Chapter 1 (General Provisions) of the
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compared with
MNCA Third Edition Chapters 1 (General Provisions)
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Additions in Exposure Draft shown in blue with double underline]
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[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. Ratification of Defective Corporate Actions
G. Religious Corporations
H. Attorney General [Optional]

[Subchapter] A
SHORT TITLE AND SAVINGS PROVISIONS
§ 1.01. Short title and application of [Act].
§ 103. Notice
§ 104. Signing of filed records.
§ 105. Extrinsic facts in filed record.
§ 106. Relationship of [Act] to other laws.
§ 1.02.107. Reservation of power to amend or repeal.
§ 1.03. Relationship of [act] to other laws.

§ 1.01. SHORT TITLE AND APPLICATION OF [Act]
(a) This [Act] shall be known and may be cited as the “[name of state] Nonprofit Corporation Act.”

Reenactment of Revised Model Nonprofit Corporation Act (1987) § 1.01, 3rd Ed. (2008), § 1.01.
Cf. Model Business Corporation Act (2016 Revision), § 1.01.

CROSS-REFERENCES
(b) This [Act] applies to all domestic nonprofit corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations if power to amend or repeal the statute under which the corporation was incorporated was reserved.

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 development of this act, the purposes it is intended to serve, the principles 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 nonprofit corporations subject to this [act] are governed by the amendment or repeal.

Reenactment of Revised Model Nonprofit Corporation Act (1987) § 1.02.

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
“plan” means a plan of domestication, business conversion, entity conversion, merger or membership exchange.


CROSS-REFERENCES

(c) A foreign nonprofit corporation registered or authorized to do business in this state on the effective date of this [Act] is subject to this [Act], is deemed to be registered to do business in this state, and is not required to file a foreign registration statement under this [Act].

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 email, 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
280
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
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on facts outside the record or plan. Terms of a filed record or plan may be made dependent on a
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fact outside the control of the corporation. A common example is a reference to an interest rate
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such as the federal funds rate. Section 1.20(c)(2) also provides that the facts on which a filed
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record or plan may be made dependent include facts within the control of the corporation in
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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
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references to determinations or actions by the board of directors, a designated body, a committee
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of the board or a designated body, an officer, employee or agent of the corporation, or any other
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person.

The only limitations on referring to extrinsic facts in a filed record or plan are that the
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facts must be objectively ascertainable and that the filed record or plan must state the manner in
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which the facts will operate. The purpose of these requirements is to avoid disputes over
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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
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as authorized by Section 1.20(c)(2)(iii), care should be take to identify the agreement or record
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appropriately. The agreement or record must be identified in a manner that satisfies the
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objectively ascertainable standard, and the manner in which the terms or events under it are to
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operate must be specified. Consideration should also be given to the intended effects of an
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amendment to the agreement or record. A simple reference to an agreement will presumably
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include subsequent amendments, while a reference to the same agreement as in effect on a
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specified date presumably will not.

Chapters 9 and 11 generally require the board of directors to adopt a plan. If the terms of
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such a plan are determined by reference to extrinsic facts, the board should take care to establish
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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
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permitted under this [act], but their use is not mandatory.

Source Note: Patterned after Model Entity
311
Transactions Act § A1-2. Derived from Revised
312

CROSS-REFERENCES

Annual report, see § 16.21.
314
Application for certificate of authority, see § 15.03.
315
Application for certificate of withdrawal, see § 15.20.
316
Certificate of existence, see § 1.28.
317
Effective time and date of filing, see § 1.23.
318
Filing fees, see § 1.22.
319
Filing requirements, see § 1.20.
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OFFICIAL COMMENT

As described in the Official Comment to Section 1.20, records are entitled to filing under
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the act if they meet the substantive and formal requirements of the act; they may also contain
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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>$___</td>
</tr>
<tr>
<td>(4) Notice of transfer of reserved name</td>
<td>$___</td>
</tr>
<tr>
<td>(5) Application for registered name</td>
<td>$___</td>
</tr>
<tr>
<td>(6) Application for renewal of registered name</td>
<td>$___</td>
</tr>
<tr>
<td>(7) Corporation’s statement of change of registered agent or registered office or both</td>
<td>$___</td>
</tr>
<tr>
<td>(8) Agent’s statement of change of registered office for each affected corporation, not to exceed a total of $______</td>
<td>$___</td>
</tr>
<tr>
<td>(9) Agent’s statement of resignation</td>
<td>No fee.</td>
</tr>
<tr>
<td>(10) Articles of domestication</td>
<td>$___</td>
</tr>
<tr>
<td>(11) Articles of charter surrender</td>
<td>$___</td>
</tr>
<tr>
<td>(12) Articles of business conversion</td>
<td>$___</td>
</tr>
<tr>
<td>(13) Articles of domestication and conversion</td>
<td>$___</td>
</tr>
<tr>
<td>(14) Articles of entity conversion</td>
<td>$___</td>
</tr>
<tr>
<td>(15) Amendment of articles of incorporation</td>
<td>$___</td>
</tr>
<tr>
<td>(16) Restatement of articles of incorporation</td>
<td>$___</td>
</tr>
<tr>
<td>with amendment of articles</td>
<td>$___</td>
</tr>
<tr>
<td>(17) Articles of merger or membership exchange</td>
<td>$___</td>
</tr>
<tr>
<td>(18) Articles of dissolution</td>
<td>$___</td>
</tr>
<tr>
<td>(19) Articles of revocation of dissolution</td>
<td>$___</td>
</tr>
<tr>
<td>(20) Certificate of administrative dissolution</td>
<td>No fee.</td>
</tr>
<tr>
<td>(21) Application for reinstatement following administrative dissolution</td>
<td>$___</td>
</tr>
<tr>
<td>(22) Certificate of reinstatement</td>
<td>No fee.</td>
</tr>
<tr>
<td>(23) Certificate of judicial dissolution</td>
<td>No fee.</td>
</tr>
<tr>
<td>(24) Application for certificate of authority</td>
<td>$___</td>
</tr>
<tr>
<td>(25) Application for amended certificate of authority</td>
<td>$___</td>
</tr>
<tr>
<td>(26) Application for certificate of withdrawal</td>
<td>$___</td>
</tr>
<tr>
<td>(27) Application for transfer of authority</td>
<td>$___</td>
</tr>
<tr>
<td>(28) Certificate of revocation of authority to conduct activities</td>
<td>No fee.</td>
</tr>
<tr>
<td>(29) Annual report</td>
<td>$___</td>
</tr>
<tr>
<td>(30) Articles of correction</td>
<td>$___</td>
</tr>
<tr>
<td>(31) Application for certificate of existence or authorization</td>
<td>$___</td>
</tr>
</tbody>
</table>
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.


Substantially a reenactment of Revised Model Nonprofit Corporation Act (1987) § 1.22, except subsection (a)(10) – (14) and (27) which are new. (2016 Revision), § 17.02.

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: Effective date of act, see § 5.021405.
Reservation of power to amend or repeal the act, § 107.
Agent’s resignation: Saving provisions, see § 5.031401.
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 short title provided by Section 101(a) creates a convenient name for the enacting state’s nonprofit corporation 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 catch-all 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.

The act’s application to all domestic nonprofit corporations in existence on the effective date of the act, as well as to all new domestic corporations formed after that date, avoids a confusing coexistence of different and overlapping rules of corporation law.

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.

Section 101(b) applies this basic principle in its broadest sense by making the act applicable as of its “effective date” (prescribed in Section 1405) to all domestic nonprofit corporations formed under general statutes for nonprofit corporations.

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
Substantially a reenactment of Revised Model

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. applies the act to all corporations to which that application is constitutionally
permissible. In view of the universal adoption of “reservation of power” provisions in all states
for more than a century, there are very few active nonprofit corporations to which this act will
not be applicable under this section. See Section 107 for the act’s “reservation of power”
provision.
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.
Section 101(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. makes the act applicable on its effective date to all foreign nonprofit corporations that are registered to transact business in the state on that date. But these corporations need not refile and obtain new certificates of registration under the act. While Chapter 13 represents a change in the rules applicable to foreign corporations in many states, these changes are not of a type that require a transition period. It is therefore recommended that only a single effective date be provided for the application of the act to foreign corporations and that delayed effective dates for specific provisions in this regard are unnecessary.

(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:

(1) the record does or does not conform to the requirements of this [act]; or
(2) 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.
resignation of registered agent, see §§ 5.03 and 15.09.
service on foreign nonprofit corporation, see § 15.10.
Powers of secretary of state, see § 1.30.

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 action by the secretary of state does not create a 
presumption as to whether a filing conforms to the act or that the information in a filing is 
correct. 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. Section 
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 secretary 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 disputed 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 petition
the [name 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] to compel its filing.
The record and the explanation of the secretary of state of the refusal to file must be
attached to the petition. The court may decide the matter in a summary proceeding.

(c) 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. Subsections (b) and (c) are
derived from Revised Model Nonprofit Corporation

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 supplied by each state when enacting this section. It is
intended that this should be a court of general civil jurisdiction. It may either be 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” PROCEEDINGS

In view of the limited discretion of the secretary of state under the act, a “summary”
proceeding appears to be appropriate in Section 1.26(b). Throughout the act the term “summary
proceeding” 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 “summary
proceeding” 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 OR REGISTRATION

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

(b) A certificate of existence or registration sets forth:

(1) the name of the domestic nonprofit corporation or the name used by the foreign nonprofit corporation in this state;

(2) that:

(i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is registered 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 registration 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;

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

(7) that the corporation is not administratively dissolved and a proceeding is not pending under section 14.21.

(c) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied upon as conclusive evidence of the facts stated in the certificate.
CROSS-REFERENCES

Fees, see § 1.22.

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 registered 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 registered 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 registration 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.

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.

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 that 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.

[Subchapter] D

DEFINITIONS


§ 1.41. Notice.

§ 1.401. [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 (annual report for secretary of state). If any record filed under this act restates the articles in their entirety, thenceforth the articles shall not include any prior filings.

When used with respect to a foreign nonprofit corporation or a domestic or foreign business corporation, the “articles of incorporation” of the corporation means the document of the corporation that is equivalent to the articles of incorporation of a domestic nonprofit corporation.

“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:

(i1) the powers, functions, or authority of the board have been vested in, or are 
exercised by, the designated body; and

(ii2) the provision of this [actAct] in which the term appears is relevant to the 
discharge by the designated body of its powers, functions, or authority.

Source Note: Patterned in part after first two 
sentences of 15 Pa.C.S. § 5103 (“board of 
directors”). Compare Revised Model Nonprofit 

“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].

Source Note: Patterned after Model Business 

“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 

“Charitable asset” means property that is given, received, or held for a charitable 
purpose.

Source Note: Patterned after Model Protection of Charitable Assets Act § 
(2)(1) (first sentence).

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

Source Note: New.

“Charitable purpose” means a purpose that:

(i1) 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

(ii2) is considered charitable under law other than this [actAct] or the Internal 
Revenue Code.

Source Note: New.

(Reserved.)

“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.


(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.

Source Note: Patterned in part after 15 Pa.C.S. § 5103 (“other body”).

(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,” with respect to an entity, means an unincorporated entity whose internal affairs are governed by the laws of this state.


“Effective date,” when referring to a record accepted for filing by the secretary of state, means the date and time determined in accordance with Section 163 (effective time and date of filing).

Source Note: Patterned after Model Business

(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.

Source Note: Patterned after Uniform Electronic Transactions Act § 2(5).

(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. A director or officer may accept duties that make the director also an employee.

Source Note: Substantially a reenactment of Revised Model Nonprofit Corporation Act (1987) § 1.40(13).

(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.

Source Note: Patterned after 15 Pa.C.S. § 5103 (“entitled to vote”).

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

“Expenses” means reasonable expenses of any kind that are incurred in connection with a matter.


(21) “Filing entity” means an unincorporated entity that is created by whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

“Foreign,” with respect to an entity, means an entity governed as to its internal affairs by an organic law of a jurisdiction other than this state.

(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.


“Foreign registration statement” means the foreign registration statement described in Section 1303 (foreign registration statement).

(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 interest exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

Source Note: New.

“Governing jurisdiction” means the jurisdiction the law of which includes the organic law governing a domestic or foreign nonprofit corporation or eligible entity.

(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).
“Includes” denotes and “including” denote a partial definition or a nonexclusive list.


“Individual” means a natural person.


“Interest” means:

(1) a share;

(2) a membership; or

(3) “Interest” means either or both of the following rights under the organic law of governing 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.


“Interest holder” means a person who holds of record an interest.


“Interest holder liability” means:

(1) 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, of the person as an interest holder, or member; or

(ii) by a provision of 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 that make one or more specified shareholders, interest holders, or
members categories of interest holders liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.


(2) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.


Source Note: New.

“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.


“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.


“Means” denotes an exhaustive definition.


(37) “Member” means:

(i) A member means a person in whose name a membership is registered on the records of the corporation and who has the right, in accordance with the articles of incorporation or bylaws and not solely 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 6.02602(d) (admission).

(ii) A designated body to the extent:
(A) the powers, functions, or authority 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 powers, functions, or authority.

(38) “Membership” means the rights and any obligations of a member in a **domestic or foreign** 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 whose formation does not require the filing of a public organic record.


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

Source Note: New.

“Nonprofit corporation,” “corporation,” “domestic corporation,” or “domestic nonprofit corporation,” means a corporation incorporated under or subject to the provisions of this **Act** that is not a foreign corporation.

(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(103) (notice).


(44) “Officer” includes:

(i) a person who is an officer as provided in Section 8.40(840) (officers); 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**.

Source Note: Patterned after 15 Pa.C.S. § 5103 ("officer").
“Organic law” means the statute principally governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.


“Organic record rules” means the public organic record or the private organic rules of an entity.


“Person” includes an individual or an entity.


“Principal office” means the office (in or out of this state) so designated in the annual report as the location of the foreign registration statement where the principal executive office of a domestic or foreign nonprofit corporation are located.


“Private organic rules” means any record (other than the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its 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.


“Proceeding” includes civil suit and means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, and investigatory action, arbitrative, or investigative, and whether formal or informal.


“Public organic record” means the record, if any, that is filed of public record to create an unincorporated entity, the filing of which by the secretary of state is required to form an entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.
(52) (Reserved.)

(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 7.07707 (record date) on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this [act]. The determination shall be made as of the close of business on the record date unless another time is specified when the record date is fixed when the record date is at the principal office of the nonprofit corporation on the date so fixed.

(54.1) “Registered foreign corporation” means a foreign corporation registered to conduct activities in this state.

(55) “Secretary” means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under Section 8.40840(bc) 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.
“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.


“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.

“Type of entity” means a generic form of entity:


(1) recognized at common law; or

(2) formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

“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.


“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.

Source Note: Patterned after 15 Pa.C.S. § 1103 ("voting").

(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.

Source Note: Patterned after Model Business Nonprofit Corporation Act, 3d Ed. (20022008), § 1.40(27).

Cf. Compare Revised Model Nonprofit Business Corporation Act (19872016 Revision), § 1.40(35).

CROSS-REFERENCES

Notice, § 103.

Special definitions in other sections of the Act:

“corporate action,” see § 1.50110(a).
“corporation,” see § 8.50850.
“court,” see § 1.50110(b).
“derivative proceeding,” see § 13.01501.
“director,” see § 8.50850.
“disinterested director;” see § 8.50850.
“exchanging entity,” see § 11.011201.
“expenses,” see § 8.50850.
“interest exchange,” § 1201.
“liability,” see § 8.50850.
“membership exchange,” see § 11.01.
“merger,” see § 11.011201.
“officer,” see § 8.50850.
“official capacity,” see § 8.50850.
“outstanding shares,” see § 6.03.
“party,” see § 8.50850.
“party to a merger,” see § 11.011201.
“party to a membership interest exchange,” see § 11.011201.
“proceeding,” see § 8.50850.
“survivor,” see § 11.011201.
OFFICIAL COMMENT

1. Board of Directors and Designated Body

The term concept of a “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 nonprofit 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 109B. 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.

Rather than providing a specific list of purposes that are considered charitable for
purposes of the act, Section 102 defines charitable purposes as including those purposes that are
considered charitable under Section 501(c)(3) of the Internal Revenue Code or other law. The
prior act also treated all nonprofit corporations that are exempt from taxation under Section
501(c)(4) as having a charitable purpose. While a corporation taxed under Section 501(c)(4) may
have a charitable purpose, treating all such corporations as having a charitable purpose was
overly broad.

The word “corporation” is used only after a more complete description of
the 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 Notwithstanding that style convention, 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.

A person elected or appointed to vote at these representative assemblies is a “delegate” for purposes of the act even if they are called
by some other name.
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 single 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 email, 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 Section 102. 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 for as long as the voicemail message is retrievable and capable of reproduction in perceivable form.

87. 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 non-business term “trust” as used in the definition of “entity” 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 “definition of “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), several categories of persons that are excluded from the definition of “unincorporated entity.” 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.

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
division’s law, to make it clear that they are not eligible to participate in a merger, interest
exchange, or conversion under Chapter 12. If a nonprofit corporation wishes to engage in a
“merger,” as defined in Section 1201, with a charitable trust it will be necessary to first
incorporate the trust.

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:

8. Expenses

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

(1) Joint tenancy, tenancy in common, tenancy by the entirety,
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 act provides in a number of contexts that expenses relating to a proceeding incurred
by a person shall or may be paid by another, through indemnification or by court order in
specific contexts. Other than the requirement that expenses must be reasonable in the
circumstances, the type or character of the expenses is not limited. Examples include such things
as fees and disbursements of counsel, experts of all kinds, and jury and similar litigation
consultants; travel, lodging, transcription, reproduction, photographic, video recording,
communication, and delivery costs, whether included in the disbursements of counsel, experts, or
consultants, or directly incurred; court costs; and premiums for posting required bonds.

9. Interest Holder Liability

The term “eligible entity interest holder liability” 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 context of provisions in Chapter 12
that preserve the personal liability of interest holders when the entity in which they own interests
is the subject of a transaction under that chapter. The term includes only liabilities that are
imposed by or pursuant to statute on interest holders. Liabilities that an interest holder incurs by
contract (other than a contract that is part of an entity’s organic rules, such as a partnership
agreement) 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 “interest holder
liability.” If, on the other hand, a member were to guarantee payment of an obligation of a
corporation, that liability would not be an “interest holder liability.”

9.10 Member and Membership

“Member” and “Membership” are defined in Sections 1.40(37) and (38) for purposes of
this the 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 the act they are referred to as “interest holders” and what they own in the limited liability
company is referred to in this the 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) of “member.” 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 the act even though the person may be referred to by the
corporation as a member.

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, 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 because 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 16.21421. 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 definition 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 documents, 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 email, 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 8.40840. However, some corporate officer, however titled, regardless of title, 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

The definition of “sign” is patterned after the definition of that term in Uniform Electronic Transactions Act § 2(8) (“electronic signature”), Uniform Limited Partnership Act (2001) § 102(19), and Uniform Limited Liability Company Act (2006) § 101(18). Those definitions, in turn, were based on the definition of “electronic signature” in section 106(5) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7006(5). The term includes manual, facsimile, conformed, or...
electronic signatures. In this regard, it is intended that, and 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 comprising 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.

1817. Voting Group

Section 1.40(63)102 defines “voting group” for purposes of this the act as a matter of
convenient reference. A “voting group” consists of all the members of one or more classes that
under the act, articles of incorporation, or 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 act,
articles of incorporation, bylaws, or the act bylaws are for that purpose a single voting group. The
word “generally” signifies all members entitled to vote on the matter by the act, articles of
incorporation, bylaws, or the act bylaws 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 act, articles of incorporation, and bylaws. 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 7.24724. See Section 7.25725(a). If a second class of members is also entitled to vote on the matter, then a further determination 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 8.04804.

The definition of a voting group permits the establishment by statute of quorum and voting requirements for a variety of matters considered at members’ meetings in corporations with multiple 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 entitled 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.

**1918. 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 certain 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.

§ 1.41103. NOTICE

(a) Notice A notice under this Act must be in the form of given or delivered in accordance with this section. Notice must be in a record unless oral notice is authorized by this Act or is reasonable under the circumstances.

(b) Notice Except as provided in subsection (c), notice may be communicated in person or by delivery, or in any other manner authorized by the articles of incorporation or
bylaws. If these forms of communication are impracticable, notice may be communicated by given by means of a broad non-exclusionary distribution to the public (which may include a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication, or other methods of distribution that the nonprofit corporation has previously identified to its members).

(c) Notice by a nonprofit corporation to a director, member of a designated body, or member shall be given to the mailing or electronic address of the person shown in the records of the corporation or as provided in subsection (e)(1f) or (2g).

(d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered to its registered agent at its registered office or to. Notices may also be delivered to the secretary of 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) Notice under this act 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 the articles of incorporation or 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:
   a. 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
(Bii) 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) Whenever notice would otherwise be required to be given under any provision of this [Act] to a member, the notice need not be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings have been returned undeliverable or could not be delivered. If a member delivers to the nonprofit corporation a notice setting forth the member’s then-current address, the requirement that notice be given to that member is reinstated.


CROSS-REFERENCES

Annual meeting, § 701.
Annual report, see § 16.01421.
Application for certificate of authority, see § 15.03.
“Deliver” defined, see § 1.40102.
“Electronic” defined, see § 1.40102.
Meetings:

board of directors, see § 8.22822.
members, see § 7.05705.
“Principal office”: defined, see § 1.40102.
designated in annual report, see § 16.01421.
“Record” defined, see § 1.40102.
Record of members, see § 16.01401.
Special notice requirements:

attorney general, see §§ 1.53113 and 1.70140.
derivative proceedings, see § 13.09509.
resignation of registered agent, see §§ 5.03222 and 15.091304.
service on corporation, see §§ 5.04 and 15.10223.
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

Notice may be given to a nonprofit corporation by delivering a copy of the notice to the corporation or to the secretary of the corporation at its principal office. This method of giving notice to the corporation, however, is not exclusive, and notice may be given in other ways as well.

Section 1.41(c) provides that notice by a corporation to its directors, members of a designated body, or members is to be given to the mailing or electronic address shown in the corporation’s records or as provided in Section 1.41(a)(1) or (2). Notice is effective as provided in Section 1.41(e). Notice by the corporation that is not addressed to a record address is effective as provided in Section 1.41(e)(a) or (2).

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 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.

3. MISCELLANEOUS PROVISIONS

Section 1.41 also contains 103(b) authorizes 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, alternative forms of notice if the otherwise applicable methods of delivery are impracticable, including notice by methods of distribution that are not provided for in the articles of incorporation or bylaws, but which the nonprofit corporation has previously identified to its members. Section 103(b) does not limit the methods of notice that may be used and, if
appropriately provided for in the articles or bylaws, or identified to the members, notice may be
given by posting on the corporation’s website or a social media platform.

Section 103(f) recognizes that notice may be given orally which could include oral notice
through voice mail or other similar means.

Section 1.41103(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 provides that these specific requirements, rather than the
general requirements of Section 1.41103, control. Finally, the second sentence of Section
1.41103(g) permits a nonprofit 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 1.41103(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 1.41103(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.”

Section 103(i) balances the requirement that the nonprofit corporation deliver notice to
members regarding meetings and the practical need to allow corporations to cease providing
notices where notices are being returned undelivered and it is clear that the member no longer is
located at the address previously provided to the corporation. Absent such a provision, the
corporation technically may be required to continue to attempt to deliver a notice to the member
in order to satisfy a statutory requirement regarding notices to members or otherwise risk
questions concerning the validity of the meeting for which the notice is required.

Under Section 103(i), a nonprofit corporation generally will be required to continue to
provide notice unless undeliverable items are returned over a period that could not be less than
twelve months and could extend for up to twenty-four months. For instance, if the first
undeliverable communication were delivered to a member six months before the next notice of
an annual meeting is required, the corporation would have to wait until the annual meeting notice
proves to be undeliverable to commence the non-delivery period, and then would have to wait
until the next annual meeting notice after that also proves to be undeliverable before suspending
the notification requirement. This amounts to a non-delivery period of eighteen months which
could extend to two years under the right circumstances.

§ 104. SIGNING OF FILED RECORDS

A record delivered to the secretary of state for filing pursuant to this [Act] must be signed
as follows:
(1) if the entity delivering the record for filing is a domestic or foreign nonprofit corporation, by:
   (i) a director, a member of a designated body, or an officer; or
   (ii) if directors or members of a designated body have not been selected or the corporation has not been formed, an incorporator; or
(2) if the entity delivering the record for filing is not a domestic or foreign nonprofit corporation, by:
   (i) a person with authority to sign for the entity; or
   (ii) if the entity is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that person.


CROSS-REFERENCES
Penalty for signing false record, § 169.
“Sign” defined, § 102.

OFFICIAL COMMENT
A record delivered for filing must 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. The act does not require that documents be acknowledged or verified as a condition for filing. Requirements such as these serve little purpose in connection with documents filed under the act because Section 169 makes it a criminal offense for any person to sign a document for filing with knowledge that it contains false information. On the other hand, many organizations, like lenders or title companies, may desire that specific documents include acknowledgments, verifications, or seals. These additional forms of authentication do not affect the eligibility of a record for filing.

§ 105. EXTRINSIC FACTS IN FILED RECORD
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 section:

(i) “filed record” means a record filed with the secretary of state under any provision of this [Act] except [Chapter] 13 (foreign corporations) or Section 421 (annual report for secretary of state); and

(ii) “plan” means a plan of domestication, conversion, merger or interest exchange.

(4) The following provisions of a plan or filed record may not be made dependent on facts outside the plan or filed document:

(i) the name and address of any person required in a filed record;

(ii) the registered office of any entity required in a filed record;

(iii) the registered agent of any entity required in a filed record;

(iv) the number of authorized interests and designation of each class or series of interests;

(v) the effective date of a filed record; and

(vi) any required statement in a filed record of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed record is made dependent on a fact ascertainable outside of the filed record, and that fact is not ascertainable by reference to a source described in Section 105(2)(i) or a record that is a matter of public record, and the affected members have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state an amendment to the filed record setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. The amendment under this Section 105(5) is deemed to be authorized by the authorization of the original filed record to which it
relates and may be filed by the corporation without further action by the board of directors, a designated body, or the members.

Source Note: Model Nonprofit Corporation Act, 3rd Ed.

OFFICIAL COMMENT

Section 105 applies where the act permits any of the terms of a filed record or plan to be made dependent on facts outside the record or plan. A common example is a reference to an interest rate such as the federal funds rate. Section 105(2)(ii) also provides that the facts on which a filed record or plan may be made dependent include facts within the control of the nonprofit 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. These requirements will help 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, 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.

Chapter 12 generally requires 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 establish appropriately defined parameters for such terms in order to discharge its statutory duties.

§ 106. 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: Model Nonprofit Corporation Act, 3rd Ed.
(2008), § 1.03.
Section 106(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.

Section 106(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.

Section 106 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.

§ 107. 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 nonprofit corporations subject to this [Act] are governed by the amendment or repeal.


CROSS-REFERENCES

Application of act to existing domestic nonprofit corporation, § 101(b).
Application of act to existing registered foreign nonprofit corporation, § 101(c).
Effective date of act, § 1405.
Saving provisions, § 17.03.

OFFICIAL COMMENT

Provisions similar to Section 107 have their genesis in Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat) 518 (1819), which held that the impairment of contracts clause of the United States Constitution, Article I, Section 10, Clause 1, prohibited the application of newly enacted statutes to existing corporations while suggesting the efficacy of a reservation of power similar to Section 107. The purpose of Section 107 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 and foreign registration statements filed under the act are subject to the reservation of power set forth in Section 107. Further, nonprofit corporations “governed” by the act – which includes all corporations formed or registered under earlier, general incorporation statutes that contain a reservation of power – are also subject to the reservation of power of Section 107 and bound by subsequent amendments to the act.

Many states have constitutional provisions mandating the reservation of power to amend or modify corporate statutes and charters. In those states, Section 107 is also supported by specific constitutional authorization.

[Subchapter] EB
REVIEW OF CONTESTED CORPORATE ACTION

§ 1.50. Definitions

(a) This [subchapterSubchapter] applies to, and the term “corporate action” in this [subchapterSubchapter] 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 that is required or permitted to be submitted to them under this [Act], any other provision of law, or the articles of incorporation or bylaws.

(b) The “court” referred to in this [subchapterSubchapter] 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 15 Pa.C.S. § 5791. See also Del. GCL §§ 211(c) and 225. Subsection (b) patterned after new § 1.26(b). Former Revised Model Nonprofit
Corporation Act (1987, 3rd Ed. (2008), § 1.50 is now § 1.64.4.

CROSS-REFERENCES

“Delegates” defined, see § 1.40102.
“Designated body” defined, see § 1.40102.
“Members” defined, see § 1.40102.
“Officers” defined, see § 1.40102.

OFFICIAL COMMENT

The rights to seek judicial relief provided in this subchapter Subchapter 1B 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.

§ 1.51111. 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 under any circumstances other than those described in section 7.03 Section 703(a) (1) or (2) court-ordered meeting), 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 § 1.50 110(a).

OFFICIAL COMMENT

This section Section 111 provides a way to conduct meetings or take corporate action when it is otherwise impractical or impossible to do so. For example, a nonprofit 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 act, articles of incorporation, or 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 (proceedings prior to corporate action).

(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.C.S. § 5793. See also Del. GCL § 225. Model Nonprofit Corporation Act, 3rd Ed. (2008), § 1.52.

CROSS-REFERENCES

“Corporate action” defined, see § 1.501.(a).

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 § 1-40102.

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 1-70140. Even if an enacting state decides to retain a requirement of notice to the attorney general in the act, this section will not be needed if Section 1-70140 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] C

RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

§ 120. [Subchapter] definitions.
§ 121. Defective corporate actions.
§ 122. Ratification of defective corporate actions.
§ 123. Action on ratification.
§ 124. Notice requirements.
§ 125. Effect of ratification.
§ 126. Filings.

§ 120. [SUBCHAPTER] DEFINITIONS

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

“Corporate action” means any action taken by or on behalf of a nonprofit corporation, including an action taken by the incorporator, the board of directors, a committee of the board of directors, a designated body, an officer, an agent of the corporation, or the members.
“Date of the defective corporate action” means the date (or the approximate date, if the exact date is unknown) the defective corporate action was purported to have been taken.

“Defective corporate action” means a corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the nonprofit corporation, but is void or voidable due to a failure of authorization.

“Failure of authorization” means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this [Act], the articles of incorporation, or bylaws, a corporate resolution or other action of the board of directors or members, or any plan or agreement to which a nonprofit corporation is a party, if and to the extent the failure would render the corporate action void or voidable.

“Validation effective time” with respect to a defective corporate action ratified under this subchapter means the later of the time at which:

(1) one of the following occurs:

   (i) the ratification of the defective corporate action is approved by the members;

   (ii) if approval of members is not required, the time at which a notice under Section 124 (notice requirements) becomes effective in accordance with Section 103 (notice);

   (iii) if approval of members is not required and notice is not given under Section 124 (notice requirements), the ratification of the defective corporate action is approved by the board of directors; and

(2) any articles of validation filed in accordance with Section 126 (filings) become effective.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.45.

CROSS-REFERENCES

Corporate powers, § 302.
Lack of power to act, § 304.

OFFICIAL COMMENT

The definitions of “corporate action,” “defective corporate action,” and “failure of authorization” are intentionally broad and permit ratification of any corporate action purportedly taken that would have been within the power granted to a nonprofit corporation under the act but as to which there is a question of its proper authorization.
§ 121. DEFECTIVE CORPORATE ACTIONS

(a) A defective corporate action shall not be void or voidable if ratified or validated in accordance with this [Subchapter].

(b) Ratification or validation under this [Subchapter] is not the exclusive means of ratifying or validating a defective corporate action. The absence or failure of ratification or validation in accordance with this [Subchapter] shall not:

1) affect the validity or effectiveness of a corporate action otherwise properly ratified; or

2) create a presumption that a corporate action is or was:

(i) a defective corporate action; or

(ii) void or voidable.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.46.

CROSS-REFERENCES

Amendment of articles of incorporation or bylaws, Chapter 9.
“Corporate action” defined, § 120.
Correcting a filed record, § 164.
“Defective corporate action” defined, § 120.

OFFICIAL COMMENT

Subchapter 1C provides a statutory ratification procedure for corporate actions that may not have been properly authorized. The statutory ratification procedure is designed to supplement common law ratification.

Examples of defective corporate actions subject to ratification include the failure of the incorporator to validly appoint an initial board of directors, corporate action taken in the absence of board resolutions or other action of the board or members authorizing the action, and the failure to obtain the requisite member approval of a corporate action. The ratification procedure is intended to be available only where there is objective evidence that a corporate action was defectively authorized.

Section 121(a) does not distinguish between void and voidable actions. Instead it provides that any defective corporate action that is ratified in accordance with Subchapter 1C shall not be void or voidable. Subchapter 1C is not the exclusive means by which a defective corporate action may be ratified. Thus, the general common law doctrine of ratification, as
applied to a board of directors' adoption of actions taken by officers who may not have had the
actual authority to take such actions, continues to be an effective mode of ratification. Section
121(b) makes clear that the nonprofit corporation's ratification of a defective corporate action
that is voidable but not void using common law methods of ratification rather than under
Subchapter 1C will not, standing alone, affect the validity of the action or create a presumption
that the action is not valid. In addition, ratification under Subchapter 1C is distinct from
correction of an already filed record under Section 164.

§ 122. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

(a) To ratify a defective corporate action other than the ratification of an election of
the initial board of directors under subsection (b), the board of directors shall take action
ratifying the action in accordance with Section 123 (action on ratification), stating:

(1) the defective corporate action to be ratified;

(2) the date of the defective corporate action;

(3) the nature of the failure of authorization with respect to the defective
corporate action to be ratified; and

(4) that the board of directors approves the ratification of the defective
corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election
of the initial board of directors or a designated body of the nonprofit corporation under Section
205(a)(2) (organization of corporation), a majority of the persons who, at the time of the
ratification, are exercising the powers of directors may take an action stating:

(1) the name of the person or persons who first took action in the name of the
corporation;

(2) the earlier of the date on which such persons first took such action or were
purported to have been elected; and

(3) that the ratification of the election of such person or persons is approved.

(c) If any provision of this [Act], the articles of incorporation, bylaws, action of the
board or directors or a designated body, plan, or agreement to which the nonprofit corporation is
a party in effect at the time action under subsection (a) is taken requires member approval or
would have required member approval at the date of the occurrence of the defective corporate
action, the ratification of the defective corporate action approved in the action taken by the
directors under subsection (a) shall be submitted to the members for approval in accordance with
Section 123.
(d) Unless otherwise provided in the action taken by the board of directors under subsection (a), after the action by the board of directors has been taken and, if required, approved by the members, the board of directors may abandon the ratification at any time before the validation effective time without further action of the members.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.47.

CROSS-REFERENCES

“Date of the defective corporate action” defined, § 120.
“Defective corporate action” defined, § 120.
“Designated body” defined, § 102.
“Failure of authorization” defined, § 120.
Organization of corporation, § 205.
Requirement for and functions of board of directors, § 801.
“Validation effective time” defined, § 120.

OFFICIAL COMMENT

Section 122(b) permits the ratification of the initial election of the board of directors or a designated body by the persons who are acting as the current board of directors, recognizing that if the nonprofit corporation’s initial board of directors was defectively appointed, there may be no effective method of ratification because a duly elected board of directors does not exist.

§ 123. ACTION ON RATIFICATION

(a) The quorum and voting requirements applicable to a ratifying action by the board of directors under Section 122(a) (ratification of defective corporate actions) shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the members under Section 122(c), and if the approval is to be given at a meeting, the nonprofit corporation shall notify each member entitled to vote as of the record date for notice of the meeting. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and must be accompanied by:

(1) either a copy of the action taken by the board of directors in accordance with Section 122(a) or the information required by Sections 122(a)(1) through (a)(4); and

(2) a statement that any claim that the ratification of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days after the applicable validation effective time.
(c) Except as provided in subsection (d) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the members required by Section 122(c) shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the member approval.

(d) The approval by members to ratify the election of a director requires a majority of the votes cast within a voting group in favor of ratification or such greater vote as is required to elect directors at the time of ratification.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.48.

CROSS-REFERENCES

“Corporate action” defined, § 120.
“Defective corporate action” defined, § 120.
Notices and other communications, § 103.
Quorum and voting requirements for the board of directors, § 824.
Quorum and voting requirements for voting groups, § 725.
“Validation effective time” defined, § 120.

OFFICIAL COMMENT

For matters other than the election of directors or a designated body, the quorum and voting requirements applicable to member approval of ratification are the quorum and voting requirements applicable to the corporate action being ratified at the time of such approval. For example, if the defective corporate action being ratified is an amendment to the articles of incorporation, the vote required would be governed by Section 904.

§ 124. NOTICE REQUIREMENTS

(a) Unless member approval is required under Section 122(c) (ratification of defective corporate actions), notice of an action taken under Section 122 may be given to each member entitled to vote as of the date of the action by the board of directors.

(b) If notice is given pursuant to subsection (a), the notice must contain:

(1) either a copy of the action taken by the board of directors in accordance with Section 122(a) or (b) or the information required by Sections 122(a)(1) through (a)(4) or Sections 122(b)(1) through (b)(3), as applicable; and

(2) a statement that any claim that the ratification of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days after the notice is effective under Section 103 (notice),
(c) No notice under this section is required with respect to any action required to be submitted to members for approval under Section 122(c).

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.49.

CROSS REFERENCES

Corporate records, § 401.
“Defective corporate action” defined, § 120.
Notices and other communications, § 103.

OFFICIAL COMMENT

If member approval is not required under Section 122(c), notice to the members of action taken under Section 122 is optional.

§ 125. EFFECT OF RATIFICATION

(a) From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under Section 127 (judicial proceedings regarding validity of corporate actions):

(1) Each defective corporate action ratified in accordance with Section 122 (ratification of defective corporate actions) shall not be void or voidable as a result of the failure of authorization identified in the action taken under Section 122(a) or (b) and shall be deemed a valid corporate action effective as of the date of the defective corporate action.

(2) Any corporate action taken subsequent to the defective corporate action ratified in accordance with this [Subchapter] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action shall be valid as of the time taken.

(b) The validation effective time shall not be affected by the filing or pendency of a judicial proceeding under Section 127 or otherwise, unless otherwise ordered by the court.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.50.

CROSS-REFERENCES

“Corporate action” defined, § 120.
“Date of the defective corporate action” defined, § 120.
“Defective corporate action” defined, § 120.
“Failure of authorization” defined, § 120.
“Validation effective time” defined, § 120.
Ratification is effective as of the validation effective time and is not dependent on the expiration of the 120-day time period under Section 127(d) in which an action challenging the ratification must be brought. The ratification of a defective corporate action has the additional effect of ratifying corporate actions that are defective as a result of the original defective corporate action.

§ 126. FILINGS

(a) If a defective corporate action ratified under this [Subchapter] would have required the delivery of a record to the secretary of state for filing, then, regardless of whether a filing was previously made in respect of the defective corporate action and in lieu of a filing otherwise required by this [Act], the corporation shall deliver to the secretary of state for filing articles of validation in accordance with this section. The articles of validation shall amend or substitute for the filing of any other record with respect to the defective corporate action required by this [Act].

(b) The articles of validation must set forth:

(1) the defective corporate action that is the subject of the articles of validation;

(2) the date of the defective corporate action;

(3) the nature of the failure of authorization in respect of the defective corporate action;

(4) a statement that the defective corporate action was ratified in accordance with Section 122 (ratification of defective corporate actions), including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the members approved the ratification of the defective corporate action; and

(5) if a filing was previously made in respect of the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with Section 122, the name, title, and filing date of the filing previously made and any articles of correction to that filing;

(6) if a filing was previously made in respect of the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with Section 122:

   (i) the name, title and filing date of the filing previously made and any articles of correction to that filing; and
to be included by this [Act] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(iii) the date and time that the original filing became effective; and

(7) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under Section 122 would have required a filing under this [Act]:

(i) a statement that a filing containing all of the information required to be included by this [Act] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

(ii) the date and time that such filing is deemed to have become effective.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.51.

CROSS-REFERENCES

Correcting filed records, § 164.
“Date of the defective corporate action” defined, § 120.
“Defective corporate action” defined, § 120.
Effective time and date of filing, § 163.
“Failure of authorization” defined, § 120.

OFFICIAL COMMENT

Section 126 requires that the articles of validation have attached as an exhibit: (i) any filing that is or would have been required under the act to effect the defective corporate action (if no filing was previously made), or (ii) a corrected filing (if correction to a previous filing is required). If a filing was previously made and does not need to be corrected, the articles of validation must identify the previous filing. These requirements are intended to provide a clear public record of the actions relating to the ratification.

§ 127. JUDICIAL PROCEEDINGS REGARDING VALIDITY OF CORPORATE ACTIONS

(a) Upon application by a nonprofit corporation, any successor entity to the nonprofit corporation, a director of the corporation, a member of a designated body, a member, or any other person claiming to be substantially and adversely affected by a ratification under Section 122 (ratification of defective corporate actions), the [name or describe court] may:
(1) determine the validity and effectiveness of the corporate action or defective corporate action;

(2) determine the validity and effectiveness of any ratification under Section 122; and

(3) modify or waive any of the procedures specified in Section 122 or 123 (action on ratification) to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances.

(c) No party other than the nonprofit corporation need be joined in order for the court to adjudicate the matter. In an action filed by the nonprofit corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of a defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days after the validation effective time.

Source Note: Cf. Model Business Corporation Act (2016 Revision), § 1.52.

CROSS-REFERENCES

“Corporate action” defined, § 120.
“Defective corporate action” defined, § 120.
“Validation effective time” defined, § 120.

OFFICIAL COMMENT

Section 127 confers plenary jurisdiction on a designated court to hear and determine claims regarding the validity of any corporate action. The court’s jurisdiction is not limited to reviewing corporate actions ratified or purportedly ratified under Subchapter 1C, and includes the ability of a nonprofit corporation or other permitted person to obtain a declaration regarding the validity of any corporate action. In acting under Section 127, the court may consider any factors or considerations it deems proper under the circumstances. These might include whether the person originally taking the defective corporate action believed that the action complied with corporate requirements, whether the corporation and board of directors has treated the defective corporate action as a valid action, whether any person has acted in reliance on the public record that such defective corporate action was valid and whether any person will be or was harmed by the ratification of the defective corporate action or will be harmed by the failure to ratify or validate the defective corporate action.
§ 1.60130. Subordination to religious doctrine or polity, or canon law.

§ 1.60130. SUBORDINATION TO RELIGIOUS DOCTRINE OR POLITY, OR CANON LAW

If religious doctrine or polity, or canon law governing the affairs of a nonprofit corporation is inconsistent with the provisions of this Act on the same subject, the religious doctrine or polity, 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 § 1.40102.

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 CALIF. 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 1.60130 is based on the recognition that some provisions of the act may conflict with religious doctrines or polity, 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 1.60130 overcomes this difficulty by providing that, to the extent canon law or religious doctrine or polity, or canon law applicable to a religious corporation sets forth provisions inconsistent with provisions of the act, the canon law or religious doctrine or polity, or canon law controls, but only to the extent required by the United States Constitution or applicable state constitutions.

While in one sense Section 1.60130 simply states the obvious, it is helpful to remind those dealing with religious corporations that they must consider constitutional mandates. The approach of Section 1.60130 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.

[Subchapter] GE [Optional]
ATTORNEY GENERAL

§ 1.70140. Notice to attorney general. [Optional]

§ 1.70140. 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), 3rd Ed. (2008), § 1.70.

CROSS-REFERENCES

Derivative actions, § 13.09509.
Dissolution:
Judicial, § 14.34.1120.
Voluntary, § 14.02.1102(g).
Removal of directors, § 8.09809.
Ultra-vires, § 3.04304.

OFFICIAL COMMENT

This section Section 140 is marked optional because an enacting state should consider whether the substance of the section Section 140 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 Section 140(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 Section 140(b)(1) grants the attorney general independent authority to act when notice is required under subsection Section 140(a) or any other provision of this the 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 Section 140(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.

[Subchapter] F
SECRETARY OF STATE

§ 150. POWERS
§ 151. Rules and procedures.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this [Act].


CROSS-REFERENCES

Administrative dissolution, Subchapter 11D.
Administrative termination of registration of foreign nonprofit corporation, § 1311.
Secretary of state’s filing duty, § 165.
OFFICIAL COMMENT

Section 150 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 nonprofit corporation statute relate to the creation and maintenance of relationships among persons interested in or involved with a corporation. These relationships 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 that 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.

§ 151. RULES AND PROCEDURES

The secretary of state may:

(1) adopt rules to administer this [Act] in accordance with [this state’s administrative procedure act]; and

(2) prescribe procedures that are reasonably necessary to perform the duties required of the secretary of state under this [Act] and are not required by [this state’s administrative procedure act] to be adopted as rules.


OFFICIAL COMMENT

Section 151 grants 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 as a grant of general authority to establish public policy. See Section 165(a) which makes clear that the duty of the secretary of state under the act is “ministerial.”

[Subchapter] G

FILING DOCUMENTS

§ 160. Filing requirements.
§ 161. Forms.
§ 162. Filing, service, and copying fees.
§ 163. Effective time and date of filing.
§ 164. Correcting a filed record.
§ 165. Filing duty of secretary of state.
§ 166. Refusal of secretary of state to file record.
§ 160. FILING REQUIREMENTS

(a) To be filed by the secretary of state pursuant to this [Act], a record must be received by the secretary of state, comply with this [Act], and satisfy the following:

(1) The record must be required or permitted by this [Act].

(2) The record must be physically delivered in written form unless and to the extent the secretary of state permits electronic delivery of records.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The record must be signed by or on behalf of a person authorized or required under this [Act] to sign the record.

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this [Act] prohibits the disclosure by the secretary of state of information contained in a record, the secretary of state shall file the record if the record otherwise complies with this [Act]. The secretary of state may redact the information, and shall do so at the request of the person delivering the record for filing.

(c) When a record is delivered to the secretary of state for filing, any fee required under this [Act] and any fee, tax, interest, or penalty required to be paid under this [Act] or law other than this [Act] must be paid in a manner permitted by the secretary of state or by that law.

(d) The secretary of state may require that a record delivered in written form be accompanied by an identical or conformed copy.


CROSS REFERENCES

“Electronic” defined, § 102.
“Record” defined, § 102.
“Sign” defined, § 102.

OFFICIAL COMMENT
A record must be in typewritten or printed form unless the secretary of state permits electronic delivery. The types of electronic delivery that may be used will be determined by the secretary of state. The text of the record must be in the English language, (except to the limited extent permitted by Section 160(a)(3).

The secretary of state is not authorized to prescribe forms (except to the extent permitted by Section 161) and as a result may not reject a record on the basis of form if it contains the information called for by the specific statutory requirement and meets the minimal formal requirements of this section.

To be filed a record must be signed by the appropriate person. Who is an appropriate person is specified in Section 104.

A record is not required to be acknowledged or verified as a condition for filing. On the other hand, many organizations, like lenders or title companies, may desire that specific records include acknowledgements, verifications, or seals. Section 160(a)(4) does not prohibit the addition of these forms of execution and their use is not intended to affect the eligibility of the record for filing.

A record must be filed by the secretary of state if it contains the information required by the act. In view of the very limited discretion granted to the secretary of state under Section 165(a), which defines the role of the secretary of state as “ministerial,” Section 167(d) provides that no presumption arises from the fact that the secretary of state has accepted or rejected a record for filing.

§ 161. FORMS

(a) The secretary of state may prescribe forms for:

(1) an application for a certificate of existence or certificate of registration;

(2) a registration statement for a foreign nonprofit corporation;

(3) a statement of withdrawal by a foreign corporation; and

(4) a transfer of registration statement by a foreign corporation.

(b) The secretary of state may require that use of the forms prescribed under subsection (a) is mandatory.

(c) The secretary of state may prescribe forms for records required or permitted to be delivered for filing under this [Act] in addition to those listed in subsection (a), but the use of those forms is not mandatory.
OFFICIAL COMMENT

The act does not vest the secretary of state with general authority to establish mandatory forms for use under the act. However, certain types of reports and requests for records may be processed efficiently only if uniform forms are used. The processing of applications for certificates of existence or registration, for example, may be handled more easily if specific information is located at specific places on the form. Similarly, processing of large-volume, largely routine filings is expedited if standardized forms are required. Also, the disclosure requirements of the annual report may be administered on a systematic basis if a standardized form is mandated. Section 161(a) recognizes that these considerations may exist in limited cases.

§ 162. 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>
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<tbody>
<tr>
<td>(1) Articles of incorporation</td>
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<td>(2) Application for use of indistinguishable name</td>
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</tr>
<tr>
<td>(3) Application for reserved name</td>
<td>$___</td>
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<td>(4) Notice of transfer of reserved name</td>
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<tr>
<td>(5) Application for registered name</td>
<td>$___</td>
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<td>(6) Application for renewal of registered name</td>
<td>$___</td>
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<tr>
<td>(7) Corporation’s statement of change of</td>
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</tbody>
</table>
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 conversion $___.

(12) Amendment of articles of incorporation $___.

(13) Restatement of articles of incorporation with amendment of articles $___.

(14) Articles of merger or interest exchange $___.

(15) Articles of dissolution $___.

(16) Articles of revocation of dissolution $___.

(17) Certificate of administrative dissolution No fee.

(18) Application for reinstatement following administrative dissolution $___.

(19) Certificate of reinstatement No fee.

(20) Certificate of judicial dissolution No fee.

(21) Foreign registration statement $___.

(22) Amendment of foreign registration statement authority $___.

(23) Statement of withdrawal $___.

(24) Transfer of registration statement $___.

(25) Annual report $___.

(26) Articles of correction $___.

(27) Application for certificate of existence or authorization $___.
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].


OFFICIAL COMMENT

Alternative A

Section 162 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 records in Section 162(a) includes all records that are authorized to be filed with the secretary of state under the act. The catch-all in the last item of the list will apply to any record for which a state does not establish a specific filing fee.

Section 162(a)(8) relating to a registered agent’s statement of change of registered office 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. 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.

Alternative B
As an alternative to having the legislature establish the fee schedule for filings under the act, Alternative B gives the secretary of state the authority to set those fees.

§ 163. EFFECTIVE TIME AND DATE OF FILING

Except as provided in Section 164(c) (correcting filed record) or [Subchapter] C (ratification of defective corporate actions), a record accepted for filing is effective:

(1) on the date and at the time of filing, as provided in Section 165(b) (filing duty of secretary of state);

(2) on the date of filing and at the time specified in the record as its effective time if later than the time specified in paragraph (1);

(3) at a specified delayed effective date and time which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.


CROSS-REFERENCES

“Effective date” defined, § 102.
Filing requirements, § 160.

OFFICIAL COMMENT

Section 163 provides definitive rules governing when a filed record becomes effective. The definition of effective date in Section 102 ties in with this section so that throughout the act the term “effective date” of a filed record means the effective date and time determined pursuant to Section 163. The act does not generally distinguish between the effective date of a filed record and the effectiveness of the transaction that is the subject of the record. However, in a few instances where filings in more than one jurisdiction are required, the act distinguishes between the effective date of the record and the effectiveness of the transaction that is the subject of the record. See Sections 1225, 1243, and 1253 regarding certain mergers, domestications, and conversions.

Section 103 deals with the effectiveness of notices and other communications and does not use or define the term “effective date.”

Section 163 does not authorize or contemplate the establishment of a retroactive effective date that is prior to the date of filing.
§ 164. CORRECTING FILED RECORD

(a) A record filed by the secretary of state under this [Act] may be corrected if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the secretary of state was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the secretary of state must deliver articles of correction to the secretary of state for filing.

(c) Articles of correction:

(1) may not state a delayed effective date;

(2) must be signed by the person correcting the filed record;

(3) must identify the filed record to be corrected;

(4) must specify the inaccuracy or defect to be corrected; and

(5) must correct the inaccuracy or defect.

(d) 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.

Source Note: Model Nonprofit Corporation Act, 3rd Ed. (2008), § 1.24. Cf. Model Business Corporation Act (2016 Revision), § 1.24. Subsections (b) and (c) patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-205(b) and (c).

CROSS-REFERENCES

Delivery defined, § 103.
Effective time and date of filing, § 163.
Filing fees, § 162.
Filing requirements, § 160.

OFFICIAL COMMENT
Section 164 permits making corrections in filed records without refiling the entire record or submitting formal articles of amendment. This correction procedure has the advantage that articles of correction do not alter the effective date of the underlying filing being corrected. Indeed, under Section 164(d), 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.

A provision in a filing setting an effective date under Section 163 may be corrected under this section, but the corrected effective date must comply with Section 163 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.

§ 165. FILING DUTY OF SECRETARY OF STATE

(a) If a record delivered to the secretary of state for filing satisfies the requirements of Section 160 (filing requirements), the secretary of state must file it. The duty of the secretary of state to file records under this section is ministerial.

(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 return to the person who delivered the record for filing 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, it shall be returned to the person who delivered the record for filing within five days after the record was delivered, together with a brief explanation in a record of the reason for the refusal.

(d) The filing or refusal to file a record by the secretary of state does not create a presumption that:

   (1) the record does or does not conform to the requirements of this [Act]; or
   (2) that information contained in the record is correct or incorrect.


CROSS-REFERENCES

Appeal from refusal to file document, § 166.
Effective time and date of filing, § 163.
Filing requirements, § 160.
Powers of secretary of state, § 150.

OFFICIAL COMMENT
Section 165 limits the secretary of state to a ministerial role in reviewing the contents of records. If the record submitted contains the information required by Section 160 and the applicable provision of the act (and if a mandatory form has been prescribed under Section 161(a), the record is in that form), the secretary of state under Section 165 must file it even though it contains additional provisions the secretary of state may believe are irrelevant or not authorized by the act or by general legal principles. Persons adversely affected by provisions in a record 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 accepted for filing by 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 a provision from the fact that the secretary of state accepted the document for filing.

§ 166. RESPONSE TO REFUSAL OF SECRETARY OF STATE TO FILE RECORD

(a) If the secretary of state refuses to file a record delivered for filing, the record may be resubmitted accompanied by an opinion in a record from a lawyer admitted to practice in this state stating why the record conforms to law and the authorities upon which the opinion is based. The secretary of state may rely with respect to any disputed 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 on whose behalf the record was delivered to the secretary of state may petition the court of the county where the entity’s principal office (or, if none in this state, its registered office) is or will be located to compel its filing. The record and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may:

(1) decide the matter in a summary proceeding; and

(2) order the secretary of state to file the record or take other action the court considers appropriate.

(c) The final decision of the court may be appealed as in other civil proceedings.


CROSS-REFERENCES

“Delivery” defined, § 102.
Filing fees, § 162.
Filing requirements, § 160.
Secretary of state’s filing duty, § 165.
OFFICIAL COMMENT

The identity of the specific court with jurisdiction to hear appeals from the secretary of state under Section 166(b) must be supplied by each state when enacting this section. The court may be one of general civil jurisdiction or relevant specialized jurisdiction. 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 703, relating to the ordering of a members meeting after the corporation fails to hold such a meeting.

The phrase “summary proceeding” in Section 166(b)(1) refers to a class of cases where the court takes action on an expedited basis and decides the case on a limited record given the narrowness of the issues involved. See Section 165.

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.

§ 167. EVIDENTIARY EFFECT OF CERTIFIED COPY OF FILED RECORD

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

Source Note: Model Nonprofit Corporation Act, 3rd Ed. (2008), § 1.27. Cf. Model Business Corporation Act (2016 Revision), § 1.27.

CROSS-REFERENCES

Certifying fee, § 162.

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 fee under Section 162. The limited effect of the certificate is consistent with the ministerial filing obligation imposed on the secretary of state under the act.

§ 168. CERTIFICATE OF EXISTENCE OR REGISTRATION

(a) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic nonprofit corporation or a certificate of registration for a registered foreign nonprofit corporation.

(b) A certificate of existence shall set forth:
(1) the corporate name of the domestic nonprofit corporation;

(2) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(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 of the domestic corporation;

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

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

(6) that the domestic corporation is not administratively dissolved and a proceeding is not pending under Section 1141 (procedure for administrative dissolution); and

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

(c) A certificate of registration shall set forth:

(1) the name under which the foreign nonprofit corporation is registered in this state;

(2) that the foreign corporation is registered to do business 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 registration of the foreign corporation;

(4) that the most recent annual report of the foreign corporation required by Section 421 (annual report for secretary of state) has been filed with the secretary of state; and

(5) 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 registration issued by the secretary of state may be relied upon as conclusive evidence of the facts stated in the certificate.
CROSS-REFERENCES

Fees, § 162.
Forms, § 161.

OFFICIAL COMMENT

Section 168 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 registered to conduct activities in the state. The secretary of state is to make the judgment whether or not the corporation is in existence or is registered 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 168(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 168 may be revised appropriately. Section 168(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.

§ 169. PENALTY FOR SIGNING FALSE RECORD

(a) Signing a record delivered to the secretary of state for filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in all material respects.

(b) A record filed under this [Act] may be signed by an agent. Whenever this [Act] requires a particular individual to sign a record and the individual is deceased or incompetent, the filing may be signed by a legal representative of the individual.

(c) A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.

CROSS-REFERENCES
The secretary of state should not check the bona fides of a person purporting to have signed a record in a representative capacity. Section 169 expressly authorizes taking action through an agent so as to provide context for Section 169(c) and for the avoidance of doubt. No negative inference should be drawn about using agents to take other action under the act.
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