' meetings; waiver of notice; record date; voting; voting trusts and

agreements; 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 and share exchanges; disposition of assets; right to appraisal and payment for shares; procedure for exercise of appraisal rights; judicial appraisal of shares; dissolutions; deposit of assets with state treasurer; foreign corporations - certificate of authority; service of process on foreign corporations; withdrawal of foreign corporations; revocation of certificate of authority; records and reports; inspection of records; financial statements for shareholders; transitional provisions; and operative date.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-d, all to read as follows:

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 1. GENERAL PROVISIONS.

**PART 1. SHORT TITLE, RESERVATION OF
POWERS AND CONSTRUCTION OF CHAPTER.**

§31D-1-101. Short title.

1 This chapter is and may be cited as the "West Virginia
2 Business Corporation Act."

§31D-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.

§31D-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.

§31D-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.

§31D-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 fifteen hundred nine, article fifteen 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 five hundred ten,
48 article fifteen 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.

§31D-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.

§31D-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.

§31D-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 as
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.

§31D-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.

§31D-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 five
9 hundred nine, article fifteen 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.

§31D-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.

§31D-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.

§31D-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 laws 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.

§31D-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.

§31D-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.

§31D-1-150. 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) "Conspicuous" means written so that a reasonable
9 person against whom the writing is to operate should have
10 noticed including, but not limited to, printing in italics or
11 boldface or contrasting color, or typing in capitals or under-
12 lined.

13 (4) "Corporation" or "domestic corporation" means a
14 corporation for profit, which is not a foreign corporation,
15 incorporated under or subject to the provisions of this chapter.

16 (5) "Deliver" or "delivery" means any method of delivery
17 used in conventional commercial practice, including, but not
18 limited to, delivery by hand, mail, commercial delivery and
19 electronic transmission.

20 (6) "Distribution" means a direct or indirect transfer of
21 money or other property or incurrence of indebtedness by a
22 corporation to or for the benefit of its shareholders in respect of
23 any of its shares: *Provided*, That "distribution" does not include
24 a direct or indirect transfer of a corporation's own shares. A
25 distribution may be in the form of a declaration or payment of
26 a dividend; a purchase, redemption, or other acquisition of
27 shares; a distribution of indebtedness.

28 (7) "Effective date of notice" means the date as determined
29 pursuant to section one hundred fifty-one of this article.

30 (8) "Electronic transmission" or "electronically transmit-
31 ted" means any process of communication not directly involv-
32 ing the physical transfer of paper that is suitable for the
33 retention, retrieval, and reproduction of information by the
34 recipient.

35 (9) "Employee" includes an officer and may include a
36 director: *Provided*, That the director has accepted duties that
37 make him or her also an employee.

38 (10) "Entity" includes corporations and foreign corpora-
39 tions; nonprofit corporations; profit and nonprofit unincorpo-
40 rated associations; limited liability companies and foreign
41 limited liability companies; business trusts, estates, partner-
42 ships, trusts, and two or more persons having a joint or common
43 economic interest; and state, United States, and foreign govern-
44 ment.

45 (11) "Foreign corporation" means a corporation for profit
46 incorporated under a law other than the laws of this state.

47 (12) "Governmental subdivision" includes, but is not
48 limited to, authorities, counties, districts and municipalities.

49 (13) "Individual" includes, but is not limited to, the estate
50 of an incompetent or deceased individual.

51 (14) "Person" includes, but is not limited to, an individual
52 and an entity.

53 (15) "Principal office" means the office so designated in the
54 return required pursuant to section three, article twelve-c,
55 chapter eleven of this code where the principal executive
56 offices of a domestic or foreign corporation are located.

57 (16) "Proceeding" includes, but is not limited to civil suits
58 and criminal, administrative and investigatory actions.

59 (17) "Record date" means the date established under article
60 six or seven of this chapter on which a corporation determines
61 the identity of its shareholders and their shareholdings. The
62 determinations are to be made as of the close of business on the
63 record date unless another time for doing so is specified when
64 the record date is fixed.

65 (18) "Registered agent" means the agent identified by the
66 corporation pursuant to section five hundred one, article five of
67 this chapter.

68 (19) "Registered office" means the address of the registered
69 agent for the corporation, as provided in section five hundred
70 one, article five of this chapter.

71 (20) "Secretary" means the corporate officer to whom the
72 board of directors has delegated responsibility under subsection
73 (c), section eight hundred forty, article eight of this chapter for
74 custody of the minutes of the meetings of the board of directors
75 and the meetings of the shareholders and for authenticating
76 records of the corporation.

77 (21) "Shareholder" means the person in whose name shares
78 are registered in the records of a corporation or the beneficial
79 owner of shares to the extent of the rights granted by a nominee
80 certificate on file with a corporation.

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

83 (23) "Sign" or "signature" includes, but is not limited to,
84 any manual, facsimile, conformed or electronic signature.

85 (24) "State," when referring to a part of the United States,
86 includes a state and commonwealth and a territory and insular
87 possession of the United States and their agencies and govern-
88 mental subdivisions.

89 (25) "Subscriber" means a person who subscribes for shares
90 in a corporation, whether before or after incorporation.

91 (26) "United States" includes, but is not limited to, districts,
92 authorities, bureaus, commissions, departments, and any other
93 agency of the United States.

94 (27) "Voting group" means all shares of one or more
95 classes or series that pursuant to the articles of incorporation or
96 this chapter are entitled to vote and be counted together
97 collectively on a matter at a meeting of shareholders. All shares
98 entitled by the articles of incorporation or this chapter to vote
99 generally on the matter are for that purpose a single voting
100 group.

101 (28) "Voting power" means the current power to vote in the
102 election of directors.

§31D-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 shareholder, if in a comprehensible form, is effective: (1)
12 Upon deposit in the United States mail, if mailed postpaid and
13 correctly addressed to the shareholder's address shown in the
14 corporation's current record of shareholders; or (2) when
15 electronically transmitted to the shareholder in a manner
16 authorized by the shareholder.

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.

§31D-1-152. Number of shareholders.

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

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, shareholdings registered in
10 substantially similar names constitute one shareholder if it is
11 reasonable to believe that the names represent the same person.

ARTICLE 2. INCORPORATION.

§31D-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.

§31D-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) The number of shares the corporation is authorized to
6 issue; the par value of each of the shares or a statement that all
7 shares are without par value;

8 (3) The street address of the corporation's initial registered
9 office, if any, and the name of its initial registered agent at that
10 office, if any;

11 (4) The name and address of each incorporator; and

12 (5) The purpose or purposes for which the corporation is
13 organized.

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

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

17 (2) Provisions not inconsistent with law regarding:

18 (A) Managing the business and regulating the affairs of the
19 corporation;

20 (B) Defining, limiting, and regulating the powers of the
21 corporation, its board of directors, and shareholders; or

22 (C) The imposition of personal liability on shareholders for
23 the debts of the corporation to a specified extent and upon
24 specified conditions;

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 stockholders for monetary
29 damages for breach of fiduciary duty as a director: *Provided,*
30 That a provision may not eliminate or limit the liability of a
31 director: (A) For any breach of the director's duty of loyalty to
32 the corporation or its stockholders; (B) for acts or omissions not
33 in good faith or which involve intentional misconduct or a
34 knowing violation of law; (C) under section eight hundred
35 thirty-three, article eight of this chapter for unlawful distribu-
36 tions; or (D) for any transaction from which the director derived
37 an improper personal benefit. No provision may eliminate or
38 limit the liability of a director for any act or omission occurring
39 prior to the date when that provision becomes effective; and

40 (5) A provision permitting or making obligatory indemnifi-
41 cation of a director for liability as that term is defined in section
42 eight hundred fifty, article eight of this chapter, to any person
43 for any action taken, or any failure to take any action, as a
44 director, except liability for: (A) Receipt of a financial benefit

45 to which he or she is not entitled; (B) an intentional infliction
46 of harm on the corporation or its shareholders; (C) a violation
47 of section eight hundred thirty-three, article eight of this chapter
48 for unlawful distributions; or (D) an intentional violation of
49 criminal law.

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

§31D-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.

§31D-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.

§31D-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.

§31D-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 shareholders, 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.

§31D-3-301. Purposes.

1 (a) Every corporation incorporated under this chapter has
2 the purpose of engaging in any lawful business unless a more
3 limited purpose is set forth in the articles of incorporation.

4 (b) A corporation engaging in a business that is subject to
5 regulation under another statute of this state may incorporate
6 under this chapter only if permitted by, and subject to all
7 limitations of, the other statute.

§31D-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 the business and regulating the affairs of the corpora-
14 tion;

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

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

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

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

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

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

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

38 (11) To elect directors and appoint officers, employees, and
39 agents of the corporation, define their duties, fix their compen-
40 sation, and lend them money and credit;

41 (12) To pay pensions and establish pension plans, pension
42 trusts, profit sharing plans, share bonus plans, share option
43 plans, and benefit or incentive plans for any or all of its current
44 or former directors, officers, employees, and agents;

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

48 (14) To transact any lawful business that will aid govern-
49 mental policy; and

50 (15) To make payments or donations, or do any other act,
51 not inconsistent with law, that furthers the business and affairs
52 of the corporation.

§31D-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 business affairs
21 of the 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.

§31D-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 shareholder against the corporation
6 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 under section
12 one thousand four hundred thirty, article fourteen of this
13 chapter.

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

ARTICLE 4. NAME.

§31D-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 incorporated or
14 authorized to transact business in this state;

15 (2) A corporate name reserved or registered under section
16 four hundred three or four hundred four of this article;

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

20 (4) The corporate name of a nonprofit corporation incorpo-
21 rated or authorized to transact business in this state; and

22 (5) The name of any other entity whose name is carried in
23 the records of the secretary of state.

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

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

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

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

42 (1) Has merged with the other corporation;

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

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

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

**§31D-4-402. Use of the words “corporation”, “incorporated” or
“limited”; prohibitions; penalties.**

1 (a) No person may use, the word “corporation” or “incor-
2 porated” 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-e 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-e or forty-seven of this
13 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 non-
20 profit 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.

§31D-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.

§31D-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 five hundred six, article fifteen 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 five hundred six, article fifteen 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 five
13 hundred six, article fifteen 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.

§31D-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 nonprofit corpora-
8 tion whose business office is identical with the registered
9 office; or

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

§31D-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, either on the statement or attached to it, to the appoint-
14 ment; 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.

§31D-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.

§31D-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. SHARES AND DISTRIBUTIONS.

PART 1. SHARES.

§31D-6-601. Authorized shares.

1 (a) The articles of incorporation must prescribe the classes
2 of shares and the number of shares of each class that the
3 corporation is authorized to issue. If more than one class of
4 shares is authorized, the articles of incorporation must prescribe
5 a distinguishing designation for each class, and, prior to the
6 issuance of shares of a class, the preferences, limitations, and
7 relative rights of that class must be described in the articles of
8 incorporation. All shares of a class must have preferences,
9 limitations, and relative rights identical with those of other
10 shares of the same class except to the extent otherwise permit-
11 ted by section six hundred two of this article.

12 (b) The articles of incorporation must authorize: (1) One or
13 more classes of shares that together have unlimited voting
14 rights; and (2) one or more classes of shares which may be the
15 same class or classes as those with voting rights that together
16 are entitled to receive the net assets of the corporation upon
17 dissolution.

18 (c) The articles of incorporation may authorize one or more
19 classes of shares that:

20 (1) Have special, conditional, or limited voting rights, or no
21 right to vote, except to the extent prohibited by this chapter;

22 (2) Are redeemable or convertible as specified in the
23 articles of incorporation: (A) At the option of the corporation,
24 the shareholder, or another person or upon the occurrence of a

25 designated event; (B) for cash, indebtedness, securities, or other
26 property; or (C) in a designated amount or in an amount
27 determined in accordance with a designated formula or by
28 reference to extrinsic data or events;

29 (3) Entitle the holders to distributions calculated in any
30 manner, including dividends that may be cumulative,
31 noncumulative, or partially cumulative; or

32 (4) Have preference over any other class of shares with
33 respect to distributions, including dividends and distributions
34 upon the dissolution of the corporation.

35 (d) The description of the designations, preferences,
36 limitations, and relative rights of share classes in subsection (c)
37 of this section is not exhaustive.

**§31D-6-602. Terms of class or series determined by board of
directors.**

1 (a) If the articles of incorporation provide, the board of
2 directors may determine, in whole or part, the preferences,
3 limitations, and relative rights within the limits set forth in
4 section six hundred one of this article of: (1) Any class of
5 shares before the issuance of any shares of that class; or (2) one
6 or more series within a class before the issuance of any shares
7 of that series.

8 (b) Each series of a class must be given a distinguishing
9 designation.

10 (c) All shares of a series must have preferences, limitations,
11 and relative rights identical with those of other shares of the
12 same series and, except to the extent otherwise provided in the
13 description of the series, with those of other series of the same
14 class.

15 (d) Before issuing any shares of a class or series created
16 under this section, the corporation must deliver to the secretary
17 of state for filing articles of amendment, which are effective
18 without shareholder action, that set forth:

19 (1) The name of the corporation;

20 (2) The text of the amendment determining the terms of the
21 class or series of shares;

22 (3) The date it was adopted; and

23 (4) A statement that the amendment was duly adopted by
24 the board of directors.

§31D-6-603. Issued and outstanding shares.

1 (a) A corporation may issue the number of shares of each
2 class or series authorized by the articles of incorporation.
3 Shares that are issued are outstanding shares until they are
4 reacquired, redeemed, converted, or canceled.

5 (b) The reacquisition, redemption, or conversion of
6 outstanding shares is subject to the limitations of subsection (c)
7 of this section and to section six hundred forty of this article.

8 (c) At all times that shares of the corporation are outstand-
9 ing, one or more shares that together have unlimited voting
10 rights and one or more shares that together are entitled to
11 receive the net assets of the corporation upon dissolution must
12 be outstanding.

§31D-6-604. Fractional shares.

1 (a) A corporation may:

2 (1) Issue fractions of a share or pay in money the value of
3 fractions of a share;

4 (2) Arrange for disposition of fractional shares by the
5 shareholders; or

6 (3) Issue scrip in registered or bearer form entitling the
7 holder to receive a full share upon surrendering enough scrip to
8 equal a full share.

9 (b) Each certificate representing scrip must be conspicu-
10 ously labeled "scrip" and must contain the information required
11 by subsection (b), section six hundred twenty-five of this
12 article.

13 (c) The holder of a fractional share is entitled to exercise
14 the rights of a shareholder, including the right to vote, to
15 receive dividends, and to participate in the assets of the
16 corporation upon liquidation. The holder of scrip is not entitled
17 to any of these rights unless the scrip provides for them.

18 (d) The board of directors may authorize the issuance of
19 scrip subject to any condition considered desirable, including:

20 (1) That the scrip will become void if not exchanged for full
21 shares before a specified date; and

22 (2) That the shares for which the scrip is exchangeable may
23 be sold and the proceeds paid to the scripholders.

PART 2. ISSUANCE OF SHARES.

§31D-6-620. Subscription for shares before incorporation.

1 (a) A subscription for shares entered into before incorpora-
2 tion is irrevocable for six months unless the subscription
3 agreement provides a longer or shorter period or all the sub-
4 scribers agree to revocation.

5 (b) The board of directors may determine the payment
6 terms of subscription for shares that were entered into before
7 incorporation, unless the subscription agreement specifies them.
8 A call for payment by the board of directors must be uniform so
9 far as practicable as to all shares of the same class or series,
10 unless the subscription agreement specifies otherwise.

11 (c) Shares issued pursuant to subscriptions entered into
12 before incorporation are fully paid and nonassessable when the
13 corporation receives the consideration specified in the subscrip-
14 tion agreement.

15 (d) If a subscriber defaults in payment of money or property
16 under a subscription agreement entered into before incorpora-
17 tion, the corporation may collect the amount owed as any other
18 debt. Alternatively, unless the subscription agreement provides
19 otherwise, the corporation may rescind the agreement and may
20 sell the shares if the debt remains unpaid for more than twenty
21 days after the corporation sends written demand for payment to
22 the subscriber.

23 (e) A subscription agreement entered into after incorpora-
24 tion is a contract between the subscriber and the corporation
25 subject to section six hundred twenty-one of this article.

§31D-6-621. Issuance of shares.

1 (a) The powers granted in this section to the board of
2 directors may be reserved to the shareholders by the articles of
3 incorporation.

4 (b) The board of directors may authorize shares to be issued
5 for consideration consisting of any tangible or intangible
6 property or benefit to the corporation, including cash, promis-
7 sory notes, services performed, contracts for services to be
8 performed, or other securities of the corporation.

9 (c) Before the corporation issues shares, the board of
10 directors must determine that the consideration received or to
11 be received for shares to be issued is adequate. That determina-
12 tion by the board of directors is conclusive insofar as the
13 adequacy of consideration for the issuance of shares relates to
14 whether the shares are validly issued, fully paid, and
15 nonassessable.

16 (d) When the corporation receives the consideration for
17 which the board of directors authorized the issuance of shares,
18 the shares issued are fully paid and nonassessable.

19 (e) The corporation may place in escrow shares issued for
20 a contract for future services or benefits or a promissory note,
21 or make other arrangements to restrict the transfer of the shares,
22 and may credit distributions in respect of the shares against
23 their purchase price, until the services are performed, the note
24 is paid, or the benefits received. If the services are not per-
25 formed, the note is not paid, or the benefits are not received, the
26 shares escrowed or restricted and the distributions credited may
27 be canceled in whole or part.

28 (f) An issuance of shares or other securities convertible into
29 or rights exercisable for shares, in a transaction or a series of
30 integrated transactions, requires approval of the shareholders,
31 at a meeting at which a quorum exists consisting of at least a
32 majority of the votes entitled to be cast on the matter, if:

33 (1) The shares, other securities, or rights are issued for
34 consideration other than cash or cash equivalents; and

35 (2) The voting power of shares that are issued and issuable
36 as a result of the transaction or series of integrated transactions
37 will comprise more than twenty percent of the voting power of
38 the shares of the corporation that were outstanding immediately
39 before the transaction.

40 (g) As used in subsection (f) of this section:

41 (1) For purposes of determining the voting power of shares
42 issued and issuable as a result of a transaction or series of
43 integrated transactions, the voting power of shares is the greater
44 of: (A) The voting power of the shares to be issued; or (B) the
45 voting power of the shares that would be outstanding after
46 giving effect to the conversion of convertible shares and other
47 securities and the exercise of rights to be issued.

48 (2) A series of transactions is integrated if consummation
49 of one transaction is made contingent on consummation of one
50 or more of the other transactions.

§31D-6-622. Liability of shareholders.

1 (a) A purchaser from a corporation of its own shares is not
2 liable to the corporation or its creditors with respect to the
3 shares except to pay the consideration for which the shares were
4 authorized to be issued pursuant to section six hundred twenty-
5 one of this article or specified in the subscription agreement
6 entered pursuant to section six hundred twenty of this article.

7 (b) Unless otherwise provided in the articles of incorpora-
8 tion, a shareholder of a corporation is not personally liable for
9 the acts or debts of the corporation except that he or she may
10 become personally liable by reason of his or her own acts or
11 conduct.

§31D-6-623. Share dividends.

1 (a) Unless the articles of incorporation provide otherwise,
2 shares may be issued pro rata and without consideration to the
3 corporation's shareholders or to the shareholders of one or more
4 classes or series. An issuance of shares under this subsection is
5 a share dividend.

6 (b) Shares of one class or series may not be issued as a
7 share dividend in respect of shares of another class or series
8 unless: (1) The articles of incorporation authorize; (2) a
9 majority of the votes entitled to be cast by the class or series to
10 be issued approve the issue; or (3) there are no outstanding
11 shares of the class or series to be issued.

12 (c) If the board of directors does not fix the record date for
13 determining shareholders entitled to a share dividend, it is the
14 date the board of directors authorizes the share dividend.

§31D-6-624. Share options.

1 A corporation may issue rights, options, or warrants for the
2 purchase of shares of the corporation. The board of directors
3 shall determine the terms upon which the rights, options, or
4 warrants are issued, their form and content, and the consider-
5 ation for which the shares are to be issued.

§31D-6-625. Form and content of certificates.

1 (a) Shares may but need not be represented by certificates.
2 Unless this chapter or another provision of this code expressly
3 provides otherwise, the rights and obligations of shareholders
4 are identical whether or not their shares are represented by
5 certificates.

6 (b) At a minimum each share certificate must state on its
7 face:

8 (1) The name of the issuing corporation and that it is
9 organized under the law of this state;

10 (2) The name of the person to whom issued; and

11 (3) The number and class of shares and the designation of
12 the series, if any, the certificate represents.

13 (c) If the issuing corporation is authorized to issue different
14 classes of shares or different series within a class, the designa-
15 tions, relative rights, preferences, and limitations applicable to
16 each class and the variations in rights, preferences, and limita-
17 tions determined for each series and the authority of the board
18 of directors to determine variations for future series must be
19 summarized on the front or back of each certificate. Alterna-
20 tively, each certificate may state conspicuously on its front or
21 back that the corporation will furnish the shareholder this
22 information on request in writing and without charge.

23 (d) Each share certificate: (1) Must be signed, either
24 manually or in facsimile, by two officers designated in the
25 bylaws or by the board of directors; and (2) may bear the
26 corporate seal or its facsimile.

27 (e) If the person who signed, either manually or in facsim-
28 ile, a share certificate no longer holds office when the certifi-
29 cate is issued, the certificate remains valid.

§31D-6-626. Shares without certificates.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, the board of directors of a corporation may authorize
3 the issue of some or all of the shares of any or all of its classes
4 or series without certificates. The authorization does not affect
5 shares already represented by certificates until they are surren-
6 dered to the corporation.

7 (b) Within a reasonable time after the issue or transfer of
8 shares without certificates, the corporation shall send the
9 shareholder a written statement of the information required on
10 certificates by subsections (b) and (c), section six hundred
11 twenty-five of this article, and, if applicable, section six
12 hundred twenty-seven of this article.

§31D-6-627. Restriction on transfer of shares and other securities.

1 (a) The articles of incorporation, bylaws, an agreement
2 among shareholders, or an agreement between shareholders and
3 the corporation may impose restrictions on the transfer or
4 registration of transfer of shares of the corporation. A restric-
5 tion does not affect shares issued before the restriction was
6 adopted unless the holders of the shares are parties to the
7 restriction agreement or voted in favor of the restriction.

8 (b) A restriction on the transfer or registration of transfer of
9 shares is valid and enforceable against the holder or a transferee
10 of the holder if the restriction is authorized by this section and
11 its existence is noted conspicuously on the front or back of the
12 certificate or is contained in the information statement required
13 by subsection (b), section six hundred twenty-six of this article.
14 Unless a restriction is noted as required by this subsection, a
15 restriction is not enforceable against a person without knowl-
16 edge of the restriction.

17 (c) A restriction on the transfer or registration of transfer of
18 shares is authorized:

19 (1) To maintain the corporation's status when it is depend-
20 ent on the number or identity of its shareholders;

21 (2) To preserve exemptions under federal or state securities
22 law; or

23 (3) For any other reasonable purpose.

24 (d) A restriction on the transfer or registration of transfer of
25 shares may:

26 (1) Obligate the shareholder first to offer the corporation or
27 other persons an opportunity to acquire the restricted shares;

28 (2) Obligate the corporation or other persons to acquire the
29 restricted shares;

30 (3) Require the corporation, the holders of any class of its
31 shares, or another person to approve the transfer of the re-
32 stricted shares, if the requirement is not manifestly unreason-
33 able; or

34 (4) Prohibit the transfer of the restricted shares to desig-
35 nated persons or classes of persons, if the prohibition is not
36 manifestly unreasonable.

37 (e) For purposes of this section, "shares" includes a security
38 convertible into or carrying a right to subscribe for or acquire
39 shares.

§31D-6-628. Expense of issue.

1 A corporation may pay the expenses of selling or under-
2 writing its shares, and of organizing or reorganizing the
3 corporation, from the consideration received for shares.

PART 3. SUBSEQUENT ACQUISITION OF SHARES
BY SHAREHOLDERS AND CORPORATION.

§31D-6-630. Shareholders' preemptive rights.

1 (a) The shareholders of a corporation do not have a preemp-
2 tive right to acquire the corporation's unissued shares except to
3 the extent the articles of incorporation provide.

4 (b) A statement included in the articles of incorporation that
5 "the corporation elects to have preemptive rights," or words of
6 similar import, means that the following principles apply,
7 except to the extent the articles of incorporation expressly
8 provide otherwise:

9 (1) The shareholders of the corporation have a preemptive
10 right, granted on uniform terms and conditions prescribed by
11 the board of directors to provide a fair and reasonable opportu-
12 nity to exercise the right, to acquire proportional amounts of the
13 corporation's unissued shares upon the decision of the board of
14 directors to issue them.

15 (2) A shareholder may waive his or her preemptive right. A
16 waiver evidenced by a writing is irrevocable even though it is
17 not supported by consideration.

18 (3) There is no preemptive right with respect to:

19 (A) Shares issued as compensation to directors, officers,
20 agents, or employees of the corporation, its subsidiaries or
21 affiliates;

22 (B) Shares issued to satisfy conversion or option rights
23 created to provide compensation to directors, officers, agents,
24 or employees of the corporation, its subsidiaries or affiliates;

25 (C) Shares authorized in articles of incorporation that are
26 issued within six months from the effective date of incorpora-
27 tion; or

28 (D) Shares sold otherwise than for money.

29 (4) Holders of shares of any class without general voting
30 rights but with preferential rights to distributions or assets have
31 no preemptive rights with respect to shares of any class.

32 (5) Holders of shares of any class with general voting rights
33 but without preferential rights to distributions or assets have no
34 preemptive rights with respect to shares of any class with
35 preferential rights to distributions or assets unless the shares
36 with preferential rights are convertible into or carry a right to
37 subscribe for or acquire shares without preferential rights.

38 (6) Shares subject to preemptive rights that are not acquired
39 by shareholders may be issued to any person for a period of one
40 year after being offered to shareholders at a consideration set by
41 the board of directors that is not lower than the consideration
42 set for the exercise of preemptive rights. An offer at a lower
43 consideration or after the expiration of one year is subject to the
44 shareholders' preemptive rights.

45 (c) For purposes of this section, "shares" includes a security
46 convertible into or carrying a right to subscribe for or acquire
47 shares.

§31D-6-631. Corporation's acquisition of its own shares.

1 (a) Subject to the provisions of chapter thirty-one-a of this
2 code and unless otherwise prohibited by law, a corporation may
3 acquire its own shares, and shares so acquired constitute
4 authorized but unissued shares.

5 (b) If the articles of incorporation prohibit the reissue of the
6 acquired shares, the number of authorized shares is reduced by
7 the number of shares acquired.

PART 4. DISTRIBUTIONS.

§31D-6-640. Distributions to shareholders.

1 (a) A board of directors may authorize and the corporation
2 may make distributions to its shareholders subject to restriction
3 by the articles of incorporation and the limitation in subsection
4 (c) of this section.

5 (b) If the board of directors does not fix the record date for
6 determining shareholders entitled to a distribution, it is the date
7 the board of directors authorizes the distribution: *Provided,*
8 That this subsection does not apply to a distribution involving

9 a purchase, redemption, or other acquisition of the corporation's
10 shares.

11 (c) No distribution may be made if, after giving it effect:

12 (1) The corporation would not be able to pay its debts as
13 they become due in the usual course of business; or

14 (2) The corporation's total assets would be less than the
15 sum of its total liabilities plus the amount that would be needed,
16 if the corporation were to be dissolved at the time of the
17 distribution, to satisfy the preferential rights upon dissolution
18 of shareholders whose preferential rights are superior to those
19 receiving the distribution, unless the articles of incorporation
20 permit otherwise.

21 (d) The board of directors may base a determination that a
22 distribution is not prohibited under subsection (c) of this section
23 either on financial statements prepared on the basis of account-
24 ing practices and principles that are reasonable in the circum-
25 stances or on a fair valuation or other method that is reasonable
26 in the circumstances.

27 (e) Except as provided in subsection (g) of this section, the
28 effect of a distribution under subsection (c) of this section is
29 measured:

30 (1) In the case of distribution by purchase, redemption, or
31 other acquisition of the corporation's shares, as of the earlier of:
32 (A) The date money or other property is transferred or debt
33 incurred by the corporation; or (B) the date the shareholder
34 ceases to be a shareholder with respect to the acquired shares;

35 (2) In the case of any other distribution of indebtedness, as
36 of the date the indebtedness is distributed; and

37 (3) In all other cases, as of: (A) The date the distribution is
38 authorized if the payment occurs within one hundred twenty
39 days after the date of authorization; or (B) the date the payment
40 is made if it occurs more than one hundred twenty days after the
41 date of authorization.

42 (f) A corporation's indebtedness to a shareholder incurred
43 by reason of a distribution made in accordance with this section
44 is at parity with the corporation's indebtedness to its general,
45 unsecured creditors except to the extent subordinated by
46 agreement.

47 (g) Indebtedness of a corporation, including indebtedness
48 issued as a distribution, is not considered a liability for purposes
49 of determinations under subsection (c) of this section if its
50 terms provide that payment of principal and interest are made
51 only if and to the extent that payment of a distribution to
52 shareholders could then be made under this section. If the
53 indebtedness is issued as a distribution, each payment of
54 principal or interest is treated as a distribution, the effect of
55 which is measured on the date the payment is actually made.

ARTICLE 7. SHAREHOLDERS.

PART 1. MEETINGS.

§31D-7-701. Annual meeting.

1 (a) A corporation must hold a meeting of shareholders
2 annually at a time stated in or fixed in accordance with the
3 bylaws.

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

9 (c) The failure to hold an annual meeting at the time stated
10 in or fixed in accordance with a corporation's bylaws does not
11 affect the validity of any corporate action.

§31D-7-702. Special meeting.

1 (a) A corporation must hold a special meeting of sharehold-
2 ers:

3 (1) On call of its board of directors or the person or persons
4 authorized by the articles of incorporation or bylaws; or

5 (2) If the holders of at least ten percent of all the votes
6 entitled to be cast on an issue proposed to be considered at the
7 proposed special meeting sign, date, and deliver to the corpora-
8 tion one or more written demands for the meeting describing
9 the purpose or purposes for which it is to be held: *Provided,*
10 That the articles of incorporation may fix a lower percentage or
11 a higher percentage not exceeding twenty-five percent of all the
12 votes entitled to be cast on any issue proposed to be considered.
13 Unless otherwise provided in the articles of incorporation, a
14 written demand for a special meeting may be revoked by a
15 writing to that effect received by the corporation prior to the
16 receipt by the corporation of demands sufficient in number to
17 require the holding of a special meeting.

18 (b) If not otherwise fixed under section seven hundred three
19 or seven hundred seven of this article, the record date for
20 determining shareholders entitled to demand a special meeting
21 is the date the first shareholder signs the demand.

22 (c) Special shareholders' meetings may be held in or out of
23 this state at the place stated in or fixed in accordance with the
24 bylaws. If no place is stated or fixed in accordance with the
25 bylaws, special meetings are to be held at the corporation's
26 principal office.

27 (d) Only business within the purpose or purposes described
28 in the meeting notice required by subsection (c), section seven
29 hundred five of this article may be conducted at a special
30 shareholders' meeting.

§31D-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 shareholder of the corporation
4 entitled to participate in an annual meeting if an annual meeting
5 was not held within the earlier of six months after the end of the
6 corporation's fiscal year or fifteen months after its last annual
7 meeting; or

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

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

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

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

§31D-7-704. Action without meeting.

1 (a) Action required or permitted by this chapter to be taken
2 at a shareholders' meeting may be taken without a meeting if
3 the action is taken by all the shareholders entitled to vote on the
4 action. The action must be evidenced by one or more written
5 consents bearing the date of signature and describing the action
6 taken, signed by all the shareholders entitled to vote on the
7 action, and delivered to the corporation for inclusion in the
8 minutes or filing with the corporate records.

9 (b) If not otherwise fixed under section seven hundred three
10 or seven hundred seven of this article, the record date for
11 determining shareholders entitled to take action without a
12 meeting is the date the first shareholder signs the consent under
13 subsection (a) of this section. No written consent may be
14 effective to take the corporate action referred to in the consent
15 unless, within sixty days of the earliest date appearing on a
16 consent delivered to the corporation in the manner required by
17 this section, written consents signed by all shareholders entitled
18 to vote on the action are received by the corporation. A written
19 consent may be revoked by a writing to that effect received by
20 the corporation prior to receipt by the corporation of unrevoked
21 written consents sufficient in number to take corporate action.

22 (c) A consent signed under this section has the effect of a
23 meeting vote and may be described as a meeting vote in any
24 document.

25 (d) If this chapter requires that notice of proposed action be
26 given to nonvoting shareholders and the action is to be taken by
27 unanimous consent of the voting shareholders, the corporation
28 must give its nonvoting shareholders written notice of the
29 proposed action at least ten days before the action is taken. The
30 notice must contain or be accompanied by the same material
31 that, under this chapter, would have been required to be sent to

32 nonvoting shareholders in a notice of meeting at which the
33 proposed action would have been submitted to the shareholders
34 for action.

§31D-7-705. Notice of meeting.

1 (a) A corporation is to notify shareholders of the date, time,
2 and place of each annual and special shareholders' meeting no
3 fewer than ten nor more than sixty days before the meeting
4 date. Unless this chapter or the articles of incorporation require
5 otherwise, the corporation is required to give notice only to
6 shareholders entitled to vote at the meeting.

7 (b) Unless this chapter, the articles of incorporation or
8 bylaws require otherwise, notice of an annual meeting need not
9 include a description of the purpose or purposes for which the
10 meeting is called.

11 (c) Notice of a special meeting must include a description
12 of the purpose or purposes for which the meeting is called.

13 (d) If not otherwise fixed under section seven hundred three
14 or seven hundred seven of this article, the record date for
15 determining shareholders entitled to notice of and to vote at an
16 annual or special shareholders' meeting is the day before the
17 first notice is delivered to shareholders.

18 (e) Unless the bylaws require otherwise, if an annual or
19 special shareholders' meeting is adjourned to a different date,
20 time, or place, notice need not be given of the new date, time,
21 or place if the new date, time, or place is announced at the
22 meeting before adjournment. If a new record date for the
23 adjourned meeting is or must be fixed under section seven
24 hundred seven of this article, notice of the adjourned meeting
25 must be given under this section to persons who are sharehold-
26 ers as of the new record date.

27 (f) Unless the articles of incorporation or bylaws provide
28 otherwise, any shareholder may participate in a regular or
29 special meeting by any means of communication by which all
30 shareholders participating may simultaneously hear each other
31 during the meeting. A shareholder participating in a meeting by
32 this means is deemed to be present in person at the meeting.

§31D-7-706. Waiver of notice.

1 (a) A shareholder 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 shareholder entitled to the notice, and
5 be delivered to the corporation for inclusion in the minutes or
6 filing with the corporate records.

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

8 (1) Waives objection to lack of notice or defective notice of
9 the meeting, unless the shareholder at the beginning of the
10 meeting objects to holding the meeting or transacting business
11 at the 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 shareholder objects
15 to considering the matter when it is presented.

§31D-7-707. Record date.

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

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

§31D-7-708. Conduct of the meeting.

1 (a) At each meeting of shareholders, a chair shall preside.
2 The 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 chair, unless the articles of incorporation or bylaws
5 provide otherwise, shall determine the order of business and has
6 the authority to establish rules for the conduct of the meeting.

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

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

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

PART 2. VOTING.

§31D-7-720. Shareholders' 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 share-
3 holders who are entitled to notice of a shareholders' meeting.
4 The list must be arranged by voting group and, within each
5 voting group, by class or series of shares, and show the address
6 of and number of shares held by each shareholder.

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

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

22 (d) If the corporation refuses to allow a shareholder, his or
23 her agent, or attorney to inspect the shareholders' list before or

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

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

§31D-7-721. Voting entitlement of shares.

1 (a) Except as provided in subsections (b) and (d) of this
 2 section or unless the articles of incorporation provide otherwise,
 3 each outstanding share, regardless of class, is entitled to one
 4 vote on each matter voted on at a shareholders' meeting. Only
 5 shares are entitled to vote.

6 (b) Absent special circumstances, the shares of a corpora-
 7 tion are not entitled to vote if they are owned, directly or
 8 indirectly, by a second corporation, domestic or foreign, and the
 9 first corporation owns, directly or indirectly, a majority of the
 10 shares entitled to vote for directors of the second corporation.

11 (c) Subsection (b) of this section does not limit the power
 12 of a corporation to vote any shares, including its own shares,
 13 held by it in a fiduciary capacity.

14 (d) Redeemable shares are not entitled to vote after notice
 15 of redemption is mailed to the holders and a sum sufficient to
 16 redeem the shares has been deposited with a bank, trust
 17 company, or other financial institution under an irrevocable
 18 obligation to pay the holders the redemption price on surrender
 19 of the shares.

§31D-7-722. Proxies.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, a shareholder may vote his or her shares in person or
3 by proxy.

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

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. An
16 appointment is valid for eleven months unless a longer period
17 is expressly provided in the appointment form.

18 (d) An appointment of a proxy is revocable unless the
19 appointment form or electronic transmission states that it is
20 irrevocable and the appointment is coupled with an interest.
21 Appointments coupled with an interest include the appointment
22 of:

23 (1) A pledgee;

24 (2) A person who purchased or agreed to purchase the
25 shares;

26 (3) A creditor of the corporation who extended it credit
27 under terms requiring the appointment;

28 (4) An employee of the corporation whose employment
29 contract requires the appointment; or

30 (5) A party to a voting agreement created under section
31 seven hundred thirty-one of this article.

32 (e) The death or incapacity of the shareholder appointing a
33 proxy does not affect the right of the corporation to accept the
34 proxy's authority unless notice of the death or incapacity is
35 received by the secretary or other officer or agent authorized to
36 tabulate votes before the proxy exercises his or her authority
37 under the appointment.

38 (f) An appointment made irrevocable under subsection (d)
39 of this section is revoked when the interest with which it is
40 coupled is extinguished.

41 (g) A transferee for value of shares subject to an irrevocable
42 appointment may revoke the appointment if he or she did not
43 know of its existence when he or she acquired the shares and
44 the existence of the irrevocable appointment was not noted
45 conspicuously on the certificate representing the shares or on
46 the information statement for shares without certificates.

47 (h) Subject to section seven hundred twenty-four of this
48 article and to any express limitation on the proxy's authority
49 stated in the appointment form or electronic transmission, a
50 corporation is entitled to accept the proxy's vote or other action
51 as that of the shareholder making the appointment.

§31D-7-723. Shares held by nominees.

1 (a) A corporation may establish a procedure by which the
2 beneficial owner of shares that are registered in the name of a
3 nominee is recognized by the corporation as the shareholder.
4 The extent of this recognition may be determined in the
5 procedure.

6 (b) The procedure may set forth:

7 (1) The types of nominees to which it applies;

8 (2) The rights or privileges that the corporation recognizes
9 in a beneficial owner;

10 (3) The manner in which the procedure is selected by the
11 nominee;

12 (4) The information that must be provided when the
13 procedure is selected;

14 (5) The period for which selection of the procedure is
15 effective; and

16 (6) Other aspects of the rights and duties created.

§31D-7-724. Corporation's acceptance of votes.

1 (a) If the name signed on a vote, consent, waiver, or proxy
2 appointment corresponds to the name of a shareholder, the
3 corporation 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 shareholder.

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

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

13 (2) The name signed purports to be that of an administrator,
14 executor, guardian, or conservator representing the shareholder
15 and, if the corporation requests, evidence of this status accept-
16 able to the corporation has been presented with respect to the
17 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 shareholder 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;

23 (4) The name signed purports to be that of a pledgee,
24 beneficial owner, or attorney-in-fact of the shareholder and, if
25 the corporation requests, evidence acceptable to the corporation
26 of the signatory's authority to sign for the shareholder has been
27 presented with respect to the vote, consent, waiver, or proxy
28 appointment; or

29 (5) Two or more persons are the shareholder as co-tenants
30 or fiduciaries and the name signed purports to be the name of
31 at least one of the co-owners and the person signing appears to
32 be acting on behalf of all the co-owners.

33 (c) The corporation is entitled to reject a vote, consent,
34 waiver, or proxy appointment if the secretary or other officer or
35 agent authorized to tabulate votes, acting in good faith, has
36 reasonable basis for doubt about the validity of the signature on
37 it or about the signatory's authority to sign for the shareholder.

38 (d) The corporation and its officer or agent who accepts or
39 rejects a vote, consent, waiver, or proxy appointment in good
40 faith and in accordance with the standards of this section or
41 subsection (b), section seven hundred twenty-two of this article
42 are not liable in damages to the shareholder for the conse-
43 quences of the acceptance or rejection.

44 (e) Corporate action based on the acceptance or rejection of
45 a vote, consent, waiver, or proxy appointment under this section
46 is valid unless a court of competent jurisdiction determines
47 otherwise.

§31D-7-725. Quorum and voting requirements for voting groups.

1 (a) Shares entitled to vote as a separate voting group may
2 take action on a matter at a meeting only if a quorum of those
3 shares exists with respect to that matter. Unless the articles of
4 incorporation or this chapter provide otherwise, a majority of
5 the votes entitled to be cast on the matter by the voting group
6 constitutes a quorum of that voting group for action on that
7 matter.

8 (b) Once a share is represented for any purpose at a
9 meeting, it is deemed present for quorum purposes for the
10 remainder of the meeting and for any adjournment of that
11 meeting unless a new record date is or must be set for that
12 adjourned meeting.

13 (c) If a quorum exists, action on a matter, other than the
14 election of directors, by a voting group is approved if the votes
15 cast within the voting group favoring the action exceed the
16 votes cast opposing the action, unless the articles of incorpora-
17 tion or this chapter require a greater number of affirmative
18 votes.

19 (d) An amendment of articles of incorporation adding,
20 changing, or deleting a quorum or voting requirement for a
21 voting group greater than specified in subsection (a) or (c) of
22 this section is governed by section seven hundred twenty-seven
23 of this article.

24 (e) The election of directors is governed by section seven
25 hundred twenty-eight of this article.

§31D-7-726. Action by single and multiple voting groups.

1 (a) If the articles of incorporation or this chapter provide for
2 voting by a single voting group on a matter, action on that

3 matter is taken when voted upon by that voting group as
4 provided in section seven hundred twenty-five of this article.

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

§31D-7-727. Greater quorum or voting requirements.

1 (a) The articles of incorporation may provide for a greater
2 quorum or voting requirement for shareholders or voting groups
3 of shareholders than is provided for by this chapter.

4 (b) An amendment to the articles of incorporation that adds,
5 changes, or deletes a greater quorum or voting requirement
6 must meet the same quorum requirement and be adopted by the
7 same vote and voting groups required to take action under the
8 quorum and voting requirements then in effect or proposed to
9 be adopted, whichever is greater.

§31D-7-728. 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 shares entitled to vote in the election at a meeting at which a
4 quorum is present.

5 (b) Each shareholder or designated voting group of share-
6 holders holding shares having the right to vote for directors has
7 a right to cumulate his or her votes for directors.

8 (c) A statement included in the articles of incorporation that
9 "all or a designated voting group of shareholders are entitled to

10 cumulate their votes for directors,” or words of similar import,
11 means that the shareholders designated are entitled to multiply
12 the number of votes they are entitled to cast by the number of
13 directors for whom they are entitled to vote and cast the product
14 for a single candidate or distribute the product among two or
15 more candidates.

16 (d) Shares otherwise entitled to vote cumulatively may not
17 be voted cumulatively at a particular meeting unless:

18 (1) The meeting notice or proxy statement accompanying
19 the notice states conspicuously that cumulative voting is
20 authorized; or

21 (2) A shareholder who has the right to cumulate his or her
22 votes gives notice to the corporation not less than forty-eight
23 hours before the time set for the meeting of his or her intent to
24 cumulate his or her votes during the meeting, and if one
25 shareholder gives this notice all other shareholders in the same
26 voting group participating in the election are entitled to
27 cumulate their votes without giving further notice.

§31D-7-729. Inspectors of election.

1 (a) A corporation having any shares listed on a national
2 securities exchange or regularly traded in a market maintained
3 by one or more members of a national or affiliated securities
4 association must, and any other corporation may, appoint one
5 or more inspectors to act at a meeting of shareholders and make
6 a written report of the inspectors’ determinations. Each inspec-
7 tor shall take and sign an oath faithfully to execute the duties of
8 inspector with strict impartiality and according to the best of the
9 inspector’s ability.

10 (b) The inspectors shall:

11 (1) Ascertain the number of shares outstanding and the
12 voting power of each;

13 (2) Determine the shares represented at a meeting;

14 (3) Determine the validity of proxies and ballots;

15 (4) Count all votes; and

16 (5) Determine the result.

17 (c) An inspector may be an officer or employee of the
18 corporation.

PART 3. VOTING TRUSTS AND AGREEMENTS.

§31D-7-730. Voting trusts.

1 (a) One or more shareholders may create a voting trust,
2 conferring on a trustee the right to vote or otherwise act for
3 them, by signing an agreement setting out the provisions of the
4 trust, including, but not limited to, anything consistent with its
5 purpose, and transferring their shares to the trustee. When a
6 voting trust agreement is signed, the trustee shall prepare a list
7 of the names and addresses of all owners of beneficial interests
8 in the trust, together with the number and class of shares each
9 transferred to the trust, and deliver copies of the list and
10 agreement to the corporation's principal office.

11 (b) A voting trust becomes effective on the date the first
12 shares subject to the trust are registered in the trustee's name.
13 A voting trust is valid for not more than ten years after its
14 effective date unless extended under subsection (c) of this
15 section.

16 (c) All or some of the parties to a voting trust may extend
17 it for additional terms of not more than ten years each by

18 signing written consent to the extension. An extension is valid
19 for ten years from the date the first shareholder signs the
20 extension agreement. The voting trustee must deliver copies of
21 the extension agreement and list of beneficial owners to the
22 corporation's principal office. An extension agreement binds
23 only those parties signing it.

§31D-7-731. Voting agreements.

1 (a) Two or more shareholders may provide for the manner
2 in which they will vote their shares by signing an agreement for
3 that purpose. A voting agreement created under this section is
4 not subject to the provisions of section seven hundred thirty of
5 this article.

6 (b) A voting agreement created under this section is
7 specifically enforceable.

§31D-7-732. Shareholder agreements.

1 (a) An agreement among the shareholders of a corporation
2 that complies with this section is effective among the share-
3 holders and the corporation even though it is inconsistent with
4 one or more other provisions of this chapter in that it:

5 (1) Eliminates the board of directors or restricts the
6 discretion or powers of the board of directors;

7 (2) Governs the authorization or making of distributions
8 whether or not in proportion to ownership of shares, subject to
9 the limitations in section six hundred forty, article six of this
10 chapter;

11 (3) Establishes who are to be directors or officers of the
12 corporation, or their terms of office or manner of selection or
13 removal;

14 (4) Governs, in general or in regard to specific matters, the
15 exercise or division of voting power by or between the share-
16 holders and directors or by or among any of them, including use
17 of weighted voting rights or director proxies;

18 (5) Establishes the terms and conditions of any agreement
19 for the transfer or use of property or the provision of services
20 between the corporation and any shareholder, director, officer
21 or employee of the corporation or among any of them;

22 (6) Transfers to one or more shareholders or other persons
23 all or part of the authority to exercise the corporate powers or
24 to manage the business and affairs of the corporation, including
25 the resolution of any issue about which there exists a deadlock
26 among directors or shareholders;

27 (7) Requires dissolution of the corporation at the request of
28 one or more of the shareholders or upon the occurrence of a
29 specified event or contingency; or

30 (8) Otherwise governs the exercise of the corporate powers
31 or the management of the business and affairs of the corpora-
32 tion or the relationship among the shareholders, the directors
33 and the corporation, or among any of them, and is not contrary
34 to public policy.

35 (b) An agreement authorized by this section must be:

36 (1) Set forth:

37 (A) In the articles of incorporation or bylaws and approved
38 by all persons who are shareholders at the time of the agree-
39 ment; or

40 (B) In a written agreement that is signed by all persons who
41 are shareholders at the time of the agreement and is made
42 known to the corporation;

43 (2) Subject to amendment only by all persons who are
44 shareholders at the time of the amendment, unless the agree-
45 ment provides otherwise; and

46 (3) Valid for ten years, unless the agreement provides
47 otherwise.

48 (c) The existence of an agreement authorized by this section
49 must be noted conspicuously on the front or back of each
50 certificate for outstanding shares or on the information state-
51 ment required by subsection (b), section six hundred twenty-six,
52 article six of this chapter. If at the time of the agreement the
53 corporation has shares outstanding represented by certificates,
54 the corporation must recall the outstanding certificates and
55 issue substitute certificates that comply with this subsection.
56 The failure to note the existence of the agreement on the
57 certificate or information statement does not affect the validity
58 of the agreement or any action taken pursuant to it. Any
59 purchaser of shares who, at the time of purchase, did not have
60 knowledge of the existence of the agreement is entitled to
61 rescission of the purchase. A purchaser is to be deemed to have
62 knowledge of the existence of the agreement if its existence is
63 noted on the certificate or information statement for the shares
64 in compliance with this subsection and, if the shares are not
65 represented by a certificate, the information statement is
66 delivered to the purchaser at or prior to the time of purchase of
67 the shares. An action to enforce the right of rescission autho-
68 rized by this subsection must be commenced within the earlier
69 of ninety days after discovery of the existence of the agreement
70 or two years after the time of purchase of the shares.

71 (d) An agreement authorized by this section ceases to be
72 effective when shares of the corporation are listed on a national
73 securities exchange or regularly traded in a market maintained
74 by one or more members of a national or affiliated securities
75 association. If the agreement ceases to be effective for any

76 reason, the board of directors may, if the agreement is contained
77 or referred to in the corporation's articles of incorporation or
78 bylaws, adopt an amendment to the articles of incorporation or
79 bylaws, without shareholder action, to delete the agreement and
80 any references to it.

81 (e) An agreement authorized by this section that limits the
82 discretion or powers of the board of directors relieves the
83 directors of, and imposes upon the person or persons in whom
84 the discretion or powers are vested, liability for acts or omis-
85 sions imposed by law on directors to the extent that the discre-
86 tion or powers of the directors are limited by the agreement.

87 (f) The existence or performance of an agreement autho-
88 rized by this section is not a ground for imposing personal
89 liability on any shareholder for the acts or debts of the corpora-
90 tion even if the agreement or its performance treats the corpora-
91 tion as if it were a partnership or results in failure to observe the
92 corporate formalities otherwise applicable to the matters
93 governed by the agreement.

94 (g) Incorporators or subscribers for shares may act as
95 shareholders with respect to an agreement authorized by this
96 section if no shares have been issued when the agreement is
97 made.

ARTICLE 8. DIRECTORS AND OFFICERS.

PART 1. BOARD OF DIRECTORS.

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

1 (a) Except as provided in section seven hundred thirty-two,
2 article seven of this chapter, each corporation must have a
3 board of directors.

4 (b) All corporate powers are to be exercised by or under the
5 authority of, and the business and affairs of the corporation
6 managed under the direction of, its board of directors, subject
7 to any limitation set forth in the articles of incorporation or in
8 an agreement authorized under section seven hundred thirty-
9 two, article seven of this chapter.

§31D-8-802. Qualifications of directors.

1 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 shareholder of the corporation unless the articles
4 of incorporation or bylaws require he or she to be a shareholder.

§31D-8-803. Number and election of directors.

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

4 (b) If a board of directors has power to fix or change the
5 number of directors, the board may increase or decrease by
6 thirty percent or less the number of directors last approved by
7 the shareholders, but only the shareholders may increase or
8 decrease by more than thirty percent the number of directors
9 last approved by the shareholders.

10 (c) The articles of incorporation or bylaws may establish a
11 variable range for the size of the board of directors by fixing a
12 minimum and maximum number of directors. If a variable
13 range is established, the number of directors may be fixed or
14 changed from time to time, within the minimum and maximum,
15 by the shareholders or the board of directors. After shares are
16 issued, only the shareholders may change the range for the size
17 of the board or change from a fixed to a variable-range size
18 board or change from a variable to a fixed range size board.

19 (d) Directors are elected at the first annual shareholders'
20 meeting and at each annual meeting thereafter unless their
21 terms are staggered under section eight hundred six of this
22 article.

§31D-8-804. Election of directors by certain classes of shareholders.

1 If the articles of incorporation authorize dividing the shares
2 into classes, the articles may also authorize the election of all or
3 a specified number of directors by the holders of one or more
4 authorized classes of shares. A class or classes of shares entitled
5 to elect one or more directors is a separate voting group for
6 purposes of the election of directors.

§31D-8-805. Terms of directors generally.

1 (a) The terms of the initial directors of a corporation expire
2 at the first shareholders' meeting at which directors are elected.

3 (b) The terms of all other directors expire at the next annual
4 shareholders' meeting following their election unless their
5 terms are staggered under section eight hundred six of this
6 article.

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

9 (d) The term of a director elected to fill a vacancy expires
10 at the next shareholders' meeting at which directors are elected.

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

§31D-8-806. Staggered terms for directors.

1 If there are nine or more directors, the articles of incorpora-
2 tion may provide for staggering their terms by dividing the total
3 number of directors into two or three groups, with each group
4 containing as close to one half or one third of the total number
5 of directors as possible. In that event, the terms of directors in
6 the first group expire at the first annual shareholders' meeting
7 after their election, the terms of the second group expire at the
8 second annual shareholders' meeting after their election, and
9 the terms of the third group, if any, expire at the third annual
10 shareholders' meeting after their election. At each annual
11 shareholders' meeting held thereafter, directors are to be chosen
12 for a term of two years or three years to succeed those whose
13 terms expire.

§31D-8-807. 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 to 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.

§31D-8-808. Removal of directors by shareholders.

1 (a) The shareholders may remove one or more directors
2 with or without cause.

3 (b) If a director is elected by a voting group of sharehold-
4 ers, only the shareholders of that voting group may participate
5 in the vote to remove him or her.

6 (c) A director may be removed only if the number of votes
7 cast to remove him or her exceeds the number of votes cast not
8 to remove him or her provided that a director may not be
9 removed if the number of votes sufficient to elect him or her
10 under cumulative voting is voted against his or her removal.

11 (d) A director may be removed by the shareholders only at
12 a meeting called for the purpose of removing him or her and the
13 meeting notice must state that the purpose, or one of the
14 purposes, of the meeting is removal of the director.

§31D-8-809. 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 shareholders holding at least ten percent of
4 the outstanding shares of any class if the court finds that: (1)
5 The director engaged in fraudulent or dishonest conduct, or
6 gross abuse of authority or discretion, with respect to the
7 corporation; and (2) removal is in the best interest of the
8 corporation.

9 (b) The court that removes a director may bar the director
10 from reelection for a period prescribed by the court.

11 (c) If shareholders commence a proceeding under subsec-
12 tion (a) of this section, they must make the corporation a party
13 defendant.

§31D-8-810. 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 shareholders may fill the vacancy;

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

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

10 (b) If the vacant office was held by a director elected by a
11 voting group of shareholders and if the vacancy is to be filled
12 by the shareholders as provided in subdivision (1), subsection
13 (a) of this section, only the holders of shares of that voting
14 group are entitled to vote to fill the vacancy.

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

§31D-8-811. 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.

§31D-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.

§31D-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.

§31D-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.

§31D-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.

§31D-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. The right of dissent or abstention is not
28 available to a director who votes in favor of the action taken.

§31D-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) Authorize distributions;
- 24 (2) Approve or propose to shareholders action that this
25 chapter requires be approved by shareholders;
- 26 (3) Fill vacancies on the board of directors or on any of its
27 committees;
- 28 (4) Amend articles of incorporation pursuant to section one
29 thousand two, article ten of this chapter;
- 30 (5) Adopt, amend, or repeal bylaws;
- 31 (6) Approve a plan of merger not requiring shareholder
32 approval;
- 33 (7) Authorize or approve reacquisition of shares, except
34 according to a formula or method prescribed by the board of
35 directors; or
- 36 (8) Authorize or approve the issuance or sale or contract for
37 sale of shares, or determine the designation and relative rights,
38 preferences, and limitations of a class or series of shares, except
39 that the board of directors may authorize a committee or a
40 senior executive officer of the corporation to authorize or
41 approve the issuance or sale or contract for sale of shares, or
42 determine the designation and relative rights, preferences, and
43 limitations of a class or series of shares within limits specifi-
44 cally prescribed by the board of directors.
- 45 (f) The creation of, delegation of authority to, or action by
46 a committee does not alone constitute compliance by a director
47 with the standards of conduct described in section eight
48 hundred thirty of this article.

PART 3. DIRECTORS.

§31D-8-830. Standard 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.

§31D-8-831. Standards of liability for directors.

1 (a) A director is not liable to the corporation or its share-
2 holders for any decision to take or not to take action, or any
3 failure to take any action, as a director, unless the party
4 asserting liability 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, interposed as a bar to the proceeding by
10 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 business and affairs of the corporation,
30 or a failure to devote timely attention, by making or causing to
31 be made appropriate inquiry, when particular facts and circum-
32 stances of significant concern materialize that would alert a
33 reasonably attentive director to the need for inquiry;

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 shareholders that is action-
37 able 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 shareholders 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 shareholder may be entitled
65 under another provision of this code or the United States Code.

§31D-8-832. [RESERVED]

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

1 (a) A director who votes for or assents to a distribution in
2 excess of what may be authorized and made pursuant to
3 subsection (a), section six hundred forty, article six of this
4 chapter is personally liable to the corporation for the amount of
5 the distribution that exceeds what could have been distributed
6 without violating subsection (a), section six hundred forty,
7 article six of this chapter if the party asserting liability estab-
8 lishes that when taking the action the director did not comply
9 with section eight hundred thirty of this chapter.

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

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

15 (2) Recoupment from each shareholder of the prorata
16 portion of the amount of the unlawful distribution the share-
17 holder accepted, knowing the distribution was made in violation
18 of subsection (a), section six hundred forty, article six of this
19 chapter.

20 (c) A proceeding to enforce:

21 (1) The liability of a director under subsection (a) of this
22 section is barred unless it is commenced within two years after
23 the date on which the effect of the distribution was measured
24 under subsection (e) or (g), section six hundred forty, article six
25 of this chapter or as of which the violation of subsection (a),
26 section six hundred forty, article six of this chapter occurred as
27 the consequence of disregard of a restriction in the articles of
28 incorporation; or

29 (2) Contribution or recoupment under subsection (b) of this
30 section is barred unless it is commenced within one year after
31 the liability of the claimant has been finally adjudicated under
32 subsection (a) of this section.

PART 4. OFFICERS.

§31D-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 shareholders' 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.

§31D-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.

§31D-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.

§31D-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.

§31D-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.

§31D-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 subsections (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, arbitratve, or investigative and whether formal
47 or informal.

§31D-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 meet**
28 the relevant standard of conduct described in this section.

29 (d) Unless ordered by a 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.

§31D-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.

§31D-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 section 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 the shareholders, but shares owned by or voted under
38 the control of a director who at the time does not qualify as a
39 disinterested director may not be voted on the authorization; or

40 (3) By special legal counsel selected in a manner in
41 accordance with subdivision (2), subsection (b), section eight
42 hundred fifty-five of this article.

**§31D-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 subdivision (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 entitled
29 to indemnification under subdivision (1), subsection (a) of this
30 section or to indemnification or advance for expenses under
31 subdivision (2), subsection (a) of this section, it shall also order
32 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.

§31D-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 shareholders, but shares owned by or voted under
20 the control of a director who at the time does not qualify as a
21 disinterested director may not be voted on the determination.

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

§31D-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 shareholders; 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 court under
25 section eight hundred fifty-four of this article for indemnifica-
26 tion or an advance for expenses, in each case to the same extent
27 to which a director may be entitled to indemnification or
28 advance for expenses under those provisions.

§31D-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.

§31D-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 shareholders, obligate
4 itself in advance of the act or omission giving rise to a proceed-
5 ing to 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 does 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 shareholders
25 of a predecessor of the corporation in a merger or in a contract
26 to which the predecessor is a party, existing at the time the
27 merger takes effect, is to be governed by subdivision (3),
28 subsection (a), section one thousand one hundred six, article
29 eleven of this chapter.

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

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

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

§31D-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.

§31D-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. R-E-S-E-R-V-E-D

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

PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

§31D-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 shareholder 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, capital structure, dividend entitlement, or purpose or
11 duration of the corporation.

§31D-10-1002. Amendment before issuance of shares.

1 If a corporation has not yet issued shares, its board of
2 directors, or its incorporators if it has no board of directors, may
3 adopt one or more amendments to the corporation's articles of
4 incorporation.

§31D-10-1003. Amendment by board of directors and shareholders.

1 If a corporation has issued shares, an amendment to the
2 articles of incorporation must be adopted in the following
3 manner:

4 (1) The proposed amendment must be adopted by the board
5 of directors.

6 (2) Except as provided in sections one thousand five, one
7 thousand seven and one thousand eight of this article, after
8 adopting the proposed amendment the board of directors must
9 submit the amendment to the shareholders for their approval.
10 The board of directors must also transmit to the shareholders a
11 recommendation that the shareholders approve the amendment,
12 unless the board of directors makes a determination that
13 because of conflicts of interest or other special circumstances
14 it should not make the recommendation, in which case the
15 board of directors must transmit to the shareholders the basis
16 for that determination.

17 (3) The board of directors may condition its submission of
18 the amendment to the shareholders on any basis.

19 (4) If the amendment is required to be approved by the
20 shareholders, and the approval is to be given at a meeting, the
21 corporation must notify each shareholder, whether or not
22 entitled to vote, of the meeting of shareholders at which the
23 amendment is to be submitted for approval. The notice must

24 state that the purpose, or one of the purposes, of the meeting is
25 to consider the amendment and must contain or be accompanied
26 by a copy of the amendment.

27 (5) Unless the articles of incorporation, or the board of
28 directors acting pursuant to subdivision (3) of this section,
29 requires a greater vote or a greater number of shares to be
30 present, approval of the amendment requires the approval of the
31 shareholders at a meeting at which a quorum consisting of at
32 least a majority of the votes entitled to be cast on the amend-
33 ment exists, and, if any class or series of shares is entitled to
34 vote as a separate group on the amendment, except as provided
35 in subsection (c), section one thousand four of this article, the
36 approval of each separate voting group at a meeting at which a
37 quorum of the voting group consisting of at least a majority of
38 the votes entitled to be cast on the amendment by that voting
39 group exists.

§31D-10-1004. Voting on amendments by voting groups.

1 (a) If a corporation has more than one class of shares
2 outstanding, the holders of the outstanding shares of a class are
3 entitled to vote as a separate voting group, if shareholder voting
4 is otherwise required by this chapter, on a proposed amendment
5 to the articles of incorporation if the amendment would:

6 (1) Effect an exchange or reclassification of all or part of
7 the shares of the class into shares of another class;

8 (2) Effect an exchange or reclassification, or create the right
9 of exchange, of all or part of the shares of another class into
10 shares of the class;

11 (3) Change the rights, preferences, or limitations of all or
12 part of the shares of the class;

13 (4) Change the shares of all or part of the class into a
14 different number of shares of the same class;

15 (5) Create a new class of shares having rights or preferences
16 with respect to distributions or to dissolution that are prior or
17 superior to the shares of the class;

18 (6) Increase the rights, preferences, or number of authorized
19 shares of any class that, after giving effect to the amendment,
20 have rights or preferences with respect to distributions or to
21 dissolution that are prior or superior to the shares of the class;

22 (7) Limit or deny an existing preemptive right of all or part
23 of the shares of the class; or

24 (8) Cancel or otherwise affect rights to distributions that
25 have accumulated but not yet been authorized on all or part of
26 the shares of the class.

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

31 (c) If a proposed amendment that entitles the holders of two
32 or more classes or series of shares to vote as separate voting
33 groups under this section would affect those two or more
34 classes or series in the same or a substantially similar way, the
35 holders of shares of all the classes or series affected by the
36 proposed amendment must vote together as a single voting
37 group on the proposed amendment, unless otherwise provided
38 in the articles of incorporation or required by the board of
39 directors.

40 (d) A class or series of shares is entitled to the voting rights
41 granted by this section although the articles of incorporation
42 provide that the shares are nonvoting shares.

§31D-10-1005. Amendment by board of directors.

1 Unless the articles of incorporation provide otherwise, a
2 corporation's board of directors may adopt amendments to the
3 corporation's articles of incorporation without shareholder
4 approval:

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) If the corporation has only one class of shares outstand-
14 ing:

15 (A) To change each issued and unissued authorized share
16 of the class into a greater number of whole shares of that class;
17 or

18 (B) To increase the number of authorized shares of the class
19 to the extent necessary to permit the issuance of shares as a
20 share dividend;

21 (5) To change the corporate name by substituting the word
22 "corporation," "incorporated," "company," "limited," or the
23 abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word
24 or abbreviation in the name, or by adding, deleting, or changing
25 a geographical attribution for the name;

26 (6) To reflect a reduction in authorized shares, as a result of
27 the operation of subsection (b), section six hundred thirty-one,

28 article six of this chapter, when the corporation has acquired its
29 own shares and the articles of incorporation prohibit the reissue
30 of the acquired shares;

31 (7) To delete a class of shares from the articles of incorpo-
32 ration, as a result of the operation of subsection (b), section six
33 hundred thirty-one, article six of this chapter, when there are no
34 remaining shares of the class because the corporation has
35 acquired all shares of the class and the articles of incorporation
36 prohibit the reissue of the acquired shares; or

37 (8) To make any change expressly permitted by subsection
38 (d), section six hundred two, article six of this chapter to be
39 made without shareholder approval.

§31D-10-1006. Articles of amendment.

1 After an amendment to the articles of incorporation has
2 been adopted and approved in the manner required by this
3 chapter and by the articles of incorporation, the corporation
4 shall deliver to the secretary of state, for filing, articles of
5 amendment, setting forth:

6 (1) The name of the corporation;

7 (2) The text of each amendment adopted;

8 (3) If an amendment provides for an exchange, reclassifica-
9 tion, or cancellation of issued shares, provisions for implement-
10 ing the amendment if not contained in the amendment itself;

11 (4) The date of each amendment's adoption; and

12 (5) If an amendment:

13 (A) Was adopted by the incorporators or board of directors
14 without shareholder approval, a statement that the amendment

15 was duly approved by the incorporators or by the board of
16 directors, as required, and that shareholder approval was not
17 required;

18 (B) Required approval by the shareholders, a statement that
19 the amendment was duly approved by the shareholders in the
20 manner required by this chapter and by the articles of incorpo-
21 ration.

§31D-10-1007. 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 share-
3 holder approval, to consolidate all amendments into a single
4 document.

5 (b) If the restated articles include one or more new amend-
6 ments that require shareholder approval, the amendments must
7 be adopted and approved as provided in section one thousand
8 three of this article.

9 (c) A corporation that restates its articles of incorporation
10 shall deliver to the secretary of state for filing articles of
11 restatement setting forth the name of the corporation and the
12 text of the restated articles of incorporation together with a
13 certificate which states that the restated articles consolidate all
14 amendments into a single document and, if a new amendment
15 is included in the restated articles, which also includes the
16 statements required under section one thousand six of this
17 article.

18 (d) Duly adopted restated articles of incorporation super-
19 sede the original articles of incorporation and all amendments
20 to it.

21 (e) The secretary of state may certify restated articles of
22 incorporation as the articles of incorporation currently in effect,

23 without including the certificate information required by
24 subsection (c) of this section.

§31D-10-1008. Amendment pursuant to reorganization.

1 (a) A corporation's articles of incorporation may be
2 amended without action by the board of directors or sharehold-
3 ers to carry out a plan of reorganization ordered or decreed by
4 a court of competent jurisdiction under the authority of federal
5 law.

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

9 (1) The name of the corporation;

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

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

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

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

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

§31D-10-1009. 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 shareholders 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.

§31D-10-1020. Amendment by board of directors or shareholders.

1 (a) A corporation's shareholders may amend or repeal the
2 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 shareholders in whole or part; or

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

**§31D-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 shareholders, only by the shareholders,
4 unless the bylaw otherwise provides; or

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

7 (b) A bylaw adopted or amended by the shareholders 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 shareholders 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.

ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1101. Definitions.

1 As used in this article:

2 (a) "Interests" means the proprietary interests in an other
3 entity.

4 (b) "Merger" means a business combination pursuant to
5 section one thousand one hundred two of this article.

6 (c) "Organizational documents" means the basic document
7 or documents that create, or determine the internal governance
8 of, an other entity.

9 (d) "Other entity" means any association or legal entity,
10 other than a domestic or foreign corporation, organized to
11 conduct business, including but not limited to, limited partner-
12 ships, general partnerships, limited liability partnerships,
13 limited liability companies, joint ventures, joint stock compa-
14 nies, and business trusts.

15 (e) "Party to a merger" or "party to a share exchange"
16 means any domestic or foreign corporation or other entity that
17 will either:

18 (1) Merge under a plan of merger;

19 (2) Acquire shares or interests of another corporation or an
20 other entity in a share exchange; or

21 (3) Have all of its shares or interests or all of one or more
22 classes or series of its shares or interests acquired in a share
23 exchange.

24 (f) "Share exchange" means a business combination
25 pursuant to section one thousand one hundred three of this
26 article.

27 (g) "Survivor" in a merger means the corporation or other
28 entity into which one or more other corporations or other
29 entities are merged. A survivor of a merger may preexist the
30 merger or be created by the merger.

§31D-11-1102. 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 shares of each
20 merging corporation and interests of each merging other entity
21 into shares or other securities, interests, obligations, rights to
22 acquire shares or other securities, cash, other property, or any
23 combination of the foregoing;

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

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

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

40 (e) The plan of merger may also include a provision that the
41 plan may be amended prior to filing the articles of merger with
42 the secretary of state: *Provided*, That if the shareholders of a
43 domestic corporation that is a party to the merger are required

44 or permitted to vote on the plan, the plan must provide that
45 subsequent to approval of the plan by the shareholders the plan
46 may not be amended to:

47 (1) Change the amount or kind of shares or other securities,
48 interests, obligations, rights to acquire shares or other securities,
49 cash, or other property to be received by the shareholders of or
50 owners of interests in any party to the merger upon conversion
51 of their shares or interests under the plan;

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

59 (3) Change any of the other terms or conditions of the plan
60 if the change would adversely affect the shareholders in any
61 material respect.

§31D-11-1103. Share exchange.

1 (a) Through a share exchange:

2 (1) A domestic corporation may acquire all of the shares of
3 one or more classes or series of shares of another domestic or
4 foreign corporation, or all of the interests of one or more classes
5 or series of interests of a domestic or foreign other entity, in
6 exchange for shares or other securities, interests, obligations,
7 rights to acquire shares or other securities, cash, other property,
8 or any combination of the foregoing, pursuant to a plan of share
9 exchange, or

10 (2) All of the shares of one or more classes or series of
11 shares of a domestic corporation may be acquired by another

12 domestic or foreign corporation or other entity, in exchange for
13 shares or other securities, interests, obligations, rights to acquire
14 shares or other securities, cash, other property, or any combina-
15 tion of the foregoing, pursuant to a plan of share exchange.

16 (b) A foreign corporation, or a domestic or foreign other
17 entity, may be a party to the share exchange only if:

18 (1) The share exchange is permitted by the laws under
19 which the corporation or other entity is organized or by which
20 it is governed; and

21 (2) In effecting the share exchange, the corporation or other
22 entity complies with the laws under which the corporation or
23 other entity is organized or by which it is governed and with its
24 articles of incorporation or organizational documents.

25 (c) The plan of share exchange must include:

26 (1) The name of each corporation or other entity whose
27 shares or interests will be acquired and the name of the corpora-
28 tion or other entity that will acquire those shares or interests;

29 (2) The terms and conditions of the share exchange;

30 (3) The manner and basis of exchanging shares of a
31 corporation or interests in an other entity whose shares or
32 interests will be acquired under the share exchange into shares
33 or other securities, interests, obligations, rights to acquire shares
34 or other securities, cash, other property, or any combination of
35 the foregoing; and

36 (4) Any other provisions required by the laws under which
37 any party to the share exchange is organized or by the articles
38 of incorporation or organizational documents of any party to the
39 share exchange.

40 (d) The terms described in subdivisions (2) and (3),
41 subsection (c) of this section may be made dependent on facts
42 ascertainable outside the plan of share exchange, provided that
43 those facts are objectively ascertainable. The term "facts"
44 includes, but is not limited to, the occurrence of any event,
45 including a determination or action by any person or body,
46 including the corporation.

47 (e) The plan of share exchange may also include a provision
48 that the plan may be amended prior to filing of the articles of
49 share exchange with the secretary of state: *Provided*, That if the
50 shareholders of a domestic corporation that is a party to the
51 share exchange are required or permitted to vote on the plan,
52 the plan must provide that subsequent to approval of the plan by
53 shareholders the plan may not be amended to:

54 (1) Change the amount or kind of shares or other securities,
55 interests, obligations, rights to acquire shares or other securities,
56 cash, or other property to be issued by the corporation or to be
57 received by the shareholders of or owners of interests in any
58 party to the share exchange in exchange for their shares or
59 interests under the plan; or

60 (2) Change any of the terms or conditions of the plan if the
61 change would adversely affect the shareholders in any material
62 respect.

63 (f) This section does not limit the power of a domestic
64 corporation to acquire shares of another corporation or interests
65 in another entity in a transaction other than a share exchange.

§31D-11-1104. Action on a plan of merger or share exchange.

1 In the case of a domestic corporation that is a party to a
2 merger or share exchange:

3 (1) The plan of merger or share exchange must be adopted
4 by the board of directors.

5 (2) Except as provided in subdivision (7) of this section and
6 in section one thousand five of this article, after adopting the
7 plan of merger or share exchange the board of directors must
8 submit the plan to the shareholders for their approval. The
9 board of directors must also transmit to the shareholders a
10 recommendation that the shareholders approve the plan, unless
11 the board of directors determines that because of conflicts of
12 interest or other special circumstances it should not make a
13 recommendation, in which case the board of directors must
14 transmit to the shareholders the basis for that determination.

15 (3) The board of directors may condition its submission of
16 the plan of merger or share exchange to the shareholders on any
17 basis.

18 (4) If the plan of merger or share exchange is required to be
19 approved by the shareholders, and if the approval is to be given
20 at a meeting, the corporation must notify each shareholder,
21 whether or not entitled to vote, of the meeting of shareholders
22 at which the plan is to be submitted for approval. The notice
23 must state that the purpose, or one of the purposes, of the
24 meeting is to consider the plan and must contain or be accom-
25 panied by a copy or summary of the plan. If the corporation is
26 to be merged into an existing corporation or other entity, the
27 notice is also to include or be accompanied by a copy or
28 summary of the articles of incorporation or organizational
29 documents of that corporation or other entity. If the corporation
30 is to be merged into a corporation or other entity that is to be
31 created pursuant to the merger, the notice is to include or be
32 accompanied by a copy or a summary of the articles of incorpo-
33 ration or organizational documents of the new corporation or
34 other entity.

35 (5) Unless the articles of incorporation, or the board of
36 directors acting pursuant to subdivision (3) of this section,
37 requires a greater vote or a greater number of votes to be
38 present, approval of the plan of merger or share exchange
39 requires the approval of the shareholders at a meeting at which
40 a quorum consisting of at least a majority of the votes entitled
41 to be cast on the plan exists, and, if any class or series of shares
42 is entitled to vote as a separate group on the plan of merger or
43 share exchange, the approval of each separate voting group at
44 a meeting at which a quorum of the voting group consisting of
45 at least a majority of the votes entitled to be cast on the merger
46 or share exchange by that voting group is present.

47 (6) Separate voting by voting groups is required:

48 (A) On a plan of merger, by each class or series of shares
49 that: (i) Are to be converted, pursuant to the provisions of the
50 plan of merger, into shares or other securities, interests,
51 obligations, rights to acquire shares or other securities, cash,
52 other property, or any combination of the foregoing; or (ii)
53 would have a right to vote as a separate group on a provision in
54 the plan that, if contained in a proposed amendment to articles
55 of incorporation, would require action by separate voting
56 groups under section one thousand four, article ten of this
57 chapter;

58 (B) On a plan of share exchange, by each class or series of
59 shares included in the exchange, with each class or series
60 constituting a separate voting group; and

61 (C) On a plan of merger or share exchange, if the voting
62 group is entitled under the articles of incorporation to vote as a
63 voting group to approve a plan of merger or share exchange.

64 (7) Unless the articles of incorporation otherwise provide,
65 approval by the corporation's shareholders of a plan of merger
66 or share exchange is not required if:

67 (A) The corporation will survive the merger or is the
68 acquiring corporation in a share exchange;

69 (B) Except for amendments permitted by section one
70 thousand five, article ten of this chapter, its articles of incorpo-
71 ration will not be changed;

72 (C) Each shareholder of the corporation whose shares were
73 outstanding immediately before the effective date of the merger
74 or share exchange will hold the same number of shares, with
75 identical preferences, limitations, and relative rights, immedi-
76 ately after the effective date of change; and

77 (D) The issuance in the merger or share exchange of shares
78 or other securities convertible into or rights exercisable for
79 shares does not require a vote under subsection (f), section six
80 hundred twenty-one, article six of this chapter.

81 (8) If as a result of a merger or share exchange one or more
82 shareholders of a domestic corporation would become subject
83 to personal liability for the obligations or liabilities of any other
84 person or entity, approval of the plan of merger requires the
85 execution, by each shareholder subject to liability, of a separate
86 written consent to become subject to personal liability.

**§31D-11-1105. Merger between parent and subsidiary or between
subsidiaries.**

1 (a) A domestic parent corporation that owns shares of a
2 domestic or foreign subsidiary corporation that carry at least
3 ninety percent of the voting power of each class and series of
4 the outstanding shares of the subsidiary that have voting power
5 may merge the subsidiary into itself or into another subsidiary,

6 or merge itself into the subsidiary, without the approval of the
7 board of directors or shareholders of the subsidiary, unless the
8 articles of incorporation of any of the corporations otherwise
9 provide, and unless, in the case of a foreign subsidiary, ap-
10 proval by the subsidiary's board of directors or shareholders is
11 required by the laws under which the subsidiary is organized.

12 (b) If under subsection (a) of this section approval of a
13 merger by the subsidiary's shareholders is not required, the
14 parent corporation shall, within ten days after the effective date
15 of the merger, notify each of the subsidiary's shareholders that
16 the merger has become effective.

17 (c) Except as provided in subsections (a) and (b) of this
18 section, a merger between a parent and a subsidiary is to be
19 governed by the provisions of this article applicable to mergers
20 generally.

§31D-11-1106. Articles of merger or share exchange.

1 (a) After a plan of merger or share exchange has been
2 adopted and approved as required by this chapter, articles of
3 merger or share exchange are to be executed on behalf of each
4 party to the merger or share exchange by any officer or other
5 duly authorized representative. The articles are to set forth:

6 (1) The names of the parties to the merger or share ex-
7 change and the date on which the merger or share exchange
8 occurred or is to be effective;

9 (2) If the articles of incorporation of the survivor of a
10 merger are amended, or if a new corporation is created as a
11 result of a merger, the amendments to the survivor's articles of
12 incorporation or the articles of incorporation of the new
13 corporation;

14 (3) If the plan of merger or share exchange required
15 approval by the shareholders of a domestic corporation that was
16 a party to the merger or share exchange, a statement that the
17 plan was duly approved by the shareholders and, if voting by
18 any separate voting group was required, by each separate voting
19 group, in the manner required by this chapter and the articles of
20 incorporation;

21 (4) If the plan of merger or share exchange did not require
22 approval by the shareholders of a domestic corporation that was
23 a party to the merger or share exchange, a statement to that
24 effect; and

25 (5) As to each foreign corporation and each other entity that
26 was a party to the merger or share exchange, a statement that
27 the plan and the performance of its terms were duly authorized
28 by all action required by the laws under which the corporation
29 or other entity is organized, or by which it is governed, and by
30 its articles of incorporation or organizational documents.

31 (b) Articles of merger or share exchange are to be delivered
32 to the secretary of state for filing by the survivor of the merger
33 or the acquiring corporation in a share exchange and take effect
34 upon issuance by the secretary of state of a certificate of merger
35 to the survivor corporation.

36 (c) The secretary of state shall withhold the issuance of any
37 certificate of merger in the case where the new or surviving
38 corporation will be a foreign corporation which has not
39 qualified to conduct affairs or do or transact business or hold
40 property in this state until the receipt by the secretary of state of
41 a notice from the tax commissioner and bureau of employment
42 programs to the effect that all taxes due from said corporation
43 under the provisions of chapter eleven of this code, including,
44 but not limited to, taxes withheld under the provisions of
45 section seventy-one, article twenty-one, chapter eleven of this

46 code, all business and occupation taxes, motor carrier and
47 transportation privilege taxes, gasoline taxes, consumer sales
48 taxes and any and all license franchise or other excise taxes and
49 corporate net income taxes, and employment security payments
50 levied or assessed against the corporation seeking to dissolve
51 have been paid or that the payment has been provided for, or
52 until the secretary of state received a notice from the tax
53 commissioner or bureau of employment programs stating that
54 the corporation in question is not subject to payment of any
55 taxes or to the making of any employment security payments or
56 assessments.

§31D-11-1107. Effect of merger or share exchange.

1 (a) When a merger takes effect:

2 (1) The corporation or other entity that is designated in the
3 plan of merger as the survivor continues or comes into exist-
4 tence, as the case may be;

5 (2) The separate existence of every corporation or other
6 entity that is merged into the survivor ceases;

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

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

17 (5) All liabilities of each corporation or other entity that is
18 merged into the survivor are vested in the survivor;

19 (6) The name of the survivor may, but need not be, substi-
20 tuted in any pending proceeding for the name of any party to
21 the merger whose separate existence ceased in the merger;

22 (7) The articles of incorporation or organizational docu-
23 ments of the survivor are amended to the extent provided in the
24 plan of merger;

25 (8) The articles of incorporation or organizational docu-
26 ments of a survivor that is created by the merger become
27 effective; and

28 (9) The shares of each corporation that is a party to the
29 merger, and the interests in an other entity that is a party to a
30 merger, that are to be converted under the plan of merger into
31 shares, interests, obligations, rights to acquire securities, other
32 securities, cash, other property, or any combination of the
33 foregoing, are converted, and the former holders of the shares
34 or interests are entitled only to the rights provided to them in
35 the plan of merger or to any rights they may have under article
36 thirteen of this chapter.

37 (b) When a share exchange becomes effective, the shares of
38 each domestic corporation that are to be exchanged for shares
39 or other securities, interests, obligations, rights to acquire shares
40 or other securities, cash, other property, or any combination of
41 the foregoing, are entitled only to the rights provided to them in
42 the plan of share exchange or to any rights they may have under
43 article thirteen of this chapter.

44 (c) Any shareholder of a domestic corporation that is a
45 party to a merger or share exchange who, prior to the merger or
46 share exchange, was liable for the liabilities or obligations of
47 the corporation, may not be released from the liabilities or
48 obligations by reason of the merger or share exchange.

49 (d) Upon a merger becoming effective, a foreign corpora-
50 tion, or a foreign other entity, that is the survivor of the merger
51 is deemed to:

52 (1) Appoint the secretary of state as its agent for service of
53 process in a proceeding to enforce the rights of shareholders of
54 each domestic corporation that is a party to the merger who
55 exercise appraisal rights; and

56 (2) Agree that it will promptly pay the amount, if any, to
57 which the shareholders are entitled under article thirteen of this
58 chapter.

§31D-11-1108. Abandonment of a merger or share exchange.

1 (a) Unless otherwise provided in a plan of merger or share
2 exchange or in the laws under which a foreign corporation or a
3 domestic or foreign other entity that is a party to a merger or a
4 share exchange is organized or by which it is governed, after
5 the plan has been adopted and approved as required by this
6 article, and at any time before the merger or share exchange has
7 become effective, it may be abandoned by any party thereto
8 without action by the party's shareholders or owners of
9 interests, in accordance with any procedures set forth in the
10 plan of merger or share exchange or, if no procedures are set
11 forth in the plan, in the manner determined by the board of
12 directors of a corporation, or the managers of an other entity,
13 subject to any contractual rights of other parties to the merger
14 or share exchange.

15 (b) If a merger or share exchange is abandoned under
16 subsection (a) after articles of merger or share exchange have
17 been filed with the secretary of state but before the merger or
18 share exchange has become effective, a statement that the
19 merger or share exchange has been abandoned in accordance
20 with this section, executed on behalf of a party to the merger or

21 share exchange by an officer or other duly authorized represen-
22 tative, is to be delivered to the secretary of state for filing prior
23 to the effective date of the merger or share exchange. Upon
24 filing, the statement is to take effect and the merger or share
25 exchange is to be deemed abandoned and may not become
26 effective.

ARTICLE 12. DISPOSITION OF ASSETS.

§31D-12-1201. Disposition of assets not requiring shareholder approval.

1 No approval of the shareholders of a corporation is re-
2 quired, 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;

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; or

13 (4) To distribute assets pro rata to the holders of one or
14 more classes or series of the corporation's shares.

§31D-12-1202. Shareholder approval of certain dispositions.

1 (a) A sale, lease, exchange, or other disposition of assets,
2 other than a disposition described in section one thousand two
3 hundred one of this article, requires approval of the corpora-
4 tion's shareholders if the disposition would leave the corpora-

5 tion without a significant continuing business activity. If a
6 corporation retains a business activity that represented at least
7 twenty-five percent of total assets at the end of the most
8 recently completed fiscal year, and twenty-five percent of either
9 income from continuing operations before taxes or revenues
10 from continuing operations for that fiscal year, in each case of
11 the corporation and its subsidiaries on a consolidated basis, the
12 corporation will conclusively be deemed to have retained a
13 significant continuing business activity.

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

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

30 (d) If a disposition is required to be approved by the
31 shareholders under subsection (a) of this section, and if the
32 approval is to be given at a meeting, the corporation shall notify
33 each shareholder, whether or not entitled to vote, of the meeting
34 of shareholders at which the disposition is to be submitted for
35 approval. The notice must state that the purpose, or one of the
36 purposes, of the meeting is to consider the disposition and must
37 contain a description of the disposition, including the terms and

38 conditions of the disposition and the consideration to be
39 received by the corporation.

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

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

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

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

ARTICLE 13. APPRAISAL RIGHTS.

PART 1. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

§31D-13-1301. Definitions.

1 In this article:

2 (1) "Affiliate" means a person that directly or indirectly
3 through one or more intermediaries controls, is controlled by,
4 or is under common control with another person or is a senior
5 executive. For purposes of subdivision (4), subsection (b),
6 section one thousand three hundred two of this article, a person
7 is deemed to be an affiliate of its senior executives.

8 (2) "Beneficial shareholder" means a person who is the
9 beneficial owner of shares held in a voting trust or by a nomi-
10 nee on the beneficial owner's behalf.

11 (3) "Corporation" means the issuer of the shares held by a
12 shareholder demanding appraisal and, for matters covered in
13 sections one thousand three hundred twenty-two, one thousand
14 three hundred twenty-three, one thousand three hundred twenty-
15 four, one thousand three hundred twenty-five, one thousand
16 three hundred twenty-six, one thousand three hundred thirty and
17 one thousand three hundred thirty-one of this article, includes
18 the surviving entity in a merger.

19 (4) "Fair value" means the value of the corporation's shares
20 determined:

21 (A) Immediately before the effectuation of the corporate
22 action to which the shareholder objects;

23 (B) Using customary and current valuation concepts and
24 techniques generally employed for similar businesses in the
25 context of the transaction requiring appraisal; and

26 (C) Without discounting for lack of marketability or
27 minority status except, if appropriate, for amendments to the
28 articles pursuant to subdivision (5), subsection (a), section one
29 thousand three hundred two of this article.

30 (5) "Interest" means interest from the effective date of the
31 corporate action until the date of payment, at the rate of interest
32 on judgments in this state on the effective date of the corporate
33 action.

34 (6) "Preferred shares" means a class or series of shares
35 whose holders have preference over any other class or series
36 with respect to distributions.

37 (7) "Record shareholder" means the person in whose name
38 shares are registered in the records of the corporation or the
39 beneficial owner of shares to the extent of the rights granted by
40 a nominee certificate on file with the corporation.

41 (8) "Senior executive" means the chief executive officer,
42 chief operating officer, chief financial officer, and anyone in
43 charge of a principal business unit or function.

44 (9) "Shareholder" means both a record shareholder and a
45 beneficial shareholder.

§31D-13-1302. Right to appraisal.

1 (a) A shareholder is entitled to appraisal rights, and to
2 obtain payment of the fair value of that shareholder's shares, in
3 the event of any of the following corporate actions:

4 (1) Consummation of a merger to which the corporation is
5 a party: (A) If shareholder approval is required for the merger
6 by section one thousand one hundred four, article eleven of this
7 chapter and the shareholder is entitled to vote on the merger,
8 except that appraisal rights may not be available to any share-
9 holder of the corporation with respect to shares of any class or
10 series that remain outstanding after consummation of the
11 merger; or (B) if the corporation is a subsidiary and the merger
12 is governed by section one thousand one hundred five, article
13 eleven of this chapter;

14 (2) Consummation of a share exchange to which the
15 corporation is a party as the corporation whose shares will be
16 acquired if the shareholder is entitled to vote on the exchange,
17 except that appraisal rights may not be available to any share-
18 holder of the corporation with respect to any class or series of
19 shares of the corporation that is not exchanged;

20 (3) Consummation of a disposition of assets pursuant to
21 section one thousand two hundred two, article twelve of this
22 chapter if the shareholder is entitled to vote on the disposition;

23 (4) An amendment of the articles of incorporation with
24 respect to a class or series of shares that reduces the number of
25 shares of a class or series owned by the shareholder to a fraction
26 of a share if the corporation has the obligation or right to
27 repurchase the fractional share so created; or

28 (5) Any other amendment to the articles of incorporation,
29 merger, share exchange or disposition of assets to the extent
30 provided by the articles of incorporation, bylaws or a resolution
31 of the board of directors.

32 (b) Notwithstanding subsection (a) of this section, the
33 availability of appraisal rights under subdivisions (1), (2), (3)
34 and (4), subsection (a) of this section are limited in accordance
35 with the following provisions:

36 (1) Appraisal rights may not be available for the holders of
37 shares of any class or series of shares which is:

38 (A) Listed on the New York Stock Exchange or the
39 American Stock Exchange or designated as a national market
40 system security on an interdealer quotation system by the
41 National Association of Securities Dealers, Inc.; or

42 (B) Not so listed or designated, but has at least two thou-
43 sand shareholders and the outstanding shares of a class or series
44 has a market value of at least twenty million dollars, exclusive
45 of the value of the shares held by its subsidiaries, senior
46 executives, directors and beneficial shareholders owning more
47 than ten percent of the shares.

48 (2) The applicability of subdivision (1), subsection (b) of
49 this section is to be determined as of:

50 (A) The record date fixed to determine the shareholders
51 entitled to receive notice of, and to vote at, the meeting of
52 shareholders to act upon the corporate action requiring appraisal
53 rights; or

54 (B) The day before the effective date of the corporate action
55 if there is no meeting of shareholders.

56 (3) Subdivision (1), subsection (b) of this section is not
57 applicable and appraisal rights are to be available pursuant to
58 subsection (a) of this section for the holders of any class or
59 series of shares who are required by the terms of the corporate
60 action requiring appraisal rights to accept for the shares
61 anything other than cash or shares of any class or any series of
62 shares of any corporation, or any other proprietary interest of
63 any other entity, that satisfies the standards set forth in subdivi-
64 sion (1), section (b) of this section at the time the corporate
65 action becomes effective.

66 (4) Subdivision (1), subsection (b) of this section is not
67 applicable and appraisal rights are to be available pursuant to
68 subsection (a) of this section for the holders of any class or
69 series of shares where any of the shares or assets of the corpora-
70 tion are being acquired or converted, whether by merger, share
71 exchange or otherwise, pursuant to the corporate action by a
72 person, or by an affiliate of a person, who: (A) Is, or at any
73 time in the one-year period immediately preceding approval by
74 the board of directors of the corporate action requiring appraisal
75 rights was, the beneficial owner of twenty percent or more of
76 the voting power of the corporation, excluding any shares
77 acquired pursuant to an offer for all shares having voting power
78 if the offer was made within one year prior to the corporate
79 action requiring appraisal rights for consideration of the same
80 kind and of a value equal to or less than that paid in connection
81 with the corporate action; or (B) for purpose of voting their
82 shares of the corporation, each member of the group formed is

83 deemed to have acquired beneficial ownership, as of the date of
84 the agreement, of all voting shares of the corporation benefi-
85 cially owned by any member of the group.

86 (c) Notwithstanding any other provision of section one
87 thousand three hundred two of this article, the articles of
88 incorporation as originally filed or any amendment to the
89 articles of incorporation may limit or eliminate appraisal rights
90 for any class or series of preferred shares, but any limitation or
91 elimination contained in an amendment to the articles of
92 incorporation that limits or eliminates appraisal rights for any
93 of the shares that are outstanding immediately prior to the
94 effective date of the amendment or that the corporation is or
95 may be required to issue or sell pursuant to any conversion,
96 exchange or other right existing immediately before the
97 effective date of the amendment does not apply to any corporate
98 action that becomes effective within one year of that date if the
99 action would otherwise afford appraisal rights.

100 (d) A shareholder entitled to appraisal rights under this
101 article may not challenge a completed corporate action for
102 which appraisal rights are available unless the corporate action:

103 (1) Was not effectuated in accordance with the applicable
104 provisions of articles ten, eleven or twelve of this chapter or the
105 corporation's articles of incorporation, bylaws or board of
106 directors' resolution authorizing the corporate action; or

107 (2) Was procured as a result of fraud or material misrepre-
108 sentation.

§31D-13-1303. Assertion of rights by nominees and beneficial owners.

1 (a) A record shareholder may assert appraisal rights as to
2 fewer than all the shares registered in the record shareholder's
3 name but owned by a beneficial shareholder only if the record

4 shareholder objects with respect to all shares of the class or
5 series owned by the beneficial shareholder and notifies the
6 corporation in writing of the name and address of each benefi-
7 cial shareholder on whose behalf appraisal rights are being
8 asserted. The rights of a record shareholder who asserts
9 appraisal rights for only part of the shares held of record in the
10 record shareholder's name under this subsection are to be
11 determined as if the shares as to which the record shareholder
12 objects and the record shareholder's other shares were regis-
13 tered in the names of different record shareholders.

14 (b) A beneficial shareholder may assert appraisal rights as
15 to shares of any class or series held on behalf of the shareholder
16 only if the shareholder:

17 (1) Submits to the corporation the record shareholder's
18 written consent to the assertion of the rights no later than the
19 date referred to in paragraph (D), subdivision (2), subsection
20 (b), section one thousand three hundred twenty-two of this
21 article; and

22 (2) Does so with respect to all shares of the class or series
23 that are beneficially owned by the beneficial shareholder.

PART 2. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

§31D-13-1320. Notice of appraisal rights.

1 (a) If proposed corporate action described in subsection (a),
2 section one thousand three hundred two of this article is to be
3 submitted to a vote at a shareholders' meeting, the meeting
4 notice must state that the corporation has concluded that
5 shareholders are, are not or may be entitled to assert appraisal
6 rights under this article. If the corporation concludes that
7 appraisal rights are or may be available, a copy of this article
8 must accompany the meeting notice sent to those record
9 shareholders entitled to exercise appraisal rights.

10 (b) In a merger pursuant to section one thousand one
11 hundred five, article eleven of this chapter, the parent corpora-
12 tion must notify in writing all record shareholders of the
13 subsidiary who are entitled to assert appraisal rights that the
14 corporate action became effective. The notice must be sent
15 within ten days after the corporate action became effective and
16 include the materials described in section one thousand three
17 hundred twenty-two of this article.

§31D-13-1321. Notice of intent to demand payment.

1 (a) If proposed corporate action requiring appraisal rights
2 under section one thousand three hundred two of this article is
3 submitted to a vote at a shareholders' meeting, a shareholder
4 who wishes to assert appraisal rights with respect to any class
5 or series of shares:

6 (1) Must deliver to the corporation before the vote is taken
7 written notice of the shareholder's intent to demand payment if
8 the proposed action is effectuated; and

9 (2) Must not vote, or cause or permit to be voted, any shares
10 of the class or series in favor of the proposed action.

11 (b) A shareholder who does not satisfy the requirements of
12 subsection (a) of this section is not entitled to payment under
13 this article.

§31D-13-1322. Appraisal notice and form.

1 (a) If proposed corporate action requiring appraisal rights
2 under subsection (a), section one thousand three hundred two of
3 this article becomes effective, the corporation must deliver a
4 written appraisal notice and form required by subdivision (1),
5 subsection (b) of this section to all shareholders who satisfied
6 the requirements of section one thousand three hundred twenty-
7 one of this article. In the case of a merger under section one

8 thousand one hundred five, article eleven of this chapter, the
9 parent must deliver a written appraisal notice and form to all
10 record shareholders who may be entitled to assert appraisal
11 rights.

12 (b) The appraisal notice must be sent no earlier than the
13 date the corporate action became effective and no later than ten
14 days after that date and must:

15 (1) Supply a form that specifies the date of the first an-
16 nouncement to shareholders of the principal terms of the
17 proposed corporate action and requires the shareholder assert-
18 ing appraisal rights to certify: (A) Whether or not beneficial
19 ownership of those shares for which appraisal rights are
20 asserted was acquired before that date; and (B) that the share-
21 holder did not vote for the transaction;

22 (2) State:

23 (A) Where the form must be sent and where certificates for
24 certificated shares must be deposited and the date by which
25 those certificates must be deposited, which date may not be
26 earlier than the date for receiving the required form under of
27 this subdivision;

28 (B) A date by which the corporation must receive the form
29 which date may not be fewer than forty nor more than sixty
30 days after the date the appraisal notice and form required by
31 subsection (a) of this section are sent, and state that the share-
32 holder is deemed to have waived the right to demand appraisal
33 with respect to the shares unless the form is received by the
34 corporation by the specified date;

35 (C) The corporation's estimate of the fair value of the
36 shares;

37 (D) That, if requested in writing, the corporation will
38 provide, to the shareholder so requesting, within ten days after
39 the date specified in paragraph (B) of this subdivision the
40 number of shareholders who return the forms by the specified
41 date and the total number of shares owned by them; and

42 (E) The date by which the notice to withdraw under section
43 one thousand three hundred twenty-three of this article must be
44 received, which date must be within twenty days after the date
45 specified in paragraph (B) of this subdivision; and

46 (3) Be accompanied by a copy of this article.

§31D-13-1323. Perfection of rights; right to withdraw.

1 (a) A shareholder who receives notice pursuant to section
2 one thousand three hundred twenty-two of this article and who
3 wishes to exercise appraisal rights must certify on the form sent
4 by the corporation whether the beneficial owner of the shares
5 acquired beneficial ownership of the shares before the date
6 required to be set forth in the notice pursuant to subdivision (1),
7 subsection (b), section one thousand three hundred twenty-two
8 of this article. If a shareholder fails to make this certification,
9 the corporation may elect to treat the shareholder's shares as
10 after-acquired shares under section one thousand three hundred
11 twenty-five of this article. In addition, a shareholder who
12 wishes to exercise appraisal rights must execute and return the
13 form and, in the case of certificated shares, deposit the share-
14 holder's certificates in accordance with the terms of the notice
15 by the date referred to in the notice pursuant to paragraph (B),
16 subdivision (2), subsection (b), section one thousand three
17 hundred twenty-two of this article. Once a shareholder deposits
18 the shareholder's certificates or, in the case of uncertificated
19 shares, returns the executed forms, that shareholder loses all
20 rights as a shareholder, unless the shareholder withdraws
21 pursuant to subsection (b) of this section.

22 (b) A shareholder who has complied with subsection (a) of
23 this section may decline to exercise appraisal rights and
24 withdraw from the appraisal process by so notifying the
25 corporation in writing by the date set forth in the appraisal
26 notice pursuant to paragraph (E), subdivision (2), subsection
27 (b), section one thousand three hundred twenty-two of this
28 article. A shareholder who fails to withdraw from the appraisal
29 process by that date may not withdraw without the corpora-
30 tion's written consent.

31 (c) A shareholder who does not execute and return the form
32 and, in the case of certificated shares, deposit the shareholder's
33 share certificates where required, each by the date set forth in
34 the notice described in subsection (b), section one thousand
35 three hundred twenty-two of this article, is not entitled to
36 payment under this article.

§31D-13-1324. Payment.

1 (a) Except as provided in section one thousand three
2 hundred twenty-five of this article, within thirty days after the
3 form required by paragraph (B), subdivision (2), subsection (b),
4 section one thousand three hundred twenty-two of this article is
5 due, the corporation shall pay in cash to those shareholders who
6 complied with subsection (a), section one thousand three
7 hundred twenty-three of this article the amount the corporation
8 estimates to be the fair value of their shares, plus interest.

9 (b) The payment to each shareholder pursuant to subsection
10 (a) of this article must be accompanied by:

11 (1) Financial statements of the corporation that issued the
12 shares to be appraised, consisting of a balance sheet as of the
13 end of a fiscal year ending not more than sixteen months before
14 the date of payment, an income statement for that year, a

15 statement of changes in shareholders' equity for that year, and
16 the latest available interim financial statements, if any;

17 (2) A statement of the corporation's estimate of the fair
18 value of the shares, which estimate must equal or exceed the
19 corporation's estimate given pursuant to paragraph (C),
20 subdivision (2), subsection (b), section one thousand three
21 hundred twenty-two of this article; and

22 (3) A statement that shareholders described in subsection
23 (a) of this section have the right to demand further payment
24 under section one thousand three hundred twenty-six of this
25 article and that if any shareholder does not make a demand for
26 further payment within the time period specified, shareholder
27 is deemed to have accepted the payment in full satisfaction of
28 the corporation's obligations under this article.

§31D-13-1325. After-acquired shares.

1 (a) A corporation may elect to withhold payment required
2 by section one thousand three hundred twenty-four of this
3 article from any shareholder who did not certify that beneficial
4 ownership of all of the shareholder's shares for which appraisal
5 rights are asserted was acquired before the date set forth in the
6 appraisal notice sent pursuant to subdivision (1), subsection (b),
7 section one thousand three hundred twenty-two of this article.

8 (b) If the corporation elected to withhold payment under
9 subsection (a) of this section, it must, within thirty days after
10 the form required by paragraph (B), subdivision (2), subsection
11 (b), section one thousand three hundred twenty-two of this
12 article is due, notify all shareholders who are described in
13 subsection (a) of this section:

14 (1) Of the information required by subdivision (1), subsec-
15 tion (b), section one thousand three hundred twenty-four of this
16 article;

17 (2) Of the corporation's estimate of fair value pursuant to
18 subdivision (2), subsection (b), section one thousand three
19 hundred twenty-four of this article;

20 (3) That they may accept the corporation's estimate of fair
21 value, plus interest, in full satisfaction of their demands or
22 demand appraisal under section one thousand three hundred
23 twenty-six of this article;

24 (4) That those shareholders who wish to accept the offer
25 must notify the corporation of their acceptance of the corpora-
26 tion's offer within thirty days after receiving the offer; and

27 (5) That those shareholders who do not satisfy the require-
28 ments for demanding appraisal under section one thousand
29 three hundred twenty-six of this article are deemed to have
30 accepted the corporation's offer.

31 (c) Within ten days after receiving the shareholder's
32 acceptance pursuant to subsection (b) of this section, the
33 corporation must pay in cash the amount it offered under
34 subdivision (2), subsection (b) of this section to each share-
35 holder who agreed to accept the corporation's offer in full
36 satisfaction of the shareholder's demand.

37 (d) Within forty days after sending the notice described in
38 subsection (b) of this section, the corporation must pay in cash
39 the amount it offered to pay under subdivision (2), subsection
40 (b) of this section to each shareholder described in subdivision
41 (5), subsection (b) of this section.

**§31D-13-1326. Procedure if shareholder dissatisfied with pay-
ment or offer.**

1 (a) A shareholder paid pursuant to section one thousand
2 three hundred twenty-four of this article who is dissatisfied with
3 the amount of the payment must notify the corporation in

4 writing of that shareholder's estimate of the fair value of the
5 shares and demand payment of that estimate plus interest, and
6 less any payment due under section one thousand three hundred
7 twenty-four of this article. A shareholder offered payment
8 under section one thousand three hundred twenty-five of this
9 article who is dissatisfied with that offer must reject the offer
10 and demand payment of the shareholder's stated estimate of the
11 fair value of the shares plus interest.

12 (b) A shareholder who fails to notify the corporation in
13 writing of that shareholder's demand to be paid the share-
14 holder's stated estimate of the fair value plus interest under
15 subsection (a) of this section within thirty days after receiving
16 the corporation's payment or offer of payment under sections
17 one thousand three hundred twenty-four or one thousand three
18 hundred twenty five of this article, respectively, waives the
19 right to demand payment under this section and is entitled only
20 to the payment made or offered pursuant to those respective
21 sections.

PART 3. JUDICIAL APPRAISAL OF SHARES.

§31D-13-1330. Court action.

1 (a) If a shareholder makes demand for payment under
2 section one thousand three hundred twenty-six of this article
3 which remains unsettled, the corporation shall commence a
4 proceeding within sixty days after receiving the payment
5 demand and petition the court to determine the fair value of the
6 shares and accrued interest. If the corporation does not com-
7 mence the proceeding within the sixty-day period, it shall pay
8 in cash to each shareholder the amount the shareholder de-
9 manded pursuant to section one thousand three hundred twenty-
10 six of this article plus interest.

11 (b) The corporation shall make all shareholders, whether or
12 not residents of this state, whose demands remain unsettled
13 parties to the proceeding as in an action against their shares, and
14 all parties must be served with a copy of the petition. Nonresi-
15 dents may be served by registered or certified mail or by
16 publication as provided by law.

17 (c) The jurisdiction of the court in which the proceeding is
18 commenced is plenary and exclusive. The court may appoint
19 one or more persons as appraisers to receive evidence and
20 recommend a decision on the question of fair value. The
21 appraisers have the powers described in the order appointing
22 them, or in any amendment to it. The shareholders demanding
23 appraisal rights are entitled to the same discovery rights as
24 parties in other civil proceedings. There is no right to a jury
25 trial.

26 (d) Each shareholder made a party to the proceeding is
27 entitled to judgment: (1) For the amount, if any, by which the
28 court finds the fair value of the shareholder's shares, plus
29 interest, exceeds the amount paid by the corporation to the
30 shareholder for the shares; or (2) for the fair value, plus interest,
31 of the shareholder's shares for which the corporation elected to
32 withhold payment under section one thousand three hundred
33 twenty-five of this article.

§31D-13-1331. Court costs and counsel fees.

1 (a) The court in an appraisal proceeding commenced under
2 section one thousand three hundred thirty of this article shall
3 determine all costs of the proceeding, including the reasonable
4 compensation and expenses of appraisers appointed by the
5 court. The court shall assess the costs against the corporation,
6 except that the court may assess costs against all or some of the
7 shareholders demanding appraisal, in amounts the court finds
8 equitable, to the extent the court finds the shareholders acted

9 arbitrarily, vexatiously, or not in good faith with respect to the
10 rights provided by this article.

11 (b) The court in an appraisal proceeding may also assess the
12 fees and expenses of counsel and experts for the respective
13 parties, in amounts the court finds equitable:

14 (1) Against the corporation and in favor of any or all
15 shareholders demanding appraisal if the court finds the corpora-
16 tion did not substantially comply with the requirements of
17 sections one thousand three hundred twenty, one thousand three
18 hundred twenty-two, one thousand three hundred twenty-four
19 or one thousand three hundred twenty-five of this article; or

20 (2) Against either the corporation or a shareholder demand-
21 ing appraisal, in favor of any other party, if the court finds that
22 the party against whom the fees and expenses are assessed acted
23 arbitrarily, vexatiously, or not in good faith with respect to the
24 rights provided by this article.

25 (c) If the court in an appraisal proceeding finds that the
26 services of counsel for any shareholder were of substantial
27 benefit to other shareholders similarly situated, and that the fees
28 for those services should not be assessed against the corpora-
29 tion, the court may award to counsel reasonable fees to be paid
30 out of the amounts awarded the shareholders who were benefit-
31 ted.

32 (d) To the extent the corporation fails to make a required
33 payment pursuant to sections one thousand three hundred
34 twenty-four, one thousand three hundred twenty-five, or one
35 thousand three hundred twenty-six of this article, the share-
36 holder may sue directly for the amount owed and, to the extent
37 successful, are to be entitled to recover from the corporation all
38 costs and expenses of the suit, including counsel fees.

ARTICLE 14. DISSOLUTION.

PART 1. VOLUNTARY DISSOLUTION.

§31D-14-1401. Dissolution by incorporators or initial directors.

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

5 (1) The name of the corporation;

6 (2) The date of its incorporation;

7 (3) Either: (A) That none of the corporation's shares has
8 been issued; or (B) that the corporation has not commenced
9 business;

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

11 (5) That the net assets of the corporation remaining after
12 winding up have been distributed to the shareholders, if shares
13 were issued; and

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

§31D-14-1402. Dissolution by board of directors and shareholders.

1 (a) A corporation's board of directors may propose dissolu-
2 tion for submission to the shareholders.

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

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

9 (2) The shareholders entitled to vote must approve the
10 proposal to dissolve as provided in subsection (e) of this
11 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 shareholder, whether
15 or not entitled to vote, of the proposed shareholders' meeting.
16 The notice must also state that the purpose, or one of the
17 purposes, of the meeting is to consider dissolving the corpora-
18 tion.

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

§31D-14-1403. 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 shareholders, a
7 statement that the proposal to dissolve was duly approved by
8 the shareholders in the manner required by this chapter and by
9 the 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 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.

§31D-14-1404. 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 shareholder 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 shareholders, a statement that
20 revocation was permitted by action by the board of directors
21 alone pursuant to that authorization; and

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

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

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

§31D-14-1405. Effect of dissolution.

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

4 (1) Collecting its assets;

5 (2) Disposing of its properties that will not be distributed in
6 kind to its shareholders;

7 (3) Discharging or making provision for discharging its
8 liabilities;

9 (4) Distributing its remaining property among its sharehold-
10 ers according to their interests; and

11 (5) Doing every other act necessary to wind up and liqui-
12 date its business and affairs.

13 (b) Dissolution of a corporation does not:

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

15 (2) Prevent transfer of its shares or securities, although the
16 authorization to dissolve may provide for closing the corpora-
17 tion's share transfer records;

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

20 (4) Change quorum or voting requirements for its board of
21 directors or shareholders; change provisions for selection,
22 resignation, or removal of its directors or officers or both; or
23 change provisions for amending its bylaws;

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

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

28 (7) Terminate the authority of the registered agent of the
29 corporation, if any.

§31D-14-1406. 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 a
24 contingent liability or a claim based on an event occurring after
25 the effective date of dissolution.

§31D-14-1407. 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 transacts its business;

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 four hundred six of this article;

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 an
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 shareholder of the dissolved corporation to the extent of his or
32 her pro rata share of the claim or the corporate assets distributed
33 to him or her in liquidation, whichever is less, but a share-
34 holder's total liability for all claims under this section may not
35 exceed the total amount of assets distributed to him or her.

PART 2. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

1 The secretary of state may commence a proceeding under
2 section one thousand four 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.

§31D-14-1421. 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 four 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 business except
20 that necessary to wind up and liquidate its business and affairs
21 under section one thousand four hundred five of this article and
22 notify claimants pursuant to sections one thousand four hundred
23 six and one thousand four hundred seven of this article.

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

§31D-14-1422. Reinstatement following administrative dissolution.

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

5 (I) Recite the name of the corporation and the effective
6 date of its administrative dissolution;

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

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

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

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

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

§31D-14-1423. 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 four 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.

§31D-14-1430. Grounds for judicial dissolution.

1 The circuit court may dissolve a corporation:

2 (1) In a proceeding by the attorney general pursuant to
3 section one, article two, chapter fifty-three of this code if it is
4 established that:

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

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

9 (2) In a proceeding by a shareholder if it is established that:

10 (A) The directors are deadlocked in the management of the
11 corporate affairs, the shareholders are unable to break the
12 deadlock, and irreparable injury to the corporation is threatened

13 or being suffered, or the business and affairs of the corporation
14 can no longer be conducted to the advantage of the shareholders
15 generally, 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;

19 (C) The shareholders are deadlocked in voting power and
20 have failed, for a period that includes at least two consecutive
21 annual meeting dates, to elect successors to directors whose
22 terms have expired; or

23 (D) The corporate assets are being misapplied or wasted;

24 (3) In a proceeding by a creditor if it is established that:

25 (A) The creditor's claim has been reduced to judgment, the
26 execution on the judgment returned unsatisfied, and the
27 corporation is insolvent; or

28 (B) The corporation has admitted in writing that the
29 creditor's claim is due and owing and the corporation is
30 insolvent; or

31 (4) In a proceeding by the corporation to have its voluntary
32 dissolution continued under circuit court supervision.

§31D-14-1431. Procedure for judicial dissolution.

1 (a) It is not necessary to make shareholders parties to a
2 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 business of the
9 corporation until a full hearing can be held.

10 (c) Within ten days of the commencement of a proceeding
11 under subdivision (2), section one thousand four hundred thirty
12 of this article to dissolve a corporation that has no shares listed
13 on a national securities exchange or regularly traded in a market
14 maintained by one or more members of a national or affiliated
15 securities association, the corporation must send to all share-
16 holders, other than the petitioner, a notice stating that the
17 shareholders are entitled to avoid the dissolution of the corpora-
18 tion by electing to purchase the petitioner's shares under section
19 one thousand four hundred thirty-four of this article and
20 accompanied by a copy of section one thousand four hundred
21 thirty-four of this article.

§31D-14-1432. 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 business 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 shareholders and creditors.

27 (d) The circuit court during a receivership may redesignate
28 the receiver a custodian, and during a custodianship may
29 redesignate the custodian a receiver, if doing it is in the best
30 interests of the corporation, its shareholders, and creditors.

31 (e) The court from time to time during the receivership or
32 custodianship may order compensation paid and expense
33 disbursements or reimbursements made to the receiver or
34 custodian and his or her counsel from the assets of the corpora-
35 tion or proceeds from the sale of the assets.

§31D-14-1433. 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 four hundred thirty of this article exist, it may enter a
4 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 business and affairs in accordance with section one thousand
11 four hundred five of this article and the notification of claim-
12 ants in accordance with sections one thousand four hundred six
13 and one thousand four hundred seven of this article.

§31D-14-1434. Election to purchase in lieu of dissolution.

1 (a) In a proceeding under subdivision (2), section one
2 thousand four hundred thirty of this article to dissolve a
3 corporation that has no shares listed on a national securities
4 exchange or regularly traded in a market maintained by one or
5 more members of a national or affiliated securities association,
6 the corporation may elect or, if it fails to elect, one or more
7 shareholders may elect to purchase all shares owned by the
8 petitioning shareholder at the fair value of the shares. An
9 election pursuant to this section is irrevocable unless the court
10 determines that it is equitable to set aside or modify the
11 election.

12 (b) An election to purchase pursuant to this section may be
13 filed with the court at any time within ninety days after the
14 filing of the petition under subdivision (2), section one thousand
15 four hundred thirty of this article or at a later time as the court
16 in its discretion may allow. If the election to purchase is filed
17 by one or more shareholders, the corporation shall, within ten
18 days after the filing, give written notice to all shareholders,
19 other than the petitioner. The notice must state the name and
20 number of shares owned by the petitioner and the name and
21 number of shares owned by each electing shareholder and must
22 advise the recipients of their right to join in the election to
23 purchase shares in accordance with this section. Shareholders

24 who wish to participate must file notice of their intention to join
25 in the purchase no later than thirty days after the effective date
26 of the notice to them. All shareholders who have filed an
27 election or notice of their intention to participate in the election
28 to purchase become parties to the proceeding and shall partici-
29 pate in the purchase in proportion to their ownership of shares
30 as of the date the first election was filed, unless they otherwise
31 agree or the court otherwise directs. After an election has been
32 filed by the corporation or one or more shareholders, the
33 proceeding under subdivision (2), section one thousand four
34 hundred thirty of this article may not be discontinued or settled,
35 nor may the petitioning shareholder sell or otherwise dispose of
36 his or her shares, unless the court determines that it would be
37 equitable to the corporation and the shareholders, other than the
38 petitioner, to permit the discontinuance, settlement, sale, or
39 other disposition.

40 (c) If, within sixty days of the filing of the first election, the
41 parties reach agreement as to the fair value and terms of
42 purchase of the petitioner's shares, the court shall enter an order
43 directing the purchase of petitioner's shares upon the terms and
44 conditions agreed to by the parties.

45 (d) If the parties are unable to reach an agreement as
46 provided for in subsection (c) of this section, the court, upon
47 application of any party, shall stay the proceedings entered
48 pursuant to subdivision (2), section one thousand four hundred
49 thirty of this article and determine the fair value of the peti-
50 tioner's shares as of the day before the date on which the
51 petition under subdivision (2), section one thousand four
52 hundred thirty of this article was filed or as of another date as
53 the court deems appropriate under the circumstances.

54 (e) Upon determining the fair value of the shares, the court
55 shall enter an order directing the purchase upon terms and
56 conditions as the court deems appropriate, which may include

57 payment of the purchase price in installments, where necessary
58 in the interests of equity; provision for security to assure
59 payment of the purchase price and any additional costs, fees,
60 and expenses as may have been awarded; and, if the shares are
61 to be purchased by shareholders, the allocation of shares among
62 them. In allocating petitioner's shares among holders of
63 different classes of shares, the court should attempt to preserve
64 the existing distribution of voting rights among holders of
65 different classes insofar as practicable and may direct that
66 holders of a specific class or classes may not participate in the
67 purchase. Interest may be allowed at the rate and from the date
68 determined by the court to be equitable, but if the court finds
69 that the refusal of the petitioning shareholder to accept an offer
70 of payment was arbitrary or otherwise not in good faith, no
71 interest may be allowed. If the court finds that the petitioning
72 shareholder had probable grounds for relief under paragraphs
73 (B) or (D), subdivision (2), section one thousand four hundred
74 thirty of this article, it may award to the petitioning shareholder
75 reasonable fees and expenses of counsel and of any experts
76 employed by him or her.

77 (f) Upon entry of an order under subsections (c) or (e) of
78 this section, the court shall dismiss the petition to dissolve the
79 corporation under section one thousand four hundred thirty of
80 this article, and the petitioning shareholder no longer has any
81 rights or status as a shareholder of the corporation, except the
82 right to receive the amounts awarded to him or her by the order
83 of the court which is enforceable in the same manner as any
84 other judgment.

85 (g) The purchase ordered pursuant to subsection (e) of this
86 section must be made within ten days after the date the order
87 becomes final unless before that time the corporation files with
88 the court a notice of its intention to adopt articles of dissolution
89 pursuant to sections one thousand four hundred two and one
90 thousand four hundred three of this article, which articles must

91 then be adopted and filed within fifty days. Upon filing of
92 articles of dissolution, the corporation is to be dissolved in
93 accordance with the provisions of sections one thousand four
94 hundred five, one thousand four hundred six, and one thousand
95 four hundred seven of this article, and the order entered
96 pursuant to subsection (e) of this section no longer has any
97 force or effect, except that the court may award the petitioning
98 shareholder reasonable fees and expenses in accordance with
99 the provisions of subsection (e) of this section and the petitioner
100 may continue to pursue any claims previously asserted on
101 behalf of the corporation.

102 (h) Any payment by the corporation pursuant to an order
103 under subsection (c) or (e) of this section, other than an award
104 of fees and expenses pursuant to subsection (e) of this section,
105 is subject to the provisions of section six hundred forty, article
106 six of this chapter.

PART 4. MISCELLANEOUS.

§31D-14-1440. Deposit with state treasurer.

1 Assets of a dissolved corporation that should be transferred
2 to a creditor, claimant, or shareholder 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 shareholder furnishes satisfactory proof
7 of entitlement to the amount deposited, the state treasurer or
8 other appropriate state official shall pay him or her or his or her
9 representative that amount.

ARTICLE 15. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31D-15-1501. Authority to transact business and jurisdiction over foreign corporations.

1 (a) A foreign corporation may not transact business 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 sharehold-
9 ers 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 deemed to be transacting
42 business 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.

**§31D-15-1502. Consequences of transacting business without
authority.**

1 (a) A foreign corporation transacting business 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 transacted
6 business 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.

§31D-15-1503. Application for certificate of authority.

1 (a) A foreign corporation may apply for a certificate of
2 authority to transact business 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 five 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 business addresses of its current
16 directors and officers; and

17 (7) Purpose or purposes for transaction of business in West
18 Virginia.

19 (b) The foreign corporation shall deliver with the completed
20 application a certificate of existence, or a document of similar
21 import, duly authenticated by the secretary of state or other
22 official having custody of corporate records in the state or
23 country under whose law it is incorporated.

§31D-15-1504. Amended certificate of authority.

1 (a) A foreign corporation authorized to transact business 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 five hundred
8 three of this article for obtaining an original certificate of
9 authority apply to obtaining an amended certificate under this
10 section.

§31D-15-1505. Effect of certificate of authority.

1 (a) A certificate of authority authorizes the foreign corpora-
2 tion to which it is issued to transact business 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 transact business in this state.

§31D-15-1506. 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 transact business 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 transact business in this state;

20 (2) A corporate name reserved or registered under section
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 nonprofit 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 transact business 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 transact business
54 in this state changes its corporate name to one that does not
55 satisfy the requirements of section four hundred one, article
56 four of this chapter, it may not transact business in this state
57 under the changed name until it adopts a name satisfying the
58 requirements of section four hundred one, article four of this
59 chapter and obtains an amended certificate of authority under
60 section one thousand five hundred four of this article.

§31D-15-1507. Registered office and registered agent of foreign corporation.

1 Each foreign corporation authorized to transact business 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 nonprofit corpora-
9 tion whose business office is identical with the registered
10 office; or

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

§31D-15-1508. Change of registered office or registered agent of foreign corporation.

1 (a) A foreign corporation authorized to transact business 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.

§31D-15-1509. Resignation of registered agent of foreign corporation.

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.

§31D-15-1510. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation authorized
2 to transact business 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 transacting business in this state
14 under section one thousand five hundred twenty of this article;
15 or

16 (3) Has had its certificate of authority revoked under
17 section one thousand five 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 do
30 or transact business in this state pursuant to the provisions of
31 this 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 doing or transacting business
68 in this state without having been authorized to do so pursuant
69 to the provisions of this chapter is conclusively presumed to
70 have 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 five 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.

§31D-15-1520. Withdrawal of foreign corporation.

1 (a) A foreign corporation authorized to transact business 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 transact business in
5 this state may apply for a certificate of withdrawal by deliver-
6 ing 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 transacting business in this state and that
11 it surrenders its authority to transact business 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 transact business 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 payment, security payments or assessments.

PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31D-15-1530. Grounds for revocation.

1 The secretary of state may commence a proceeding under
2 section one thousand five hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to transact business 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 of
9 state under section one thousand five hundred eight or one
10 thousand five 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.

§31D-15-1531. 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 five 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 five
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 five
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 five 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.

§31D-15-1532. 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 five
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 16. RECORDS AND REPORTS.

PART 1. RECORDS.

§31D-16-1601. Corporate records.

1 (a) A corporation shall keep as permanent records minutes
2 of all meetings of its shareholders and board of directors, a
3 record of all actions taken by the shareholders or board of
4 directors without a meeting, and a record of all actions taken by
5 a 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 shareholders, in a form that permits preparation of a list of the
11 names and addresses of all shareholders, in alphabetical order
12 by class of shares showing the number and class of shares held
13 by each.

14 (d) A corporation shall maintain its records in written form
15 or in another form capable of conversion into written form
16 within a reasonable time.

17 (e) A corporation shall keep a copy of the following records
18 at its principal office:

19 (1) Its articles or restated articles of incorporation and all
20 amendments to them currently in effect;

21 (2) Its bylaws or restated bylaws and all amendments to
22 them currently in effect;

23 (3) Resolutions adopted by its board of directors creating
24 one or more classes or series of shares, and fixing their relative
25 rights, preferences, and limitations, if shares issued pursuant to
26 those resolutions are outstanding;

27 (4) The minutes of all shareholders' meetings, and records
28 of all action taken by shareholders without a meeting, for the
29 past three years;

30 (5) All written communications to shareholders generally
31 within the past three years, including the financial statements
32 furnished for the past three years under section one thousand six
33 hundred twenty of this article; and

34 (6) A list of the names and business addresses of its current
35 directors and officers.

§31D-16-1602. Inspection of records by shareholders.

1 (a) A shareholder of a corporation is entitled to inspect,
2 during regular business hours at the corporation's principal
3 office, any of the records of the corporation described in
4 subsection (e), section one thousand six hundred one of this
5 article if he or she gives the corporation written notice of his or
6 her demand at least five business days before the date on which
7 he or she wishes to inspect.

8 (b) A shareholder of a corporation is entitled to inspect,
9 during regular business hours at a reasonable location specified
10 by the corporation, any of the following records of the corpora-
11 tion if the shareholder meets the requirements of subsection (c)
12 of this section and gives the corporation written notice of his or
13 her demand at least five business days before the date on which
14 he 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 shareholders, and records of action taken by the shareholders or
20 board of directors without a meeting, to the extent not subject
21 to inspection under subsection (a), section one thousand six
22 hundred two of this article;

23 (2) Accounting records of the corporation; and

24 (3) The record of shareholders.

25 (c) A shareholder may inspect and copy the records
26 described in subsection (b) of this section only if:

27 (1) His or her demand is made in good faith and for a
28 proper purpose;

29 (2) He or she describes with reasonable particularity his or
30 her purpose and the records he or she desires to inspect; and

31 (3) The records are directly connected with his or her
32 purpose.

33 (d) The right of inspection granted by this section may not
34 be abolished or limited by a corporation's articles of incorpora-
35 tion or bylaws.

36 (e) This section does not affect:

37 (1) The right of a shareholder to inspect records under
38 section seven hundred twenty, article seven of this chapter or,
39 if the shareholder is in litigation with the corporation, to the
40 same extent as any other litigant; or

41 (2) The power of a circuit court, independently of this
42 chapter, to compel the production of corporate records for
43 examination.

44 (f) For purposes of this section, "shareholder" includes a
45 beneficial owner whose shares are held in a voting trust or by
46 a nominee on his or her behalf.

§31D-16-1603. Scope of inspection right.

1 (a) A shareholder's agent or attorney has the same inspec-
2 tion and copying rights as the shareholder represented.

3 (b) The right to copy records under section one thousand six
4 hundred two of this article includes, if reasonable, the right to
5 receive copies by xerographic or other means, including copies
6 through an electronic transmission if available and requested by
7 the shareholder.

8 (c) The corporation may comply at its expense with a
9 shareholder's demand to inspect the record of shareholders
10 under subdivision (3), subsection (b), section one thousand six
11 hundred two of this article by providing the shareholder with a
12 list of shareholders that was compiled no earlier than the date
13 of the shareholder's demand.

14 (d) The corporation may impose a reasonable charge,
15 covering the costs of labor and material, for copies of any
16 documents provided to the shareholder. The charge may not
17 exceed the estimated cost of production, reproduction or
18 transmission of the records.

§31D-16-1604. Court-ordered inspection.

1 (a) If a corporation does not allow a shareholder who
2 complies with subsection (a), section one thousand six hundred
3 two of this article to inspect and copy any records required by
4 that subsection to be available for inspection, the circuit court
5 may summarily order inspection and copying of the records
6 demanded at the corporation's expense upon application of the
7 shareholder.

8 (b) If a corporation does not within a reasonable time allow
9 a shareholder to inspect and copy any other record, the share-
10 holder who complies with subsections (b) and (c), section one
11 thousand six 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 shareholder's costs, including reasonable counsel fees, incurred
18 to 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 shareholder 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 shareholder.

§31D-16-1605. 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.

§31D-16-1606. Exception to notice requirement.

1 (a) Whenever notice is required to be given under any
2 provision of this chapter to any shareholder, notice may not be
3 required to be given if:

4 (1) Notice of two consecutive annual meetings, and all
5 notices of meetings during the period between two consecutive
6 annual meetings, have been sent to the shareholder at the
7 shareholder's address as shown on the records of the corpora-
8 tion and have been returned undeliverable; or

9 (2) All, but not less than two, payments of dividends on
10 securities during a twelve-month period, or two consecutive
11 payments of dividends on securities during a period of more
12 than twelve months, have been sent to the shareholder at the
13 shareholder's address as shown on the records of the corpora-
14 tion and have been returned undeliverable.

15 (b) If any shareholder delivers to the corporation a written
16 notice setting forth the shareholder's then-current address, the
17 requirement that notice be given to the shareholder is to be
18 reinstated.

PART 2. REPORTS.

§31D-16-1620. Financial statements for shareholders.

1 (a) Unless unanimously waived by the shareholders, a
2 corporation shall furnish its shareholders annual financial
3 statements, which may be consolidated or combined statements
4 of the corporation and one or more of its subsidiaries, as
5 appropriate, that include a balance sheet as of the end of the
6 fiscal year, an income statement for that year, and a statement
7 of changes in shareholders' equity for the year unless that
8 information appears elsewhere in the financial statements. If
9 financial statements are prepared for the corporation on the
10 basis of generally accepted accounting principles, the annual
11 financial statements must also be prepared on that basis.

12 (b) If the annual financial statements are reported upon by
13 a public accountant, his or her report must accompany them. If
14 not, the statements must be accompanied by a statement of the
15 president or the person responsible for the corporation's
16 accounting records:

17 (1) Stating his or her reasonable belief whether the state-
18 ments were prepared on the basis of generally accepted
19 accounting principles and, if not, describing the basis of
20 preparation; and

21 (2) Describing any respects in which the statements were
22 not prepared on a basis of accounting consistent with the
23 statements prepared for the preceding year.

24 (c) A corporation shall mail the annual financial statements
25 to each shareholder within one hundred twenty days after the
26 close of each fiscal year. On written request from a shareholder
27 who was not mailed the statements, the corporation shall mail
28 him or her the latest financial statements.

ARTICLE 17. TRANSITION PROVISIONS.

§31D-17-1701. 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 corporations for profit.

§31D-17-1702. 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.

§31D-17-1703. Effective date.

1 This chapter takes effect the first day of October, two
2 thousand two.

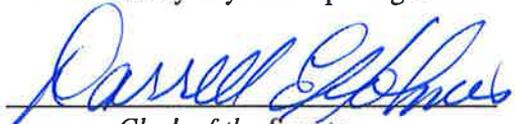
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

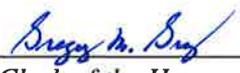

Chairman Senate Committee

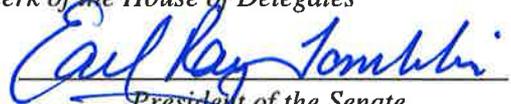

Chairman House Committee

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 disapproved this the 21st
day of March, 2002.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/15/02

Time 5:05 pm