CHAPTER 1

General Provisions

Subchapter
A. Short Title and Savings Provisions
B. Filing Documents
C. Secretary of State
D. Definitions
E. Review of Contested Corporate Action
F. Religious Corporations
G. Attorney General [Optional]
[Subchapter] A
SHORT TITLE AND SAVINGS PROVISIONS
§ 1.01. Short title.
§ 1.02. Reservation of power to amend or repeal.
§ 1.03. Relationship of [act] to other laws.

§ 1.01. SHORT TITLE
This [act] shall be known and may be cited as the “[name of state]
Nonprofit Corporation Act.”

Source Note: Patterned after Model Business Corporation Act,
3d Ed. (2002) § 1.01. Reenactment of Revised Model Non-
profit Corporation Act (1987) § 1.01.

CROSS-REFERENCES
Application of act to existing domestic nonprofit
corporation, see § 17.01.
Application of act to existing qualified foreign nonprofit
corporation, see § 17.02.
Effective date of act, see § 17.06.
Saving provisions, see § 17.03.

OFFICIAL COMMENT
The short title provided by Section 1.01 creates a convenient
name for the enacting state’s nonprofit corporation act.
See the Introduction for a general description of the develop-
ment of this act, the purposes it is intended to serve, the prin-
ciples under which it was prepared, and the roles of the Cross-
References and Official Comments.

§ 1.02. RESERVATION OF POWER TO AMEND
OR REPEAL
The [name of state legislature] has power to amend or repeal all
or part of this [act] at any time and all domestic and foreign
MODEL NONPROFIT CORPORATION ACT, THIRD EDITION

nonprofit corporations subject to this [act] are governed by the amendment or repeal.


CROSS-REFERENCES

- Application of act to existing domestic nonprofit corporation, see § 17.01.
- Application of act to existing qualified foreign nonprofit corporation, see § 17.02.
- Effective date of act, see § 17.06.
- Saving provisions, see § 17.03.

OFFICIAL COMMENT

Provisions similar to Section 1.02 have their genesis in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibited the application of newly enacted statutes to existing corporations while suggesting the efficacy of a reservation of power similar to Section 1.02. The purpose of Section 1.02 is to avoid any possible argument that a nonprofit corporation or a member, beneficiary, or any other person has contractual or vested rights in any specific statutory provision and to ensure that the state may in the future modify its corporation statutes as it deems appropriate and require existing corporations to comply with the statutes as modified.

All articles of incorporation or certificates of authority granted under this act are subject to the reservation of power set forth in Section 1.02. Further, corporations “governed” by this act—which includes all corporations formed or qualified under earlier, general incorporation statutes that contain a reservation of power—are also subject to the reservation of power of Section 1.02 and bound by subsequent amendments to this act.

Many states have constitutional provisions mandating the reservation of power to amend or modify corporate statutes and
charters. In those states, Section 1.02 is also supported by specific constitutional authorization.

§ 1.03. RELATIONSHIP OF [ACT] TO OTHER LAWS

(a) Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

(b) This [act] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [act].

Source Note: Patterned after Model Entity Transactions Act § 103.

OFFICIAL COMMENT

Section 103(a) is a standard provision in uniform and model acts and has been included to make clear that unless a particular provision of this act displaces “other law,” the principles of law and equity continue to apply, including with respect to the rights of creditors, transferees, assignees, or other similar parties.

Subsection (b) preserves regulatory jurisdiction over actions and fundamental transactions under the act, such as amendments of the articles, mergers, sales of assets, and dissolution. The provisions of the act must be read together with any applicable regulatory law and, to the extent they are irreconcilable, the provisions of the regulatory law will control.

This section does not create an independent power of a court or regulatory agency to enjoin or reverse an action or fundamental transaction. The appropriate remedy for violation of a regulatory law will be determined under the regulatory law itself.

Charitable corporations also must comply with applicable provisions of the Internal Revenue Code.
[Subchapter] B
FILING DOCUMENTS
§ 1.20. Filing requirements.
§ 1.21. Forms.
§ 1.22. Filing, service, and copying fees.
§ 1.23. Effective time and date of filing.
§ 1.24. Correcting a filed record.
§ 1.25. Filing duty of secretary of state.
§ 1.26. Refusal of secretary of state to file record.
§ 1.27. Evidentiary effect of copy of filed record.
§ 1.28. Certificate of existence.
§ 1.29. Penalty for signing false record.

§ 1.20. FILING REQUIREMENTS
(a) To be entitled to filing by the secretary of state under this [act], a record must satisfy the following requirements and the requirements of any other provision of this [act] that adds to or varies these requirements:
(1) This [act] requires or permits filing the record in the office of the secretary of state.
(2) The record contains the information required by this [act] and may contain other information.
(3) The record is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign nonprofit corporations need not be in English if accompanied by a reasonably authenticated English translation.
(4) The record is signed on behalf of the domestic or foreign entity as follows:
   (i) if the entity is a domestic or foreign nonprofit corporation, by the chair of the board of directors, a member of a designated body, or an officer;
(ii) if directors or members of a designated body have not been selected or the corporation has not been formed, by an incorporator;

(iii) if the entity is not a domestic or foreign nonprofit corporation, by a person with authority to sign for the entity; or

(iv) if the entity is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(5) The record states the name and capacity of the person signing it. The record may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

(6) The record is delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If the record is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the record.

(b) When the record is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this [act] or other law is paid or provision for payment is made in a manner permitted by the secretary of state.

(c) Whenever a provision of this [act] permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed record shall be set forth in the plan or filed record.

(2) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices,
market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;
(ii) a determination or action by any person or body, including the nonprofit corporation or any other party to a plan or filed record; or
(iii) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

(3) As used in this subsection:
(i) “filed record” means a record filed with the secretary of state under any provision of this [act] except [Chapter] 15 or Section 16.21; and
(ii) “plan” means a plan of domestication, business conversion, entity conversion, merger, or membership exchange.


CROSS-REFERENCES
Corporate name, see Ch. 4 and § 15.06.
Correcting filed record, see § 1.24.
Date of filing, see § 1.25(b).
“Deliver” defined, see § 1.40.
“Designated body” defined, see § 1.40.
Effective time and date of filing, see § 1.23.
Filing fees, see § 1.22.
Forms, see § 1.21.
Penalty for signing false record, see § 1.29.
“Record” defined, see § 1.40.
“Secretary” of corporation defined, see § 1.40.
Secretary of state’s filing duty, see § 1.25.
“Sign” defined, see § 1.40.
OFFICIAL COMMENT

1. In General

Subchapters 1B and C provide the general procedures for filings under the act with the secretary of state. Similar procedures are also needed to govern filings with the secretary of state under other entity laws. States should consider whether to expand the scope of Subchapters 1B and C so that they also apply to filings under other entity laws and place the subchapters in a different location in their state code or, alternatively, to make filings under the act subject to other provisions of law instead of Subchapters 1B and C.

Section 1.20 standardizes the filing requirements for all records required or permitted by this act to be filed with the secretary of state. In a few instances, other sections of the act impose additional requirements that must also be complied with if the record in question is to be filed. Section 1.20 relates only to records that the act expressly requires or permits to be filed with the secretary of state; it does not authorize or direct the secretary of state to accept or reject for filing other records relating to nonprofit corporations and does not treat records required or permitted to be filed under other statutes.

The purposes of the filing requirements of Chapter 1 are: (1) to simplify the filing requirements by the elimination of formal or technical requirements that serve little purpose; (2) to minimize the number of items to be processed by the secretary of state; and (3) to eliminate all possible disputes between persons seeking to make filings and the secretary of state as to the legal efficacy of the filings.

The requirements of Section 1.20 are summarized in the following comments.

2. Form

This act permits a filing to be made in typewritten or printed form through physical delivery to the secretary of state or, alternatively, by electronic transmission. Electronic transmission is intended to include the evolving methods of electronic delivery, including facsimile transmissions and e-mail, as may be
permitted by the secretary of state. See Official Comment 7 to Section 1.40. The filing must also be in the English language (except to the limited extent permitted by Section 1.20(a)(3)). The secretary of state is permitted to prescribe forms but Section 1.21 provides that their use is not mandatory. As a result the secretary of state may not reject documents on the basis of form if they contain the information called for by the specific statutory requirement and meet the minimal formal requirements of this section.

3. Signature

To be filed a record must simply be signed by a corporate officer. No specific corporate officer is designated as the appropriate officer to sign although the record must state the office or capacity in which the officer signs the record. Among the officers who are expressly authorized to sign a record is the chair of the board of directors or a member of a designated body, a choice that may be appropriate if the corporation has a board of directors or designated body but has not appointed officers. If a corporation has not been formed or has neither officers nor a board of directors or designated body, an incorporator may sign the record. See Section 1.40 for a description of the manner in which a document may be “signed.” See also the definition of “officer” in Section 1.40.

The requirement in some state statutes that records must be acknowledged or verified as a condition for filing has not been included. These requirements serve little purpose in connection with records filed under corporation statutes. (See in this connection Section 1.29, which makes it a criminal offense for any person to sign a record for filing with knowledge that it contains materially false information.) On the other hand, many organizations, like lenders or title companies, may desire that specific records include acknowledgments, verifications, or seals; Section 1.20(a)(5) therefore provides that the addition of these forms of additional authentication does not affect the eligibility of the record for filing.
4. Contents

A record must be filed by the secretary of state if it contains the information required by the act. The record may contain additional information or statements and their presence is not grounds for the secretary of state to reject the record for filing. These records must be accepted for filing even though the secretary of state believes that the language is irrelevant or not authorized by the act or by general legal principles. In view of the very limited discretion granted to secretaries of state under this section, Section 1.25(d) defines the secretary of state’s role as “ministerial” and provides that no inference or presumption arises from the fact that the secretary of state accepted a record for filing. See the Official Comments to Sections 1.25 and 1.30.

5. Number of Copies

The act permits the secretary of state to require an exact or conformed copy of a document that is being filed in typewritten or printed form, thus providing the secretary of state flexibility to determine whether or not such copies serve any purpose. There is no such requirement with respect to records transmitted electronically.

Under Section 1.20(a)(6) an “exact” copy is a reproduction of the executed original document, while a “conformed” copy is a copy on which the existence of signatures is entered or noted on the copy. A person submitting “duplicate originals” meets any requirement for an exact or conformed copy since the secretary of state may treat the duplicate original as a “conformed copy.”

6. Reference to Extrinsic Facts

Section 1.20(c) permits any of the terms of a filed record or a plan to be made dependent on facts outside the record or plan. Terms of a filed record or plan may be made dependent on a fact outside the control of the corporation. A common example is a reference to an interest rate such as the federal funds rate. Section 1.20(c)(2) also provides that the facts on which a filed
record or plan may be made dependent include facts within the control of the corporation in order to make clear that those facts do not need to occur independently. In addition to a determination or action by the corporation, references to extrinsic facts may also include references to determinations or actions by the board of directors, a designated body, a committee of the board or a designated body, an officer, employee or agent of the corporation, or any other person.

The only limitations on referring to extrinsic facts in a filed record or plan are that the facts must be objectively ascertainable and that the filed record or plan must state the manner in which the facts will operate. The purpose of these requirements is to avoid disputes over whether an extrinsic fact has occurred or its effect.

If the terms of a filed record or plan are made dependent on an agreement or other record as authorized by Section 1.20(c)(2)(iii), care should be taken to identify the agreement or record appropriately. The agreement or record must be identified in a manner that satisfies the objectively ascertainable standard, and the manner in which the terms or events under it are to operate must be specified. Consideration should also be given to the intended effects of an amendment to the agreement or record. A simple reference to an agreement will presumably include subsequent amendments, while a reference to the same agreement as in effect on a specified date presumably will not.

Chapters 9 and 11 generally require the board of directors to adopt a plan. If the terms of such a plan are determined by reference to extrinsic facts, the board should take care to establish appropriately defined parameters for such terms in order to discharge its statutory duties.

§ 1.21. FORMS
The secretary of state may prescribe and furnish on request forms for filings required or permitted under this [act], but their use is not mandatory.
CROSS-REFERENCES
Annual report, see § 16.21.
Application for certificate of authority, see § 15.03.
Application for certificate of withdrawal, see § 15.20.
Certificate of existence, see § 1.28.
Effective time and date of filing, see § 1.23.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.

OFFICIAL COMMENT
As described in the Official Comment to Section 1.20, records are entitled to filing under the act if they meet the substantive and formal requirements of the act; they may also contain additional information if the person submitting the record so elects. See the Official Comments to Sections 1.20 and 1.25. In these circumstances it is not appropriate to vest the secretary of state with general authority to establish mandatory forms for use under the act.

§ 1.22. FILING, SERVICE, AND COPYING FEES

Alternative A
(a) The secretary of state shall collect the following fees when the records described in this subsection are delivered to the secretary of state for filing:

<table>
<thead>
<tr>
<th>Document</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Articles of incorporation</td>
<td>$____</td>
</tr>
<tr>
<td>(2) Application for use of indistinguishable name</td>
<td>$.___</td>
</tr>
<tr>
<td>(3) Application for reserved name</td>
<td>$.___</td>
</tr>
</tbody>
</table>

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(4) Notice of transfer of reserved name $___.
(5) Application for registered name $___.
(6) Application for renewal of registered name $___.
(7) Corporation’s statement of change of registered agent or registered office or both $___.
(8) Agent’s statement of change of registered office for each affected corporation, not to exceed a total of $_____ $___.
(9) Agent’s statement of resignation No fee.
(10) Articles of domestication $___.
(11) Articles of charter surrender $___.
(12) Articles of business conversion $___.
(13) Articles of domestication and conversion $___.
(14) Articles of entity conversion $___.
(15) Amendment of articles of incorporation $___.
(16) Restatement of articles of incorporation with amendment of articles $___.
(17) Articles of merger or membership exchange $___.
(18) Articles of dissolution $___.
(19) Articles of revocation of dissolution $___.
(20) Certificate of administrative dissolution No fee.
(21) Application for reinstatement following administrative dissolution $___.
(22) Certificate of reinstatement No fee.
(23) Certificate of judicial dissolution No fee.
(24) Application for certificate of authority $___.
(25) Application for amended certificate of authority $___.
(26) Application for certificate of withdrawal $___.
(27) Application for transfer of authority $___.
(28) Certificate of revocation of authority to conduct activities No fee.
(29) Annual report $___.
(30) Articles of correction $___.
(31) Application for certificate of existence or authorization $___.
(32) Any other document required or permitted to be filed by this [act] $_____.

(b) The secretary of state shall collect a fee of $______ each time process is served on the secretary of state under this [act]. The party to a proceeding causing service of process may recover this fee as costs if that party prevails in the proceeding.

(c) The secretary of state shall collect the following fees for copying and certifying the copy of any record filed under this [act]:
   (1) $_____ a page for copying; and
   (2) $______ for the certificate.


Alternative B

The secretary of state shall promulgate rules, in accordance with the [state’s administrative procedure act], setting fees for filings and services by the secretary of state under this [act].

CROSS-REFERENCES

Agent’s change of registered office, see § 5.02.
Agent’s resignation, see § 5.03.
Amended certificate of authority, see § 15.04.
Amendment of articles of incorporation, see §§ 10.06 and 10.08.
Annual report, see § 16.21.
Certificate of authority, see § 15.03.
Certificate of withdrawal, see § 15.20.
Corporation’s change of registered agent or office, see § 5.02.
Correction, see § 1.24.
Dissolution:
   administrative, see § 14.21.
judicial, see § 14.31.
reinstatement, see § 14.22.
revocation, see § 14.04.
voluntary, see §§ 14.01 and 14.03.

Evidentiary effect of certified copy, see § 1.27.
Existence, see § 1.28.
Incorporation, see § 2.01.
Membership exchange, see § 11.03.
Merger, see § 11.02.
Registered name, see § 4.03.
Renewal of registered name, see § 4.03.
Reserved name, see § 4.02.
Restatement of articles of incorporation, see § 10.07.
Revocation of certificate of authority, see § 15.31.
Service on secretary of state, see §§ 15.20 and 15.31.
Transfer of registered name, see § 4.03.

OFFICIAL COMMENT

Section 1.22 establishes in a single section the filing fees for all records that may be filed under the act. The dollar amounts for each record should be inserted by each state as it adopts the act.

The list of filings in Section 1.22 includes all records that are authorized to be filed with the secretary of state under the act. The catchall in paragraph (a)(32) will apply to any filing for which a state does not establish a specific filing fee plus any filing that later amendments to the statute may authorize or direct be filed with the secretary of state without establishing a specific filing fee.

Paragraph (a)(8) contains a maximum fee for filing a change of address of a registered agent. Since corporation service companies serve as registered agents for thousands of corporations in many jurisdictions, their change of address may require a very large number of filings. Hence, the fee is broadly based on the number of corporations affected but a maximum fee is specified.
to reflect that as the number of changes increases the cost per
change should decrease.

Paragraph (a)(9) states that no fee is applicable to filing the
resignation of a registered agent. This provision permits a person
who is named as a registered agent without the person’s consent,
or who agrees to serve as registered agent for a fee and the fee is
not paid, to eliminate any reference to the person as a registered
agent in the records of the secretary of state without expense.

Sections 11.07, 15.20, and 15.31 require the secretary of state to
serve process on foreign corporations under the circumstances there
specified. The fee for this service is set forth in Section 1.22(b).

Section 1.22(c) establishes standard fees for copying filed
records and certifying that copies are true copies under Section
1.27.

§ 1.23. EFFECTIVE TIME AND DATE OF FILING

(a) Except as provided in subsection (b) and Section 1.24(b), a
record accepted for filing is effective:

(1) at the date and time of filing, as evidenced by such
means as the secretary of state may use for the purpose
of recording the date and time of filing; or

(2) at the time specified in the record as its effective time on
the date it is filed.

(b) A record may specify a delayed effective time and date, and
if it does so the record becomes effective at the time and date
specified. If a delayed effective date but no time is specified,
the record is effective at the close of business on that date. A
delayed effective date for a record may not be later than the
90th day after the date it is filed.

Source Note: Patterned after Model Business Corporation Act,
3d Ed. (2002) § 1.23. Substantially a reenactment of Revised

CROSS-REFERENCES

Effective date:

domestication, see § 9.22.
entity conversion, see § 9.53.
for-profit conversion, see § 9.32.
foreign for-profit domestication and conversion,
see § 9.41.
merger or membership exchange, see § 11.06.
voluntary dissolution, see § 14.03.
Filing duty of secretary of state, see § 1.25.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.

OFFICIAL COMMENT

Section 1.23(a) provides that records accepted for filing become effective at the date and time of filing, or at another specified time on that date, unless a delayed effective date is selected under Section 1.23(b). This section gives express statutory authority to the common practice of most secretaries of state of ignoring processing time and treating a record as effective as of the date it is submitted for filing even though it may not be reviewed and accepted for filing until several days later.

Section 1.23(a) requires secretaries of state to maintain some means of recording the date and time of filing of records and provides that records become effective at the recorded time on the date of filing. This provision should eliminate any doubt about situations involving same-day transactions in which a filing—for example, articles of merger—is made on the morning of the date the merger is to become effective. Section 1.23(a) contemplates that the time of filing, as well as the date, will be routinely recorded.

Section 1.23(b) provides an alternative method of establishing the effective date of a filing. The record itself may fix as its effective date any date within 90 days after the date it is filed; it may also fix the time it becomes effective on that date. If no time is specified, the filing becomes effective as of the close of business on the specified date. The act also allows the effective date fixed in a filing to be corrected to a limited extent. See the Official Comment to Section 1.24.

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Section 1.23(b) does not authorize or contemplate the establishment of a retroactive effective date that is prior to the date of filing.

§ 1.24. CORRECTING A FILED RECORD

(a) A domestic or foreign entity may correct a record filed by the secretary of state by filing with the secretary of state articles of correction, signed by the corporation or other party in interest, that:
   (1) describe the record (including its filing date) or attach a copy of it to the articles, and
   (2) specify the correction being made.

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


CROSS-REFERENCES

“Deliver” defined, see § 1.40.
Effective time and date of filing, see § 1.23.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.

OFFICIAL COMMENT

Section 1.24 permits making corrections in filed records without refiling the entire record or submitting formal articles of amendment. This correction procedure has two advantages: (1) filing articles of correction may be less expensive than refiling the record or filing articles of amendment, and (2) articles of correction do not alter the effective date of the underlying filing being corrected. Indeed, under Section 1.24(b), even the correction relates back to the original effective date of the filing except as to persons relying on the original filing and adversely affected.
by the correction. As to these persons, the effective date of articles of correction is the date the articles are filed.

Unlike many organic laws, the act does not contain a list of the types of problems that may be corrected under this section. The rule in Section 1.24(b) on how a correction will operate was considered a sufficient safeguard against abuse of the correction procedure and thus the list in the prior version of the act of what could be corrected has been omitted. Any problem that could be corrected under the prior version of the act, of course, may also be corrected under the broader correction procedure of current Section 1.24.

A provision in a filing setting an effective date (Section 1.23) may be corrected under this section, but the corrected effective date must comply with Section 1.23 measured from the date of the original filing being corrected, i.e., it cannot be before the date of the original filing or more than 90 days thereafter.

§ 1.25. FILING DUTY OF SECRETARY OF STATE

(a) A record delivered to the office of the secretary of state for filing that satisfies the requirements of Section 1.20 must be filed by the secretary of state.

(b) The secretary of state files a record by recording it as filed on the date and time of receipt. After filing a record, the secretary of state shall deliver to the person making the filing or the person’s representative a copy of the record with an acknowledgement of the date and time of filing.

(c) If the secretary of state refuses to file a record, the secretary of state shall return it to the person making the filing or the person’s representative within five days after the record was delivered, together with a brief explanation in the form of a record of the reason for the refusal to file it.

(d) The duty of the secretary of state to file records under this section is ministerial. Except as provided in Section 2.03(b), the filing or refusal to file a record does not create a presumption that the record is valid or invalid or that information contained in the record is correct or incorrect.
(e) If a law other than this [act] prohibits the disclosure by the secretary of state of information contained in a record delivered for filing, the secretary of state shall file the record if it otherwise complies with this act but may redact such information so that it is not available to the public.


**CROSS-REFERENCES**

Appeal from rejection of filing, see § 1.26.

“Deliver” defined, see § 1.40.

Effective time and date of filing, see § 1.23.

Filing requirements:

- fees, see § 1.22.
- generally, see § 1.20.

Powers of secretary of state, see § 1.30.

Resignation of registered agent, see §§ 5.03 and 15.09.

Service on foreign nonprofit corporation, see § 15.10.

**OFFICIAL COMMENT**

1. *Filing Duty in General*

Under Section 1.25 the secretary of state is required to file a record if it “satisfies the requirements of Section 1.20.” This language should be contrasted with those state statutes that require the secretary of state to ascertain whether a record “conforms with law” before filing it. The purpose of the formulation used in this act is to limit the discretion of the secretary of state to a ministerial role in reviewing the contents of records. If the record satisfies the requirements of Section 1.20 and contains the information required by the applicable provision of the act, the secretary of state under Section 1.25 must file it even though it contains additional provisions the secretary of state may feel are irrelevant or not authorized by the act or by general legal principles. Consistent with this approach, Section 1.25(d) states that
the filing duty of the secretary of state is ministerial and provides that filing a record with the secretary of state does not affect the validity or invalidity of any provision contained in the record and does not create any presumption with respect to any provision. Persons adversely affected by provisions in a filing may test their validity in a proceeding appropriate for that purpose. Similarly, the attorney general of the state may also question the validity of provisions of records filed with the secretary of state in an independent suit brought for that purpose; in neither case should any presumption or inference be drawn about the validity of the provision from the fact that the secretary of state accepted the record for filing.

2. Mechanics of Filing

Section 1.25(b) provides that when the secretary of state files a record, the secretary of state records it as filed on the date and time of receipt, retains the original filing for the state’s records, and delivers a copy of the filing to the corporation or its representative with an acknowledgement of the date and time of filing. The acknowledgement may be endorsed on the record or be provided separate from the filed record. In the case of a filing transmitted electronically, delivery of the acknowledgement may be made by electronic transmission.

The copy returned by the secretary of state will be the exact or conformed copy if one has been required by the secretary of state, or will be a copy made by the secretary of state if an exact or conformed copy was not required. Consideration was given to dispensing with a copy of the filing and providing only for the return of an acknowledgement of filing. Several states currently follow this practice with respect to articles of incorporation and other documents. It was felt to be important, however, to continue a practice by which each corporation receives back from the secretary of state a record that on its face shows that it is a copy of the record that was filed with the secretary of state. This copy is usually placed in the minute book and is available for informal inspection without requiring a person to examine the records of the secretary of state. Of course, a person desiring
a certified copy of any filed record may obtain it from the office
of the secretary of state by paying the fee prescribed in Section
1.22(c). Sections 5.03 and 15.09 also require the secretary of state
to send a copy of a statement of resignation filed by a registered
agent to the corporation previously represented by the agent.

3. Rejection of Filing by Secretary of State

Because of the simplification of formal filing requirements
and the limited discretion granted to the secretary of state
by the act, rejection of filings should occur only rarely. Sec-
tion 1.25(c) provides that if the secretary of state does reject
a record for filing, the secretary of state must return it to the
person making the filing or the person’s representative within
five days together with a brief written explanation of the reason
for rejection. In the case of a record transmitted electronically,
rejection of the record may be made electronically by the secre-
tary of state or by a mailing to the corporation at its registered
office. A rejection may be the basis of judicial review under
Section 1.26.

§ 1.26. REFUSAL OF SECRETARY OF STATE
TO FILE RECORD

(a) If the secretary of state refuses to file a record delivered for
filing because it does not satisfy the requirements of Section
1.20, the record may be resubmitted accompanied by an
opinion in the form of a record from a lawyer admitted to
practice in this state stating why the record does satisfy those
requirements and the authorities upon which the opinion is
based. The secretary of state may rely with respect to any dis-
puted point of law upon the opinion in determining whether
the record conforms to law.

(b) If the secretary of state refuses to file a record delivered
for filing, and as an alternative to resubmitting the record
under subsection (a), or following a refusal to file the record
after it is resubmitted under subsection (a), the person that
submitted the record may appeal the refusal to the [name

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or describe] court [of the county where the entity’s principal office (or, if none in this state, its registered office) is or will be located] [of county] under the following procedures:

1. The appeal is commenced by petitioning the court to compel filing the record and by attaching to the petition the record and the explanation of the secretary of state for the refusal to file.

2. The court may summarily order the secretary of state to file the record or take other action the court considers appropriate.

3. The final decision of the court may be appealed as in other civil proceedings.

Source Note: Subsection (a) is patterned after CA Corp. Code § 5008. Subsection (b) is derived from Revised Model Non-profit Corporation Act (1987) § 1.26.

CROSS-REFERENCES

“Deliver” defined, see § 1.40.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.
“Principal office”:
   defined, see § 1.40.
   designated in annual report, see § 16.21.
Registered office:
   designated in annual report, see § 16.21.
   requirement, see §§ 2.02, 5.01, and 15.07.
Secretary of state’s filing duty, see § 1.25.

OFFICIAL COMMENT

1. The Court with Jurisdiction to Hear Appeals from the Secretary of State

The identity of the specific court with jurisdiction to hear appeals from the secretary of state under Section 1.26(b) must be
SECTION 1.26

supplied by each state when enacting this section. It is intended that this should be a court of general civil jurisdiction. It may be either the court located in the capital of the state or the court in the county where the corporation’s principal business office is located in the state or, if the corporation does not have a principal office in the state, the court located in the county in which its registered office is located. The annual report of the corporation must state where the principal office of the corporation (which need not be within the state) is located. See Section 16.21. Other sections of the act also contemplate that the court with jurisdiction over substantive corporate matters will be designated in the statute. See, for example, Section 7.03, relating to the ordering of a members’ meeting after the corporation fails to hold such a meeting. It is expected that jurisdiction over litigation with respect to substantive matters will normally be vested in the court in the county of the corporation’s principal or registered office. See the Official Comment to Section 7.03.

2. “Summary” Orders

In view of the limited discretion of the secretary of state under the act, a “summary” order appears to be appropriate in Section 1.26(b). Throughout the act the term “summarily order” or similar language is used where courts are authorized to order action taken and the person charged with taking the original action has little or no discretion. The words “summarily order” are not used in a technical sense but to refer to a class of cases where the court might appropriately order that action be taken on the face of the pleadings or after an oral hearing but without any need to resolve disputed factual issues.

3. Burden of Proof and Review Standard

The act does not address either the burden of proof or the standard for review in judicial proceedings challenging action of the secretary of state. It is contemplated that these matters will be governed by general principles of judicial review of agency action in each adopting state.
§ 1.27. EVIDENTIARY EFFECT OF COPY OF FILED RECORD

A certificate from the secretary of state delivered with a copy of a record filed by the secretary of state conclusively establishes that the original record is on file with the secretary of state.


CROSS-REFERENCES

Certifying fee, see § 1.22.
Forms, see § 1.21.
Secretary of state’s filing duty, see § 1.25.

OFFICIAL COMMENT

The secretary of state may be requested to certify that a specific record has been filed with the secretary of state upon payment of the fees specified in Section 1.22(c). Section 1.27 provides that the certificate conclusively establishes that the record is on file. The limited effect of the certificate is consistent with the ministerial filing obligation imposed on the secretary of state under the act. The certificate from the secretary of state, as well as the copy of the record, may be delivered by electronic transmission.

§ 1.28. CERTIFICATE OF EXISTENCE

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic nonprofit corporation or a certificate of authorization for a qualified foreign nonprofit corporation.

(b) A certificate of existence or authorization sets forth:
   (1) the name of the domestic nonprofit corporation or the name used by the foreign nonprofit corporation in this state;
   (2) that:
SECTION 1.28

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

(3) that all fees, taxes, and penalties owed to this state have been paid, if:
   (i) payment is reflected in the records of the secretary of state, and
   (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) that its most recent annual report required by Section 16.21 has been filed with the secretary of state;

(5) that articles of dissolution have not been filed; and

(6) other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) 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 nonprofit corporation is in existence or is authorized to conduct activities in this state.


CROSS-REFERENCES

Filing fees, see § 1.22.

Filing requirements, see § 1.20.

Forms, see § 1.21.

“Principal office”:
   defined, see § 1.40.
   designated in annual report, see § 16.21.

Registered office
   designated in annual report, see § 16.21.
   requirement, see §§ 2.02, 5.01, and 15.07.
OFFICIAL COMMENT

Section 1.28 establishes a procedure by which anyone may obtain a conclusive certificate from the secretary of state that a particular domestic or foreign nonprofit corporation is in existence or is authorized to conduct activities in the state. The certificate will probably be a standardized form. The secretary of state is to make the judgment whether or not the corporation is in existence or is authorized to conduct activities from public records only and is not expected to make a more extensive investigation. In appropriate cases, the secretary of state may issue a certificate subject to specified qualifications.

Section 1.28(b)(3) refers only to fees, taxes, or penalties the payment of which is reflected in the records of the secretary of state. Those fees, taxes, and penalties include those collected by the secretary of state or collected by other agencies and reported to the secretary of state. In some states the secretary of state may ascertain from other agencies that other fees, taxes, or penalties have been paid and include this information in the certificate. In states where this procedure does not unduly delay the issuance of certificates, Section 1.28 may be revised appropriately. Section 1.28(b)(3) relates only to fees, taxes, or penalties to the extent their nonpayment affects the existence or authorization to conduct activities of the corporation.

A certificate of existence or authorization that may be relied on as binding and conclusive is of material assistance to attorneys who may be required to give formal legal opinions in connection with corporate transactions.

§ 1.29. PENALTY FOR SIGNING FALSE RECORD

A person commits a [______] misdemeanor [punishable by a fine not to exceed $ _______] if the person signs a record knowing it is false in any material respect and the record is delivered to the secretary of state for filing.

SECTION 1.29

CROSS-REFERENCES

“Deliver” defined, see § 1.40.
“Sign” defined, see § 1.40.

OFFICIAL COMMENT

Section 1.29 makes it a criminal offense for any person to sign a record that the person knows is false in any material respect with intent that the record be submitted for filing to the secretary of state. As provided in Section 1.40, “sign” includes actions to authenticate or adopt a record beyond just a manual signature.

Section 1.29 is keyed to the classification of offenses provided by the Model Penal Code. If a state has not adopted this classification, the dollar amount of the fine should be substituted for the misdemeanor classification.
[Subchapter] C
SECRETARY OF STATE
§ 1.30. Powers.

§ 1.30. POWERS
The secretary of state has the powers reasonably necessary to perform the duties required of the secretary of state by this [act].


CROSS-REFERENCES
Administrative dissolution, see § 14.20.
Revocation of certificate of authority of foreign nonprofit corporation, see Subch. 15C.
Secretary of state’s filing duty, see § 1.25.

OFFICIAL COMMENT
Section 1.30 is intended to grant the secretary of state the authority necessary for the efficient performance of the filing and other duties imposed by the act but is not intended to give the secretary of state general authority to establish public policy. The most important aspects of a modern corporation statute relate to the creation and maintenance of relationships among persons interested in or involved with a corporation. These relationships basically should be a matter of concern to the parties involved and not subject to regulation or interpretation by the secretary of state. Further, even in situations where it is claimed that the corporation has been formed or is being operated for purposes that may violate the public policies of the state, the secretary of state generally should not be the governmental official who determines the scope of public policy through administration of the filing responsibilities under the act. Rather, the attorney general may seek to enjoin the illegal conduct or to dissolve involuntarily the offending corporation.
§ 1.40. [ACT] DEFINITIONS

In this [act], unless the context clearly indicates otherwise:

(1) “Articles” or “articles of incorporation” means the original articles of incorporation, all amendments thereof, and any other records filed with the secretary of state with respect to a domestic nonprofit corporation under any provision of this [act] except Section 16.21. If any record filed under this [act] restates the articles in their entirety, thenceforth the articles shall not include any prior filings.


(2) “Board” or “board of directors” means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:

(i) the authority, powers, or functions of the board have been vested in, or are exercised by, the designated body; and

(ii) the provision of this [act] in which the term appears is relevant to the discharge by the designated body of its authority, powers, or functions.


(3) “Business corporation” or “domestic business corporation” means a corporation incorporated under the laws
of this state and subject to the provisions of the [Model Business Corporation Act].


(4) “Bylaws” means the code or codes of rules (other than the articles of incorporation) adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.

Source Note: Derived from Revised Model Nonprofit Corporation Act (1987) § 1.40(4).

(5) “Charitable corporation” means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

Source Note: New.

(6) “Charitable purpose” means a purpose that:
   (i) would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code, or
   (ii) is considered charitable under law other than this [act] or the Internal Revenue Code.

Source Note: New.

(7) “Conspicuous” means so written, displayed, or presented that a reasonable person against whom the record is to operate should have noticed it. For example, text in italics, boldface, contrasting color, or capitals, or that is underlined, is conspicuous.


(8) “Corporation,” “domestic corporation,” “domestic nonprofit corporation,” or “nonprofit corporation” means a corporation incorporated under or subject to the provisions of this [act] that is not a foreign corporation.
SECTION 1.40


(9) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.


(10) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt by the secretary of state.


(11) “Designated body” means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles or bylaws in that person or group, would be required by this [act] to be exercised by the board or the members.


(12) “Director” means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position. The term does not include a member of a designated body, as such.


(13) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of this state.
(14) “Effective date of notice” is provided for in Section 1.41.

(15) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(16) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign business corporation.

(17) “Eligible interests” means interests or shares.

(18) “Employee” does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(19) “Entitled to vote” means entitled to vote on the matter under consideration pursuant to the articles of incorporation or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(20) “Entity” includes a domestic or foreign business corporation, domestic or foreign nonprofit corporation,
domestic or foreign unincorporated entity, estate, trust, state, the United States, foreign government, or governmental subdivision.


(21) “Filing entity” means an unincorporated entity that is created by filing a public organic record.


(22) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.


(23) “Foreign corporation” or “foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.


(24) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.


(25) “Fundamental transaction” means an amendment of the articles of incorporation or bylaws, merger, membership exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.
MODEL NONPROFIT CORPORATION ACT, THIRD EDITION

Source Note: New.

(26) “Governmental subdivision” includes an authority, county, district, and municipality.


(27) “Governor” means a person by or under whose authority the powers of an unincorporated entity are exercised and under whose direction the business, activities, or affairs of the entity are managed pursuant to the organic law and organic records of the entity.

Source Note: Patterned after Model Entity Transactions Act § 102(16).

(28) “Includes” denotes a partial definition.


(29) “Individual” means a natural person.


(30) “Interest” means either or both of the following rights under the organic law of an unincorporated entity:

(i) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.


(31) “Interest holder” means a person who holds of record an interest.
**SECTION 1.40**


(32) “Interest holder liability” means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) solely by reason of the person’s status as a shareholder, interest holder, or member; or

(ii) by the articles of incorporation, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.


*Source Note:* New.

(34) “Material interest” means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.


(35) “Material relationship” means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.

(36) “Means” denotes an exhaustive definition.


(37) “Member” means:
(i) A person who has the right, in accordance with the articles of incorporation or bylaws and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction. See Section 6.02(d) (admission).
(ii) A designated body to the extent:
(A) the authority, powers, or functions of the members have been vested in, or are exercised by, the designated body; and
(B) the provision of this [act] in which the term appears is relevant to the discharge by the designated body of its authority, powers, or functions.


(38) “Membership” means the rights and any obligations of a member in a nonprofit corporation.


(39) “Membership corporation” means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall have members.

Source Note: New.

(40) “Nonfiling entity” means an unincorporated entity that is not created by filing a public organic record.
SECTION 1.40


(41) “Nonmembership corporation” means a nonprofit corporation whose articles of incorporation or bylaws do not provide that it shall have members.

Source Note: New.

(42) “Nonqualified foreign corporation” means a foreign corporation that is not authorized to conduct activities in this state.

Source Note: New.

(43) “Notice” is provided for in Section 1.41.


(44) “Officer” includes:
   (i) a person who is an officer as provided in Section 8.40; and
   (ii) if a nonprofit corporation is in the hands of a custodian, receiver, trustee or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this [act].


(45) “Organic law” means the statute principally governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.


(46) “Organic record” means a public organic record or the private organic rules.

(47) “Person” includes an individual or an entity.


(48) “Principal office” means the office (in or out of this state) designated in the annual report as the location of the principal executive office of a domestic or foreign nonprofit corporation.


(49) “Private organic rules” means any record (other than the public organic record, if any) that determines the internal governance of an unincorporated entity. Where the private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.


(50) “Proceeding” includes civil suit and criminal, administrative, and investigatory action.


(51) “Public organic record” means the record, if any, that is filed of public record to create an unincorporated entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.


(52) “Qualified foreign corporation” means a foreign corporation authorized to conduct activities in this state.
(53) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.


(54) “Record date” means the date established under Section 7.07 on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this [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.


(55) “Secretary” means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under Section 8.40(b) for custody of the minutes of the meetings of the board of directors, any designated body, committees, and the members, and for authenticating records of the nonprofit corporation.


(56) “Shareholder” means the person in whose name shares are registered in the records of a domestic or foreign business corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with such a corporation.
(57) “Shares” means the units into which the proprietary interests in a domestic or foreign business corporation are divided.

(58) “Sign” means, with present intent to authenticate or adopt a record:
   (i) to execute or adopt a tangible symbol; or
   (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(59) “State,” when referring to a part of the United States, includes a state or commonwealth, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession of the United States, and any agency or governmental subdivision of any of the foregoing.

(60) “Unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business or statutory trust,
joint stock association, and unincorporated nonprofit association.


(61) “United States” includes a district, authority, bureau, commission, department, and any other agency of the United States.


(62) “Vote,” “voting,” or “casting a vote” includes the giving of consent in the form of a record without a meeting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes such conduct as voting or casting a vote.


(63) “Voting group” means one or more classes of members that under the articles of incorporation, bylaws, or this [act] are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation, bylaws, or this [act] to vote generally on the matter are for that purpose a single voting group.


(64) “Voting power” means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

CROSS-REFERENCES

Special definitions:
“corporate action,” see § 1.50.
“corporation,” see § 8.50.
“court,” see § 1.50.
“derivative proceeding,” see § 13.01.
“director,” see § 8.50.
“disinterested director,” see § 8.50.
“exchanging entity,” see § 11.01.
“expenses,” see § 8.50.
“liability,” see § 8.50.
“membership exchange,” see § 11.01.
“merger,” see § 11.01.
“officer,” see § 8.50.
“official capacity,” see § 8.50.
“outstanding shares,” see § 6.03.
“party,” see § 8.50.
“party to a merger,” see § 11.01.
“party to a membership exchange,” see § 11.01.
“proceeding,” see § 8.50.
“survivor,” see § 11.01.

OFFICIAL COMMENT

1. Board of Directors and Designated Body

The term “designated body” was not found in the prior version of the act, although the prior act did contain a rudimentary version of the concept in former Section 8.01(c). More detail has been provided in this version of the act to give nonprofit corporations greater certainty when using the flexibility inherent in the concept of a designated body when organizing their affairs. The concept of a designated body recognizes that it is sometimes desirable for a nonprofit corporation to depart from the traditional governance structure based on a board of directors and, in appropriate circumstances, members.

There is no limitation in the act on the number of designated bodies that a nonprofit corporation may create.
When a designated body is exercising a power that would otherwise be exercised by the board of directors, the members of the designated body have the duties and liabilities of directors. See Section 8.12. However, when a designated body is exercising a power that would otherwise be exercised by the members, the members of the designated body should be subject only to the duties and liabilities of members or delegates.

2. Bylaws

The “bylaws” are those rules that are intended to have the status of bylaws under this act regardless of how the corporation chooses to refer to them. Some corporations, for example, adopt a “constitution” that serves as bylaws.

Many nonprofit corporations adopt codes of conduct and other policies that have an important place in the conduct of the corporation’s activities but are not intended to have the status of bylaws under the act. A code of conduct that is not intended to be part of the bylaws, for example, will not be subject to the provisions of the act governing the adoption and amendment of bylaws in Chapters 2 and 10B. On the other hand, a corporation could choose to include a code of conduct in its bylaws, in which case the code of conduct would be subject to the provisions of the act in the same manner as the other provisions of the bylaws.

3. Charitable Corporation and Charitable Purposes

The prior version of the act classified nonprofit corporations into three types: mutual benefit corporations, public benefit corporations, and religious corporations. See Revised Model Nonprofit Corporation Act (1987) § 1.40(23), (28), and (30). Separate rules on a variety of subjects were then provided for those differing types of corporations. See, e.g., Revised Model Nonprofit Corporation Act (1987) §§ 6.11 (transfers of membership), 8.31 (director conflicts of interest), and 11.01 (plans of merger). That classification scheme was not widely embraced and led to the prior act being seen as unduly complicated and restrictive.
There are, nonetheless, certain areas in which public policy concerns are more sensitive with respect to some nonprofit corporations than others. The act accordingly provides different rules for charitable corporations with respect to certain subjects.

The prior act included a definition of “charitable purposes” that listed those purposes that were considered to be charitable purposes. Specifying what constitutes a charitable purpose provides certainty as to the scope of the term, and thus which nonprofit corporations will be subject to the rules in the act regarding charitable corporations. But providing a definition of charitable purposes also means that the act’s definition may diverge from the meaning of charitable purposes under Section 501(c)(3) or (4) of the Internal Revenue Code and similar provisions of state law. Instead of providing a specific list of purposes that are considered charitable for purposes of the act, Section 1.40(6) looks to what constitutes a charitable purpose under Section 501(c)(3) or (4) or other law.

4. Conspicuous

“Conspicuous” is defined in Section 1.40(7) similarly to the way it is defined in Section 1-201(10) of the Uniform Commercial Code. Even though the definition indicates some of the methods by which a provision may be made attention-calling, the test is whether attention can reasonably be expected to be called to it.

5. Corporation, Domestic Corporation, Domestic Nonprofit Corporation, Foreign Corporation, Foreign Nonprofit Corporation, and Nonprofit Corporation

“Corporation,” “domestic corporation,” “domestic nonprofit corporation,” “foreign corporation,” “foreign nonprofit corporation,” and “nonprofit corporation” are defined in Sections 1.40(8) and (23). The word “corporation” refers only to domestic nonprofit corporations and is only used where a more complete term has already been used in the same subsection. In a few instances, the phrase “domestic corporation” has been used in order to contrast it with a foreign corporation. The phrase
“domestic nonprofit corporation” has been used on occasion to contrast it with a domestic business corporation.

6. Delegate

Professional associations, churches, political parties, and numerous other organizations hold representative assemblies from time to time at which major corporate and policy decisions are made. These representative assemblies may be called conventions, annual meetings, or some other name. The people elected or appointed to vote at these representative assemblies are “delegates” for purposes of the act even if they are called by some other name.

7. Electronic

The definition of “electronic” is patterned after the definition of that term in Uniform Electronic Transactions Act § 2(5). While not all of the technologies listed are technically “electronic” in nature (e.g., optical fiber technology), the term was chosen in the Uniform Electronic Transactions Act as the most descriptive term available to describe current technologies. The term should be construed broadly to include developing technologies arguably within any aspect of the definition. Because “delivery” is defined to include electronic transmission, the use of such means as e-mail, fax, and telephone are permissible ways of delivering notices under the act. But the use of electronic technology will not always involve a “record” as defined in this section. A telephone conversation between two people will involve electronic technology, but will not create a “record” because the conversation will not later be “retrievable” as required to create a record. Leaving a message on voicemail, however, results in a record because the voicemail message is retrievable and capable of reproduction in perceivable form.

8. Eligible Entity, Entity, and Unincorporated Entity

The term “entity,” defined in Section 1.40(20), appears in the definition of “person” in Section 1.40(47) and is included to cover all types of artificial persons. Estates and trusts and general partnerships are included even though they may not, in
some jurisdictions, be considered artificial persons. The usage of “trust” in Section 1.40(60) in contrast to “business or statutory trust” in that same provision indicates that “trust” by itself means a nonbusiness trust, such as a traditional testamentary trust, inter vivos trust, or charitable trust.

The term “entity” is significantly broader than the term “unincorporated entity” which is defined in Section 1.40(60) because the term “entity” includes all types of corporations, estates, and trusts, as well as public and quasi-public organizations. See also the definitions of “governmental subdivision” in Section 1.40(26), “state” in Section 1.40(59), and “United States” in Section 1.40(61).

A form of co-ownership of property or sharing of returns from property that is not a partnership under the Uniform Partnership Act (1997) will not be an “unincorporated entity.” In that connection, Section 202(c) of the Uniform Partnership Act (1997) provides, among other things, that:

In determining whether a partnership is formed, the following rules apply:

1. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

The term “eligible entity” is used in the act to refer to those types of entities that can engage in mergers and other types of fundamental transactions under the act with a nonprofit corporation. Because the term “eligible entity” includes business corporations, for example, the provisions of Chapter 11 permitting a nonprofit corporation to merge with an eligible entity will permit a merger between a nonprofit corporation and a business corporation. Similarly, a nonprofit corporation may merge under Chapter 11 with a limited liability company because a limited liability company is also an eligible entity.
9. Member and Membership

“Member” and “membership” are defined in Sections 1.40(37) and (38) for purposes of this act to refer only to the rights of a member in a nonprofit corporation. Although the owners of a limited liability company are generally referred to as “members,” for purposes of this act they are referred to as “interest holders” and what they own in the limited liability company is referred to in this act as an “interest.”

A nonprofit corporation will sometimes refer to contributors or other persons interested in the activities of the corporation as “members” even though those persons do not fit within the definition in Section 1.40(37). If a person does not have the right to vote for the election of directors or delegates or to vote on fundamental transactions, the person will not be a “member” for purposes of this act even though the person may be referred to informally by the corporation as a member. However, a person who is designated as a member pursuant to an applicable provision of the bylaws will have that status regardless of what rights may or may not be conferred by the bylaws.

A person who has the right to select or vote for the election of members of a designated body, but who does not have the right to vote for the election of directors or on approval of any type of fundamental transaction, is not within the definition of “member.”


The term “organic records” as defined in Section 1.40(46) includes both public organic records and private organic rules. The term “public organic record” includes such filings as the certificate of limited partnership of a limited partnership, the articles of organization or certificate of formation of a limited liability company, the deed of trust of a business trust, and comparable documents, however denominated, that are publicly filed to create other forms of unincorporated entities. The term “private organic rules” includes a partnership agreement of a general or limited partnership, an operating agreement of a limited liability company.
company, and comparable agreements, however denominated, of other forms of unincorporated entities.

11. **Owner Liability**

The term “owner liability” is used in the context of provisions in Chapters 9 and 11 that preserve the personal liability of shareholders, interest holders, and members when the entity in which they own shares or interests is the subject of a transaction under those chapters. The term includes only liabilities that are imposed by or pursuant to statute on shareholders, interest holders, or members. Liabilities that a shareholder, interest holder, or member incurs by contract are not included. Thus, for example, if a state’s nonprofit corporation law were to make members personally liable for unpaid wages, that liability would be an “owner liability.” If, on the other hand, a member were to guarantee payment of an obligation of a corporation, that liability would not be an “owner liability.” The reason for excluding contractual liabilities from the definition of “owner liability” is that those liabilities are constitutionally protected from impairment and thus do not need to be separately protected in Chapters 9 and 11.

12. **Person**

The term “person” is defined in Section 1.40(47) to include an individual or an entity. In the case of an individual this act assumes that the person is competent to act in the matter under general state law independent of the corporation statute.

13. **Principal Office**

Section 1.40(48) defines the principal office of a corporation to be the office within or without the state where the principal executive office of the corporation is located. Many corporations maintain numerous offices, but there is usually one office, sometimes colloquially referred to as the home office, headquarters, or executive suite, where the principal corporate officers are located. The corporation must designate its principal office address in the annual report required by Section 16.21. In case of doubt as to which corporate office is the principal office, the designation by
the corporation in its annual report should be accepted as establishing the principal office of the corporation.

14. Record

The definition of “record” is patterned after the definitions of that term in Uniform Electronic Transactions Act § 2(13), Uniform Limited Partnership Act (2001) § 102(17), and Uniform Limited Liability Company Act (2006) § 102(17). Those definitions, in turn, were based on the same definition in section 106(9) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7006(9). The term includes both communication systems that in the normal course produce paper, such as telegrams and facsimiles, as well as communication systems that transmit and permit the retention of data that is then subject to subsequent retrieval and reproduction in perceivable form. The term is intended to be broadly construed and include the evolving methods of electronic delivery, such as e-mail, the Internet, and electronic transmissions between computers. A voicemail message creates a record. See Comment 7 on the definition of “electronic.”

15. Secretary

The term “secretary” is defined in Section 1.40(55) since this act does not require the corporation to maintain any specific or titled officers. See Section 8.40. However, some corporate officer, however titled, must perform the functions described in this definition, and that officer is referred to as the “secretary” in various sections of the act that impose a duty to perform those functions.

16. Sign

§ 7006(5). The term includes manual, facsimile, conformed, or electronic signatures. In this regard, it is intended that any manifestation of an intention to execute or authenticate a record will be accepted. Electronic signatures are expected to encompass any methodology approved by the secretary of state for purposes of verification of the authenticity of the record. This could include a typewritten conformed signature or other electronic entry in the form of a computer data compilation of any characters or series of characters constituting a name intended to evidence authorization and execution of a record.

17. Unincorporated Entity

The term “unincorporated entity” is a subset of the broader term “entity.”

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the Uniform Partnership Act (1997), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of the Uniform Partnership Act (1914) gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “unincorporated entity.” As a result, all general partnerships will be “unincorporated entities” regardless of whether the state in which they are organized has adopted the new Uniform Partnership Act (1997).

The term “unincorporated entity” includes limited liability partnerships and limited liability limited partnerships because those entities are forms of general partnerships and limited partnerships, respectively, that have made the additional required election claiming that status.

Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “unincorporated entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most
states that have not adopted the Uniform Act have nonetheless modified the common law rule, but states that have not adopted the Uniform Act should analyze whether they should modify the definition of “unincorporated entity” to add an express reference to unincorporated nonprofit associations.

“Business or statutory trust” includes any trust carrying on a business, such as a Massachusetts trust, real estate investment trust, or other common law or statutory business trust. The term “unincorporated entity” expressly excludes estates and trusts (i.e., trusts that are not business trusts), whether or not they would be considered artificial persons under the governing jurisdiction’s law, to make it clear that they are not eligible to participate in a conversion under Subchapter E of Chapter 9 or a merger or share exchange under Chapter 11. If a nonprofit corporation wishes to merge with a charitable trust it will be necessary to first incorporate the trust.

18. Voting Group

Section 1.40(63) defines “voting group” for purposes of this act as a matter of convenient reference. A “voting group” consists of all the members of one or more classes that under the articles of incorporation, bylaws, or the act are entitled to vote and be counted together collectively on a matter. Members entitled to vote “generally” on a matter under the articles of incorporation, bylaws, or the act are for that purpose a single voting group. The word “generally” signifies all members entitled to vote on the matter by the articles of incorporation, bylaws, or the act that do not expressly have the right to be counted or tabulated separately. “Voting groups” are thus the basic units of collective voting at a members’ meeting, and voting by voting groups may provide essential protection to one or more classes of members against actions that are detrimental to the rights or interests of that class.

The determination of which members form part of a single voting group must be made from the provisions of the articles of incorporation, bylaws, and the act. In a few instances under the act, the board of directors or a designated body may establish the right to vote by voting groups. On most matters coming before
members’ meetings, only a single voting group, consisting of a
class of voting members, will be involved, and action on such a
matter is effective when approved by that voting group pursuant
to Section 7.24. See Section 7.25(a). If a second class of members
is also entitled to vote on the matter, then a further determina-
tion must be made as to whether that class is to vote as a separate
voting group or whether it is to vote along with the other voting
members as part of a single voting group.

Members of the board of directors are usually elected by the
single voting group of members entitled to vote generally; in
some circumstances, however, some members of the board may
be selected by one voting group and other members by one or
more different voting groups. See Section 8.04.

The definition of a voting group permits the establishment by
statute of quorum and voting requirements for a variety of mat-
ters considered at members’ meetings in corporations with mul-
tiple classes of members. See Sections 7.25 and 7.26. Depending
on the circumstances, two classes of members may vote together
collectively on a matter as a single voting group, they may be enti-
tled to vote on the matter separately as two voting groups, or one
or both of them may not be entitled to vote on the matter at all.

19. Voting Power

Under Section 1.40(64) the term “voting power” means the
current power to vote in the election of directors or delegates,
or on approval of a fundamental transaction. Application of this
definition turns on whether the relevant members have the power
to vote as of the time a vote is being conducted. If members have
the power to vote in an election of directors only under a cer-
tain contingency, for example, those members would not have
voting power within the meaning of Section 1.40(64) unless the
contingency has occurred, and then only during the period when
the voting rights are in effect. Members that have the power to
vote for any directors as of the time a vote is conducted have
the current power to vote in the election of directors within the
meaning of Section 1.40(64) even if the members do not have
the power to vote for all directors.
§ 1.41. NOTICE

(a) Notice under this [act] must be in the form of a record unless oral notice is authorized by this [act] or is reasonable under the circumstances.

(b) Notice may be communicated in person or by delivery. If these forms of communication 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.

(c) Notice in the form of a record by a membership corporation to a member is effective:
   (1) upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member’s address shown in the corporation’s current record of members, or
   (2) when given if the notice is delivered in any other manner that the member has authorized.

(d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered 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.

(e) Except as provided in subsection (c), notice is effective at the earliest of the following:
   (1) when received;
   (2) when left at the recipient’s residence or usual place of business;
   (3) five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed;
   (4) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.
(g) If this [act] prescribes notice requirements for particular circumstances, those requirements govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this [act], those requirements govern.

(h) With respect to electronic communications:

1. Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:
   (i) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
   (ii) it is in a form capable of being processed by that system.

2. An electronic communication is received under paragraph (h)(1) even if no individual is aware of its receipt.

3. Receipt of an electronic acknowledgement from an information processing system described in paragraph (h)(1) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An authorization by a member of delivery of notices or communications by e-mail or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. Such an authorization is deemed revoked if (i) the corporation is unable to deliver two consecutive notices or other communications to the member in the manner authorized; and (ii) the inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

Source Note: Subsections (a)–(g) patterned in part after Model Business Corporation Act, 3d Ed. (2002) § 1.41, and derived from Revised Model Nonprofit Corporation Act (1987) § 1.41.
SECTION 1.41

Subsection (h) patterned after Uniform Electronic Transactions Act § 15(b), (e), and (f). Subsection (i) patterned after 8 Del. Code § 232(a).

CROSS-REFERENCES

Annual report, see § 16.21.
Application for certificate of authority, see § 15.03.
“Deliver” defined, see § 1.40.
“Electronic” defined, see § 1.40.
Meetings:
    board of directors, see § 8.22.
    members, see § 7.05.
“Principal office”:
    defined, see § 1.40.
    designated in annual report, see § 16.21.
“Record” defined, see § 1.40.
Record of members, see § 16.01.
Special notice requirements:
    attorney general, see §§ 1.53 and 1.70.
    derivative proceedings, see § 13.09.
    resignation of registered agent, see §§ 5.03 and 15.09.
    service on corporation, see §§ 5.04 and 15.10.

OFFICIAL COMMENT

Section 1.41 establishes rules for determining how notice may be given and when notice is effective for a variety of purposes under the act. Those rules permit many other sections of the act to be phrased simply in terms of delivering notice without repeating details with respect to how notice should be given and when it is effective in various circumstances.

1. Notice by a Corporation to Its Members

Section 1.41(c) provides that notice by a corporation to its members is effective when mailed if correctly addressed with
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sufficient postage. Similarly, notice is effective when deposited with a commercial delivery service if correctly addressed with the delivery charge prepaid. The correct address for this purpose is the address shown in the corporation’s member records. Notice includes notice by electronic transmission, but notice may be provided through electronic transmission only if specifically authorized by the member. This allows corporations to provide notices by electronic means, but only when, and in the manner, authorized by the member. Absent such authorization, notice must be provided to the shareholder in the traditional manner consistent with the other provisions of Section 1.41.

Notice to members by persons other than the corporation is effective as provided in Section 1.41(e). Notice by the corporation to its members that is not addressed to the record address of a member is effective when received under Section 1.41(e).

2. Notice to the Corporation

Section 1.41(d) provides that notice to a corporation may be delivered to the registered agent of the corporation at its registered office or to the corporation or its secretary at the principal office of the corporation as shown in its most recent filing with the secretary of state. An officer, director, member of a designated body, or member of a corporation will normally give notice to the corporation by delivering or mailing a copy of the notice to the corporation or to the secretary of the corporation at its principal office. Such a notice is effective when it is received. Such notice may be given for a variety of purposes under the act, e.g., notice of a demand to inspect books and records (Section 16.02), and notices of resignation (Sections 8.07 and 8.43). This method of giving notice to the corporation, however, is not exclusive, and an officer, director, member of a designated body, or member of the corporation may give notice in other ways as well.

Persons who have no prior relationship with the corporation may give notice either to the registered agent of the corporation or, if they wish, to the corporation or its secretary at its principal office.

Section 1.41 also contains a variety of general provisions dealing with notice. It recognizes, for example, that notice on some occasions may be given orally if that is reasonable under the circumstances, which could include oral notice through voice-mail or other similar means. It also deals with situations where notice may be sought to be given to persons for whom no current address is available, or where personal notice is impractical. Notice delivered to the person’s last known address is effective as described in Section 1.41(e) even though never actually received by the person. Section 1.41(b) also authorizes notice by publication in some circumstances, including radio, television, or other form of public broadcast communication.

Section 1.41(g) recognizes that other sections of the act prescribe specific notice requirements for particular situations—e.g., service of process on a corporation’s registered agent under Section 5.04—and that these specific requirements, rather than the general requirements of Section 1.41, control. Finally, the second sentence of Section 1.41(g) permits a corporation’s articles of incorporation or bylaws to prescribe the corporation’s own notice requirements, if they are not inconsistent with the general requirements of this section or specific requirements of other sections of the act.

Section 1.41(h)(2) makes clear that receipt of an electronic communication is not dependent on a person having notice that the record is in the person’s system. Receipt occurs when the record reaches the designated system whether or not the recipient ever retrieves the record. The paper analog is the recipient who never reads a mail notice. Section 1.41(h)(3) provides legal certainty regarding the effect of an electronic acknowledgement. It only addresses the fact of receipt, not the quality of the content, nor whether the electronic record was read or “opened.”
[Subchapter] E
REVIEW OF CONTESTED CORPORATE ACTION

§ 1.50. Definitions.
§ 1.51. Proceedings prior to corporate action.
§ 1.52. Review of contested corporate action.
§ 1.53. Notice to attorney general. [Optional]

§ 1.50. DEFINITIONS
(a) This [subchapter] applies to, and the term “corporate action” in this [subchapter] means, any of the following actions:
(1) The election, appointment, designation, or other selection and the suspension, removal, or expulsion of members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.
(2) The taking of any action on any matter that is required under this [act] or under any other provision of law to be, or which under the articles of incorporation or bylaws may be, submitted for action to the members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.
(b) The “court” referred to in this [subchapter] is the [name or describe] court [of the county where the corporation’s principal office (or, if none in this state, its registered office) is located] [of county].

Source Note: Subsection (a) patterned after PA. CONS. STAT. § 5791 (2008). See also DEL. GCL §§ 211(c) and 225 (2008). Subsection (b) patterned after new § 1.26(b). Former Revised Model Nonprofit Corporation Act (1987), § 1.50 is now § 6.44.

CROSS-REFERENCES
“Delegates” defined, see § 1.40.
“Designated body” defined, see § 1.40.
“Members” defined, see § 1.40.
“Officers” defined, see § 1.40.
OFFICIAL COMMENT

The rights to seek judicial relief provided in this subchapter are available for all types of nonprofit corporations. It is expected, however, that the courts will use their discretion to avoid becoming overly entangled in the affairs of religious corporations.

§ 1.51. PROCEEDINGS PRIOR TO CORPORATE ACTION

(a) Where under applicable law or the articles of incorporation or bylaws of a nonprofit corporation there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the date designated or appropriate therefor, the court may summarily order a meeting to be held upon the application of [the attorney general in the case of a charitable corporation or] any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue.

(b) The court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the court may deem proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.


CROSS-REFERENCES

“Corporate action” defined, see § 1.50.

OFFICIAL COMMENT

This section provides a way to conduct meetings or take corporate action when it is otherwise impractical or impossible to do so. For example, a corporation may have a quorum requirement.
that effectively prevents it from holding a meeting of members because of the difficulty of securing the required attendance of members. Or a corporation may have inaccurate records and be unable to identify its members or directors.

The power of the court to order a meeting under this section is discretionary. If the court decides to order a meeting, this section allows the court to order a meeting and frame the manner in which it is to be conducted even if it is necessary to dispense with otherwise applicable requirements of the articles of incorporation, bylaws, or the act.

§ 1.52. REVIEW OF CONTESTED CORPORATE ACTION

(a) Upon petition of a person whose status as, or whose rights or duties as, a member, delegate, director, member of a designated body, or officer of a corporation are or may be affected by any corporate action, the court may hear and determine the validity of the corporate action.

(b) The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers, and records of the corporation and other evidence that may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with Section 1.51.

(c) Subsection (a) shall not apply if a nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to a corporate action, but the court may enforce the articles or bylaws if appropriate.

Source Note: Subsections (a) and (b) patterned after 15 Pa. Cons. Stat. § 5793 (2008). See also Del. GCL § 225 (2008).

CROSS-REFERENCES

“Corporate action” defined, see § 1.50.
OFFICIAL COMMENT

This section provides an expeditious way to secure judicial review of corporate elections, the filling of corporate positions in other fashions, or the taking of action on matters such as fundamental transactions. The court has broad powers to fashion relief in the manner it considers appropriate.

§ 1.53. NOTICE TO ATTORNEY GENERAL [OPTIONAL]

The plaintiff in a proceeding under this [subchapter] must notify the attorney general within ten days after commencing the proceeding if it involves a charitable corporation.


CROSS-REFERENCES

“Charitable corporation” defined, see § 1.40.

OFFICIAL COMMENT

This section is marked optional for two reasons. As a general matter, an enacting state should consider whether the substance of the section would be better placed with the other provisions of its law relating to the powers and duties of the attorney general. See the Official Comment to Section 1.70. Even if an enacting state decides to retain a requirement of notice to the attorney general in this act, this section will not be needed if Section 1.70 is included in the state’s version of the act.

Notice to the attorney general of a proceeding under this subchapter involving a charitable corporation gives the attorney general an opportunity to learn of and evaluate the dispute. This section does not require the attorney general to join an action under this subchapter and does not detract from the jurisdiction the attorney general may otherwise have in states adopting this act.
[Subchapter] F
RELIGIOUS CORPORATIONS
§ 1.60. Subordination to canon law.

§ 1.60. SUBORDINATION TO CANON LAW

If religious doctrine or canon law governing the affairs of a non-profit corporation is inconsistent with the provisions of this [act] on the same subject, the religious doctrine or canon law shall control to the extent required by the Constitution of the United States or the Constitution of [name of state] or both.


CROSS-REFERENCES
“Nonprofit corporation” defined, see § 1.40.

OFFICIAL COMMENT

As a result of history, policy, and constitutional principles, religious corporations are entitled to protections not available to business or other nonprofit corporations. Courts have been reluctant to interfere with the internal affairs of religious organizations. They will not decide between conflicting religious doctrine or determine the “true” faith. However, courts have often decided internal property disputes by applying neutral principles of contract or corporate law to organizational documents of religious organizations. See Mansfield, The Religious Clauses of the First Amendments and the Philosophy of the Constitution, 72 Calif. L. Rev. 847 (1984); Ellman, “Driven from the Tribunal: Judicial Resolution of Internal Church Disputes, “ 69 Cal. L. Rev. 1378 (1981).

This reluctance is based in part on the First Amendment to the United States Constitution which provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” The establishment clause
applies to states, *Everson v. Board of Education*, 330 U.S. 1 (1947), as does the free exercise clause, *Cantwell v. Connecticut*, 310 U.S. 296 (1940). The act attempts to walk the thin line between the establishment clause and the free exercise clause. It allows religious corporations to be formed and gives them the same rights and privileges as other corporations. The act avoids interfering with the free exercise of religion by negating or allowing religious corporations to negate provisions of the act that might result in excessive entanglement in religious activities by the state. By limiting state intrusion, the act uses the least restrictive means to provide an orderly structure in which religious corporations can be formed and operate.

Section 1.60 is based on the recognition that some provisions of the act may conflict with religious doctrines or canon law protected by the United States Constitution or state constitutions. The exact scope of constitutional limitations is less than clear and is subject to debate. Section 1.60 overcomes this difficulty by providing that, to the extent canon law or religious doctrine applicable to a religious corporation sets forth provisions inconsistent with provisions of the act, the canon law or religious doctrine controls, but only to the extent required by the United States Constitution or applicable state constitutions.

While in one sense Section 1.60 simply states the obvious, it is helpful to remind those dealing with religious corporations that they must consider constitutional mandates. The approach of Section 1.60 also allows a case-by-case determination of difficult questions and automatically conforms the act to the opinions of the United States Supreme Court and applicable state courts.
§ 1.70. NOTICE TO ATTORNEY GENERAL [OPTIONAL]

(a) The attorney general must be given notice of the commencement of any proceeding that this [act] authorizes the attorney general to bring but that has been commenced by another person.

(b) Whenever any provision of this [act] requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a proceeding:

(1) if no proceeding has been commenced, the attorney general may take appropriate action including, but not limited to, seeking injunctive relief; and

(2) if a proceeding has been commenced by a person other than the attorney general, the attorney general, as of right, may intervene in such proceeding.

Source Note: Reenactment of Revised Model Nonprofit Corporation Act (1987) § 1.70.

CROSS-REFERENCES

Derivative actions, § 13.09.

Dissolution:

judicial, § 14.31.

voluntary, § 14.02.

Removal of directors, § 8.09.

Ultra-vires, § 3.04.

OFFICIAL COMMENT

This section is marked optional because an enacting state should consider whether the substance of the section would be
better placed with the other provisions of its law relating to the powers and duties of the attorney general. If that approach is taken, the state should consider whether a cross-reference to that other statute should be added to this act.

Subsection (a) requires that the attorney general be given notice of any proceeding that could have been brought by the attorney general, but is commenced by another person. Subsection (b)(1) grants the attorney general independent authority to act when notice is required under subsection (a) or any other provision of this act. This carries out the policy implicit in such notice requirements by specifically empowering the attorney general to protect the public interest when it may be adversely affected. Subsection (b)(2) permits the attorney general to intervene in any proceeding that the attorney general could have commenced but that was brought by another person, such as a director or member. To protect the public interest, the attorney general may either commence a proceeding or intervene in a proceeding commenced by another person who is authorized to do so.

This section does not detract from the jurisdiction the attorney general may otherwise have in states adopting this act.