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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

2ND EXTRAORDINARY SESSION, 2002

ENROLLED

SENATE BILL NO. 2004

(By Senators Tomblin, Mr. President, and ~~Sprouse~~ ~~by Request of the Executive~~)

PASSED June 10, 2002

In Effect OCTOBER 1, 2002 ~~Passage~~

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WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 2004

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed June 10, 2002; to take effect October 1, 2002.]

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 amend said code by adding thereto a new chapter, designated chapter thirty-one-d, 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; 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, 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
- 2 to the drafting of this chapter of the late Ann Maxey,
- 3 professor of law at the West Virginia university college of
- 4 law.

§31D-1-102. Reservation of powers.

1 The Legislature has power to amend or repeal all or part
2 of this act at any time and all domestic and foreign
3 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
3 particular classes of corporations by chapters thirty-one,
4 thirty-one-a or thirty-three of this code, the provisions
5 contained in said chapters prevail to the extent of the
6 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
4 secretary of state.

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

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

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

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

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

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

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

31 (f) The document to be filed must be delivered to the
32 office of the secretary of state for filing. Delivery may be
33 made by electronic transmission as permitted by the
34 secretary of state. The secretary of state may require one
35 exact or conformed copy to be delivered with the docu-
36 ment to be filed if the document is filed in typewritten or
37 printed form and not transmitted electronically: *Provided*,
38 That a document filed pursuant to section five hundred
39 three, article five of this chapter and section one thousand
40 five hundred nine, article fifteen of this chapter concern-
41 ing the resignation of a registered agent must be accompa-
42 nied by two exact or conformed copies as required by
43 those sections.

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

50 (h) In the case of service of notice and process as permit-
51 ted by subsection (c), section five hundred four, article five
52 of this chapter and subsections (d) and (e), section one

53 thousand five hundred ten, article fifteen of this chapter,
54 the notice and process must be filed with the secretary of
55 state as one original, plus two copies for each person to be
56 served or noticed.

§31D-1-121. Forms.

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

5 (b) The secretary of state may adopt procedural rules in
6 accordance with the provisions of this article governing
7 the form for filing with, and delivery of documents to, the
8 office of the secretary of state under this chapter by
9 electronic means, including facsimile and computer
10 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 one, article twelve-c, chapter eleven of this code
4 and section two, article one, chapter fifty-nine of this code.

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

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

4 (1) At the date and time of filing, as evidenced by means
5 as the secretary of state may use for the purpose of record-
6 ing the 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
11 the time and date specified. If a delayed effective date but

12 no time is specified, the document is effective at the close
13 of business on that date. A delayed effective date for a
14 document may not be later than the ninetieth day after the
15 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
16 date of the document they correct: *Provided*, That articles
17 of correction are effective when filed as to persons who
18 have relied on the uncorrected document and have been
19 adversely 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
2 of state for filing satisfies the requirements of section one
3 hundred twenty of this article, the secretary of state shall
4 file it.

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

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

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

24 (1) Affect the validity or invalidity of the document in
25 whole or in part;

26 (2) Relate to the correctness or incorrectness of informa-
27 tion contained in the document; or

28 (3) Create a presumption that the document is valid or
29 invalid or that information contained in the document is
30 correct 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
3 foreign corporation may appeal the refusal to the circuit
4 court within thirty days after the return of the document
5 to the corporation. The appeal is commenced by petition-
6 ing the court to compel filing the document and by attach-

7 ing to the petition the document and the secretary of
8 state's explanation of his or her refusal to file.

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

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

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

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

§31D-1-128. Certificate of existence.

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

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

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

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

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

15 (4) If payment is reflected in the records of the secretary
16 of state and if nonpayment affects the existence or autho-

17 rization of the domestic or foreign corporation, whether all
18 fees, taxes and penalties owed to this state have been paid.

19 (c) Subject to any qualification stated in the certificate,
20 a certificate of existence or authorization issued by the
21 secretary of state may be relied upon as conclusive evi-
22 dence that the domestic or foreign corporation is in
23 existence or is authorized 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
2 false in any material respect and knows that the document
3 is to be delivered to the secretary of state for filing is
4 guilty of a misdemeanor and, upon conviction thereof,
5 shall be fined not more than one thousand dollars or
6 confined in the county or regional jail not more than one
7 year, or both.

PART 3. SECRETARY OF STATE.

§31D-1-130. Powers.

1 The secretary of state has the power reasonably neces-
2 sary to perform the duties required of him or her by this
3 chapter. The secretary of state has the power and author-
4 ity to propose legislative rules for promulgation in accor-
5 dance with the provisions of chapter twenty-nine-a of this
6 code in order to carry out and implement the provisions of
7 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
3 this chapter may be initiated in the circuit court of any
4 county of this state as provided in section one, article one,
5 chapter fifty-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
4 limited to, amended and restated articles of incorporation
5 and articles 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
12 underlined.

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
16 chapter.

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

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

30 (7) "Effective date of notice" means the date as deter-
31 mined pursuant to section one hundred fifty-one of this
32 article.

33 (8) "Electronic transmission" or "electronically trans-
34 mitted" means any process of communication not directly
35 involving the physical transfer of paper that is suitable for
36 the retention, retrieval and reproduction of information by
37 the recipient.

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

41 (10) "Entity" includes corporations and foreign corpora-
42 tions; nonprofit corporations; profit and nonprofit unin-
43 corporated associations; limited liability companies and
44 foreign limited liability companies; business trusts, estates,
45 partnerships, trusts and two or more persons having a
46 joint or common economic interest; and state, United
47 States and foreign government.

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

51 (12) "Governmental subdivision" includes, but is not
52 limited to, authorities, counties, districts and municipali-
53 ties.

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

56 (14) "Person" includes, but is not limited to, an individ-
57 ual and an entity.

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

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

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

72 (18) "Registered agent" means the agent identified by
73 the corporation pursuant to section five hundred one,
74 article five of this chapter.

75 (19) "Registered office" means the address of the regis-
76 tered agent for the corporation, as provided in section five
77 hundred one, article five of this chapter.

78 (20) "Secretary" means the corporate officer to whom
79 the board of directors has delegated responsibility under
80 subsection (c), section eight hundred forty, article eight of
81 this chapter for custody of the minutes of the meetings of
82 the board of directors and the meetings of the shareholders
83 and for authenticating records of the corporation.

84 (21) "Shareholder" means the person in whose name
85 shares are registered in the records of a corporation or the
86 beneficial owner of shares to the extent of the rights
87 granted by a nominee certificate on file with a corpora-
88 tion.

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

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

93 (24) "State", when referring to a part of the United
94 States, includes a state and commonwealth and a territory
95 and insular possession of the United States and their
96 agencies and governmental subdivisions.

97 (25) "Subscriber" means a person who subscribes for
98 shares in a corporation, whether before or after incorpora-
99 tion.

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

103 (27) "Voting group" means all shares of one or more
104 classes or series that, pursuant to the articles of incorpora-
105 tion or this chapter, are entitled to vote and be counted
106 together collectively on a matter at a meeting of share-
107 holders. All shares entitled by the articles of incorporation
108 or this chapter to vote generally on the matter are for that
109 purpose a single voting group.

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

§31D-1-151. Notice.

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

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

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

19 (d) Written notice to a domestic or foreign corporation
20 authorized to transact business in this state may be
21 addressed to its registered agent at its registered office or

22 to the corporation or its secretary at its principal office
23 shown in its most recent return required pursuant to
24 section three, article twelve-c, chapter eleven of this code
25 or, in the case of a foreign corporation that has not yet
26 delivered a return, in its application for a certificate of
27 authority.

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

31 (1) When received;

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

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

37 (f) Oral notice is effective when communicated, if
38 communicated in a comprehensible manner.

39 (g) If other provisions of this chapter prescribe notice
40 requirements for particular circumstances, those require-
41 ments govern. If articles of incorporation or bylaws
42 prescribe notice requirements, not inconsistent with this
43 section or other provisions of this chapter, those require-
44 ments govern.

§31D-1-152. Number of shareholders.

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

4 (1) Three or fewer coowners;

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

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

9 (b) For purposes of this chapter, shareholdings registered
10 in substantially similar names constitute one shareholder
11 if it is reasonable to believe that the names represent the
12 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
3 incorporation 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
3 the requirements of section four hundred one, article four
4 of this 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
7 that all shares are without par value;

8 (3) The street address of the corporation's initial regis-
9 tered office, if any, and the name of its initial registered
10 agent at that 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
16 to serve as the initial directors;

17 (2) Provisions not inconsistent with law regarding:

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

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

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

§31D-2-203. Incorporation.

1 (a) Unless a delayed effective date is specified, the
2 corporate existence begins when the articles of incorpora-
3 tion are filed.

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

§31D-2-204. Organization of corporation.

1 (a) After incorporation:

2 (1) If initial directors are named in the articles of
3 incorporation, the initial directors shall hold an organiza-
4 tional meeting, at the call of a majority of the directors, to
5 complete the organization of the corporation by appoint-
6 ing officers, adopting bylaws and carrying on any other
7 business brought before the 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
12 the 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
16 taken by incorporators at an organizational meeting may
17 be taken without a meeting if the action taken is evidenced
18 by one or more written consents describing the action
19 taken and signed by each incorporator.

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

§31D-2-205. Bylaws.

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

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

§31D-2-206. Emergency bylaws.

1 (a) Unless the articles of incorporation provide other-
2 wise, the board of directors of a corporation may adopt
3 bylaws to be effective only in an emergency defined in
4 subsection (d) of this section. The emergency bylaws,
5 which are subject to amendment or repeal by the share-
6 holders, may make all provisions necessary for managing
7 the corporation during the emergency, 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
13 the emergency bylaws remain effective during the emer-
14 gency. The emergency bylaws are not effective after the
15 emergency ends.

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

18 (1) Binds the corporation; and

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

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

ARTICLE 3. PURPOSES AND POWERS.**§31D-3-301. Purposes.**

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

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

§31D-3-302. General powers.

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

7 (1) To sue and be sued, complain and defend in its
8 corporate name;

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

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

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

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

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

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

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

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

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

41 (11) To elect directors and appoint officers, employees
42 and agents of the corporation; define their duties; fix their
43 compensation and lend them money and credit;

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

49 (13) To make donations for the public welfare or for
50 charitable, scientific or educational purposes and for other
51 purposes that further the corporate interest;

52 (14) To transact any lawful business that will aid
53 governmental policy; and

54 (15) To make payments or donations, or do any other act,
55 not inconsistent with law, that furthers the business and
56 affairs 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
8 officers to 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
13 reach and may be given in any practicable manner,
14 including by publication 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
17 directors for the meeting, in order of rank and within the
18 same rank in order of seniority, as necessary to achieve a
19 quorum.

20 (c) Corporate action taken in good faith during an
21 emergency under this section to further the ordinary
22 business affairs of the corporation:

23 (1) Binds the corporation; and

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

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

§31D-3-304. Ultra vires.

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

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

6 (1) In a proceeding by a shareholder against the corpora-
7 tion to enjoin the act;

8 (2) In a proceeding by the corporation, directly, deriva-
9 tively or through a receiver, trustee or other legal repre-
10 sentative, against an incumbent or former director, officer,
11 employee or agent of the corporation; or

12 (3) In a proceeding by the attorney general under section
13 one thousand four hundred thirty, article fourteen of this
14 chapter.

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

ARTICLE 4. NAME.**§31D-4-401. Corporate name.**

1 (a) A corporate name:

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

6 (2) May not contain language stating or implying that
7 the corporation is organized for a purpose other than that

8 permitted by section three hundred one, article three of
9 this chapter and its articles of incorporation.

10 (b) Except as authorized by subsections (c) and (d) of this
11 section, a corporate name must be distinguishable upon
12 the 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
16 section four hundred three or four hundred four of this
17 article;

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

21 (4) The corporate name of a nonprofit corporation
22 incorporated or authorized to transact business in this
23 state; and

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

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

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

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

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

45 (1) Has merged with the other corporation;

46 (2) Has been formed by reorganization of the other
47 corporation; or

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

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

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

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

8 (b) No person may use the word “limited” or any abbre-
9 viation of the word “limited” in any trade name, business
10 or other organization name unless the name is used by a
11 domestic or foreign corporation authorized by the secre-
12 tary of state to transact business in West Virginia under
13 the provisions of this chapter, chapter thirty-one-b, thirty-
14 one-e or forty-seven of this code.

15 (c) The tax commissioner may not issue any business
16 registration certificate under the provisions of article
17 twelve, chapter eleven of this code to any business if the
18 business name includes any of the words or their abbrevia-
19 tions as set forth in subsection (a) or (b) of this section

20 unless the business is a domestic or foreign corporation or
21 domestic or foreign nonprofit corporation.

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

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

33 (f) The provisions of this section do not apply to busi-
34 nesses in existence prior to the first day of July, one
35 thousand nine 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 appli-
5 cation must set forth the name and address of the appli-
6 cant and the name proposed to be reserved. If the secre-
7 tary of state finds that the corporate name applied for is
8 available, he or she shall reserve the name for the appli-
9 cant's exclusive use for a nonrenewable one hundred
10 twenty-day period.

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

§31D-4-404. Registered name.

1 (a) A foreign corporation may register its corporate
2 name, or its corporate name with any addition required by

3 section one thousand five hundred six, article fifteen of
4 this chapter, if the name is distinguishable upon the
5 records of the secretary of state from the corporate names
6 that are not available under subsection (b), section four
7 hundred one of this article.

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

13 (1) Setting forth its corporate name, or its corporate
14 name with any addition required by section one thousand
15 five hundred six, article fifteen of this chapter, the state or
16 country and date of its incorporation and a brief descrip-
17 tion of the nature of the business in which it is engaged;
18 and

19 (2) Accompanied by a certificate of existence, or a
20 document of similar import, from the state or country of
21 incorporation.

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

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

32 (e) A foreign corporation whose registration is effective
33 may qualify as a foreign corporation under the registered
34 name or consent in writing to the use of that name by a
35 corporation incorporated under this chapter or by another
36 foreign corporation authorized to transact business in this
37 state. The registration terminates when the domestic

38 corporation is incorporated or the foreign corporation
39 qualifies or consents to the qualification of another foreign
40 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
2 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
9 corporation whose business office is identical with the
10 registered office; or

11 (C) A foreign corporation or foreign nonprofit corpora-
12 tion authorized to transact business in this state whose
13 business 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
3 filing a statement of change that sets forth:

4 (1) The name of the corporation;

5 (2) The mailing address or description of physical
6 location 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
9 new 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
13 written consent, either on the statement or attached to it,
14 to the appointment; and

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

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

§31D-5-503. Resignation of registered agent.

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

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

11 (c) The agency appointment is terminated, and the
12 registered office is discontinued if provision for its discon-
13 tinuation is made, on the thirty-first day after the date on
14 which the 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 corpora-
6 tion may be served by registered or certified mail, return
7 receipt requested, addressed to the secretary of the corpo-
8 ration at its principal office. Service is perfected under
9 this subsection at the earliest of:

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

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

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

16 (c) In addition to the methods of service on a corporation
17 provided in subsections (a) and (b) of this section, the
18 secretary of state is hereby constituted the attorney-in-
19 fact for and on behalf of each corporation created pursu-
20 ant to the provisions of this chapter. The secretary of state
21 has the authority to accept service of notice and process on
22 behalf of each corporation and is an agent of the corpora-
23 tion upon whom service of notice and process may be made
24 in this state for and upon each corporation. No act of a
25 corporation appointing the secretary of state as attorney-
26 in-fact is necessary. Service of any process, notice or
27 demand on the secretary of state may be made by deliver-
28 ing to and leaving with the secretary of state the original
29 process, notice or demand and two copies of the process,
30 notice or demand for each defendant, along with the fee
31 required by section two, article one, chapter fifty-nine of
32 this code. Immediately after being served with or accept-
33 ing any process or notice, the secretary of state shall: (1)
34 File in his or her office a copy of the process or notice,

35 endorsed as of the time of service or acceptance; and (2)
36 transmit one copy of the process or notice by registered or
37 certified mail, return receipt requested, to: (A) The corpora-
38 tion's registered agent; or (B) if there is no registered
39 agent, to the individual whose name and address was last
40 given to the secretary of state's office as the person to
41 whom notice and process are to be sent and if no person
42 has been named, to the principal office of the corporation
43 as that address was last given to the secretary of state's
44 office. Service or acceptance of process or notice is
45 sufficient if return receipt is signed by an agent or em-
46 ployee of the corporation, or the registered or certified
47 mail sent by the secretary of state is refused by the ad-
48 dressee and the registered or certified mail is returned to
49 the secretary of state, or to his or her office, showing the
50 stamp of the United States postal service that delivery has
51 been refused, and the return receipt or registered or
52 certified mail is appended to the original process or notice
53 and filed in the clerk's office of the court from which the
54 process or notice was issued. No process or notice may be
55 served on the secretary of state or accepted by him or her
56 less than ten days before the return day of the process or
57 notice. The court may order continuances as may be
58 reasonable to afford each defendant opportunity to defend
59 the action or proceedings.

60 (d) This section does not prescribe the only means, or
61 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
2 classes of shares and the number of shares of each class
3 that the corporation is authorized to issue. If more than
4 one class of shares is authorized, the articles of incorpora-
5 tion must prescribe a distinguishing designation for each
6 class and, prior to the issuance of shares of a class, the

7 preferences, limitations and relative rights of that class
8 must be described in the articles of incorporation. All
9 shares of a class must have preferences, limitations and
10 relative rights identical with those of other shares of the
11 same class except to the extent otherwise permitted by
12 section six hundred two of this article.

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

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

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

24 (2) Are redeemable or convertible as specified in the
25 articles of incorporation: (A) At the option of the corpora-
26 tion, the shareholder or another person or upon the
27 occurrence of a designated event; (B) for cash, indebted-
28 ness, securities or other property; or (C) in a designated
29 amount or in an amount determined in accordance with a
30 designated formula or by reference to extrinsic data or
31 events;

32 (3) Entitle the holders to distributions calculated in any
33 manner, including dividends that may be cumulative,
34 noncumulative or partially cumulative; or

35 (4) Have preference over any other class of shares with
36 respect to distributions, including dividends and distribu-
37 tions upon the dissolution of the corporation.

38 (d) The description of the designations, preferences,
39 limitations and relative rights of share classes in subsec-
40 tion (c) 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 in part, the prefer-
3 ences, limitations and relative rights within the limits set
4 forth in section six hundred one of this article of: (1) Any
5 class of shares before the issuance of any shares of that
6 class; or (2) one or more series within a class before the
7 issuance of any shares 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, limita-
11 tions and relative rights identical with those of other
12 shares of the same series and, except to the extent other-
13 wise provided in the description of the series, with those of
14 other series of the same class.

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

19 (1) The name of the corporation;

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

22 (3) The date it was adopted; and

23 (4) A statement that the amendment was duly adopted
24 by 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
4 are reacquired, redeemed, converted or canceled.

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

9 (c) At all times that shares of the corporation are out-
10 standing, one or more shares that together have unlimited
11 voting rights and one or more shares that together are
12 entitled to receive the net assets of the corporation upon
13 dissolution must 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
8 scrip to equal a full share.

9 (b) Each certificate representing scrip must be conspicu-
10 ously labeled "scrip" and must contain the information
11 required by subsection (b), section six hundred twenty-five
12 of this 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
17 entitled to any of these rights unless the scrip provides for
18 them.

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

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

24 (2) That the shares for which the scrip is exchangeable
25 may be sold and the proceeds paid to the scripolders.

PART 2. ISSUANCE OF SHARES.

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

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

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

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

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

25 (e) A subscription agreement entered into after incorpo-
26 ration is a contract between the subscriber and the corpo-
27 ration subject to section six hundred twenty-one of this
28 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
3 articles of incorporation.

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

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

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

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

30 (f) An issuance of shares or other securities convertible
31 into or rights exercisable for shares, in a transaction or a
32 series of integrated transactions, requires approval of the
33 shareholders at a meeting at which a quorum exists

34 consisting of at least a majority of the votes entitled to be
35 cast on the matter, if:

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

38 (2) The voting power of shares that are issued and
39 issuable as a result of the transaction or series of inte-
40 grated transactions will comprise more than twenty
41 percent of the voting power of the shares of the corpora-
42 tion that were outstanding immediately before the trans-
43 action.

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

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

53 (2) A series of transactions is integrated if consummation
54 of one transaction is made contingent on consummation of
55 one or more of the other transactions.

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

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

8 (b) Unless otherwise provided in the articles of incorpora-
9 tion, a shareholder of a corporation is not personally
10 liable for the acts or debts of the corporation except that

11 he or she may become personally liable by reason of his or
12 her own acts or conduct.

§31D-6-623. Share dividends.

1 (a) Unless the articles of incorporation provide other-
2 wise, shares may be issued pro rata and without consider-
3 ation to the corporation's shareholders or to the sharehold-
4 ers of one or more classes or series. An issuance of shares
5 under this subsection is 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
8 series unless: (1) The articles of incorporation authorize;
9 (2) a majority of the votes entitled to be cast by the class or
10 series to be issued approve the issue; or (3) there are no
11 outstanding shares of the class or series to be issued.

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

§31D-6-624. Share options.

1 A corporation may issue rights, options or warrants for
2 the purchase of shares of the corporation. The board of
3 directors shall determine the terms upon which the rights,
4 options or warrants are issued, their form and content, and
5 the consideration 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 certifi-
2 cates. Unless this chapter or another provision of this code
3 expressly provides otherwise, the rights and obligations of
4 shareholders are identical whether or not their shares are
5 represented by 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
12 of the series, if any, the certificate represents.

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

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

28 (e) If the person who signed, either manually or in
29 facsimile, a share certificate no longer holds office when
30 the certificate 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
3 authorize the issue of some or all of the shares of any or all
4 of its classes or series without certificates. The authoriza-
5 tion does not affect shares already represented by certifi-
6 cates until they are surrendered 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
10 required on certificates by subsections (b) and (c), section

11 six hundred twenty-five of this article and, if applicable,
12 section six 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
3 and the corporation may impose restrictions on the
4 transfer or registration of transfer of shares of the corpo-
5 ration. A restriction does not affect shares issued before
6 the restriction was adopted unless the holders of the shares
7 are parties to the restriction agreement or voted in favor of
8 the restriction.

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

19 (c) A restriction on the transfer or registration of transfer
20 of shares is authorized:

21 (1) To maintain the corporation's status when it is
22 dependent on the number or identity of its shareholders;

23 (2) To preserve exemptions under federal or state
24 securities law; or

25 (3) For any other reasonable purpose.

26 (d) A restriction on the transfer or registration of trans-
27 fer of shares may:

28 (1) Obligate the shareholder first to offer the corporation
29 or other persons an opportunity to acquire the restricted
30 shares;

31 (2) Obligate the corporation or other persons to acquire
32 the restricted shares;

33 (3) Require the corporation, the holders of any class of its
34 shares or another person to approve the transfer of the
35 restricted shares, if the requirement is not manifestly
36 unreasonable; or

37 (4) Prohibit the transfer of the restricted shares to
38 designated persons or classes of persons, if the prohibition
39 is not manifestly unreasonable.

40 (e) For purposes of this section, "shares" includes a
41 security convertible into or carrying a right to subscribe
42 for or acquire 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
2 preemptive right to acquire the corporation's unissued
3 shares except to the extent the articles of incorporation
4 provide.

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

10 (1) The shareholders of the corporation have a preemp-
11 tive right, granted on uniform terms and conditions
12 prescribed by the board of directors to provide a fair and
13 reasonable opportunity to exercise the right, to acquire

14 proportional amounts of the corporation's unissued shares
15 upon the decision of the board of directors to issue them.

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

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

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

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

27 (C) Shares authorized in articles of incorporation that
28 are issued within six months from the effective date of
29 incorporation; or

30 (D) Shares sold otherwise than for money.

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

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

42 (6) Shares subject to preemptive rights that are not
43 acquired by shareholders may be issued to any person for
44 a period of one year after being offered to shareholders at
45 a consideration set by the board of directors that is not
46 lower than the consideration set for the exercise of pre-

47 preemptive rights. An offer at a lower consideration or after
48 the expiration of one year is subject to the shareholders'
49 preemptive rights.

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

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

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

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

PART 4. DISTRIBUTIONS.

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

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

5 (b) If the board of directors does not fix the record date
6 for determining shareholders entitled to a distribution, it
7 is the date the board of directors authorizes the distribu-
8 tion: *Provided*, That this subsection does not apply to a
9 distribution involving a purchase, redemption or other
10 acquisition of the corporation's 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
16 needed, if the corporation were to be dissolved at the time

17 of the distribution, to satisfy the preferential rights upon
18 dissolution of shareholders whose preferential rights are
19 superior to those receiving the distribution unless the
20 articles of incorporation permit otherwise.

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

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

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

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

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

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

48 (g) Indebtedness of a corporation, including indebtedness
49 issued as a distribution, is not considered a liability for
50 purposes of determinations under subsection (c) of this

51 section if its terms provide that payment of principal and
52 interest are made only if and to the extent that payment of
53 a distribution to shareholders could then be made under
54 this section. If the indebtedness is issued as a distribution,
55 each payment of principal or interest is treated as a
56 distribution, the effect of which is measured on the date
57 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
3 the bylaws.

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

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

§31D-7-702. Special meeting.

1 (a) A corporation must hold a special meeting of share-
2 holders:

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

6 (2) If the holders of at least ten percent of all the votes
7 entitled to be cast on an issue proposed to be considered at
8 the proposed special meeting sign, date and deliver to the
9 corporation one or more written demands for the meeting
10 describing the purpose or purposes for which it is to be
11 held: *Provided*, That the articles of incorporation may fix

12 a lower percentage or a higher percentage not exceeding
13 twenty-five percent of all the votes entitled to be cast on
14 any issue proposed to be considered. Unless otherwise
15 provided in the articles of incorporation, a written demand
16 for a special meeting may be revoked by a writing to that
17 effect received by the corporation prior to the receipt by
18 the corporation of demands sufficient in number to require
19 the holding of a special meeting.

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

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

30 (d) Only business within the purpose or purposes de-
31 scribed in the meeting notice required by subsection (c),
32 section seven hundred five of this article may be conducted
33 at a special shareholders' meeting.

§31D-7-703. Court-ordered meeting.

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

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

8 (2) On application of a shareholder who signed a demand
9 for a special meeting valid under section seven hundred
10 two of 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
19 to notice of and to vote at the meeting; prescribe the form
20 and content of the meeting notice; fix the quorum required
21 for specific matters to be considered at the meeting or
22 direct that the votes represented at the meeting constitute
23 a quorum for action on those matters; and enter other
24 orders necessary to accomplish the purpose or purposes of
25 the meeting.

§31D-7-704. Action without meeting.

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

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

20 action are received by the corporation. A written consent
21 may be revoked by a writing to that effect received by the
22 corporation prior to receipt by the corporation of
23 unrevoked written consents sufficient in number to take
24 corporate action.

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

28 (d) If this chapter requires that notice of proposed action
29 be given to nonvoting shareholders and the action is to be
30 taken by unanimous consent of the voting shareholders,
31 the corporation must give its nonvoting shareholders
32 written notice of the proposed action at least ten days
33 before the action is taken. The notice must contain or be
34 accompanied by the same material that, under this chap-
35 ter, would have been required to be sent to nonvoting
36 shareholders in a notice of meeting at which the proposed
37 action would have been submitted to the shareholders for
38 action.

§31D-7-705. Notice of meeting.

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

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

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

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

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

28 (f) Unless the articles of incorporation or bylaws provide
29 otherwise, any shareholder may participate in a regular or
30 special meeting by any means of communication by which
31 all shareholders participating may simultaneously hear
32 each other during the meeting. A shareholder participat-
33 ing in a meeting by this means is deemed to be present in
34 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
3 after the date and time stated in the notice. The waiver
4 must be in writing, be signed by the shareholder entitled
5 to the notice and be delivered to the corporation for
6 inclusion in the minutes or filing with the corporate
7 records.

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

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

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

§31D-7-707. Record date.

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

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

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

5 (b) The chair, unless the articles of incorporation or
6 bylaws provide otherwise, shall determine the order of

7 business and has the authority to establish rules for the
8 conduct of the meeting.

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

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

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

PART 2. VOTING.

§31D-7-720. Shareholders' list for meeting.

1 (a) After fixing a record date for a meeting, a corpora-
2 tion must prepare an alphabetical list of the names of all
3 its shareholders who are entitled to notice of a sharehold-
4 ers' meeting. The list must be arranged by voting group
5 and, within each voting group, by class or series of shares
6 and show the address of and number of shares held by
7 each shareholder.

8 (b) The shareholders' list must be available for inspec-
9 tion by any shareholder, beginning two business days after
10 notice of the meeting is given for which the list was
11 prepared and continuing through the meeting, at the
12 corporation's principal office or at a place identified in the
13 meeting notice in the city where the meeting will be held.
14 A shareholder, his or her agent or attorney is entitled on

15 written demand to inspect and, subject to the requirements
16 of subsection (c), section one thousand six hundred two,
17 article sixteen of this chapter, to copy the list, during
18 regular business hours and at his or her expense, during
19 the period it is available for inspection.

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

24 (d) If the corporation refuses to allow a shareholder, his
25 or her agent or attorney to inspect the shareholders' list
26 before or at the meeting, or to copy the list as permitted by
27 subsection (b) of this section, the circuit court, on applica-
28 tion of the shareholder, may summarily order the inspec-
29 tion or copying at the corporation's expense and may
30 postpone the meeting for which the list was prepared until
31 the inspection or copying is complete.

32 (e) Refusal or failure to prepare or make available the
33 shareholders' list does not affect the validity of action
34 taken at 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
3 otherwise, each outstanding share, regardless of class, is
4 entitled to one vote on each matter voted on at a sharehold-
5 ers' meeting. Only shares are entitled to vote.

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

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

15 (d) Redeemable shares are not entitled to vote after
16 notice of redemption is mailed to the holders and a sum
17 sufficient to redeem the shares has been deposited with a
18 bank, trust company or other financial institution under
19 an irrevocable obligation to pay the holders the redemp-
20 tion price on surrender 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
3 person or 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
6 shareholder by signing an appointment form or by an
7 electronic transmission of the appointment. An electronic
8 transmission must contain or be accompanied by informa-
9 tion from which one can determine that the shareholder,
10 the shareholder's agent or the shareholder's attor-
11 ney-in-fact authorized the electronic transmission.

12 (c) An appointment of a proxy is effective when a signed
13 appointment form or an electronic transmission of the
14 appointment is received by the inspector of election or the
15 officer or agent of the corporation authorized to tabulate
16 votes. An appointment is valid for eleven months unless a
17 longer period is expressly provided in the appointment
18 form.

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

24 (1) A pledgee;

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

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

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

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

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

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

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

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

§31D-7-723. Shares held by nominees.

1 (a) A corporation may establish a procedure by which
2 the beneficial owner of shares that are registered in the
3 name of a nominee is recognized by the corporation as the
4 shareholder. The extent of this recognition may be
5 determined in the 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 recog-
9 nizes 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
4 vote, consent, waiver or proxy appointment and give it
5 effect as the 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
8 shareholder, the corporation if acting in good faith is
9 entitled to accept the vote, consent, waiver or proxy
10 appointment and give it effect as the act of the shareholder
11 if:

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

14 (2) The name signed purports to be that of an adminis-
15 trator, executor, guardian or conservator representing the
16 shareholder and, if the corporation requests, evidence of
17 this status acceptable to the corporation has been pre-
18 sented with respect to the vote, consent, waiver or proxy
19 appointment;

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

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

31 (5) Two or more persons are the shareholder as cotenants
32 or fiduciaries and the name signed purports to be the name
33 of at least one of the coowners and the person signing
34 appears to be acting on behalf of all the coowners.

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

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

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

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

- 1 (a) Shares entitled to vote as a separate voting group
- 2 may take action on a matter at a meeting only if a quorum

3 of those shares exists with respect to that matter. Unless
4 the articles of incorporation or this chapter provide
5 otherwise, a majority of the votes entitled to be cast on the
6 matter by the voting group constitutes a quorum of that
7 voting group for action on that 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
15 votes cast within the voting group favoring the action
16 exceed the votes cast opposing the action unless the
17 articles of incorporation or this chapter require a greater
18 number of affirmative votes.

19 (d) An amendment of articles of incorporation adding,
20 changing or deleting a quorum or voting requirement for
21 a voting group greater than specified in subsection (a) or
22 (c) of this section is governed by section seven hundred
23 twenty-seven 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
2 for voting by a single voting group on a matter, action on
3 that matter is taken when voted upon by that voting group
4 as provided in section seven hundred twenty-five of this
5 article.

6 (b) If the articles of incorporation or this chapter provide
7 for voting by two or more voting groups on a matter,
8 action on that matter is taken only when voted upon by
9 each of those voting groups counted separately as provided
10 in section seven hundred twenty-five of this article.

11 Action may be taken by one voting group on a matter even
12 though no action is taken by another voting group entitled
13 to vote on the matter.

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

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

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

§31D-7-728. Voting for directors; cumulative voting.

1 (a) Unless otherwise provided in the articles of incorpo-
2 ration, directors are elected by a plurality of the votes cast
3 by the shares entitled to vote in the election at a meeting
4 at which a quorum is present.

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

9 (c) A statement included in the articles of incorporation
10 that "all or a designated voting group of shareholders are
11 entitled to cumulate their votes for directors", or words of
12 similar import, means that the shareholders designated are
13 entitled to multiply the number of votes they are entitled
14 to cast by the number of directors for whom they are
15 entitled to vote and cast the product for a single candidate
16 or distribute the product among two or more candidates.

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

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

22 (2) A shareholder who has the right to cumulate his or
23 her votes gives notice to the corporation not less than
24 forty-eight hours before the time set for the meeting of his
25 or her intent to cumulate his or her votes during the
26 meeting and if one shareholder gives this notice all other
27 shareholders in the same voting group participating in the
28 election are entitled to cumulate their votes without giving
29 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
3 maintained by one or more members of a national or
4 affiliated securities association must, and any other
5 corporation may, appoint one or more inspectors to act at
6 a meeting of shareholders and make a written report of the
7 inspectors' determinations. Each inspector shall take and
8 sign an oath faithfully to execute the duties of inspector
9 with strict impartiality and according to the best of the
10 inspector's ability.

11 (b) The inspectors shall:

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

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

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

16 (4) Count all votes; and

17 (5) Determine the result.

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

§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
3 for them, by signing an agreement setting out the provi-
4 sions of the trust, including, but not limited to, anything
5 consistent with its purpose, and transferring their shares
6 to the trustee. When a voting trust agreement is signed,
7 the trustee shall prepare a list of the names and addresses
8 of all owners of beneficial interests in the trust, together
9 with the number and class of shares each transferred to
10 the trust, and deliver copies of the list and agreement to
11 the corporation's principal office.

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

17 (c) All or some of the parties to a voting trust may extend
18 it for additional terms of not more than ten years each by
19 signing written consent to the extension. An extension is
20 valid for ten years from the date the first shareholder signs
21 the extension agreement. The voting trustee must deliver
22 copies of the extension agreement and list of beneficial
23 owners to the corporation's principal office. An extension
24 agreement binds only those parties signing it.

§31D-7-731. Voting agreements.

1 (a) Two or more shareholders may provide for the
2 manner in which they will vote their shares by signing an
3 agreement for that purpose. A voting agreement created
4 under this section is not subject to the provisions of section
5 seven hundred thirty of 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 corpora-
2 tion that complies with this section is effective among the
3 shareholders and the corporation even though it is incon-
4 sistent with one or more other provisions of this chapter in
5 that it:

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

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

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

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

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

24 (6) Transfers to one or more shareholders or other
25 persons all or part of the authority to exercise the corpo-
26 rate powers or to manage the business and affairs of the
27 corporation, including the resolution of any issue about
28 which there exists a deadlock among directors or share-
29 holders;

30 (7) Requires dissolution of the corporation at the request
31 of one or more of the shareholders or upon the occurrence
32 of a specified event or contingency; or

33 (8) Otherwise governs the exercise of the corporate
34 powers or the management of the business and affairs of

35 the corporation or the relationship among the sharehold-
36 ers, the directors and the corporation, or among any of
37 them, and is not contrary to public policy.

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

39 (1) Set forth:

40 (A) In the articles of incorporation or bylaws and
41 approved by all persons who are shareholders at the time
42 of the agreement; or

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

46 (2) Subject to amendment only by all persons who are
47 shareholders at the time of the amendment, unless the
48 agreement provides otherwise; and

49 (3) Valid for ten years, unless the agreement provides
50 otherwise.

51 (c) The existence of an agreement authorized by this
52 section must be noted conspicuously on the front or back
53 of each certificate for outstanding shares or on the infor-
54 mation statement required by subsection (b), section six
55 hundred twenty-six, article six of this chapter. If at the
56 time of the agreement the corporation has shares outstand-
57 ing represented by certificates, the corporation must recall
58 the outstanding certificates and issue substitute certifi-
59 cates that comply with this subsection. The failure to note
60 the existence of the agreement on the certificate or infor-
61 mation statement does not affect the validity of the
62 agreement or any action taken pursuant to it. Any pur-
63 chaser of shares who, at the time of purchase, did not have
64 knowledge of the existence of the agreement is entitled to
65 rescission of the purchase. A purchaser is to be deemed to
66 have knowledge of the existence of the agreement if its
67 existence is noted on the certificate or information state-
68 ment for the shares in compliance with this subsection

69 and, if the shares are not represented by a certificate, the
70 information statement is delivered to the purchaser at or
71 prior to the time of purchase of the shares. An action to
72 enforce the right of rescission authorized by this subsection
73 must be commenced within the earlier of ninety days
74 after discovery of the existence of the agreement or two
75 years after the time of purchase of the shares.

76 (d) An agreement authorized by this section ceases to be
77 effective when shares of the corporation are listed on a
78 national securities exchange or regularly traded in a
79 market maintained by one or more members of a national
80 or affiliated securities association. If the agreement ceases
81 to be effective for any reason, the board of directors may,
82 if the agreement is contained or referred to in the corpora-
83 tion's articles of incorporation or bylaws, adopt an amend-
84 ment to the articles of incorporation or bylaws, without
85 shareholder action, to delete the agreement and any
86 references to it.

87 (e) An agreement authorized by this section that limits
88 the discretion or powers of the board of directors relieves
89 the directors of, and imposes upon the person or persons in
90 whom the discretion or powers are vested, liability for acts
91 or omissions imposed by law on directors to the extent that
92 the discretion or powers of the directors are limited by the
93 agreement.

94 (f) The existence or performance of an agreement
95 authorized by this section is not a ground for imposing
96 personal liability on any shareholder for the acts or debts
97 of the corporation even if the agreement or its perfor-
98 mance treats the corporation as if it were a partnership or
99 results in failure to observe the corporate formalities
100 otherwise applicable to the matters governed by the
101 agreement.

102 (g) Incorporators or subscribers for shares may act as
103 shareholders with respect to an agreement authorized by

104 this section if no shares have been issued when the agree-
105 ment is 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-
2 two, article seven of this chapter, each corporation must
3 have a board of directors.

4 (b) All corporate powers are to be exercised by or under
5 the authority of, and the business and affairs of the
6 corporation managed under the direction of, its board of
7 directors subject to any limitation set forth in the articles
8 of incorporation or in an agreement authorized under
9 section seven hundred thirty-two, article seven of this
10 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
3 resident of this state or a shareholder of the corporation
4 unless the articles of incorporation or bylaws require he or
5 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
3 accordance 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
7 by the shareholders, but only the shareholders may
8 increase or decrease by more than thirty percent the
9 number of directors last approved by the shareholders.

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

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

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

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

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

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

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

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

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

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

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

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

§31D-8-807. Resignation of directors.

1 (a) A director may resign at any time by delivering
2 written notice to the board of directors, the chair of the
3 board of 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
5 participate in the vote to remove him or her.

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

12 (d) A director may be removed by the shareholders only
13 at a meeting called for the purpose of removing him or her
14 and the meeting notice must state that the purpose, or one
15 of the 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
2 corporation from office in a proceeding commenced either
3 by the corporation or by its shareholders holding at least
4 ten percent of the outstanding shares of any class if the
5 court finds that: (1) The director engaged in fraudulent or
6 dishonest conduct or gross abuse of authority or discretion
7 with respect to the corporation; and (2) removal is in the
8 best interest of the corporation.

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

12 (c) If shareholders commence a proceeding under subsection
13 (a) of this section, they must make the corporation a
14 party defendant.

§31D-8-810. Vacancy on board.

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

5 (1) The shareholders may fill the vacancy;

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

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

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

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

§31D-8-811. Compensation of directors.

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

PART 2: MEETINGS AND ACTION OF THE BOARD.

§31D-8-820. Meetings.

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

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting 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
3 be taken at a board of directors' meeting may be taken
4 without a meeting if the action is taken by all members of
5 the board. The action must be evidenced by one or more
6 written consents describing the action taken, signed by
7 each director and included in the minutes or filed with the
8 corporate records reflecting the action taken.

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

12 (c) A consent signed under this section has the effect of
13 a meeting vote and may be described as having the effect
14 of a 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
3 be held without notice of the date, time, place or purpose
4 of the meeting.

5 (b) Unless the articles of incorporation or bylaws provide
6 for a longer or shorter period, special meetings of the
7 board of directors must be preceded by at least two days'
8 notice of the date, time and place of the meeting. The
9 notice need not describe the purpose of the special meeting
10 unless required by 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
3 after the date and time stated in the notice. Except as
4 provided by subsection (b) of this section, the waiver must
5 be in writing, signed by the director entitled to the notice,
6 and filed with the minutes or corporate records.

7 (b) A director's attendance at or participation in a
8 meeting waives any required notice to him or her of the

9 meeting unless the director at the beginning of the meeting
10 or promptly upon his or her arrival objects to holding the
11 meeting or transacting business at the meeting and does
12 not thereafter vote for or assent to action taken at the
13 meeting.

§31D-8-824. Quorum and voting.

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

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

7 (2) A majority of the number of directors prescribed, or
8 if no number is prescribed, the number in office immedi-
9 ately before the meeting begins if the corporation has a
10 variable-range size board.

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

15 (c) If a quorum is present when a vote is taken, the
16 affirmative vote of a majority of directors present is the
17 act of the board of directors unless the articles of incorpo-
18 ration or bylaws require the vote of a greater number of
19 directors.

20 (d) A director who is present at a meeting of the board of
21 directors or a committee of the board of directors when
22 corporate action is taken is deemed to have assented to the
23 action taken unless: (1) He or she objects at the beginning
24 of the meeting or promptly upon his or her arrival to
25 holding it or transacting business at the meeting; (2) his or
26 her dissent or abstention from the action taken is entered
27 in the minutes of the meeting; or (3) he or she delivers
28 written notice of his or her dissent or abstention to the

29 presiding officer of the meeting before its adjournment.
30 The right of dissent or abstention is not available to a
31 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
3 committees and appoint members of the board of directors
4 to serve on them. Each committee must have two or more
5 members who serve at the pleasure of the board of direc-
6 tors.

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

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

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

24 (e) A committee may not, however:

- 25 (1) Authorize distributions;
- 26 (2) Approve or propose to shareholders action that this
27 chapter requires be approved by shareholders;
- 28 (3) Fill vacancies on the board of directors or on any of
29 its committees;

30 (4) Amend articles of incorporation pursuant to section
31 one thousand two, article ten of this chapter;

32 (5) Adopt, amend or repeal bylaws;

33 (6) Approve a plan of merger not requiring shareholder
34 approval;

35 (7) Authorize or approve reacquisition of shares, except
36 according to a formula or method prescribed by the board
37 of directors; or

38 (8) Authorize or approve the issuance or sale or contract
39 for sale of shares, or determine the designation and
40 relative rights, preferences and limitations of a class or
41 series of shares, except that the board of directors may
42 authorize a committee or a senior executive officer of the
43 corporation to authorize or approve the issuance or sale or
44 contract for sale of shares, or determine the designation
45 and relative rights, preferences and limitations of a class
46 or series of shares within limits specifically prescribed by
47 the board of directors.

48 (f) The creation of, delegation of authority to or action
49 by a committee does not alone constitute compliance by a
50 director with the standards of conduct described in section
51 eight 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 dis-
2 charging the duties of a director, shall act: (1) In good
3 faith; and (2) in a manner the director reasonably believes
4 to be in the best 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
7 their decision-making function or devoting attention to
8 their oversight function, shall discharge their duties with

9 the care that a person in a like position would reasonably
10 believe appropriate under similar circumstances.

11 (c) In discharging board or committee duties a director,
12 who does not have knowledge that makes reliance unwar-
13 ranted, is entitled to rely on the performance by any of the
14 persons specified in subdivision (1) or (3), subsection (e) of
15 this section to whom the board may have delegated,
16 formally or informally by course of conduct, the authority
17 or duty to perform one or more of the board's functions
18 that are delegable under applicable law.

19 (d) In discharging board or committee duties a director,
20 who does not have knowledge that makes reliance unwar-
21 ranted, is entitled to rely on information, opinions, reports
22 or statements, including financial statements and other
23 financial data, prepared or presented by any of the persons
24 specified in 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
33 or expertise the director reasonably believes are matters:
34 (A) Within the particular person's professional or expert
35 competence; or (B) as to which the particular person merits
36 confidence; or

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

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

1 (a) A director is not liable to the corporation or its
2 shareholders for any decision to take or not to take action,

3 or any failure to take any action, as a director, unless the
4 party asserting liability in a proceeding establishes that:

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

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

13 (A) Action not in good faith; or

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

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

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

38 (E) Receipt of a financial benefit to which the director
39 was not entitled or any other breach of the director's
40 duties to deal fairly with the corporation and its share-
41 holders that is actionable under applicable law.

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

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

45 (A) Harm to the corporation or its shareholders has been
46 suffered; and

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

49 (2) For other money payment under a legal remedy,
50 including compensation for the unauthorized use of
51 corporate assets, has whatever persuasion burden may be
52 called for to establish that the payment sought is appropri-
53 ate in the circumstances; or

54 (3) For other money payment under an equitable remedy,
55 including profit recovery by or disgorgement to the
56 corporation, has whatever persuasion burden may be
57 called for to establish that the equitable remedy sought is
58 appropriate in the circumstances.

59 (c) Nothing contained in this section may: (1) In any
60 instance where fairness is at issue, including consideration
61 of the fairness of a transaction to the corporation under
62 section eight hundred sixty of this article, alter the burden
63 of proving the fact or lack of fairness otherwise applicable;
64 (2) alter the fact or lack of liability of a director under
65 another section of this chapter, including the provisions
66 governing the consequences of an unlawful distribution
67 under section eight hundred thirty-three of this article or
68 a transactional interest under section eight hundred sixty
69 of this article; or (3) affect any rights to which the corpora-
70 tion or a shareholder may be entitled under another
71 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
2 in 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
5 amount of the distribution that exceeds what could have
6 been distributed without violating subsection (a), section
7 six hundred forty, article six of this chapter if the party
8 asserting liability establishes that when taking the action
9 the director did not comply with section eight hundred
10 thirty of this chapter.

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

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

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

21 (c) A proceeding to enforce:

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

30 (2) Contribution or recoupment under subsection (b) of
31 this section is barred unless it is commenced within one

32 year after the liability of the claimant has been finally
33 adjudicated under subsection (a) of this section.

PART 4. OFFICERS.

§31D-8-840. Required officers.

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

4 (b) A duly appointed officer may appoint one or more
5 officers or assistant officers if authorized by the bylaws or
6 the 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
9 the directors' and shareholders' meetings and for authenti-
10 cating 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
2 duties set forth in the bylaws or, to the extent consistent
3 with the bylaws, the duties prescribed by the board of
4 directors or by direction of an officer authorized by the
5 board of directors to 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
7 the 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
3 notice is delivered unless the board of directors agree to a
4 later effective date. If a resignation is made effective at a
5 later date and the corporation accepts the future effective
6 date, its board of directors may fill the pending vacancy
7 before the effective date if the board of directors provides
8 that the successor does not take office until the effective
9 date.

10 (b) A board of directors may remove any officer at any
11 time 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
6 rights, if 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
6 who, while a director or officer of the corporation, is or
7 was serving at the corporation's request as a director,
8 officer, partner, trustee, employee or agent of another
9 domestic or foreign corporation, partnership, joint ven-
10 ture, trust, employee benefit plan or other entity. A
11 director or officer is considered to be serving an employee
12 benefit plan at the corporation's request if his or her duties

13 to the corporation also impose duties on, or otherwise
14 involve services by, him or her to the plan or to partici-
15 pants in or beneficiaries of the plan. "Director" or
16 "officer" includes, unless the context requires otherwise,
17 the estate or personal representative of a director or
18 officer.

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

31 (4) "Expenses" includes counsel fees.

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

36 (6) "Official capacity" means:

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

39 (B) When used with respect to an officer, as contem-
40 plated in section eight hundred fifty-six of this article, the
41 office in a corporation held by the officer. "Official
42 capacity" does not include service for any other domestic
43 or foreign corporation or any partnership, joint venture,
44 trust, employee benefit plan or other entity.

45 (7) "Party" means an individual who was, is or is threat-
46 ened to be made, a defendant or respondent in a proceed-
47 ing.

48 (8) "Proceeding" means any threatened, pending or
49 completed action, suit or proceeding, whether civil,
50 criminal, administrative, arbitratve or investigative and
51 whether formal or informal.

§31D-8-851. Permissible indemnification.

1 (a) Except as otherwise provided in this section, a
2 corporation may indemnify an individual who is a party to
3 a proceeding because he or she is a director against
4 liability incurred in the 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
9 conduct was in the best interests of the corporation; and
10 (ii) in all other cases, that his or her conduct was at least
11 not opposed to the best interests of the corporation; and

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

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

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

26 (c) The termination of a proceeding by judgment, order,
27 settlement or conviction, or upon a plea of nolo contendere
28 or its equivalent, is not determinative that the director did

29 not meet the relevant standard of conduct described in this
30 section.

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

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

39 (2) In connection with any proceeding with respect to
40 conduct for which he or she was adjudged liable on the
41 basis that he or she received a financial benefit to which
42 he or she was not entitled, whether or not involving action
43 in his or her 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
3 any proceeding to which he or she was a party because he
4 or she was a director of the corporation against reasonable
5 expenses incurred by him or her in connection with the
6 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
3 reasonable expenses incurred by a director who is a party
4 to a proceeding because he or she is a director if he or she
5 delivers to the corporation:

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

12 (b), section two hundred two, article two of this chapter;
13 and

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

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

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

28 (1) By the board of directors:

29 (A) If there are two or more disinterested directors, by a
30 majority vote of all the disinterested directors, a majority
31 of whom constitute a quorum for this purpose, or by a
32 majority of the members of a committee of two or more
33 disinterested directors appointed by a vote; or

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

39 (2) By the shareholders, but shares owned by or voted
40 under the control of a director who at the time does not
41 qualify as a disinterested director may not be voted on the
42 authorization; or

43 (3) By special legal counsel selected in a manner in
44 accordance with subdivision (2), subsection (b), section
45 eight 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
2 or she is a director may apply for indemnification or an
3 advance for expenses to the circuit court conducting the
4 proceeding or to another circuit court of competent
5 jurisdiction. After receipt of an application and after
6 giving any notice it considers necessary, the circuit court
7 shall:

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

11 (2) Order indemnification or advance for expenses if the
12 circuit court determines that the director is entitled to
13 indemnification or advance for expenses pursuant to a
14 provision authorized by subsection (a), section eight
15 hundred fifty-eight of this article; or

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

19 (A) To indemnify the director; or

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

30 (b) If the circuit court determines that the director is
31 entitled to indemnification under subdivision (1), subsec-
32 tion (a) of this section or to indemnification or advance for

33 expenses under subdivision (2) of said subsection, it shall
34 also order the corporation to pay the director's reasonable
35 expenses incurred in connection with obtaining circuit
36 court-ordered indemnification or advance for expenses. If
37 the circuit court determines that the director is entitled to
38 indemnification or advance for expenses under subdivision
39 (3) of said subsection, it may also order the corporation to
40 pay the director's reasonable expenses to obtain circuit
41 court-ordered 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
3 authorized for a specific proceeding after a determination
4 has been made that indemnification of the director is
5 permissible because he or she has met the relevant stan-
6 dard of conduct set forth in section eight hundred fifty-one
7 of this article.

8 (b) The determination is to be made:

9 (1) If there are two or more disinterested directors, by
10 the board of directors by a majority vote of all the disin-
11 terested directors, a majority of whom constitute a quorum
12 for this purpose, or by a majority of the members of a
13 committee of two or more disinterested directors ap-
14 pointed by a vote;

15 (2) By special legal counsel:

16 (A) Selected in the manner prescribed in subdivision (1)
17 of this subsection; or

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

22 (3) By the shareholders, but shares owned by or voted
23 under the control of a director who at the time does not

24 qualify as a disinterested director may not be voted on the
25 determination.

26 (c) Authorization of indemnification is to be made in the
27 same manner as the determination that indemnification is
28 permissible, except that if there are fewer than two
29 disinterested directors or if the determination is made by
30 special legal counsel, authorization of indemnification is
31 to be made by those entitled under paragraph (B), subdivi-
32 sion (2), subsection (b) of this section to select special legal
33 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
3 party to a proceeding because he or she is an officer of the
4 corporation:

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

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

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

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

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

16 (ii) An intentional infliction of harm on the corporation
17 or the shareholders; or

18 (iii) An intentional violation of criminal law.

19 (b) The provisions of subdivision (2), subsection (a) of
20 this section apply to an officer who is also a director if the

21 basis on which he or she is made a party to the proceeding
22 is an act or omission solely as an officer.

23 (c) An officer of a corporation who is not a director is
24 entitled to mandatory indemnification under section eight
25 hundred fifty-two of this article and may apply to a court
26 under section eight hundred fifty-four of this article for
27 indemnification or an advance for expenses in each case to
28 the same extent to which a director may be entitled to
29 indemnification or advance for expenses under those
30 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
4 corporation, serves at the corporation's request as a
5 director, officer, partner, trustee, employee or agent of
6 another domestic or foreign corporation, partnership, joint
7 venture, trust, employee benefit plan or other entity,
8 against liability asserted against or incurred by him or her
9 in that capacity or arising from his or her status as a
10 director or officer, whether or not the corporation would
11 have power to indemnify or advance expenses to him or
12 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
3 contract approved by its board of directors or sharehold-
4 ers, obligate itself in advance of the act or omission giving
5 rise to a proceeding to provide indemnification in accor-
6 dance with section eight hundred fifty-one of this article
7 or advance funds to pay for or reimburse expenses in
8 accordance with section eight hundred fifty-three of this
9 article. Any obligatory provision is deemed to satisfy the
10 requirements for authorization referred to in subsection
11 (c), section eight hundred fifty-three of this article and in

12 subsection (c), section eight hundred fifty-five of this
13 article. Any provision that obligates the corporation to
14 provide indemnification to the fullest extent permitted by
15 law is deemed to obligate the corporation to advance funds
16 to pay for or reimburse expenses in accordance with
17 section eight hundred fifty-three of this article to the
18 fullest extent permitted by law, unless the provision
19 specifically provides otherwise.

20 (b) Any provision pursuant to subsection (a) of this
21 section does not obligate the corporation to indemnify or
22 advance expenses to a director of a predecessor of the
23 corporation, pertaining to conduct with respect to the
24 predecessor, unless otherwise specifically provided. Any
25 provision for indemnification or advance for expenses in
26 the articles of incorporation, bylaws or a resolution of the
27 board of directors or shareholders of a predecessor of the
28 corporation in a merger or in a contract to which the
29 predecessor is a party, existing at the time the merger
30 takes effect, is to be governed by subdivision (3), subsec-
31 tion (a), section one thousand one hundred six, article
32 eleven of this chapter.

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

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

40 (e) This part does not limit a corporation's power to
41 indemnify, advance expenses to or provide or maintain
42 insurance 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
3 this 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
3 corporation and any other corporation, partnership,
4 association or other organization in which one or more of
5 its directors or officers are directors or officers, or have a
6 financial interest, is void or voidable solely for this reason
7 or solely because the director or officer is present at or
8 participates in the meeting of the board or committee
9 thereof which authorizes the contract or transaction or
10 solely because any director's or officer's votes are counted
11 for the purpose, if:

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

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

26 (3) The contract or transaction is fair as to the corpora-
27 tion as of the time it is authorized, approved or ratified by
28 the board of directors, a committee of the board of direc-
29 tors or the members.

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

ARTICLE 9. [RESERVED]

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
4 provision not required in the articles of incorporation.
5 Whether a provision is required or permitted in the articles
6 of incorporation is determined as of the effective date of
7 the amendment.

8 (b) A shareholder of the corporation does not have a
9 vested property right resulting from any provision in the
10 articles of incorporation, including provisions relating to
11 management, control, capital structure, dividend entitle-
12 ment or purpose or 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 direc-
3 tors, may adopt one or more amendments to the corpora-
4 tion's articles of incorporation.

**§31D-10-1003. Amendment by board of directors and share-
holders.**

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
5 board of directors.

6 (2) Except as provided in sections one thousand five, one
7 thousand seven and one thousand eight of this article,
8 after adopting the proposed amendment the board of
9 directors must submit the amendment to the shareholders

10 for their approval. The board of directors must also
11 transmit to the shareholders a recommendation that the
12 shareholders approve the amendment, unless the board of
13 directors makes a determination that because of conflicts
14 of interest or other special circumstances it should not
15 make the recommendation, in which case the board of
16 directors must transmit to the shareholders the basis for
17 that determination.

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

20 (4) If the amendment is required to be approved by the
21 shareholders and the approval is to be given at a meeting,
22 the corporation must notify each shareholder, whether or
23 not entitled to vote, of the meeting of shareholders at
24 which the amendment is to be submitted for approval. The
25 notice must state that the purpose, or one of the purposes,
26 of the meeting is to consider the amendment and must
27 contain or be accompanied by a copy of the amendment.

28 (5) Unless the articles of incorporation, or the board of
29 directors acting pursuant to subdivision (3) of this section,
30 requires a greater vote or a greater number of shares to be
31 present, approval of the amendment requires the approval
32 of the shareholders at a meeting at which a quorum
33 consisting of at least a majority of the votes entitled to be
34 cast on the amendment exists and, if any class or series of
35 shares is entitled to vote as a separate group on the
36 amendment, except as provided in subsection (c), section
37 one thousand four of this article, the approval of each
38 separate voting group at a meeting at which a quorum of
39 the voting group consisting of at least a majority of the
40 votes entitled to be cast on the amendment by that voting
41 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
3 class are entitled to vote as a separate voting group, if

4 shareholder voting is otherwise required by this chapter,
5 on a proposed amendment to the articles of incorporation
6 if the amendment would:

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

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

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

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

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

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

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

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

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

34 (c) If a proposed amendment that entitles the holders of
35 two or more classes or series of shares to vote as separate

36 voting groups under this section would affect those two or
37 more classes or series in the same or a substantially similar
38 way, the holders of shares of all the classes or series
39 affected by the proposed amendment must vote together as
40 a single voting group on the proposed amendment, unless
41 otherwise provided in the articles of incorporation or
42 required by the board of directors.

43 (d) A class or series of shares is entitled to the voting
44 rights granted by this section although the articles of
45 incorporation provide that the shares are nonvoting
46 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
3 the corporation's articles of incorporation without share-
4 holder approval:

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

8 (2) To delete the names and addresses of the initial
9 directors;

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

13 (4) If the corporation has only one class of shares out-
14 standing:

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

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

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

27 (6) To reflect a reduction in authorized shares, as a result
28 of the operation of subsection (b), section six hundred
29 thirty-one, article six of this chapter, when the corporation
30 has acquired its own shares and the articles of incorpora-
31 tion prohibit the reissue of the acquired shares;

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

39 (8) To make any change expressly permitted by subsec-
40 tion (d), section six hundred two, article six of this chapter
41 to be 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 corpora-
4 tion shall deliver to the secretary of state, for filing,
5 articles of 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, reclassifi-
9 cation or cancellation of issued shares, provisions for
10 implementing the amendment if not contained in the
11 amendment itself;

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

13 (5) If an amendment:

14 (A) Was adopted by the incorporators or board of
15 directors without shareholder approval, a statement that
16 the amendment was duly approved by the incorporators or
17 by the board of directors, as required, and that shareholder
18 approval was not required;

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

§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
3 shareholder approval, to consolidate all amendments into
4 a single document.

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

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

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

21 (e) The secretary of state may certify restated articles of
22 incorporation as the articles of incorporation currently in
23 effect, without including the certificate information
24 required by 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
3 shareholders to carry out a plan of reorganization ordered
4 or decreed by a court of competent jurisdiction under the
5 authority of federal 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
14 the 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
18 decree in the reorganization proceeding even though the
19 court retains jurisdiction of the proceeding for limited
20 purposes unrelated to consummation of the reorganization
21 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
4 party or the existing rights of persons other than share-
5 holders of the corporation. An amendment changing a

6 corporation's name does not abate a proceeding brought
7 by or against the corporation 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
2 the corporation's bylaws.

3 (b) A corporation's board of directors may amend or
4 repeal 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
7 the shareholders, in whole or in part; or

8 (2) The shareholders in amending, repealing or adopting
9 a bylaw expressly provide that the board of directors may
10 not 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 require-
2 ment for the board of directors may be amended or
3 repealed:

4 (1) If adopted by the shareholders, only by the share-
5 holders, unless the bylaw otherwise provides; or

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

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

13 (c) Action by the board of directors under subsection (a)
14 of this section to amend or repeal a bylaw that changes the

15 quorum or voting requirement for the board of directors
16 must meet the same quorum requirement and be adopted
17 by the same vote required to take action under the quorum
18 and voting requirement then in effect or proposed to be
19 adopted, whichever is 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
3 other 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 docu-
7 ment or documents that create, or determine the internal
8 governance 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
12 partnerships, general partnerships, limited liability
13 partnerships, limited liability companies, joint ventures,
14 joint stock companies 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
17 that will either:

18 (1) Merge under a plan of merger;

19 (2) Acquire shares or interests of another corporation or
20 an 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
23 share 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
28 other entity into which one or more other corporations or
29 other entities are merged. A survivor of a merger may
30 preexist the merger or be created by the merger.

§31D-11-1102. Merger.

1 (a) One or more domestic corporations may merge with
2 a domestic or foreign corporation or other entity pursuant
3 to a 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
6 the 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
11 entity complies with the laws under which the corporation
12 or other entity is organized or by which it is governed and
13 with its articles of incorporation or organizational docu-
14 ments.

15 (c) The plan of merger must include:

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

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

20 (3) The manner and basis of converting the shares of
21 each merging corporation and interests of each merging
22 other entity into shares or other securities, interests,
23 obligations, rights to acquire shares or other securities,
24 cash, other property or any combination of the foregoing;

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

31 (5) Any other provisions required by the laws under
32 which any party to the merger is organized or by which it
33 is governed, or by the articles of incorporation or organi-
34 zational documents of any party to the merger.

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

42 (e) The plan of merger may also include a provision that
43 the plan may be amended prior to filing the articles of
44 merger with the secretary of state: *Provided*, That if the
45 shareholders of a domestic corporation that is a party to
46 the merger are required or permitted to vote on the plan,
47 the plan must provide that subsequent to approval of the
48 plan by the shareholders the plan may not be amended to:

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

55 (2) Change the articles of incorporation of any corpora-
56 tion, or the organizational documents of any other entity,
57 that will survive or be created as a result of the merger,
58 except for changes permitted by section one thousand five,
59 article ten of this chapter or by comparable provisions of

60 the laws under which the foreign corporation or other
61 entity is organized or governed; or

62 (3) Change any of the other terms or conditions of the
63 plan if the change would adversely affect the shareholders
64 in any material respect.

§31D-11-1103. Share exchange.

1 (a) Through a share exchange:

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

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

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

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

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

28 (1) The name of each corporation or other entity whose
29 shares or interests will be acquired and the name of the
30 corporation or other entity that will acquire those shares
31 or interests;

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

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

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

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

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

58 (1) Change the amount or kind of shares or other securi-
59 ties, interests, obligations, rights to acquire shares or other
60 securities, cash or other property to be issued by the
61 corporation or to be received by the shareholders of or

62 owners of interests in any party to the share exchange in
63 exchange for their shares or interests under the plan; or

64 (2) Change any of the terms or conditions of the plan if
65 the change would adversely affect the shareholders in any
66 material respect.

67 (f) This section does not limit the power of a domestic
68 corporation to acquire shares of another corporation or
69 interests in another entity in a transaction other than a
70 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
4 adopted by the board of directors.

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

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

19 (4) If the plan of merger or share exchange is required to
20 be approved by the shareholders and if the approval is to
21 be given at a meeting, the corporation must notify each
22 shareholder, whether or not entitled to vote, of the meeting
23 of shareholders at which the plan is to be submitted for
24 approval. The notice must state that the purpose, or one

25 of the purposes, of the meeting is to consider the plan and
26 must contain or be accompanied by a copy or summary of
27 the plan. If the corporation is to be merged into an
28 existing corporation or other entity, the notice is also to
29 include or be accompanied by a copy or summary of the
30 articles of incorporation or organizational documents of
31 that corporation or other entity. If the corporation is to be
32 merged into a corporation or other entity that is to be
33 created pursuant to the merger, the notice is to include or
34 be accompanied by a copy or a summary of the articles of
35 incorporation or organizational documents of the new
36 corporation or other entity.

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

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

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

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

64 (C) On a plan of merger or share exchange, if the voting
65 group is entitled under the articles of incorporation to vote
66 as a voting group to approve a plan of merger or share
67 exchange.

68 (7) Unless the articles of incorporation otherwise pro-
69 vide, approval by the corporation's shareholders of a plan
70 of merger or share exchange is not required if:

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

73 (B) Except for amendments permitted by section one
74 thousand five, article ten of this chapter, its articles of
75 incorporation will not be changed;

76 (C) Each shareholder of the corporation whose shares
77 were outstanding immediately before the effective date of
78 the merger or share exchange will hold the same number
79 of shares, with identical preferences, limitations and
80 relative rights, immediately after the effective date of
81 change; and

82 (D) The issuance in the merger or share exchange of
83 shares or other securities convertible into or rights exercis-
84 able for shares does not require a vote under subsection (f),
85 section six hundred twenty-one, article six of this chapter.

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

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

1 (a) A domestic parent corporation that owns shares of a
2 domestic or foreign subsidiary corporation that carry at
3 least ninety percent of the voting power of each class and
4 series of the outstanding shares of the subsidiary that have
5 voting power may merge the subsidiary into itself or into
6 another subsidiary, or merge itself into the subsidiary,
7 without the approval of the board of directors or share-
8 holders of the subsidiary, unless the articles of incorpora-
9 tion of any of the corporations otherwise provide, and
10 unless, in the case of a foreign subsidiary, approval by the
11 subsidiary's board of directors or shareholders is required
12 by the laws under which the subsidiary is organized.

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

18 (c) Except as provided in subsections (a) and (b) of this
19 section, a merger between a parent and a subsidiary is to
20 be governed by the provisions of this article applicable to
21 mergers 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
3 of merger or share exchange are to be executed on behalf
4 of each party to the merger or share exchange by any
5 officer or other duly authorized representative. The
6 articles are to set forth:

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

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

13 articles of incorporation or the articles of incorporation of
14 the new corporation;

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

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

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

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

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

48 seventy-one, article twenty-one, chapter eleven of this
49 code, all business and occupation taxes, motor carrier and
50 transportation privilege taxes, gasoline taxes, consumers
51 sales taxes and any and all license franchise or other
52 excise taxes and corporate net income taxes and employ-
53 ment security payments levied or assessed against the
54 corporation seeking to dissolve have been paid or that the
55 payment has been provided for, or until the secretary of
56 state received a notice from the tax commissioner or
57 bureau of employment programs stating that the corpora-
58 tion in question is not subject to payment of any taxes or
59 to the making of any employment security payments or
60 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
3 the plan of merger as the survivor continues or comes into
4 existence, 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
9 into the survivor is vested in the survivor without rever-
10 sion or impairment;

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

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

19 (6) The name of the survivor may, but need not be,
20 substituted in any pending proceeding for the name of any

21 party to the merger whose separate existence ceased in the
22 merger;

23 (7) The articles of incorporation or organizational
24 documents of the survivor are amended to the extent
25 provided in the plan of merger;

26 (8) The articles of incorporation or organizational
27 documents of a survivor that is created by the merger
28 become effective; and

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

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

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

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

55 (1) Appoint the secretary of state as its agent for service
56 of process in a proceeding to enforce the rights of share-
57 holders of each domestic corporation that is a party to the
58 merger who exercise appraisal rights; and

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

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

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

16 (b) If a merger or share exchange is abandoned under
17 subsection (a) of this section after articles of merger or
18 share exchange have been filed with the secretary of state
19 but before the merger or share exchange has become
20 effective, a statement that the merger or share exchange
21 has been abandoned in accordance with this section,
22 executed on behalf of a party to the merger or share
23 exchange by an officer or other duly authorized represen-
24 tative, is to be delivered to the secretary of state for filing
25 prior to the effective date of the merger or share exchange.
26 Upon filing, the statement is to take effect and the merger
27 or share exchange is to be deemed abandoned and may not
28 become 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
2 required, unless the articles of incorporation otherwise
3 provide:

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

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

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

14 (4) To distribute assets pro rata to the holders of one or
15 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
3 two hundred one of this article, requires approval of the
4 corporation's shareholders if the disposition would leave
5 the corporation without a significant continuing business
6 activity. If a corporation retains a business activity that
7 represented at least twenty-five percent of total assets at
8 the end of the most recently completed fiscal year and
9 twenty-five percent of either income from continuing
10 operations before taxes or revenues from continuing
11 operations for that fiscal year, in each case of the corpora-
12 tion and its subsidiaries on a consolidated basis, the
13 corporation will conclusively be deemed to have retained
14 a significant continuing business activity.

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

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

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

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

50 (f) After a disposition has been approved by the share-
51 holders under subsection (b) of this section, and at any

52 time before the disposition has been consummated, it may
53 be abandoned by the corporation without action by the
54 shareholders, subject to any contractual rights of other
55 parties to the disposition.

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

59 (h) The assets of a direct or indirect consolidated subsid-
60 iary are to be deemed the assets of the parent corporation
61 for the 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
4 by or is under common control with another person or is a
5 senior executive. For purposes of subdivision (4), subsec-
6 tion (b), section one thousand three hundred two of this
7 article, a person is deemed to be an affiliate of its senior
8 executives.

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

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

21 (4) "Fair value" means the value of the corporation's
22 shares determined:

23 (A) Immediately before the effectuation of the corporate
24 action to which the shareholder objects;

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

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

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

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

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

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

47 (9) "Shareholder" means both a record shareholder and
48 a 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
3 shares, in the event of any of the following corporate
4 actions:

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

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

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

27 (4) An amendment of the articles of incorporation with
28 respect to a class or series of shares that reduces the
29 number of shares of a class or series owned by the share-
30 holder to a fraction of a share if the corporation has the
31 obligation or right to repurchase the fractional share so
32 created; or

33 (5) Any other amendment to the articles of incorpora-
34 tion, merger, share exchange or disposition of assets to the
35 extent provided by the articles of incorporation, bylaws or
36 a resolution of the board of directors.

37 (b) Notwithstanding subsection (a) of this section, the
38 availability of appraisal rights under subdivisions (1), (2),

39 (3) and (4), subsection (a) of this section are limited in
40 accordance with the following provisions:

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

43 (A) Listed on the New York stock exchange or the
44 American stock exchange or designated as a national
45 market system security on an interdealer quotation system
46 by the national association of securities dealers, inc.; or

47 (B) Not so listed or designated, but has at least two
48 thousand shareholders and the outstanding shares of a
49 class or series has a market value of at least twenty million
50 dollars, exclusive of the value of the shares held by its
51 subsidiaries, senior executives, directors and beneficial
52 shareholders owning more than ten percent of the shares.

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

55 (A) The record date fixed to determine the shareholders
56 entitled to receive notice of, and to vote at, the meeting of
57 shareholders to act upon the corporate action requiring
58 appraisal rights; or

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

61 (3) Subdivision (1), subsection (b) of this section is not
62 applicable and appraisal rights are to be available pursu-
63 ant to subsection (a) of this section for the holders of any
64 class or series of shares who are required by the terms of
65 the corporate action requiring appraisal rights to accept
66 for the shares anything other than cash or shares of any
67 class or any series of shares of any corporation, or any
68 other proprietary interest of any other entity, that satisfies
69 the standards set forth in subdivision (1), section (b) of this
70 section at the time the corporate action becomes effective.

71 (4) Subdivision (1), subsection (b) of this section is not
72 applicable and appraisal rights are to be available pursu-

73 ant to subsection (a) of this section for the holders of any
74 class or series of shares where any of the shares or assets
75 of the corporation are being acquired or converted,
76 whether by merger, share exchange or otherwise, pursuant
77 to the corporate action by a person, or by an affiliate of a
78 person, who: (A) Is, or at any time in the one-year period
79 immediately preceding approval by the board of directors
80 of the corporate action requiring appraisal rights was, the
81 beneficial owner of twenty percent or more of the voting
82 power of the corporation, excluding any shares acquired
83 pursuant to an offer for all shares having voting power if
84 the offer was made within one year prior to the corporate
85 action requiring appraisal rights for consideration of the
86 same kind and of a value equal to or less than that paid in
87 connection with the corporate action; or (B) for purpose of
88 voting their shares of the corporation, each member of the
89 group formed is deemed to have acquired beneficial
90 ownership, as of the date of the agreement, of all voting
91 shares of the corporation beneficially owned by any
92 member of the group.

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

108 (d) A shareholder entitled to appraisal rights under this
109 article may not challenge a completed corporate action for

110 which appraisal rights are available unless the corporate
111 action:

112 (1) Was not effectuated in accordance with the applica-
113 ble provisions of articles ten, eleven or twelve of this
114 chapter or the corporation's articles of incorporation,
115 bylaws or board of directors' resolution authorizing the
116 corporate action; or

117 (2) Was procured as a result of fraud or material misrep-
118 resentation.

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

1 (a) A record shareholder may assert appraisal rights as
2 to fewer than all the shares registered in the record share-
3 holder's name but owned by a beneficial shareholder only
4 if the record shareholder objects with respect to all shares
5 of the class or series owned by the beneficial shareholder
6 and notifies the corporation in writing of the name and
7 address of each beneficial shareholder on whose behalf
8 appraisal rights are being asserted. The rights of a record
9 shareholder who asserts appraisal rights for only part of
10 the shares held of record in the record shareholder's name
11 under this subsection are to be determined as if the shares
12 as to which the record shareholder objects and the record
13 shareholder's other shares were registered in the names of
14 different record shareholders.

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

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

23 (2) Does so with respect to all shares of the class or series
24 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
2 (a), section one thousand three hundred two of this article
3 is to be submitted to a vote at a shareholders' meeting, the
4 meeting notice must state that the corporation has con-
5 cluded that shareholders are, are not or may be entitled to
6 assert appraisal rights under this article. If the corpora-
7 tion concludes that appraisal rights are or may be avail-
8 able, a copy of this article must accompany the meeting
9 notice sent to those record shareholders entitled to exer-
10 cise appraisal rights.

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

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

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

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

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

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

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

1 (a) If proposed corporate action requiring appraisal
2 rights under subsection (a), section one thousand three
3 hundred two of this article becomes effective, the corpora-
4 tion must deliver a written appraisal notice and form
5 required by subdivision (1), subsection (b) of this section to
6 all shareholders who satisfied the requirements of section
7 one thousand three hundred twenty-one of this article. In
8 the case of a merger under section one thousand one
9 hundred five, article eleven of this chapter, the parent
10 must deliver a written appraisal notice and form to all
11 record shareholders who may be entitled to assert ap-
12 praisal rights.

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

16 (1) Supply a form that specifies the date of the first
17 announcement to shareholders of the principal terms of
18 the proposed corporate action and requires the share-
19 holder asserting appraisal rights to certify: (A) Whether or
20 not beneficial ownership of those shares for which ap-
21 praisal rights are asserted was acquired before that date;
22 and (B) that the shareholder did not vote for the transac-
23 tion;

24 (2) State:

25 (A) Where the form must be sent and where certificates
26 for certificated shares must be deposited and the date by
27 which those certificates must be deposited, which date

28 may not be earlier than the date for receiving the required
29 form under this subdivision;

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

38 (C) The corporation's estimate of the fair value of the
39 shares;

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

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

51 (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
3 who wishes to exercise appraisal rights must certify on the
4 form sent by the corporation whether the beneficial owner
5 of the shares acquired beneficial ownership of the shares
6 before the date required to be set forth in the notice
7 pursuant to subdivision (1), subsection (b), section one
8 thousand three hundred twenty-two of this article. If a
9 shareholder fails to make this certification, the corpora-

10 tion may elect to treat the shareholder's shares as af-
11 ter-acquired shares under section one thousand three
12 hundred twenty-five of this article. In addition, a share-
13 holder who wishes to exercise appraisal rights must
14 execute and return the form and, in the case of certificated
15 shares, deposit the shareholder's certificates in accordance
16 with the terms of the notice by the date referred to in the
17 notice pursuant to paragraph (B), subdivision (2), subsec-
18 tion (b), section one thousand three hundred twenty-two
19 of this article. Once a shareholder deposits the share-
20 holder's certificates or, in the case of uncertificated shares,
21 returns the executed forms, that shareholder loses all
22 rights as a shareholder unless the shareholder withdraws
23 pursuant to subsection (b) of this section.

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

33 (c) A shareholder who does not execute and return the
34 form and, in the case of certificated shares, deposit the
35 shareholder's share certificates where required, each by
36 the date set forth in the notice described in subsection (b),
37 section one thousand three hundred twenty-two of this
38 article, is not entitled to 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
3 after the form required by paragraph (B), subdivision (2),
4 subsection (b), section one thousand three hundred twenty-
5 two of this article is due, the corporation shall pay in cash
6 to those shareholders who complied with subsection (a),

7 section one thousand three hundred twenty-three of this
8 article the amount the corporation estimates to be the fair
9 value of their shares, plus interest.

10 (b) The payment to each shareholder pursuant to subsec-
11 tion (a) of this article must be accompanied by:

12 (1) Financial statements of the corporation that issued
13 the shares to be appraised, consisting of a balance sheet as
14 of the end of a fiscal year ending not more than sixteen
15 months before the date of payment, an income statement
16 for that year, a statement of changes in shareholders'
17 equity for that year and the latest available interim
18 financial statements, if any;

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

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

§31D-13-1325. After-acquired shares.

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

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

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

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

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

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

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

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

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

42 subsection (b) of this section to each shareholder described
43 in subdivision (5), subsection (b) of this section.

§31D-13-1326. Procedure if shareholder dissatisfied with payment or offer.

1 (a) A shareholder paid pursuant to section one thousand
2 three hundred twenty-four of this article who is dissatis-
3 fied with the amount of the payment must notify the
4 corporation in writing of that shareholder's estimate of the
5 fair value of the shares and demand payment of that
6 estimate plus interest and less any payment due under
7 section one thousand three hundred twenty-four of this
8 article. A shareholder offered payment under section one
9 thousand three hundred twenty-five of this article who is
10 dissatisfied with that offer must reject the offer and
11 demand payment of the shareholder's stated estimate of
12 the fair value of the shares plus interest.

13 (b) A shareholder who fails to notify the corporation in
14 writing of that shareholder's demand to be paid the
15 shareholder's stated estimate of the fair value plus interest
16 under subsection (a) of this section within thirty days after
17 receiving the corporation's payment or offer of payment
18 under sections one thousand three hundred twenty-four or
19 one thousand three hundred twenty-five of this article,
20 respectively, waives the right to demand payment under
21 this section and is entitled only to the payment made or
22 offered pursuant to those respective 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
3 article which remains unsettled, the corporation shall
4 commence a proceeding within sixty days after receiving
5 the payment demand and petition the court to determine
6 the fair value of the shares and accrued interest. If the
7 corporation does not commence the proceeding within the

8 sixty-day period, it shall pay in cash to each shareholder
9 the amount the shareholder demanded pursuant to section
10 one thousand three hundred twenty-six of this article plus
11 interest.

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

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

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

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

1 (a) The court in an appraisal proceeding commenced
2 under section one thousand three hundred thirty of this
3 article shall determine all costs of the proceeding, includ-
4 ing the reasonable compensation and expenses of apprais-
5 ers appointed by the court. The court shall assess the costs
6 against the corporation, except that the court may assess
7 costs against all or some of the shareholders demanding

8 appraisal, in amounts the court finds equitable, to the
9 extent the court finds the shareholders acted arbitrarily,
10 vexatiously, or not in good faith with respect to the rights
11 provided by this article.

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

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

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

28 (c) If the court in an appraisal proceeding finds that the
29 services of counsel for any shareholder were of substantial
30 benefit to other shareholders similarly situated, and that
31 the fees for those services should not be assessed against
32 the corporation, the court may award to counsel reason-
33 able fees to be paid out of the amounts awarded the
34 shareholders who were benefitted.

35 (d) To the extent the corporation fails to make a required
36 payment pursuant to section one thousand three hundred
37 twenty-four, one thousand three hundred twenty-five, or
38 one thousand three hundred twenty-six of this article, the
39 shareholder may sue directly for the amount owed and, to
40 the extent successful, are to be entitled to recover from the
41 corporation all costs and expenses of the suit, including
42 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 com-
3 menced business may dissolve the corporation by deliver-
4 ing to the secretary of state for filing articles of dissolution
5 that set forth:

6 (1) The name of the corporation;

7 (2) The date of its incorporation;

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

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

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

15 (6) That a majority of the incorporators or initial direc-
16 tors authorized the dissolution.

**§31D-14-1402. Dissolution by board of directors and share-
holders.**

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

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

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

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

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

15 (d) The corporation shall notify each shareholder,
16 whether or not entitled to vote, of the proposed sharehold-
17 ers' meeting. The notice must also state that the purpose,
18 or one of the purposes, of the meeting is to consider
19 dissolving the corporation.

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

§31D-14-1403. Articles of dissolution.

1 (a) At any time after dissolution is authorized, the
2 corporation may dissolve by delivering to the secretary of
3 state for 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
8 by the shareholders in the manner required by this chapter
9 and by the articles of incorporation.

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

13 (c) The secretary of state shall issue a certificate of
14 dissolution to the corporation delivering articles of

15 dissolution upon receipt by the secretary of state of a
16 notice from the tax commissioner and bureau of employ-
17 ment programs to the effect that all taxes due from the
18 corporation under the provisions of chapter eleven of this
19 code, including, but not limited to, taxes withheld under
20 the provisions of section seventy-one, article twenty-one
21 of chapter eleven of this code, all business and occupation
22 taxes, motor carrier and transportation privilege taxes,
23 gasoline taxes, consumers sales taxes and any and all
24 license franchise or other excise taxes and corporate net
25 income taxes, and employment security payments levied or
26 assessed against the corporation seeking to dissolve have
27 been paid or that the payment has been provided for, or
28 until the secretary of state received a notice from the tax
29 commissioner or bureau of employment programs, as the
30 case may be, stating that the corporation in question is not
31 subject to payment of any taxes or to the making of any
32 employment security payments or 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
6 of directors alone, in which event the board of directors
7 may 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
10 the secretary of state for filing articles of revocation of
11 dissolution, together with a copy of its articles of dissolu-
12 tion, that set forth:

13 (1) The name of the corporation;

14 (2) The effective date of the dissolution that was re-
15 voked;

16 (3) The date that the revocation of dissolution was
17 authorized;

18 (4) If the corporation's board of directors or incorpora-
19 tors revoked the dissolution, a statement to that effect;

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

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

28 (d) Revocation of dissolution is effective upon the
29 effective date of the articles of revocation of dissolution.

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

§31D-14-1405. Effect of dissolution.

1 (a) A dissolved corporation continues its corporate
2 existence but may not carry on any business except those
3 appropriate to wind up and liquidate its business and
4 affairs, including:

5 (1) Collecting its assets;

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

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

10 (4) Distributing its remaining property among its
11 shareholders according to their interests; and

- 12 (5) Doing every other act necessary to wind up and
13 liquidate its business and affairs.
- 14 (b) Dissolution of a corporation does not:
- 15 (1) Transfer title to the corporation's property;
- 16 (2) Prevent transfer of its shares or securities, although
17 the authorization to dissolve may provide for closing the
18 corporation's share transfer records;
- 19 (3) Subject its directors or officers to standards of
20 conduct different from those prescribed in article eight of
21 this chapter;
- 22 (4) Change quorum or voting requirements for its board
23 of directors or shareholders; change provisions for selec-
24 tion, resignation or removal of its directors or officers or
25 both; or change provisions for amending its bylaws;
- 26 (5) Prevent commencement of a proceeding by or against
27 the corporation in its corporate name;
- 28 (6) Abate or suspend a proceeding pending by or against
29 the corporation on the effective date of dissolution; or
- 30 (7) Terminate the authority of the registered agent of the
31 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
3 this 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
8 claim;
- 9 (2) Provide a mailing address where a claim may be sent;

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

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

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

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

20 (2) If a claimant whose claim was rejected by the dis-
21 solved corporation does not commence a proceeding to
22 enforce the claim within ninety days from the effective
23 date of the rejection notice.

24 (d) For purposes of this section, “claim” does not include
25 a contingent liability or a claim based on an event occur-
26 ring after 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
3 the corporation present them in accordance with the
4 notice.

5 (b) The notice must:

6 (1) Be published one time in a newspaper of general
7 circulation in the county where the dissolved corporation’s
8 principal office or if the corporation had no principal
9 office in this state, in any county where it transacts its
10 business;

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

14 (3) State that a claim against the corporation will be
15 barred unless a proceeding to enforce the claim is com-
16 menced within five years after the publication of the
17 notice.

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

24 (1) A claimant who did not receive written notice under
25 section one thousand four hundred six of this article;

26 (2) A claimant whose claim was timely sent to the
27 dissolved corporation but not acted on; and

28 (3) A claimant whose claim is contingent or based on an
29 event occurring after the effective date of dissolution.

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

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

33 (2) If the assets have been distributed in liquidation,
34 against a shareholder of the dissolved corporation to the
35 extent of his or her pro rata share of the claim or the
36 corporate assets distributed to him or her in liquidation,
37 whichever is less, but a shareholder's total liability for all
38 claims under this section may not exceed the total amount
39 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
3 article to 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
6 this 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
9 office has been changed, that its registered agent has
10 resigned or that its registered office has been discontinued;
11 or

12 (3) The corporation's period of duration stated in its
13 articles 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
3 twenty of this article for dissolving a corporation, he or
4 she shall serve the corporation with written notice of his
5 or her determination pursuant to section five hundred
6 four, article five of this chapter.

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

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

24 one thousand four hundred six and one thousand four
25 hundred seven of this article.

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

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

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

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

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

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

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

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

25 (c) When the reinstatement is effective, it relates back to
26 and takes effect as of the effective date of the administra-
27 tive dissolution and the corporation resumes carrying on

28 its business as if the administrative dissolution had never
29 occurred.

§31D-14-1423. Appeal from denial of reinstatement.

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

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

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

18 (d) The circuit court's final decision may be appealed as
19 in 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
4 it is 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
10 that:

11 (A) The directors are deadlocked in the management of
12 the corporate affairs, the shareholders are unable to break
13 the deadlock and irreparable injury to the corporation is
14 threatened or being suffered, or the business and affairs of
15 the corporation can no longer be conducted to the advan-
16 tage of the shareholders generally, because of the dead-
17 lock;

18 (B) The directors or those in control of the corporation
19 have acted, are acting or will act in a manner that is
20 illegal, oppressive or fraudulent;

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

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

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

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

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

33 (4) In a proceeding by the corporation to have its volun-
34 tary 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
7 circuit court directs, take other action required to preserve
8 the corporate assets wherever located and carry on the
9 business of the 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
12 thirty of this article to dissolve a corporation that has no
13 shares listed on a national securities exchange or regularly
14 traded in a market maintained by one or more members of
15 a national or affiliated securities association, the corpora-
16 tion must send to all shareholders, other than the peti-
17 tioner, a notice stating that the shareholders are entitled to
18 avoid the dissolution of the corporation by electing to
19 purchase the petitioner's shares under section one thou-
20 sand four hundred thirty-four of this article and accompa-
21 nied by a copy of section one thousand four hundred
22 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
3 to wind up and liquidate, or one or more custodians to
4 manage, the business and affairs of the corporation. The
5 circuit court shall hold a hearing, after notifying all parties
6 to the proceeding and any interested persons designated by
7 the circuit court, before appointing a receiver or custodian.
8 The circuit court appointing a receiver or custodian has
9 exclusive jurisdiction over the corporation and all of its
10 property wherever located.

11 (b) The circuit court may appoint an individual or a
12 domestic or foreign corporation authorized to transact
13 business in this state as a receiver or custodian. The circuit
14 court may require the receiver or custodian to post bond,
15 with or without sureties, in an amount the circuit court
16 directs.

17 (c) The circuit court shall describe the powers and duties
18 of the receiver or custodian in its appointing order, which
19 may be amended from time to time. Among other powers:

20 (1) The receiver: (A) May dispose of all or any part of the
21 assets of the corporation wherever located, at a public or
22 private sale, if authorized by the circuit court; and (B) may
23 sue and defend in his or her own name as receiver of the
24 corporation in all circuit courts of this state; and

25 (2) The custodian may exercise all of the powers of the
26 corporation, through or in place of its board of directors,
27 to the extent necessary to manage the affairs of the
28 corporation in the best interests of its shareholders and
29 creditors.

30 (d) The circuit court during a receivership may
31 redesignate the receiver a custodian, and during a custodi-
32 anship may redesignate the custodian a receiver, if doing
33 it is in the best interests of the corporation, its sharehold-
34 ers and creditors.

35 (e) The court, from time to time, during the receivership
36 or custodianship may order compensation paid and
37 expense disbursements or reimbursements made to the
38 receiver or custodian and his or her counsel from the assets
39 of the corporation 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
2 or more grounds for judicial dissolution described in
3 section one thousand four hundred thirty of this article
4 exist, it may enter a decree dissolving the corporation and
5 specifying the effective date of the dissolution and the
6 clerk of the circuit court shall deliver a certified copy of
7 the decree to the secretary of state, who shall file it.

8 (b) After entering the decree of dissolution, the circuit
9 court shall direct the winding-up and liquidation of the
10 corporation's business and affairs in accordance with
11 section one thousand four hundred five of this article and
12 the notification of claimants in accordance with sections
13 one thousand four hundred six and one thousand four
14 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 securi-
4 ties exchange or regularly traded in a market maintained
5 by one or more members of a national or affiliated securi-
6 ties association, the corporation may elect, or if it fails to
7 elect, one or more shareholders may elect, to purchase all
8 shares owned by the petitioning shareholder at the fair
9 value of the shares. An election pursuant to this section is
10 irrevocable unless the court determines that it is equitable
11 to set aside or modify the election.

12 (b) An election to purchase pursuant to this section may
13 be filed with the court at any time within ninety days after
14 the filing of the petition under subdivision (2), section one
15 thousand four hundred thirty of this article or at a later
16 time as the court in its discretion may allow. If the
17 election to purchase is filed by one or more shareholders,
18 the corporation shall, within ten days after the filing, give
19 written notice to all shareholders other than the petitioner.
20 The notice must state the name and number of shares
21 owned by the petitioner and the name and number of
22 shares owned by each electing shareholder and must advise
23 the recipients of their right to join in the election to
24 purchase shares in accordance with this section. Share-
25 holders who wish to participate must file notice of their
26 intention to join in the purchase no later than thirty days
27 after the effective date of the notice to them. All share-
28 holders who have filed an election or notice of their
29 intention to participate in the election to purchase become
30 parties to the proceeding and shall participate in the
31 purchase in proportion to their ownership of shares as of
32 the date the first election was filed, unless they otherwise
33 agree or the court otherwise directs. After an election has
34 been filed by the corporation or one or more shareholders,
35 the proceeding under subdivision (2), section one thousand
36 four hundred thirty of this article may not be discontinued

37 or settled, nor may the petitioning shareholder sell or
38 otherwise dispose of his or her shares, unless the court
39 determines that it would be equitable to the corporation
40 and the shareholders, other than the petitioner, to permit
41 the discontinuance, settlement, sale or other disposition.

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

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

57 (e) Upon determining the fair value of the shares, the
58 court shall enter an order directing the purchase upon
59 terms and conditions as the court deems appropriate,
60 which may include payment of the purchase price in
61 installments, where necessary in the interests of equity;
62 provision for security to assure payment of the purchase
63 price and any additional costs, fees and expenses as may
64 have been awarded; and, if the shares are to be purchased
65 by shareholders, the allocation of shares among them. In
66 allocating petitioner's shares among holders of different
67 classes of shares, the court should attempt to preserve the
68 existing distribution of voting rights among holders of
69 different classes insofar as practicable and may direct that
70 holders of a specific class or classes may not participate in
71 the purchase. Interest may be allowed at the rate and from
72 the date determined by the court to be equitable, but if the
73 court finds that the refusal of the petitioning shareholder

74 to accept an offer of payment was arbitrary or otherwise
75 not in good faith, no interest may be allowed. If the court
76 finds that the petitioning shareholder had probable
77 grounds for relief under paragraph (B) or (D), subdivision
78 (2), section one thousand four hundred thirty of this article,
79 it may award to the petitioning shareholder reasonable
80 fees and expenses of counsel and of any experts employed
81 by him or her.

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

90 (g) The purchase ordered pursuant to subsection (e) of
91 this section must be made within ten days after the date
92 the order becomes final unless before that time the corpo-
93 ration files with the court a notice of its intention to adopt
94 articles of dissolution pursuant to sections one thousand
95 four hundred two and one thousand four hundred three of
96 this article, which articles must then be adopted and filed
97 within fifty days. Upon filing of articles of dissolution, the
98 corporation is to be dissolved in accordance with the
99 provisions of sections one thousand four hundred five, one
100 thousand four hundred six and one thousand four hundred
101 seven of this article and the order entered pursuant to
102 subsection (e) of this section no longer has any force or
103 effect, except that the court may award the petitioning
104 shareholder reasonable fees and expenses in accordance
105 with the provisions of subsection (e) of this section and the
106 petitioner may continue to pursue any claims previously
107 asserted on behalf of the corporation.

108 (h) Any payment by the corporation pursuant to an order
109 under subsection (c) or (e) of this section, other than an
110 award of fees and expenses pursuant to subsection (e) of

111 this section, is subject to the provisions of section six
112 hundred forty, article six of this chapter.

PART 4. MISCELLANEOUS.

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

1 Assets of a dissolved corporation that should be trans-
2 ferred to a creditor, claimant or shareholder of the corpo-
3 ration who cannot be found or who is not competent to
4 receive them are to be reduced to cash and deposited with
5 the state treasurer or other appropriate state official for
6 safekeeping. When the creditor, claimant or shareholder
7 furnishes satisfactory proof of entitlement to the amount
8 deposited, the state treasurer or other appropriate state
9 official shall pay him or her or his or her representative
10 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
2 this state until it obtains a certificate of authority from the
3 secretary of state.
- 4 (b) The following activities, among others, do not consti-
5 tute conducting affairs within the meaning of subsection
6 (a) of this section:
- 7 (1) Maintaining, defending or settling any proceeding;
- 8 (2) Holding meetings of the board of directors or share-
9 holders or carrying on other activities concerning internal
10 corporate 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
15 require acceptance outside this state before they become
16 contracts;

17 (6) Creating or acquiring indebtedness, mortgages and
18 security interests in real or personal property;

19 (7) Securing or collecting debts or enforcing mortgages
20 and security interests in property securing the debts;

21 (8) Owning, without more, real or personal property;

22 (9) Conducting an isolated transaction that is completed
23 within thirty days and that is not one in the course of
24 repeated transactions of a like nature;

25 (10) Conducting affairs in interstate commerce;

26 (11) Granting funds or other gifts;

27 (12) Distributing information to its shareholders or
28 members;

29 (13) Effecting sales through independent contractors;

30 (14) The acquisition by purchase of lands secured by
31 mortgage or deeds;

32 (15) Physical inspection and appraisal of property in
33 West Virginia as security for deeds of trust, or mortgages
34 and negotiations for the purchase of loans secured by
35 property in West Virginia; and

36 (16) The management, rental, maintenance and sale or
37 the operating, maintaining, renting or otherwise dealing
38 with selling or disposing of property acquired under
39 foreclosure sale or by agreement in lieu of foreclosure sale.

40 (c) The list of activities in subsection (b) of this section is
41 not exhaustive.

42 (d) A foreign corporation is deemed to be transacting
43 business in this state if:

44 (1) The corporation makes a contract to be performed, in
45 whole or in part, by any party thereto in this state;

46 (2) The corporation commits a tort, in whole or in part,
47 in this state; or

48 (3) The corporation manufactures, sells, offers for sale or
49 supplies any product in a defective condition and that
50 product causes injury to any person or property within this
51 state notwithstanding the fact that the corporation had no
52 agents, servants or employees or contacts within this state
53 at the time of the injury.

54 (e) A foreign corporation's making of a contract, the
55 committing of a manufacture or sale, offer of sale or supply
56 of defective product as described in subsection (d) of this
57 section is deemed to be the agreement of that foreign
58 corporation that any notice or process served upon, or
59 accepted by, the secretary of state in a proceeding against
60 that foreign corporation arising from, or growing out of,
61 contract, tort or manufacture or sale, offer of sale or
62 supply of the defective product has the same legal force
63 and validity as process duly served on that corporation in
64 this state.

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

1 (a) A foreign corporation transacting business in this
2 state without a certificate of authority may not maintain
3 a proceeding in any circuit court in this state until it
4 obtains a certificate of authority.

5 (b) The successor to a foreign corporation that transacted
6 business in this state without a certificate of authority and
7 the assignee of a cause of action arising out of that busi-
8 ness may not maintain a proceeding based on that cause of
9 action in any circuit court in this state until the foreign
10 corporation or its successor obtains a certificate of author-
11 ity.

12 (c) A circuit court may stay a proceeding commenced by
13 a foreign corporation, its successor or assignee until it
14 determines whether the foreign corporation or its successor
15 requires a certificate of authority. If it so determines, the
16 circuit court may further stay the proceeding until the
17 foreign corporation or its successor obtains the certificate.

18 (d) A foreign corporation which conducts affairs or does
19 or transacts business in this state without a certificate of
20 authority is liable to this state for the years or parts of
21 years during which it conducted affairs or did or trans-
22 acted business in this state without a certificate of author-
23 ity in an amount equal to all fees and taxes which would
24 have been imposed by this chapter, or by any other provi-
25 sion of this code, upon the corporation had it duly applied
26 for and received a certificate of authority to conduct
27 affairs or do or transact business in this state as required
28 by this article and had filed all reports, statements or
29 returns required by this chapter or by any other chapter of
30 this code, plus all penalties imposed for failure to pay any
31 fees and taxes.

32 (e) Notwithstanding subsections (a) and (b) of this
33 section, the failure of a foreign corporation to obtain a
34 certificate of authority does not impair the validity of its
35 corporate acts or prevent it from defending any proceeding
36 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 applica-
4 tion 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
7 satisfies the requirements of section one thousand five
8 hundred six of this article;

9 (2) The name of the state or country under whose law it
10 is 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
18 West Virginia.

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

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

1 (a) A foreign corporation authorized to transact business
2 in this state must obtain an amended certificate of author-
3 ity from 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
8 hundred three of this article for obtaining an original
9 certificate of authority apply to obtaining an amended
10 certificate under this section.

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

1 (a) A certificate of authority authorizes the foreign
2 corporation to which it is issued to transact business in this

3 state subject to the right of the state to revoke the certifi-
4 cate as provided in this chapter.

5 (b) A foreign corporation with a valid certificate of
6 authority has the same rights and has the same privileges
7 as, and except as otherwise provided by this chapter is
8 subject to the same duties, restrictions, penalties and
9 liabilities as, a domestic corporation of like character.

10 (c) This chapter does not authorize this state to regulate
11 the organization or internal affairs of a foreign corporation
12 authorized 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
2 not satisfy the requirements of section four hundred one,
3 article four of this chapter, the foreign corporation to
4 obtain or maintain a certificate of authority to transact
5 business in this state:

6 (1) May add the word "corporation", "incorporated",
7 "company" or "limited" or the abbreviation "corp.",
8 "inc.", "co." or "ltd." to its corporate name for use in this
9 state; or

10 (2) May use a fictitious name to transact business in this
11 state if its real name is unavailable and it delivers to the
12 secretary of state for filing a copy of the resolution of its
13 board of directors, certified by its secretary, adopting the
14 fictitious name.

15 (b) Except as authorized by subsections (c) and (d) of this
16 section, the corporate name, including a fictitious name, of
17 a foreign corporation must be distinguishable upon the
18 records of the secretary of state from:

19 (1) The corporate name of a corporation incorporated or
20 authorized to transact business in this state;

21 (2) A corporate name reserved or registered under section
22 four hundred three or four hundred four, article four of
23 this chapter;

24 (3) The fictitious name of another foreign corporation
25 authorized to transact business in this state;

26 (4) The corporate name of a nonprofit corporation
27 incorporated or authorized to transact business in this
28 state; and

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

31 (c) A foreign corporation may apply to the secretary of
32 state for authorization to use in this state the name of
33 another corporation incorporated or authorized to transact
34 business in this state that is not distinguishable upon his or
35 her records from the name applied for. The secretary of
36 state shall authorize use of the name applied for if:

37 (1) The other corporation consents to the use in writing
38 and submits an undertaking in form satisfactory to the
39 secretary of state to change the name so that it is distin-
40 guishable upon the records of the secretary of state from
41 the name applied for; or

42 (2) The applicant delivers to the secretary of state a
43 certified copy of a final judgment of a circuit court of
44 competent jurisdiction establishing the applicant's right to
45 use the name applied for in this state.

46 (d) A foreign corporation may use in this state the name,
47 including the fictitious name, of another domestic or
48 foreign corporation that is used in this state if the other
49 corporation is incorporated or authorized to transact
50 business in this state and the foreign corporation:

51 (1) Has merged with the other corporation;

52 (2) Has been formed by reorganization of the other
53 corporation; or

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

56 (e) If a foreign corporation authorized to transact
57 business in this state changes its corporate name to one
58 that does not satisfy the requirements of section four
59 hundred one, article four of this chapter, it may not
60 transact business in this state under the changed name
61 until it adopts a name satisfying the requirements of
62 section four hundred one, article four of this chapter and
63 obtains an amended certificate of authority under section
64 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
2 in 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
9 corporation whose business office is identical with the
10 registered office; or

11 (C) A foreign corporation or foreign nonprofit corpora-
12 tion authorized to transact business in this state whose
13 business 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
2 in this state may change its registered office or registered
3 agent by delivering to the secretary of state for filing a
4 statement of 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
12 written consent, either on the statement or attached to it,
13 to the appointment; and

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

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

**§31D-15-1509. Resignation of registered agent of foreign corpo-
ration.**

1 (a) The registered agent of a foreign corporation may
2 resign his or her agency appointment by signing and
3 delivering to the secretary of state for filing the original
4 and two exact or conformed copies of a statement of
5 resignation. The statement of resignation may include a
6 statement that the registered office 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
10 secretary of state shall mail the other copy to the foreign
11 corporation at its principal office address shown in its

12 most recent return required pursuant to section three,
13 article twelve-c, chapter eleven of this code.

14 (c) The agency appointment is terminated, and the
15 registered office discontinued if provided in the statement
16 of registration, on the thirty-first day after the date on
17 which the statement was filed.

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

1 (a) The registered agent of a foreign corporation autho-
2 rized to transact business in this state is the corporation's
3 agent for service of process, notice or demand required or
4 permitted by 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
8 shown in its application for a certificate of authority or in
9 its most recent return required pursuant to section three,
10 article twelve-c, chapter eleven of this code if the foreign
11 corporation:

12 (1) Has no registered agent or its registered agent cannot
13 with reasonable diligence be served;

14 (2) Has withdrawn from transacting business in this state
15 under section one thousand five hundred twenty of this
16 article; or

17 (3) Has had its certificate of authority revoked under
18 section one thousand five hundred thirty-one of this
19 article.

20 (c) Service is perfected under subsection (b) of this
21 section at the earliest of:

22 (1) The date the foreign corporation receives the mail;

23 (2) The date shown on the return receipt, if signed on
24 behalf of the foreign corporation; or

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

28 (d) In addition to the methods of service on a foreign
29 corporation provided in subsections (a) and (b) of this
30 section, the secretary of state is hereby constituted the
31 attorney-in-fact for and on behalf of each foreign corpora-
32 tion authorized to do or transact business in this state
33 pursuant to the provisions of this chapter. The secretary of
34 state has the authority to accept service of notice and
35 process on behalf of each corporation and is an agent of
36 the corporation upon whom service of notice and process
37 may be made in this state for and upon each corporation.
38 No act of a corporation appointing the secretary of state as
39 attorney-in-fact is necessary. Service of any process,
40 notice or demand on the secretary of state may be made by
41 delivering to and leaving with the secretary of state the
42 original process, notice or demand and two copies of the
43 process, notice or demand for each defendant, along with
44 the fee required by section two, article one, chapter fifty-
45 nine of this code. Immediately after being served with or
46 accepting any process or notice, the secretary of state shall:
47 (1) File in his or her office a copy of the process or notice,
48 endorsed as of the time of service or acceptance; and (2)
49 transmit one copy of the process or notice by registered or
50 certified mail, return receipt requested, to: (A) The foreign
51 corporation's registered agent; or (B) if there is no regis-
52 tered agent, to the individual whose name and address was
53 last given to the secretary of state's office as the person to
54 whom notice and process are to be sent and if no person
55 has been named, to the principal office of the foreign
56 corporation as that address was last given to the secretary
57 of state's office. Service or acceptance of process or notice
58 is sufficient if return receipt is signed by an agent or
59 employee of the corporation, or the registered or certified
60 mail sent by the secretary of state is refused by the ad-
61 dressee and the registered or certified mail is returned to
62 the secretary of state, or to his or her office, showing the

63 stamp of the United States postal service that delivery has
64 been refused, and the return receipt or registered or
65 certified mail is appended to the original process or notice
66 and filed in the clerk's office of the court from which the
67 process or notice was issued. No process or notice may be
68 served on the secretary of state or accepted by him or her
69 less than ten days before the return day of the process or
70 notice. The court may order continuances as may be
71 reasonable to afford each defendant opportunity to defend
72 the action or proceedings.

73 (e) Any foreign corporation doing or transacting business
74 in this state without having been authorized to do so
75 pursuant to the provisions of this chapter is conclusively
76 presumed to have appointed the secretary of state as its
77 attorney-in-fact with authority to accept service of notice
78 and process on behalf of the corporation and upon whom
79 service of notice and process may be made in this state for
80 and upon the corporation in any action or proceeding
81 arising from activities described in section one thousand
82 five hundred one of this article. No act of a corporation
83 appointing the secretary of state as its attorney-in-fact is
84 necessary. Immediately after being served with or accept-
85 ing any process or notice, of which process or notice two
86 copies for each defendant are to be furnished to the
87 secretary of state with the original notice or process,
88 together with the fee required by section two, article one,
89 chapter fifty-nine of this code, the secretary of state shall
90 file in his or her office a copy of the process or notice, with
91 a note endorsed of the time of service or acceptance, and
92 transmit one copy of the process or notice by registered or
93 certified mail, return receipt requested, to the corporation
94 at the address of its principal office, which address shall be
95 stated in the process or notice. The service or acceptance
96 of process or notice is sufficient if the return receipt is
97 signed by an agent or employee of the corporation, or the
98 registered or certified mail sent by the secretary of state is
99 refused by the addressee and the registered or certified
100 mail is returned to the secretary of state, or to his or her

101 office, showing thereon the stamp of the United States
102 postal service that delivery thereof has been refused and
103 the return receipt or registered or certified mail is ap-
104 pended to the original process or notice and filed therewith
105 in the clerk's office of the court from which the process or
106 notice was issued. No process or notice may be served on
107 the secretary of state or accepted by him or her less than
108 ten days before the return date thereof. The court may
109 order continuances as may be reasonable to afford each
110 defendant opportunity to defend the action or proceedings.

111 (f) This section does not prescribe the only means, or
112 necessarily the required means, of serving a foreign
113 corporation.

PART 2. WITHDRAWAL.

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

1 (a) A foreign corporation authorized to transact business
2 in this state may not withdraw from this state until it
3 obtains a certificate of withdrawal from the secretary of
4 state.

5 (b) A foreign corporation authorized to transact business
6 in this state may apply for a certificate of withdrawal by
7 delivering an application to the secretary of state for filing.
8 The application must set forth:

9 (1) The name of the foreign corporation and the name of
10 the state or country under whose law it is incorporated;

11 (2) That it is not transacting business in this state and
12 that it surrenders its authority to transact business in this
13 state;

14 (3) That it revokes the authority of its registered agent to
15 accept service on its behalf and appoints the secretary of
16 state as its agent for service of process in any proceeding
17 based on a cause of action arising during the time it was
18 authorized to transact business in this state;

19 (4) A mailing address to which the secretary of state may
20 mail a copy of any process served on him or her under
21 subdivision (3) of this subsection; and

22 (5) A commitment to notify the secretary of state in the
23 future of any change in its mailing address.

24 (c) After the withdrawal of the corporation is effective,
25 service of process on the secretary of state under this
26 section is service on the foreign corporation. Upon receipt
27 of process, the secretary of state shall mail a copy of the
28 process to the foreign corporation at the mailing address
29 set forth under subsection (b) of this section.

30 (d) The secretary of state shall withhold the issuance of
31 any certificate of withdrawal until the receipt by the
32 secretary of state of a notice from the tax commissioner
33 and bureau of employment programs to the effect that all
34 taxes due from the corporation under the provisions of
35 chapter eleven of this code, including, but not limited to,
36 taxes withheld under the provisions of section seventy-one,
37 article twenty-one, chapter eleven of this code, all business
38 and occupation taxes, motor carrier and transportation
39 privilege taxes, gasoline taxes, consumers sales taxes and
40 any and all license franchise or other excise taxes and
41 corporate net income taxes, and employment security
42 payments levied or assessed against the corporation
43 seeking to dissolve have been paid or that payment has
44 been provided for, or until the secretary of state received
45 a notice from the tax commissioner or bureau of employ-
46 ment programs, as the case may be, stating that the
47 corporation in question is not subject to payment of any
48 taxes or to the making of any employment security pay-
49 ment, 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

3 to revoke the certificate of authority of a foreign corpora-
4 tion authorized to transact business in this state if:

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

8 (2) The foreign corporation does not inform the secretary
9 of state under section one thousand five hundred eight or
10 one thousand five hundred nine of this article that its
11 registered agent or registered office has changed, that its
12 registered agent has resigned or that its registered office
13 has been discontinued within sixty days of the change,
14 resignation or discontinuance;

15 (3) An incorporator, director, officer or agent of the
16 foreign corporation signed a document he or she knew was
17 false in any material respect with intent that the document
18 be delivered to the secretary of state for filing; or

19 (4) The secretary of state receives a duly authenticated
20 certificate from the secretary of state or other official
21 having custody of corporate records in the state or country
22 under whose law the foreign corporation is incorporated
23 stating that it has been dissolved or disappeared as the
24 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
3 thirty of this article for revocation of a certificate of
4 authority, he or she shall serve the foreign corporation
5 with written notice of his or her determination pursuant to
6 section one thousand five hundred ten of this article.

7 (b) If the foreign corporation does not correct each
8 ground for revocation or demonstrate to the reasonable
9 satisfaction of the secretary of state that each ground
10 determined by the secretary of state does not exist within
11 sixty days after service of the notice is perfected pursuant

12 to section one thousand five hundred ten of this article, the
13 secretary of state may revoke the foreign corporation's
14 certificate of authority by signing a certificate of revoca-
15 tion that recites the ground or grounds for revocation and
16 its effective date. The secretary of state shall file the
17 original of the certificate and serve a copy on the foreign
18 corporation pursuant to section one thousand five hundred
19 ten of this article.

20 (c) The authority of a foreign corporation to transact
21 business in this state ceases on the date shown on the
22 certificate revoking its certificate of authority.

23 (d) The secretary of state's revocation of a foreign corpo-
24 ration's certificate of authority appoints the secretary of
25 state the foreign corporation's agent for service of process
26 in any proceeding based on a cause of action which arose
27 during the time the foreign corporation was authorized to
28 transact business in this state. Service of process on the
29 secretary of state under this subsection is service on the
30 foreign corporation. Upon receipt of process, the secretary
31 of state shall mail a copy of the process to the secretary of
32 the foreign corporation at its principal office shown in its
33 most recent return required pursuant to section three,
34 article twelve-c, chapter eleven of this code or in any
35 subsequent communication received from the corporation
36 stating the current mailing address of its principal office
37 or, if none are on file, in its application for a certificate of
38 authority.

39 (e) Revocation of a foreign corporation's certificate of
40 authority does not terminate the authority of the registered
41 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
3 circuit court within thirty days after service of the certifi-
4 cate of revocation is perfected pursuant to section one

5 thousand five hundred ten of this article. The foreign
6 corporation appeals by petitioning the circuit court to set
7 aside the revocation and attaching to the petition copies of
8 its certificate of authority and the secretary of state's
9 certificate of revocation.

10 (b) The circuit court may summarily order the secretary
11 of state to reinstate the certificate of authority or may take
12 any other action the circuit court considers appropriate.

13 (c) The circuit court's final decision may be appealed as
14 in 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
2 minutes of all meetings of its shareholders and board of
3 directors, a record of all actions taken by the shareholders
4 or board of directors without a meeting and a record of all
5 actions taken by a committee of the board of directors in
6 place of the board of 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
10 its shareholders, in a form that permits preparation of a
11 list of the names and addresses of all shareholders, in
12 alphabetical order by class of shares showing the number
13 and class of shares held by each.

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

17 (e) A corporation shall keep a copy of the following
18 records 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
25 relative rights, preferences and limitations if shares issued
26 pursuant to 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
29 the past three years;

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

34 (6) A list of the names and business addresses of its
35 current 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 princi-
3 pal office, any of the records of the corporation described
4 in subsection (e), section one thousand six hundred one of
5 this article if he or she gives the corporation written notice
6 of his or her demand at least five business days before the
7 date on which 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
10 specified by the corporation, any of the following records
11 of the corporation if the shareholder meets the require-
12 ments of subsection (c) of this section and gives the corpo-
13 ration written notice of his or her demand at least five
14 business days before the date on which he or she wishes to
15 inspect and copy:

16 (1) Excerpts from minutes of any meeting of the board of
17 directors, records of any action of a committee of the board
18 of directors while acting in place of the board of directors
19 on behalf of the corporation, minutes of any meeting of the
20 shareholders and records of action taken by the sharehold-
21 ers or board of directors without a meeting, to the extent
22 not subject to inspection under subsection (a), section one
23 thousand six hundred two of this article;

24 (2) Accounting records of the corporation; and

25 (3) The record of shareholders.

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

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

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

33 (3) The records are directly connected with his or her
34 purpose.

35 (d) The right of inspection granted by this section may
36 not be abolished or limited by a corporation's articles of
37 incorporation or bylaws.

38 (e) This section does not affect:

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

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

46 (f) For purposes of this section, "shareholder" includes a
47 beneficial owner whose shares are held in a voting trust or
48 by 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
2 inspection and copying rights as the shareholder repre-
3 sented.

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

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

15 (d) The corporation may impose a reasonable charge,
16 covering the costs of labor and material, for copies of any
17 documents provided to the shareholder. The charge may
18 not exceed the estimated cost of production, reproduction
19 or 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
3 hundred two of this article to inspect and copy any records
4 required by that subsection to be available for inspection,
5 the circuit court may summarily order inspection and
6 copying of the records demanded at the corporation's
7 expense upon application of the shareholder.

8 (b) If a corporation does not within a reasonable time
9 allow a shareholder to inspect and copy any other record,
10 the shareholder who complies with subsections (b) and (c),
11 section one thousand six hundred two of this article may
12 apply to the circuit court for an order to permit inspection
13 and copying of the records demanded. The circuit court

14 shall dispose of an application under this subsection on an
15 expedited basis.

16 (c) If the circuit court orders inspection and copying of
17 the records demanded, it shall also order the corporation
18 to pay the shareholder's costs, including reasonable
19 counsel fees, incurred to obtain the order unless the
20 corporation proves that it refused inspection in good faith
21 because it had a reasonable basis for doubt about the right
22 of the shareholder to inspect the records demanded.

23 (d) If the circuit court orders inspection and copying of
24 the records demanded, it may impose reasonable restric-
25 tions on the use or distribution of the records by the
26 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
3 at any reasonable time to the extent reasonably related to
4 the performance of the director's duties as a director,
5 including duties as a member of a committee, but not for
6 any other purpose or in any manner that would violate any
7 duty to the corporation.

8 (b) The circuit court may order inspection and copying of
9 the books, records and documents at the corporation's
10 expense, upon application of a director who has been
11 refused inspection rights, unless the corporation estab-
12 lishes that the director is not entitled to inspection rights.
13 The circuit court shall dispose of an application under this
14 subsection on an expedited basis.

15 (c) If an order is issued, the circuit court may include
16 provisions protecting the corporation from undue burden
17 or expense and prohibiting the director from using infor-
18 mation obtained upon exercise of the inspection rights in
19 a manner that would violate a duty to the corporation and
20 may also order the corporation to reimburse the director

21 for the director's costs, including reasonable counsel fees,
22 incurred in connection with 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
3 not be required to be given if:

4 (1) Notice of two consecutive annual meetings and all
5 notices of meetings during the period between two consec-
6 utive annual meetings have been sent to the shareholder at
7 the shareholder's address as shown on the records of the
8 corporation 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 consecu-
11 tive payments of dividends on securities during a period of
12 more than twelve months, have been sent to the share-
13 holder at the shareholder's address as shown on the records
14 of the corporation and have been returned undeliverable.

15 (b) If any shareholder delivers to the corporation a
16 written notice setting forth the shareholder's then-current
17 address, the requirement that notice be given to the
18 shareholder is to be 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
4 statements of the corporation and one or more of its
5 subsidiaries, as appropriate, that include a balance sheet
6 as of the end of the fiscal year, an income statement for
7 that year and a statement of changes in shareholders'
8 equity for the year unless that information appears
9 elsewhere in the financial statements. If financial state-
10 ments are prepared for the corporation on the basis of

11 generally accepted accounting principles, the annual
12 financial statements must also be prepared on that basis.

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

18 (1) Stating his or her reasonable belief whether the
19 statements were prepared on the basis of generally ac-
20 cepted accounting principles and, if not, describing the
21 basis of preparation; and

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

25 (c) A corporation shall mail the annual financial state-
26 ments to each shareholder within one hundred twenty days
27 after the close of each fiscal year. On written request from
28 a shareholder who was not mailed the statements, the
29 corporation shall mail him or her the latest financial
30 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
3 under any general statute of this state providing for
4 incorporation of corporations for profit.

§31D-17-1702. Application to qualified foreign corporations.

1 A foreign corporation authorized to transact business in
2 this state on the effective date of this chapter is subject to
3 this chapter but is not required to obtain a new certificate
4 of 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.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect October 1, 2002.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 21st
Day of JUNE, 2002.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 6/19/02
TIME 11:30 am