LEGISLATIVE BILL 109

Approved by the Governor April 24, 1995

Introduced by Kristensen, 37; Landis, 46

AN ACT relating to corporations; to amend sections 8-1401, 21-302, 21-305, 21-323, 21-325, 21-329, 21-1301, 21-2103, 21-2105, 21-2110, 21-2115, 21-2203, 21-2204, 21-2439, 30-3214, 44-205.01, 44-206, 44-208.02, 44-224.01, 44-224.04, 44-301, 44-2128, 44-2916, 44-3112, 44-32,115, 44-3312, and 44-3812, Reissue Revised Statutes of Nebraska, and sections 9-614, 21-2209, 23-3586.01, 33-101, and 67-248.02, Revised Statutes Supplement, 1994; to adopt the Business Corporation Act; to eliminate the Nebraska Business Corporation Act; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide an operative date; to provide severability; to repeal the original sections; and to outright repeal sections 21-2001 to 21-2003, 21-2005 to 21-2012, 21-2014 to 21-2026, 21-2028, 21-2031 to 21-2035, 21-2037 to 21-2051, 21-2053 to 21-2069, 21-2071.01 to 21-2074, 21-2077 to 21-20,138, and 21-20,140 to 21-20,144, Reissue Revised Statutes of Nebraska, and sections 21-2004, 21-2027, 21-2029, 21-2030, 21-2036, 21-2052, 21-2070, 21-2071, 21-2075, 21-2076, and 21-20,139, Revised Statutes Supplement, 1994.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 192 of this act shall be known and may be cited as the Business Corporation Act.

Sec. 2. The Legislature shall have the power to amend or repeal all or part of the Business Corporation Act at any time and all domestic and foreign corporations subject to the act shall be governed by the amendment or repeal.

Sec. 3. (1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

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

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

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 4 of this act, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in sections 33 and 176 of this act, the correct filing fee, and any tax, license fee, or penalty required by law.

Sec. 4. (1) The Secretary of State may prescribe and furnish on request forms for (a) an application for a certificate of existence, (b) a foreign corporation's application for a certificate of authority to transact business in this state, and (c) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms shall be mandatory.

(2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Business

Corporation Act, but the use of such forms shall not be mandatory.

Sec. 5. (1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Application for use of indistinguishable name	$25
(c) Application for reserved name	$25
(d) Notice of transfer of reserved name	$25
(e) Application for registered name	$25
(f) Application for renewal of registered name	$25
(g) Corporation's statement of change of registered agent or registered office or both	$25
(h) Agent's statement of change of registered office for each affected corporation not to exceed a total of	$25 $1,000
(i) Agent's statement of resignation	No fee
(j) Amendment of articles of incorporation	$25
(k) Restatement of articles of incorporation with amendment of articles	$25 $25
(l) Articles of merger or share exchange	$25
(m) Articles of dissolution	$45
(n) Articles of revocation of dissolution	$25
(o) Certificate of administrative dissolution	No fee
(p) Application for reinstatement following administrative dissolution	$25
(q) Certificate of reinstatement	No fee
(r) Certificate of judicial dissolution	No fee
(s) Application for certificate of authority	$130
(t) Application for amended certificate of authority	$25
(u) Application for certificate of withdrawal	$25
(v) Certificate of revocation of authority to transact business	No fee
(w) Articles of correction	$25
(x) Application for certificate of existence or authorization	$25
(y) Any other document required or permitted to be filed by the Business Corporation Act	$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Sec. 6. (1) Except as provided in subsection (2) of this section and subsection (3) of section 7 of this act, a document accepted for filing shall be effective:

(a) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(b) At the time specified in the document as its effective time on

the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall become effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Sec. 7. (1) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (a) contains an incorrect statement or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document shall be corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the Secretary of State for filing.

(3) Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the articles of correction shall be effective when filed.

Sec. 8. (1) If a document delivered to the Secretary of State for filing satisfies the requirements of section 3 of this act, the Secretary of State shall file it.

(2) The Secretary of State shall file such document by stamping or otherwise endorsing Filed, together with his or her name and official title and the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 33 and 176 of this act, the Secretary of State shall deliver the document copy with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(3) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(4) The Secretary of State's duty to file documents under this section shall be ministerial. His or her filing or refusal to file a document shall not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Sec. 9. (1) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Sec. 10. A certificate attached to a copy of a document filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the seal of this state, shall be conclusive evidence that the original document is on file with the Secretary of State.

Sec. 11. (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization shall set forth:

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

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;

(c) That no occupation taxes due from and assessable against the

corporation are unpaid and have become delinquent;

(d) That no annual report required to be forwarded by the corporation to the Secretary of State has become delinquent; and

(e) That articles of dissolution have not been filed.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Sec. 12. (1) A person commits an offense if he or she signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(2) An offense under this section shall be a Class I misdemeanor.

Sec. 13. The Secretary of State shall have the power reasonably necessary to perform the duties required of him or her by the Business Corporation Act.

Sec. 14. For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver shall include mail;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 15 of this act;

(8) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

(9) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, state, United States, and foreign government;

(10) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

(11) Governmental subdivision shall include authority, county, district, and municipality;

(12) Individual shall include the estate of an incompetent or deceased individual;

(13) Notice shall have the same meaning as in section 15 of this act;

(14) Person shall include individual and entity;

(15) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(16) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

(17) Record date shall mean the date established under sections 35 to 50 or 51 to 77 of this act on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(18) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 97 of this act for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(19) Share shall mean the unit into which the proprietary interests in a corporation are divided;

(20) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a

corporation;

(21) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(22) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

(23) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

(24) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Sec. 15. (1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person, by telephone, telegraph, teletype, or other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

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

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Sec. 16. (1) For purposes of the Business Corporation Act, the following, identified as a shareholder in a corporation's current record of shareholders, shall constitute one shareholder:

(a) Three or fewer co-owners;

(b) A corporation, partnership, limited liability company, trust, estate, or other entity; and

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

(2) For purposes of the act, shareholdings registered in substantially similar names shall constitute one shareholder if it is reasonable to believe that the names represent the same person.

Sec. 17. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Sec. 18. (1) The articles of incorporation shall set forth:

(a) The corporate name for the corporation that satisfies the requirements of section 28 of this act;

(b) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(d) The name and street address of each incorporator; and

(e) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940. The provision shall not be effective if such corporation does not become or ceases to be so registered.

(2) The articles of incorporation may set forth:

(a) The names and street addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders; and

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

(c) Any provision that under the Business Corporation Act is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he or she is not entitled;

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

(iii) A violation of section 96 of this act; or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 102 of this act, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which he or she is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 96 of this act, or (iv) an intentional violation of criminal law.

(3) The articles of incorporation shall not be required to set forth any of the corporate powers enumerated in the act.

Sec. 19. (1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed.

(2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Sec. 20. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Business Corporation Act, shall be jointly and severally liable for all liabilities created while so acting.

Sec. 21. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; and

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

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by the Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Sec. 22. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

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

Sec. 23. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be

effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which shall be subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

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

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Shall bind the corporation; and

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

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Sec. 24. (1) Every corporation incorporated under the Business Corporation Act shall have the purpose of engaging in any lawful business unless a more limited purpose shall be set forth in the articles of incorporation.

(2) A corporation engaging in a business subject to regulation under another law of this state may incorporate under the act only if permitted by, and subject to all limitations of, such other law.

(3) Corporations shall not be organized under the act to perform any personal services as specified in section 21-2202.

Sec. 25. Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

(1) Sue and be sued, complain, and defend in its corporate name;

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

(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for managing the business and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

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

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

(7) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, limited liability company, trust, or other entity;

(10) Conduct its business, locate offices, and exercise the powers granted by the Business Corporation Act within or without this state;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share-bonus plans, share-option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Transact any lawful business that will aid governmental policy; and

(15) Make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

Sec. 26. (1) In anticipation of or during an emergency as defined in subsection (4) of this section, the board of directors of a corporation may:

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

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors shall be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

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

(3) Corporate action taken in good faith during an emergency to further the ordinary business affairs of the corporation:

(a) Shall bind the corporation; and

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

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Sec. 27. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

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

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) In a proceeding by the Attorney General under section 162 of this act.

(3) In a shareholder's proceeding under subdivision (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable, and if all affected persons are parties to the proceeding. The court may also award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(4) Venue for a proceeding under subdivision (2)(a) or (2)(b) of this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Sec. 28. (1) A corporate name:

(a) Shall contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under sections 8-101 to 8-1,121 may use a name which includes the word bank without using any such words or abbreviations; and

(b) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 24 of this act and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall be distinguishable upon the records of the Secretary of State from:

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

(b) A corporate name reserved or registered under section 29 or 30 of this act;

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

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (2) of this

section. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation has:

(a) Merged with the other corporation;

(b) Been formed by reorganization of the other corporation; or

(c) Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) The Business Corporation Act shall not be construed to control the use of fictitious names.

Sec. 29. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Sec. 30. (1) A foreign corporation may register its corporate name or its corporate name with any addition required by section 173 of this act if the name is distinguishable upon the records of the Secretary of State from the corporate names that are not available under subdivision (2)(c) of section 28 of this act.

(2) A foreign corporation shall register its corporate name or its corporate name with any addition required by section 173 of this act by delivering to the Secretary of State for filing an application:

(a) Setting forth its corporate name or its corporate name with any addition required by section 173 of this act, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application which complies with the requirements of subsection (2) of this section between October 1 and December 31 of the preceding year. The renewal application shall renew the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under the Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Sec. 31. Each corporation shall continuously maintain in this state:

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

(2) A registered agent, who may be:

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

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or not-for-profit foreign corporation

authorized to transact business in this state whose business office is identical with the registered office.

Sec. 32. (1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

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

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Sec. 33. (1) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment shall be terminated and the registered office discontinued, if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 34. (1) A corporation's registered agent shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

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

(a) The date the corporation receives the mail;

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

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not be construed to prescribe the only means, or necessarily the required means, of serving a corporation.

Sec. 35. (1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 36 of this act.

(2) The articles of incorporation shall authorize (a) one or more classes of shares that together have unlimited voting rights and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by the Business Corporation Act;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by

reference to extrinsic data or events;

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

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

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be exhaustive.

Sec. 36. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 35 of this act, of (a) any class of shares before the issuance of any shares of that class or (b) one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment, which shall be effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date the amendment was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

Sec. 37. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued shall be outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares shall be subject to the limitations of subsection (3) of this section and to section 50 of this act.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Sec. 38. (1) A corporation may:

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

(b) Arrange for disposition of fractional shares by the shareholders; and

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

(2) Each certificate representing scrip shall be conspicuously labeled scrip and shall contain the information required by subsection (2) of section 44 of this act.

(3) The holder of a fractional share shall be entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip shall not be entitled to any of these rights unless the scrip provides for them.

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

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

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

Sec. 39. (1) A subscription for shares entered into before incorporation shall be irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies such terms. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of

the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation shall be considered fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation shall be a contract between the subscriber and the corporation subject to section 40 of this act.

Sec. 40. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. Such determination by the board of directors shall be conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor shall be considered fully paid and nonassessable.

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

Sec. 41. (1) A purchaser from a corporation of its own shares shall not be liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to section 40 of this act or specified in the subscription agreement pursuant to section 39 of this act.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation shall not be personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Sec. 42. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection shall be a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (a) the articles of incorporation so authorize, (b) a two-thirds majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date shall be the date the board of directors authorizes the share dividend.

Sec. 43. A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

Sec. 44. (1) Shares may but shall not be required to be represented by certificates. Unless the Business Corporation Act or another law expressly provides otherwise, the rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate shall state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

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

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

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate (a) shall be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Sec. 45. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization shall not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (2) and (3) of section 44 of this act and, if applicable, section 46 of this act.

Sec. 46. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (2) of section 45 of this act. Unless so noted, a restriction shall not be enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares shall be authorized:

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

(b) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

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

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Sec. 47. A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Sec. 48. (1) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import,

shall mean that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation shall have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing shall be irrevocable even though it is not supported by consideration;

(c) There shall be no preemptive right with respect to:

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

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

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

(iv) Shares sold otherwise than for money;

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class;

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

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

(3) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Sec. 49. (1) A corporation may acquire its own shares and shares so acquired shall constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares shall be reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the Secretary of State for filing. The articles shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Sec. 50. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase redemption or other acquisition of the corporation's shares, the record date shall be the date the board of directors authorizes the distribution.

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

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

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

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of generally accepted accounting practices and principles that are reasonable in the circumstances or on a fair

valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section shall be measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

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

(c) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section shall be at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, shall not be considered a liability for purposes of determination under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.

Sec. 51. (1) A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

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

(4) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, which, pursuant to section 18 of this act, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, shall not be required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by the federal Investment Company Act of 1940, and the rules and regulations adopted and promulgated under such act.

Sec. 52. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under section 53 or 57 of this act, the record date for determining shareholders entitled to demand a special meeting shall be the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by subsection (3) of section 55 of this act may be conducted at a special shareholders' meeting.

Sec. 53. (1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may summarily order a meeting to be held:

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

(b) On application of a shareholder who signed a demand for a special meeting valid under section 52 of this act if:

(i) Notice of the special meeting was not given within thirty days

after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

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

Sec. 54. (1) Action required or permitted by the Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under section 53 or 57 of this act, the record date for determining shareholders entitled to take action without a meeting shall be the date the first shareholder signs the consent under subsection (1) of this section.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

(4) If the act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice shall contain or be accompanied by the same material that, under the act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Sec. 55. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless the Business Corporation Act or the articles of incorporation require otherwise, the corporation shall be required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless the act or the articles of incorporation require otherwise, notice of an annual meeting shall not be required to include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 53 or 57 of this act, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice shall not be required to be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or is required to be fixed under section 57 of this act, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

Sec. 56. (1) A shareholder may waive any notice required by the Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, shall be signed by the shareholder entitled to the notice, and shall be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Sec. 57. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not

fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

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

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which the board shall do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, the court may provide that the original record date shall continue in effect or it may fix a new record date.

Sec. 58. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and shall show the address of and number of shares held by each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his or her agent, or his or her attorney shall be entitled on written demand to inspect and, subject to the requirements of subsection (3) of section 183 of this act, to copy the shareholders' list during regular business hours and at his or her expense during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting and any shareholder, his or her agent, or his or her attorney shall be entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his or her agent, or his or her attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2) of this section, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the shareholders' list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of action taken at the meeting.

Sec. 59. (1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

(2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares shall not be entitled to vote after notice of redemption has been mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

Sec. 60. (1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for him or her by signing an appointment form either personally or by his or her attorney in fact.

(3) An appointment of a proxy shall be effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy shall be revocable by the shareholder

unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

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

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 68 of this act.

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

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

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

(8) Subject to section 62 of this act and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Sec. 61. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that shall be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

Sec. 62. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a shareholder, the corporation, if acting in good faith, shall nevertheless be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

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

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

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

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

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

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

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction determines otherwise.

Sec. 63. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or the Business Corporation Act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group shall constitute a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting it shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group shall be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or the act requires a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) of this section shall be governed by section 65 of this act.

(5) The election of directors shall be governed by section 66 of this act.

Sec. 64. (1) If the articles of incorporation or the Business Corporation Act provides for voting by a single voting group on a matter, action on that matter shall be taken when voted upon by that voting group as provided in section 63 of this act.

(2) If the articles of incorporation or the act provides for voting by two or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in section 63 of this act. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Sec. 65. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Business Corporation Act.

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

Sec. 66. (1) Unless otherwise provided in the articles of incorporation, directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Sec. 67. (1) One or more shareholders may create a voting trust conferring on a trustee the right to vote or otherwise act for them by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust shall become effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust shall be valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension shall be valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and a list of beneficial owners to the corporation's principal office. An extension agreement shall bind only those parties signing it.

Sec. 68. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section shall not be subject to the provisions of section 67 of this act.

(2) A voting agreement created under this section shall be specifically enforceable.

Sec. 69. (1) An agreement among the shareholders of a corporation that complies with this section shall be effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Business Corporation Act in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 50 of this act;

(c) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

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

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

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

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

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and the agreement is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise; and

(c) Valid for ten years unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (2) of section 45 of this act. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the

purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws without shareholder action to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be grounds for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

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

Sec. 70. For purposes of sections 70 to 77 of this act:

(1) Derivative proceeding shall mean a civil suit or action in the right of a domestic corporation or, to the extent provided in section 77 of this act, in the right of a foreign corporation; and

(2) Shareholder shall include a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Sec. 71. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at such time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Sec. 72. (1) No shareholder may commence a derivative proceeding until:

(a) A written demand has been made upon the corporation to take suitable action; and

(b) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(2) Venue for a proceeding under this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Sec. 73. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Sec. 74. (1) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) of this section has determined, in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(3) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (a) that a majority of the board of directors did not consist of independent directors at the time the determination was made or (b) that the requirements of subsection (1) of this section have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (1) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

Sec. 75. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Sec. 76. On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if the court finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if the court finds that the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Sec. 77. In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 70 to 77 of this act shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 73, 75, and 76 of this act.

Sec. 78. (1) Except as provided in section 69 of this act, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 69 of this act.

Sec. 79. The articles of incorporation or bylaws may prescribe qualifications for directors. A director shall not be required to be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Sec. 80. (1) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and

maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 83 of this act.

(5) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, and, pursuant to section 18 of this act, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation, and thereafter the election of directors by shareholders shall not be required unless required by the federal Investment Company Act of 1940, or the rules and regulations under such act or otherwise required by the Business Corporation Act.

Sec. 81. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of election of directors.

Sec. 82. (1) The terms of the initial directors of a corporation shall expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors shall expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 83 of this act.

(3) A decrease in the number of directors shall not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy shall expire at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, he or she shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

Sec. 83. The articles of incorporation may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group shall expire at the first annual shareholders' meeting after their election, the terms of the second group shall expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, shall expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Sec. 84. (1) A director may resign at any time by delivering written notice to the board of directors, to its chairperson, or to the corporation.

(2) The resignation shall be effective when notice is delivered unless the notice specifies a later effective date.

Sec. 85. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) A director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

Sec. 86. (1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation and (b) removal is in

the best interests of the corporation.

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

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

Sec. 87. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

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

(c) 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.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group shall be entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (2) of section 84 of this act or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Sec. 88. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Sec. 89. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) 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 shall be deemed to be present in person at the meeting.

Sec. 90. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by the Business Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

Sec. 91. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice shall not be required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Sec. 92. (1) A director may waive any notice required by the Business Corporation Act, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

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

Sec. 93. (1) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Business Corporation Act, a quorum of a board of directors shall consist of:

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

(b) A majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins if the corporation has a variable-range board size.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or

prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless (a) he or she objects at the beginning of the meeting or promptly upon his or her arrival to holding it or transacting business at the meeting, (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

Sec. 94. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it shall be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under section 93 of this act.

(3) Sections 89 to 93 of this act which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors shall apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 78 of this act.

(5) A committee may not, however:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that the Business Corporation Act requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 117 of this act;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval;

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

(h) Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in section 95 of this act.

Sec. 95. (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if

he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Sec. 96. (1) A director who votes for or assents to a distribution made in violation of section 50 of this act or the articles of incorporation shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 50 of this act or the articles of incorporation if it is established that he or she did not perform his or her duties in compliance with section 95 of this act. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:

(a) From every other director who could be liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section 50 of this act or the articles of incorporation.

(3) A proceeding under this section shall be barred unless it is commenced within two years after the date on which the effect of the distribution was measured under subsection (5) or (7) of section 50 of this act.

Sec. 97. (1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

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

(3) The bylaws or the board of directors shall delegate to one of the officers the responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

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

Sec. 98. Each officer shall have the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Sec. 99. (1) An officer with discretionary authority shall discharge his or her duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, an officer shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer shall not be liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Sec. 100. (1) An officer may resign at any time by delivering notice to the corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor shall not take office until the effective date.

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

Sec. 101. (1) The appointment of an officer shall not itself create any contract rights.

(2) An officer's removal shall not affect the officer's contract

rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Sec. 102. For purposes of sections 102 to 111 of this act:

(1) Corporation shall include any domestic or foreign predecessor entity of a corporation in a merger;

(2) Director or officer shall mean an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, member of a limited liability company, trustee, employee, or agent of another domestic or foreign corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other entity. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on or otherwise involve services by him or her to the plan or to participants in or beneficiaries of the plan. Director or officer shall include, unless the context requires otherwise, the estate or personal representative of a director or officer;

(3) Disinterested director shall mean a director who, at the time of a vote referred to in subsection (3) of section 105 of this act or a vote or selection referred to in subsection (2) or (3) of section 107 of this act, is not (a) a party to the proceeding or (b) an individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made;

(4) Expenses shall include attorney's fees;

(5) Liability shall mean the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding;

(6) Official capacity shall mean (a) when used with respect to a director, the office of director in a corporation, and (b) when used with respect to an officer, as contemplated in section 108 of this act, the office in a corporation held by the officer. Official capacity shall not include service for any other domestic or foreign corporation or limited liability company or any partnership, joint venture, trust, employee benefit plan, or other entity;

(7) Party shall mean an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding; and

(8) Proceeding shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Sec. 103. (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he or she is a director against liability incurred in the proceeding if:

(a)(i) He or she conducted himself or herself in good faith;

(ii) He or she reasonably believed:

(A) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases that his or her conduct was at least not opposed to the best interests of the corporation; and

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

(b) He or she engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by subdivision (2)(e) of section 18 of this act.

(2) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be conduct that satisfies the requirement of subdivision (1)(a)(ii)(B) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not be, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under subdivision (1)(c) of section 106 of this act, a corporation may not indemnify a director under this section:

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

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

Sec. 104. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

Sec. 105. (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation:

(a) A written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in section 103 of this act or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (2)(d) of section 18 of this act; and

(b) His or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under section 104 of this act and it is ultimately determined under section 106 or 107 of this act that he or she has not met the relevant standard of conduct described in section 103 of this act.

(2) The undertaking required by subdivision (1)(b) of this section shall be an unlimited general obligation of the director but shall not be required to be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section shall be made:

(a) By the board of directors:

(i) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (3) of section 93 of this act, in which authorization directors who do not qualify as disinterested directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Sec. 106. (1) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 104 of this act;

(b) Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by subsection (1) of section 110 of this act; or

(c) Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (1) of section 103 of this act, failed to comply with section 105 of this act, or was adjudged liable in a proceeding referred to in subdivision (4)(a) or (b) of section 103 of this act, but if he or she was adjudged so liable his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subdivision (1)(a) of this section or to indemnification or an advance for expenses under subdivision (1)(b) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or an advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subdivision (1)(c) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or an advance for expenses.

Sec. 107. (1) A corporation may not indemnify a director under

section 103 of this act unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he or she has met the relevant standard of conduct set forth in section 103 of this act.

(2) The determination shall be made:

(a) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

(b) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (a) of this subsection; or

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

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(3) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision (2)(b)(ii) of this section to select special legal counsel.

Sec. 108. (1) A corporation may indemnify and advance expenses under sections 102 to 111 of this act to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

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

(b) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for (i) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding or (ii) liability arising out of conduct that constitutes (A) receipt by him or her of a financial benefit to which he or she is not entitled, (B) an intentional infliction of harm on the corporation or the shareholders, or (C) an intentional violation of criminal law.

(2) The provisions of subdivision (1)(b) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(3) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 104 of this act, and may apply to a court under section 106 of this act for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

Sec. 109. A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, member of a limited liability company, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director or officer whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under sections 102 to 111 of this act.

Sec. 110. (1) A corporation may, by a provision in its articles of incorporation or bylaws, or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 103 of this act or advance funds to pay for or reimburse expenses in accordance with section 105 of this act. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (3) of section 105 of this act and in subsection (3) of section 107 of this act. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 105 of this act to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of

a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision (1)(c) of section 133 of this act.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance for expenses created by or pursuant to sections 102 to 111 of this act.

(4) Sections 102 to 111 of this act shall not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(5) Sections 102 to 111 of this act shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Sec. 111. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 102 to 111 of this act.

Sec. 112. For purposes of sections 112 to 115 of this act:

(1) Conflicting interest with respect to a corporation shall mean the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or she or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, member of a limited liability company, agent, or employee;

(ii) A person that controls one or more of the entities specified in subdivision (i) of this subdivision or an entity that is controlled by, or is under common control with, one or more of the entities specified in subdivision (i) of this subdivision; or

(iii) An individual who is a general partner, principal, or employer of the director;

(2) Director's conflicting interest transaction with respect to a corporation shall mean a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest;

(3) Related person of a director shall mean (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this subdivision is a substantial beneficiary or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary;

(4) Required disclosure shall mean disclosure by the director who has a conflicting interest of (a) the existence and nature of his or her conflicting interest and (b) all facts known to him or her respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; and

(5) Time of commitment respecting a transaction shall mean the time when the transaction is consummated or, if made pursuant to contract, the time

when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Sec. 113. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction, may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with section 114 of this act;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with section 115 of this act; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

Sec. 114. (1) Directors' action respecting a transaction shall be effective for purposes of subdivision (2)(a) of section 113 of this act if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board of directors who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section. Such action by a committee shall be effective only if:

(a) All members of the committee are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subdivision (3)(a) of section 112 of this act is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in subdivision (4)(b) of section 112 of this act, then disclosure shall be sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character of and limitations imposed by that duty before their vote on the transaction and (b) plays no part, directly or indirectly, in the directors' deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee shall constitute a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section shall not be affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, qualified director shall mean, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, under the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

Sec. 115. (1) Shareholders' action respecting a transaction shall be effective for purposes of subdivision (2)(b) of section 113 of this act if a two-thirds majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction to the extent the information was not known by them.

(2) For purposes of this section, qualified shares shall mean any shares entitled to vote with respect to the director's conflicting interest

transaction except shares that, to the knowledge before the vote of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares shall constitute a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section shall not be affected by the presence of holders or the voting of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote, and of all shares that the director knows are beneficially owned or the voting of which is controlled by the director or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that his or her failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further proceedings respecting subdivision (2)(c) of section 113 of this act, take such action respecting the transaction and the director and give such effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

Sec. 116. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation shall be determined as of the effective date of the amendment.

(2) A shareholder of the corporation shall not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Sec. 117. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

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

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

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

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

(6) To make any other change expressly permitted by the Business Corporation Act to be made without shareholder action.

Sec. 118. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

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

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 55 of this act. The notice of the meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(a) A two-thirds majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by sections 63 and 64 of this act by every other voting group entitled to vote on the amendment.

Sec. 119. (1) The holders of the outstanding shares of a class shall be entitled to vote as a separate voting group if shareholder voting is otherwise required by the Business Corporation Act on a proposed amendment if the amendment would:

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

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

(c) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

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

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

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

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series shall be entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(4) A class or series of shares shall be entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Sec. 120. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Sec. 121. A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

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

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If an amendment was approved by the shareholders:

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting

group was sufficient for approval by that voting group.

Sec. 122. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in section 118 of this act.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 55 of this act. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 121 of this act.

(5) Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto.

(6) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4) of this section.

Sec. 123. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 18 of this act.

(2) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(a) The name of the corporation;

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

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

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

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization shall not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Sec. 124. An amendment to articles of incorporation shall not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

Sec. 125. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or the Business Corporation Act reserves this power exclusively to the shareholders in whole or part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Sec. 126. (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required

by the Business Corporation Act. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section may not be adopted, amended, or repealed by the board of directors.

Sec. 127. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subdivision (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Sec. 128. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 130 of this act, approve a plan of merger.

(2) The plan of merger shall set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

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

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

Sec. 129. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 130 of this act, approve the exchange.

(2) The plan of exchange shall set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Sec. 130. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors shall recommend the plan of merger or share exchange to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 55 of this act. The notice shall also state that the purpose, or one

of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a two-thirds majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups shall be required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 119 of this act; and

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger shall not be required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 117 of this act, from its articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.

(8) For purposes of subsection (7) of this section:

(a) Participating shares shall mean shares that entitle their holders to participate without limitation in distributions; and

(b) Voting shares shall mean shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Sec. 131. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without the approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

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

(3) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent may not deliver articles of merger to the Secretary of State for filing until at least thirty days after the date the parent mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in section 117 of this act.

Sec. 132. (1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange

setting forth:

(a) The plan of merger or share exchange;

(b) If shareholder approval was not required, a statement to that effect; and

(c) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) A merger or share exchange shall take effect upon the effective date of the articles of merger or share exchange.

Sec. 133. (1) When a merger takes effect:

(a) Every other corporation party to the merger shall merge into the surviving corporation and the separate existence of every corporation except the surviving corporation shall cease;

(b) The title to all real estate and other property owned by each corporation party to the merger shall be vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation shall have all liabilities of each corporation party to the merger;

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

(e) The articles of incorporation of the surviving corporation shall be amended to the extent provided in the plan of merger; and

(f) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property shall be converted and the former holders of the shares shall be entitled only to the rights provided in the articles of merger or to their rights under sections 137 to 150 of this act.

(2) When a share exchange takes effect the shares of each acquired corporation shall be exchanged as provided in the plan and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange or to their rights under sections 137 to 150 of this act.

Sec. 134. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with section 132 of this act if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of sections 128 to 131 of this act and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 132 of this act.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange shall be deemed:

(a) To agree that it may be served with process within or without this state in a proceeding in the courts of this state to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholder of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under sections 137 to 150 of this act.

(3) This section shall not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Sec. 135. (1) A corporation may, on the terms and conditions and

for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section shall not be required.

Sec. 136. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 55 of this act. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a two-thirds majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution shall be governed by section 50 of this act and not by this section.

Sec. 137. For purposes of sections 137 to 150 of this act:

(1) Beneficial shareholder shall mean the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder;

(2) Corporation shall mean the issuer of the shares held by a dissenter before the corporate action or the surviving or acquiring corporation by merger or share exchange of that issuer;

(3) Dissenter shall mean a shareholder who is entitled to dissent from corporate action under section 138 of this act and who exercises that right when and in the manner required by sections 140 to 148 of this act;

(4) Fair value, with respect to a dissenter's shares, shall mean the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;

(5) Interest shall mean interest from the effective date of the corporate action until the date of payment at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature;

(6) Record shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation; and

(7) Shareholder shall mean the record shareholder or the beneficial shareholder.

Sec. 138. (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section

130 of this act or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under section 131 of this act;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 38 of this act; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, the bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his or her shares under sections 137 to 150 of this act may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) The right to dissent and obtain payment under sections 137 to 150 of this act shall not apply to the shareholders of a bank, trust company, stock-owned savings and loan association, industrial loan and investment company, or the holding company of any such bank, trust company, stock-owned savings and loan association, or industrial loan and investment company.

Sec. 139. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection shall be determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if:

(a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

Sec. 140. (1) If proposed corporate action creating dissenters' rights under section 138 of this act is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights under sections 137 to 150 of this act and be accompanied by a copy of such sections.

(2) If corporate action creating dissenters' rights under section 138 of this act is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send those shareholders the dissenters' notice described in section 142 of this act.

Sec. 141. (1) If proposed corporate action creating dissenters' rights under section 138 of this act is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights (a) shall deliver to the corporation before the vote is taken written notice of his or her intent to demand payment for his or her shares if the proposed action is

effectuated and (b) shall not vote his or her shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section shall not be entitled to payment for his or her shares under sections 137 to 150 of this act.

Sec. 142. (1) If proposed corporate action creating dissenters' rights under section 138 of this act is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 141 of this act.

(2) The dissenters' notice shall be sent no later than ten days after the corporate action was taken and shall:

(a) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he or she acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation shall receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice required by subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of sections 137 to 150 of this act.

Sec. 143. (1) A shareholder who was sent a dissenters' notice described in section 142 of this act shall demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to subdivision (2)(c) of section 142 of this act, and deposit his or her certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his or her shares under subsection (1) of this section shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or does not deposit his or her share certificates where required, each by the date set in the dissenters' notice, shall not be entitled to payment for his or her shares under sections 137 to 150 of this act.

Sec. 144. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under section 146 of this act.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

Sec. 145. (1) Except as provided in section 147 of this act, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 143 of this act the amount the corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment shall be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under section 148 of this act; and

(e) A copy of sections 137 to 150 of this act.

Sec. 146. (1) If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If, after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under section 142 of this act and repeat the payment demand procedure.

Sec. 147. (1) A corporation may elect to withhold payment required

by section 145 of this act from a dissenter unless he or she was the beneficial shareholder before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 148 of this act.

Sec. 148. (1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 145 of this act, or reject the corporation's offer under section 147 of this act and demand payment of the fair value of his or her shares and interest due if:

(a) The dissenter believes that the amount paid under section 145 of this act or offered under section 147 of this act is less than the fair value of his or her shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under section 145 of this act within sixty days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for his or her shares.

Sec. 149. (1) If a demand for payment under section 148 of this act remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the district court of the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

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

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. Appraisers shall have the powers described in the order appointing them or in any amendment to such order. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding shall be entitled to judgment (a) for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or (b) for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 147 of this act.

Sec. 150. (1) The court in an appraisal proceeding commenced under section 149 of this act shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 148 of this act.

(2) The court may also assess the attorney's fees and expenses and the fees and expenses of experts for the respective parties in amounts the

court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 140 to 148 of this act; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 137 to 150 of this act.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award to counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Sec. 151. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either (a) that none of the corporation's shares has been issued or (b) that the corporation has not commenced business;

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

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

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

Sec. 152. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal to dissolve on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 55 of this act. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a two-thirds majority of all the votes entitled to be cast on that proposal.

Sec. 153. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) If dissolution was approved by the shareholders:

(i) The number of votes entitled to be cast on the proposal to dissolve; and

(ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) If voting by voting groups was required, the information required by subdivision (c) of this subsection shall be separately provided for each voting group entitled to vote separately on the proposal to dissolve.

(2) A corporation shall be dissolved upon the effective date of its articles of dissolution.

Sec. 154. (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its

articles of dissolution, that set forth:

(a) The name of the corporation;

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

(c) The date that the revocation of dissolution was authorized;

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

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

(f) If shareholder action was required to revoke the dissolution, the information required by subdivision (1)(c) or (d) of section 153 of this act.

(4) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it shall relate back to and take effect as of the effective date of the dissolution and the corporation shall resume carrying on its business as if dissolution had never occurred.

Sec. 155. (1) A dissolved corporation shall continue its corporate existence but may not carry on any business, except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

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

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation shall not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in sections 78 to 115 of this act;

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

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

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

(g) Terminate the authority of the registered agent of the corporation.

Sec. 156. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

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

(a) Describe the information that shall be included in a claim;

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

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation shall be barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, claim shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 157. (1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice shall:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(b) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

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

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 156 of this act;

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

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

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation to the extent of its undistributed assets; or

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

Sec. 158. The Secretary of State may commence a proceeding under section 159 of this act to administratively dissolve a corporation if:

(1) The corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

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

Sec. 159. (1) If the Secretary of State determines that one or more grounds exist under section 158 of this act for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination under section 34 of this act.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 34 of this act, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 34 of this act.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 155 of this act and notify claimants under sections 156 and 157 of this act.

(4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

Sec. 160. (1) A corporation administratively dissolved under section 159 of this act may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of section 28 of this act.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct, and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of dissolution and

prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 34 of this act.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

Sec. 161. (1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation under section 34 of this act with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Sec. 162. The court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

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

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

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

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

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

(d) The corporate assets are being misapplied or wasted;

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

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

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

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

Sec. 163. (1) Venue for a proceeding by the Attorney General to dissolve a corporation shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 162 of this act shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is or was last located.

(2) It shall not be necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within ten days of the commencement of a proceeding under subdivision (2) of section 162 of this act to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of

the corporation by electing to purchase the petitioner's shares under section 166 of this act and accompanied by a copy of such section.

Sec. 164. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing after notifying all parties to the proceeding and any interested persons designated by the court before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located at a public or private sale if authorized by the court and (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its shareholders, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Sec. 165. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 162 of this act exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 155 of this act and the notification of claimants in accordance with sections 156 and 157 of this act.

Sec. 166. (1) In a proceeding under subdivision (2) of section 162 of this act to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (2) of section 162 of this act or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (2) of section 162 of this act may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or

other disposition.

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

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay such proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (2) of section 162 of this act was filed or as of such other date as the court deems appropriate under the circumstances.

(5)(a) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments when necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(b) If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (2)(b) or (d) of section 162 of this act, it may award to the petitioning shareholder reasonable attorney's fees and expenses and fees and expenses of any experts employed by him or her.

(6) Upon entry of an order under subsection (3) or subdivision (5)(a) of this section, the court shall dismiss the petition to dissolve the corporation under section 162 of this act, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him or her by the order of the court which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subdivision (5)(a) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 152 and 153 of this act, which articles shall then be adopted and filed within fifty days thereafter. Upon the filing of such articles of dissolution the corporation shall be dissolved in accordance with the provisions of sections 155 to 157 of this act and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of subdivision (5)(b) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of fees and expenses pursuant to subsection (5) of this section, shall be subject to the provisions of section 50 of this act.

Sec. 167. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay him or her, or his or her representative, that amount in accordance with the act.

Sec. 168. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Acting as a foreign corporate trustee to the extent authorized under section 30-2805.

(3) The list of activities in subsection (2) of this section shall not be construed as exhaustive.

(4) The requirements of the Business Corporation Act shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Sec. 169. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court in this state may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If the court determines that a certificate of authority is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation shall be liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for credit to the permanent school fund.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Sec. 170. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 173 of this act;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office; and

(f) The names and street addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Sec. 171. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the Secretary of State if it changes:

(a) Its corporate name;

(b) The period of its duration; or

(c) The state or country of its incorporation.

(2) The requirements of section 170 of this act for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

Sec. 172. (1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Business Corporation Act.

(2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by the act, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) The act shall not be construed to authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Sec. 173. (1) If the corporate name of a foreign corporation does not satisfy the requirements of section 28 of the Business Corporation Act, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

(a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or

(b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable upon the records of the Secretary of State from:

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

(b) A corporate name reserved or registered under section 29 or 30 of this act;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable upon his or her records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation;

(b) Has been formed by reorganization of the other corporation; or

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

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 28 of this act, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 28 of this act and obtains an amended certificate of authority under section 171 of this act.

Sec. 174. Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

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

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business

office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Sec. 175. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Sec. 176. (1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment shall be terminated and the registered office discontinued if so provided on the thirty-first day after the date on which the statement was filed.

Sec. 177. (1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 178 of this act; or

(c) Had its certificate of authority revoked under section 180 of this act.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Sec. 178. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation and the name of the state or

country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(d) A mailing address at which process against the corporation may be served.

Sec. 179. The Secretary of State may commence a proceeding under section 180 of this act to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 175 or 176 of this act that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(4) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

Sec. 180. (1) If the Secretary of State determines that one or more grounds exist under section 179 of this act for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination under section 177 of this act.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 177 of this act, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 177 of this act.

(3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

Sec. 181. (1) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the district court of Lancaster County within thirty days after service of the certificate of revocation is perfected under section 177 of this act. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Sec. 182. (1) A corporation shall keep as permanent records the minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each shareholder.

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

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

(a) Its articles or restated articles of incorporation and all amendments thereto currently in effect;

(b) Its bylaws or restated bylaws and all amendments thereto currently in effect;

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

(d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(e) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 186 of this act;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its most recent annual report delivered to the Secretary of State under section 21-301.

Sec. 183. (1) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at the corporation's principal office any of the records of the corporation described in subsection (5) of section 182 of this act if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy.

(2) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section shall not affect:

(a) The right of a shareholder to inspect records under section 58 of this act or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of the Business Corporation Act, to compel the production of corporate records for examination.

(6) For purposes of this section, shareholder shall include a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

Sec. 184. (1) A shareholder's agent or attorney shall have the same inspection and copying rights as the shareholder he or she represents.

(2) The right to copy records under section 183 of this act shall include, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

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

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under subdivision (2)(c) of section 183 of this act by providing him or her with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Sec. 185. (1) If a corporation does not allow a shareholder who complies with subsection (1) of section 183 of this act to inspect and copy any records required by that subsection to be available for inspection, the

district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (2) and (3) of section 183 of this act may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney's fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Sec. 186. (1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

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

(3) A corporation shall mail the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him or her the latest financial statements.

Sec. 187. (1) If a corporation indemnifies or advances expenses to a director under section 103, 104, 105, or 106 of this act in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Sec. 188. Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing an annual report as required under section 21-301 or 21-304.

Sec. 189. (1) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation subject to the Business Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (a) the corporate name for the corporation, (b) the number of shares the corporation is authorized to issue, (c) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (d) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(2) Notice of the dissolution of a domestic corporation and the

terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles, with a statement of assets and liabilities of the corporation, shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(3) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Sec. 190. The Business Corporation Act shall apply to all domestic corporations in existence on the operative date of this act that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Sec. 191. A foreign corporation authorized to transact business in this state on the operative date of this act shall be subject to the Business Corporation Act but shall not be required to obtain a new certificate of authority to transact business under the act.

Sec. 192. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this legislative bill shall not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this legislative bill is reduced by a similar provision of the Business Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

Sec. 193. Section 8-1401, Reissue Revised Statutes of Nebraska, is amended to read:

8-1401. No person or corporation or association organized under Chapter 8, article 1, 2, 3, or 4, ~~or Chapter 21, article 17, 19, 20, 22, or 23,~~ the Credit Union Act, the Nebraska Depository Institution Guaranty Corporation Act, the Nebraska Nonprofit Corporation Act, the Business Corporation Act, the Nebraska Professional Corporation Act, or the Nebraska Industrial Development Corporation Act, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person or corporation with which it is doing business to any person, party, agency, or organization, unless there shall first be presented to such person, corporation, or association a court order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons or organizations to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order. The requesting party shall pay the costs of providing such information ~~as provided in~~ pursuant to section 8-1402. This section shall not apply to any duly constituted supervisory regulatory agency of such person, corporation, or association, to disclosures governed by rules for discovery adopted and promulgated pursuant to section 25-1273.01, or to such cases for which specific disclosures are specifically required by other sections of the statutes heretofore or hereafter enacted, except that the Department of Banking and Finance shall be subject to the payment of cost provision of this section when making inquiries that are beyond those normally made in conducting examinations and inquiries for the purpose of determining the safety and soundness of a financial institution, but shall not be subject to the disclosure and reasonable notice provisions of this section when making reasonable inquiries of any person, corporation, or association for the purpose of enforcing any of the laws over which the department has jurisdiction.

Sec. 194. Section 9-614, Revised Statutes Supplement, 1994, is amended to read:

9-614. Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Limited Liability Company Act, or incorporated under the ~~Nebraska Business Corporation Act~~ Business Corporation Act.

Sec. 195. Section 21-302, Reissue Revised Statutes of Nebraska, is amended to read:

21-302. (1) ~~Such~~ An annual report required under section 21-301 from a domestic corporation ~~report~~ shall show ~~(1)~~ (a) the exact corporate name of the corporation; ~~(2)~~ (b) the location of its registered office; ~~(3)~~ (c) the names of the president, secretary, treasurer and members of the board of directors, with street address of each; ~~(4)~~ (d) the amount of paid-up capital stock; ~~(5)~~ (e) the nature and kind of business in which the corporation is engaged; and ~~(6)~~ (f) the change or changes, if any, in the above particulars made since the last annual report.

(2) Commencing January 1, 1996, an annual report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

(a) The exact corporate name of the corporation;

(b) The street address of the corporation's registered office and the name of its registered agent at that office in this state;

(c) The street address of the corporation's principal office;

(d) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;

(e) A brief description of the nature of the corporation's business;

(f) The amount of paid-up capital stock; and

(g) The change or changes, if any, in the above particulars made since the last annual report.

Sec. 196. Section 21-305, Reissue Revised Statutes of Nebraska, is amended to read:

21-305. (1) ~~Such a report~~ An annual report required under section 21-304 from a foreign corporation shall show ~~(1)~~ (a) the exact corporate name of the corporation; ~~(2)~~ (b) under the laws of what state or country organized; ~~(3)~~ (c) the location of its registered office in Nebraska; ~~(4)~~ (d) the mailing address of the corporation; ~~(5)~~ (e) the names of the president, secretary, treasurer, and members of the board of directors, with the street address of each; ~~(6)~~ (f) the nature and kind of business in which the company is engaged; ~~(7)~~ (g) the value of the property owned and used by the company in Nebraska and where such property is situated; and ~~(8)~~ (h) the change or changes, if any, in the above particulars made since the last annual report.

(2) Commencing January 1, 1996, an annual report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

(a) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) The street address of the foreign corporation's registered office and the name of its registered agent at that office in this state;

(c) The street address of the foreign corporation's principal office;

(d) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(e) A brief description of the nature of the foreign corporation's business;

(f) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and

(g) The change or changes, if any, in the above particulars made since the last annual report.

Sec. 197. Section 21-323, Reissue Revised Statutes of Nebraska, is amended to read:

21-323. (1) Prior to January 1 of each year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-325 a notice stating (a) on or before August 1, 1982, or (b) April 15, 1983, and April 15 of each year thereafter that occupation taxes are to be paid and that a properly executed and signed report is to be filed. If occupation taxes are not paid and the report is not filed on or before such dates, delinquent

corporations shall be automatically dissolved on August 2, 1982, or April 16, 1983, and April 16 of each year thereafter for nonpayment of occupation taxes and failure to file the report; and that the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall upon August 2, 1982, or April 16, 1983, and April 16 of each year thereafter automatically dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) Commencing April 16, 1996, the Secretary of State shall automatically dissolve a corporation subject to the Business Corporation Act by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 34 of this act.

(b) A corporation automatically dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 155 of this act and notify claimants under sections 156 and 157 of this act.

(c) The automatic dissolution of a corporation shall not terminate the authority of its registered agent.

~~(3)~~ (4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes. Occupation ~~, PROVIDED, occupation~~ taxes existing and delinquent on August 28, 1943, shall cease to be a lien as against any mortgagee, pledgee, purchaser, or judgment creditor unless a notice of the lien is filed by the Secretary of State, within one year after March 9, 1957, with the county clerk of the county wherein the personal property sought to be charged with such lien is situated, and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated.

~~(4)~~ (5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and annual fees due to or assessable by the state have been paid and the report filed by such corporation.

Sec. 198. (1) A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the corporation and the effective date of its automatic dissolution;

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

(c) State that the corporation's name satisfies the requirements of section 28 of this act; and

(d) Be accompanied by a fee in the amount prescribed in section 5 of this act, as such section may from time to time be amended, for an application for reinstatement following administrative dissolution.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 34 of this act.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (ii) forward to the Secretary of State a properly executed and signed annual report for the current year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

Sec. 199. (1) If the Secretary of State denies a corporation's application for reinstatement following automatic dissolution under section 21-323, he or she shall serve the corporation under section 34 of this act with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Sec. 200. Section 21-325, Reissue Revised Statutes of Nebraska, is amended to read:

21-325. (1) Prior to January 1 of each year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-325 a notice stating (a) on or before August 1, 1982, or (b) April 15, 1983, and April 15 of each year thereafter that occupation taxes are to be paid and that a properly executed and signed report is to be filed. If such occupation taxes are not paid and such report is not filed on or before such dates, delinquent corporations shall be automatically dissolved on August 2, 1982, or April 16, 1983, and April 16 of each year thereafter for nonpayment of occupation taxes and failure to file the report; and that the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall upon August 2, 1982, or April 16, 1983, and April 16 of each year thereafter automatically dissolve the corporation for nonpayment of taxes and shall bar the corporation from doing business in the State of Nebraska under the corporation laws of the state and make such entry and showing upon the records of his or her office.

(3)(a) Commencing April 16, 1996, the Secretary of State shall automatically dissolve a foreign corporation subject to the Business Corporation Act by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 177 of this act.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

~~(3)~~ (4) All delinquent corporation taxes of the corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing ~~; PROVIDED, that~~ nothing in sections 21-322 to 21-325 shall be construed to allow a foreign corporation to do business in Nebraska without complying with the laws of the State of Nebraska.

~~(4)~~ (5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes and annual fees due to or assessable by the state have been paid and the report filed by such corporation.

Sec. 201. (1) A foreign corporation automatically dissolved under section 21-325 may appeal the Secretary of State's revocation of its certificate of authority to the district court of Lancaster County within thirty days after service of the certificate of revocation is perfected under section 177 of this act. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Sec. 202. Section 21-329, Reissue Revised Statutes of Nebraska, is amended to read:

21-329. For ~~the~~ purposes of Chapter 21, article 3, the term paid-up capital stock shall mean, ~~the same as the term stated capital as defined in section 21-2002~~ at any particular time, the sum of the par value of all shares of the corporation that have been issued, and such amounts not included in such par value as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

Sec. 203. Section 21-1301, Reissue Revised Statutes of Nebraska, is amended to read:

21-1301. Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. ~~Wherever sections 21-2001 to 21-20,142 require~~ If the Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Sec. 204. Section 21-2103, Reissue Revised Statutes of Nebraska, is amended to read:

21-2103. One or more business development corporations may be incorporated in this state pursuant to the provisions of the ~~Nebraska Business Corporation Act~~ Business Corporation Act not in conflict with or inconsistent with the provisions of ~~sections 21-2101 to 21-2117~~ the Nebraska Business Development Corporation Act.

Sec. 205. Section 21-2105, Reissue Revised Statutes of Nebraska, is amended to read:

21-2105. (1) A development corporation shall have all the powers granted to corporations organized under the ~~Nebraska Business Corporation Act, PROVIDED,~~ Business Corporation Act except that it shall not give security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the Small Business Administration, an agency of the United States Government.

Sec. 206. Section 21-2110, Reissue Revised Statutes of Nebraska, is amended to read:

21-2110. (1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the ~~Nebraska Business Corporation Act~~ Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created ~~hereunder~~ under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Sec. 207. Section 21-2115, Reissue Revised Statutes of Nebraska, is amended to read:

21-2115. A corporation shall keep, in addition to the books and records required by the ~~Nebraska Business Corporation Act~~ Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the ~~Nebraska Business Corporation Act~~ Business Corporation Act.

Sec. 208. Section 21-2203, Reissue Revised Statutes of Nebraska, is amended to read:

21-2203. Except as ~~sections 21-2201 to 21-2222~~ the Nebraska Professional Corporation Act shall otherwise require, professional

corporations shall enjoy all the powers, benefits, and privileges and be subject to all the duties, restrictions, and liabilities of a business corporation under the Business Corporation Act and sections 21-301 to 21-325, ~~and 21-2001 to 21-20,144.~~

Sec. 209. Section 21-2204, Reissue Revised Statutes of Nebraska, is amended to read:

21-2204. (1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of ~~sections 21-2052 and 21-2053~~ section 18 of this act.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Sec. 210. Section 21-2209, Revised Statutes Supplement, 1994, is amended to read:

21-2209. (1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (1) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections ~~21-20,109 to 21-20,111~~ 168 to 181 of the Business Corporation Act.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325 and the ~~Nebraska Business Corporation Act~~ Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation shall not be required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation shall mean a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Sec. 211. Section 21-2439, Reissue Revised Statutes of Nebraska, is amended to read:

21-2439. Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corporation that, except for the Shareholders Protection

Act, would, when added to all other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with ~~section 21-2070~~ sections 128 to 134 of this act if the issuing public corporation is a party to the ~~agreement~~ plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Sec. 212. Section 23-3586.01, Revised Statutes Supplement, 1994, is amended to read:

23-3586.01. Within forty-five days after June 10, 1993, for all hospital authorities established in counties having a population in excess of one hundred thousand, the boards of trustees shall be reorganized by order of the county board of the county in which such authorities have been established so that the board of trustees for each authority shall consist of eleven members of two separate classes, a first class consisting of six trustees, each of whom shall be an individual residing within the boundaries of the authority who is not an employee, an officer, or a director of any hospital located within the county in which the authority has been established, and a second class consisting of five trustees, each of whom shall be an individual nominated by one of the hospitals the principal hospital facility of which is located within the boundaries of the authority to serve as its designated trustee representative, with each such hospital having the right to nominate at least one such trustee representative.

The terms of the trustees of the second class shall expire on July 1, 1995, or upon certification under section 23-3594.07, whichever is sooner.

In the order effecting such reorganization, existing trustees may be reappointed to the board of trustees for membership in the first class, if they otherwise qualify, without petition of electors, but any newly designated trustee to serve in the first class shall be nominated by a petition or petitions signed by not less than twenty-five electors residing within the boundaries of the authority. Trustees appointed for the second class shall be nominated by the hospital for which they are to serve as trustee representative. So long as each hospital the principal hospital facility of which is located within an authority is represented by a trustee representative nominated by it, such hospital may nominate and the county board may appoint more than one trustee representative for any one such hospital.

In reorganizing the boards of trustees of authorities within their jurisdiction, county boards shall not be required to nominate any individual presently serving, nominated by petition, or nominated by a hospital if for any reason the county board determines such individual unfit to serve and may, as to trustees of the first class, appoint an individual or individuals determined suitable who have not been nominated by petition. As to trustees of the second class, the county board, if it determines that a nominated individual is unfit to serve, may request the hospital making the nomination to submit the name or names of an additional individual or individuals to be appointed.

For purposes of any issuance of bonds or other transaction of a hospital authority relating to financing by a hospital authority, the board of trustees shall consist solely of the trustees of the first class, with a majority of such class constituting a quorum and a majority of a quorum authorized to take any and all actions with respect to issuance of bonds and all matters related to such issuance. For all other actions of the hospital authority, the board of trustees shall consist of all of the trustees of both classes, with a majority of such trustees constituting a quorum and a majority of a quorum authorized to take any and all other actions.

For purposes of this section, hospital shall mean and refer only to hospitals which (1) are licensed by the Department of Health under sections 71-2017 to 71-2029 and defined in subdivision (2) of section 71-2017.01 and (2) are owned by a corporation organized or qualified under the ~~Nebraska Business Corporation Act~~ Business Corporation Act or the Nebraska Nonprofit Corporation Act.

Successor trustees for hospital authorities reorganized pursuant to this section shall be appointed to the first class by the county board establishing the authority upon receipt of nominating petitions signed by not less than twenty-five electors residing within the boundaries of the authority filed with the county clerk not later than thirty days before the date of termination of a trustee's term of office. If no petitions are received by such deadline, the county board may appoint individuals, otherwise qualified, as it deems appropriate without petition. Successor trustees shall be appointed to the second class upon receipt of written nominations received from hospitals the principal hospital facility of which is located within the boundaries of the authority subject to the same limitations and powers of the county board as were applicable upon the reorganization required by this section.

All trustees shall continue in office after their stated term until their successors have been appointed by the county board. Trustees may be removed from office by the county board upon any determination of reasonable cause for removal. Vacancies created by death, resignation, or removal shall be filled by order of the county board appointing individuals, otherwise qualified, to fill the office for the remaining term.

Sec. 213. Section 30-3214, Reissue Revised Statutes of Nebraska, is amended to read:

30-3214. A real estate investment trust shall~~, after October 9, 1961,~~ file its articles of agreement or of trust or any modifications thereof with the Secretary of State and with the county clerk of the county in this state in which ~~said~~ the trust has its principal place of doing business by complying with the same procedures as set forth in sections ~~21-2053, 21-2057, and 21-20,125~~ 15, 17 to 23, and 116 to 127 of this act. Such filing shall include a copy of the articles of agreement or of trust and shall name a resident agent in the State of Nebraska and the principal place of doing business in this state.

Sec. 214. Section 33-101, Revised Statutes Supplement, 1994, is amended to read:

33-101. There shall be paid to the Secretary of State the following fees:

(1) For certificate or exemplification with seal, ten dollars;

(2) For copies of records, for each page, a fee of one dollar;

(3) For filing articles of association, incorporation, or consolidation, domestic or foreign, if the capital stock is ten thousand dollars or less, sixty dollars; if the capital stock is more than ten thousand dollars but does not exceed twenty-five thousand dollars, one hundred dollars; if the capital stock is more than twenty-five thousand dollars but does not exceed fifty thousand dollars, one hundred fifty dollars; if the capital stock is more than fifty thousand dollars but does not exceed seventy-five thousand dollars, two hundred twenty-five dollars; if the capital stock is more than seventy-five thousand dollars but does not exceed one hundred thousand dollars, three hundred dollars; and if the capital stock is over one hundred thousand dollars, three dollars additional for each one thousand dollars in excess of one hundred thousand dollars. For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share;

(4) For recording articles of association or incorporation, amendments, revised or restated articles, changes of registered office or registered agent, increase or decrease of capital stock, merger or consolidation, statement of intent to dissolve, and consent to dissolution, revocation of dissolution, articles of dissolution, domestic or foreign, profit or nonprofit, five dollars per page;

(5) For receiving and filing articles of incorporation of corporations formed for religious, benevolent, or literary purposes, not for profit, conducting no business for profit, with no right to declare dividends and not mutual in character, or religious or secret societies, or societies or associations composed exclusively of any class of mechanics, express, telegraph, or other employees formed for mutual protection, and not for profit, and other nonprofit corporations organized under Chapter 21, ten

dollars, plus recording fee;

(6) For filing certificate of increase of capital stock of any corporation for profit, association, or consolidation, domestic or foreign, fifteen dollars, and three dollars for each one thousand dollars of increase of capital stock so certified, plus recording fee;

(7) For filing certificate of decrease of capital stock of any corporation for profit, thirty dollars, plus recording fee;

(8) For filing decree of court changing the name of any corporation or association, thirty dollars, plus recording fee;

(9) For filing amendment to articles of incorporation of any corporation for profit, twenty-five dollars, plus recording fee;

(10) For issuing license, ten dollars;

(11) For filing amendment to articles of incorporation of nonprofit corporation, five dollars, plus recording fee;

(12) For taking acknowledgment, ten dollars;

(13) For administering oath, ten dollars;

(14) For reservation of name, twenty dollars;

(15) For transfer of reserved name, twenty dollars;

(16) For registration of name, twenty-five dollars;

(17) For renewal of registered name, twenty-five dollars;

(18) For change of registered agent or registered office for domestic or foreign corporations, or both, twenty dollars, plus recording fee;

(19) For change of registered agent or registered office for nonprofit corporations, or both, filing, five dollars, plus recording fee;

(20) Fee for filing regarding shares divided and issued into series, revised articles, restated articles, statement of redeemable shares or shares other than redeemable, merger, consolidation, statement of intent to dissolve and consent to dissolution, revocation of dissolution and articles of dissolution of any corporation for profit shall be twenty dollars, plus recording fee;

(21) Fee for filing notice of merger or consolidation, or articles of dissolution for nonprofit corporations shall be five dollars, plus recording fee;

(22) Fee for filing certificates pertaining to foreign corporations regarding mergers, consolidation, and existence, twenty dollars, plus recording fee;

(23) Fee for filing foreign application for certificate of authority, one hundred twenty-five dollars, plus recording fee;

(24) Fee for filing foreign amended application for certificate of authority, twenty dollars, plus recording fee;

(25) Fee for filing withdrawal of a foreign corporation, twenty dollars, plus recording fee; and

(26) For filing a change of street address in any city or village in this state of the registered office of any registered agent, who serves as registered agent for more than one corporation, seventy-five dollars, plus recording fee.

The fees for filing articles of association, incorporation, or consolidation, domestic or foreign, shall be based on the authorized capital stock. All fees set forth in this section shall be paid to the Secretary of State and by him or her remitted to the State Treasurer for credit to the General Fund, except that domestic and foreign corporate filing fees shall be credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Commencing on the operative date of this act, corporations subject to the Business Corporation Act shall pay the fees as set forth in section 5 of this act.

Sec. 215. Section 44-205.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-205.01. (1) The articles of incorporation filed pursuant to section 44-205 shall state (a) the corporate name, which shall not so nearly resemble the name of an existing corporation as, in the opinion of the Director of Insurance, will mislead the public or cause confusion, (b) the place in Nebraska where the registered office and principal office will be located, (c) the purposes, which shall be restricted to the kind or kinds of insurance to be undertaken, such other kinds of business which it shall be empowered to undertake, and the powers necessary and incidental to carrying out such purposes, and (d) such other particulars as are required by the ~~Nebraska Business Corporation Act~~ Business Corporation Act and Chapter 44.

(2) The articles of incorporation may state such other particulars as are permitted by the ~~Nebraska Business Corporation Act~~ Business Corporation Act and Chapter 44, including provisions relating to the management of the business and regulation of the affairs of the corporation and defining,

limiting, and regulating the powers of the corporation, its board of directors, and the shareholders of a stock corporation or the members of a mutual or assessment corporation.

Sec. 216. Section 44-206, Reissue Revised Statutes of Nebraska, is amended to read:

44-206. Within the earlier of thirty days after receiving the certificate of authority to transact business or four months after filing its articles of incorporation, such corporation shall publish a notice in some legal newspaper, which notice shall contain the same information, as far as practicable, as that required under the ~~Nebraska Business Corporation Act~~ Business Corporation Act.

Sec. 217. Section 44-208.02, Reissue Revised Statutes of Nebraska, is amended to read:

44-208.02. If the Director of Insurance approves the forms of subscriptions for capital stock or the forms of application for membership or for insurance, the corporate surety on the bond required by section 44-208.01, and, in the case of stock insurers, the application to solicit subscriptions for stock, he or she shall deliver to the promoter or incorporators a permit in the name of the corporation authorizing it to complete its organization. Upon receiving such permit, the corporation shall have authority to solicit subscriptions and payments for capital stock if a stock insurer and applications and premiums or advance assessments for insurance if other than a stock insurer and to exercise such powers, subject to the limitations imposed by the ~~Nebraska Business Corporation Act~~ Business Corporation Act and Chapter 44, as may be necessary and proper in completing its organization and qualifying for a license to transact the kind or kinds of insurance proposed in its articles of incorporation. No corporation shall issue policies or enter into contracts of insurance until it receives a certificate of authority permitting it to do so.

Sec. 218. Section 44-224.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-224.01. For purposes of sections 44-224.01 to 44-224.10, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance or his or her authorized representative;

(2) Policyholders shall mean the members of mutual insurance companies, the members of assessment associations, and the subscribers to reciprocal insurance exchanges;

(3) Merger or contract of merger shall mean a merger or consolidation agreement between stock insurance companies as authorized by the ~~Nebraska Business Corporation Act~~ Business Corporation Act;

(4) Consolidation or contract of consolidation shall mean a merger or consolidation agreement between companies operating on other than the stock plan of insurance; and

(5) Bulk reinsurance or contract of bulk reinsurance shall mean an agreement whereby one company cedes by an assumption reinsurance agreement fifty percent or more of its risks and business to another company.

Sec. 219. Section 44-224.04, Reissue Revised Statutes of Nebraska, is amended to read:

44-224.04. Any domestic stock insurance company may merge with another stock insurer after the contract of merger is approved by the director. The director shall not approve any such contract of merger unless the interests of the policyholders or shareholders of both parties thereto are properly protected. If the director does not approve the contract of merger, he or she shall issue a written order of disapproval setting forth his or her findings. After having obtained the approval of the director, the contract of merger shall be consummated in the manner set forth in the ~~Nebraska Business Corporation Act~~ Business Corporation Act for the merger or consolidation of stock corporations.

Sec. 220. Section 44-301, Reissue Revised Statutes of Nebraska, is amended to read:

44-301. The ~~Nebraska Business Corporation Act~~ Business Corporation Act, except as otherwise provided in Chapter 44, shall apply to all domestic incorporated insurance companies so far as the act is applicable or pertinent to and not in conflict with other provisions of the law relating to such companies. An assessment association that has accumulated and continues to maintain (1) reserves and (2) surplus or contingency funds at least equal to those required of a mutual insurance company shall, unless otherwise provided by law, be deemed to have all the powers and privileges in transacting its business and managing its affairs as those possessed by a mutual insurance company qualified to transact the same line or lines of insurance as the assessment association.

Sec. 221. Section 44-2128, Reissue Revised Statutes of Nebraska, is amended to read:

44-2128. Section 44-2126 shall not apply to:

(1) Any transaction which is subject to the provisions of the Business Corporation Act and sections 44-224.01 to 44-224.10, ~~and the Nebraska Business Corporation Act,~~ except as otherwise provided in Chapter 44, dealing with the merger or consolidation of two or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the director by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or (b) otherwise not comprehended within the purposes of section 44-2126.

Sec. 222. Section 44-2916, Reissue Revised Statutes of Nebraska, is amended to read:

44-2916. To the extent applicable and when not in conflict with the Nebraska Hospital and Physicians Mutual Insurance Association Act, the provisions of the ~~Nebraska Business Corporation Act~~ Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to associations incorporated pursuant to the Nebraska Hospital and Physicians Mutual Insurance Association Act.

Sec. 223. Section 44-3112, Reissue Revised Statutes of Nebraska, is amended to read:

44-3112. To the extent applicable and when not in conflict with the Nebraska Professional Association Mutual Insurance Company Act, the provisions of the ~~Nebraska Business Corporation Act~~ Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to companies incorporated pursuant to the Nebraska Professional Association Mutual Insurance Company Act.

Sec. 224. Section 44-32,115, Reissue Revised Statutes of Nebraska, is amended to read:

44-32,115. Any person may apply to the director for a certificate of authority to establish and operate a health maintenance organization in compliance with the Health Maintenance Organization Act. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under the act. Operating a health maintenance organization without a certificate of authority shall be a violation of the Unauthorized Insurers Act. A foreign corporation may qualify under the Health Maintenance Organization Act if it registers to do business in this state as a foreign corporation under the ~~Nebraska Business Corporation Act~~ Business Corporation Act and complies with the Health Maintenance Organization Act and other applicable state laws.

Sec. 225. Section 44-3312, Reissue Revised Statutes of Nebraska, is amended to read:

44-3312. (1) Two or more persons may organize a legal service insurance corporation under this section.

(2) The articles of incorporation of a not-for-profit corporation shall conform to the requirements applicable to not-for-profit corporations under the Nebraska Nonprofit Corporation Act and the articles of incorporation of a corporation for profit shall conform to the requirements applicable to corporations for profit under the ~~Nebraska Business Corporation Act~~ Business Corporation Act, except that:

(a) The name of the corporation shall indicate that legal services or indemnity for legal services is to be provided;

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto;

(c) The articles shall state whether members or other providers of services may be required to share operating deficits, either through assessments or through reductions in the compensation for services rendered. They shall also state the general conditions and procedures for deficit sharing and any limits on the amount of the deficit to be assumed by each individual member or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Sec. 226. Section 44-3812, Reissue Revised Statutes of Nebraska, is amended to read:

44-3812. (1) Two or more persons may organize a prepaid dental service corporation under this section.

(2) The articles of incorporation of the corporation shall conform

to the requirements of the Nebraska Nonprofit Corporation Act or to the requirements of the ~~Nebraska Business Corporation Act~~ Business Corporation Act, except that:

(a) The name of the corporation shall indicate that dental services are to be provided;

(b) The purposes of the corporation shall be limited to providing dental services and business reasonably related thereto;

(c) The articles shall state whether members, shareholders, or providers of services may be required to share operating deficits, either through assessments or through reductions in compensation for services rendered, the general conditions and procedures for deficit sharing, and any limits on the amount of the deficit to be assumed by each individual member, shareholder, or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Sec. 227. Section 67-248.02, Revised Statutes Supplement, 1994, is amended to read:

67-248.02. (a) Pursuant to an agreement, one or more domestic or foreign limited partnerships, limited liability companies, or corporations may merge into or consolidate with one or more domestic or foreign limited partnerships, limited liability companies, or corporations. If the resulting entity is a domestic corporation, the ~~Nebraska Business Corporation Act~~ Business Corporation Act shall govern the merger or consolidation. If the surviving or resulting entity is a corporation, the merger or consolidation shall be subject to ~~section 21-2070 or 21-2071~~ sections 128 to 134 of this act. If the surviving or resulting entity is not a domestic corporation or a limited liability company, the board of directors of each domestic corporation party to such merger or consolidation shall, by resolution adopted by each such board, approve a plan of merger or plan of consolidation setting forth information substantially similar to that required by ~~section 21-2070 or 21-2071~~ sections 128 to 134 of this act. If the surviving or resulting entity is a limited liability company, the Limited Liability Company Act shall govern the merger or consolidation. Unless otherwise provided in the partnership agreement, a plan of merger or plan of consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners and (2) by limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement or plan of merger or agreement or plan of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement or plan of merger or agreement or plan of consolidation.

(b) If the surviving or resulting entity is not a domestic limited partnership, limited liability company, or corporation following a merger or consolidation of one or more domestic limited partnerships, limited liability companies, or corporations and one or more foreign limited partnerships, limited liability companies, or corporations, the surviving or resulting entity shall comply with ~~section 21-2076~~ sections 128 to 134 of this act and, for each such domestic limited partnership, a certificate shall be executed and filed in the office of the Secretary of State by the surviving or resulting limited partnership, limited liability company, or corporation stating that the surviving or resulting limited partnership, limited liability company, or corporation agrees that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(c) A merger or consolidation to which a domestic corporation is a party shall become effective as provided in ~~section 21-2075~~ sections 128 to 134 of this act. A merger or consolidation to which a domestic limited liability company is a party shall become effective as provided in sections 21-2647 to 21-2653. Any other merger or consolidation provided for in the Nebraska Uniform Limited Partnership Act shall become effective as provided in the agreement or plan of merger or consolidation. When such merger or consolidation has become effective, the terms of ~~section 21-2075~~ sections 128 to 134 of this act shall apply if the surviving or resulting entity is a corporation, the terms of section 21-2651 shall apply if the surviving or resulting entity is a limited liability company, and the following provisions

shall apply if the surviving or resulting entity is a limited partnership:

(1) The several limited partnerships, limited liability companies, or corporations which are parties to the merger or consolidation agreement shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation agreement;

(2) The separate existence of all limited partnerships, limited liability companies, and corporations which are parties to the merger or consolidation agreement, except the surviving or new limited partnership, shall cease;

(3) If the surviving or new limited partnership is a domestic limited partnership, it shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(4) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and, subject to the Nebraska Uniform Limited Partnership Act, each of the merging or consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships, limited liability companies, and corporations as merged or consolidated shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating entities. The title to any real property or any interest in such property vested in any of such merging or consolidating entities shall not revert or be in any way impaired by reason of such merger or consolidation;

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

(6) The equity securities of the corporation or corporations, limited liability company or companies, and limited partnership or limited partnerships party to the merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged shall cease to exist, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted in accordance with the terms of the merger or consolidation, subject to any rights under ~~section 21-2079~~ sections 137 to 150 of this act or the Limited Liability Company Act.

Sec. 228. The Revisor of Statutes shall assign sections 1 to 192 of this act to Chapter 21, article 20, and sections 198, 199, and 201 of this act to Chapter 21, article 3.

Sec. 229. This act becomes operative on January 1, 1996.

Sec. 230. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 231. Original sections 8-1401, 21-302, 21-305, 21-323, 21-325, 21-329, 21-1301, 21-2103, 21-2105, 21-2110, 21-2115, 21-2203, 21-2204, 21-2439, 30-3214, 44-205.01, 44-206, 44-208.02, 44-224.01, 44-224.04, 44-301, 44-2128, 44-2916, 44-3112, 44-32,115, 44-3312, and 44-3812, Reissue Revised Statutes of Nebraska, and sections 9-614, 21-2209, 23-3586.01, 33-101, and 67-248.02, Revised Statutes Supplement, 1994, are repealed.

Sec. 232. The following sections are outright repealed: Sections 21-2001 to 21-2003, 21-2005 to 21-2012, 21-2014 to 21-2026, 21-2028, 21-2031 to 21-2035, 21-2037 to 21-2051, 21-2053 to 21-2069, 21-2071.01 to 21-2074, 21-2077 to 21-20,138, and 21-20,140 to 21-20,144, Reissue Revised Statutes of Nebraska, and sections 21-2004, 21-2027, 21-2029, 21-2030, 21-2036, 21-2052, 21-2070, 21-2071, 21-2075, 21-2076, and 21-20,139, Revised Statutes Supplement, 1994.