Chapter 14 (Transition) of the
MNCA Fourth Edition December 13, 2019 Exposure Draft

compared with

MNCA Third Edition Chapters 17 (Transition)
(with amendments adopted through those published at 70 Bus. Law 467 (Spring 2015) and
also includes amendments approved on second reading
on April 18, 2015 but not published)

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Additions in Exposure Draft shown in blue with double underline
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[Chapter] 1714

TRANSITION PROVISIONS

§ 17.01. Application to existing domestic corporations.
§ 17.02. Application to qualified foreign corporations.
§ 17.031401. Saving provisions.
§ 17.041402. Severability.
§ 17.051403. Consistency of application.
§ 17.061404. Repeal.
§ 17.071405. Effective date.

INTRODUCTORY COMMENT

Most states, when enacting this act, should establish a single effective date for the new
statute and all nonprofit corporations should become subject to the new act on that date. See
Sections 17.01, 17.02, and 17.07.

Some of the provisions of the revised act may differ in significant respects from earlier
laws. When this occurs, it may be appropriate for the state to “grandfather” existing nonprofit
corporations, provide an opt-in election for them, or provide delayed effective dates for certain
provisions, or certain types of provisions, to give existing domestic corporations adequate time to
revise controlling corporate documents to take into account the provisions of the new act. The
provisions that are most likely to give rise to transitional problems are discussed below.

1. CHANGES IN VOTING REQUIREMENTS

All state statutes require that certain important transactions be approved by a specified
fraction of the members. This fraction varies from state to state. Most states require a majority
of all the members, but some states require a two-thirds or larger vote. Few states have yet
adopted the lower vote required in the revised act of a majority of the votes cast at a meeting at which a quorum is present. In states with higher voting requirements, it may be necessary to “grandfather” existing corporations and provide an opt-in election for them.

2. **Cumulative Voting**

Under the revised act, cumulative voting by the members in the election of directors is not available. Because many states provide for cumulative voting, Section 17.03(c) provides a special transitional rule that preserves existing cumulative voting rights.

3. **Obsolete Provisions in Articles of Incorporation**

Under the revised act, corporations automatically have unlimited purpose clauses (Section 3.01) and perpetual duration (Section 3.02). Under many state statutes, these privileges are available only if specifically provided in the articles of incorporation. These special provisions will become unnecessary once the corporation becomes subject to the act. While they should cause no direct harm, it would generally be desirable to eliminate them in order to avoid possible negative inferences as to the scope of the purpose or duration of the corporation. See the Official Comment to Section 3.01. These inferences are probably more likely to be drawn from purpose clauses than from duration clauses.

4. **Classification of Corporations**

The prior act classified nonprofit corporations into three categories: public benefit corporations, mutual benefit corporations, and religious corporations. The articles of incorporation were required to include a statement as to which of the three types the corporation was. That classification scheme has been eliminated from the revised act, and a statement in the articles of incorporation as to which of those types the corporation is will have no meaning under the revised act. When they have the occasion to do so, existing corporations may remove such a statement from their articles.

In place of the former classification scheme, the revised act includes certain provisions dealing with charitable corporations. Those provisions are automatically applicable to corporations that meet the definition of a charitable corporation, and thus a transitional rule in this regard is not necessary.

5. **Conclusion**

Because it is impossible to anticipate precisely what changes adoption of the revised act will make in the rules applicable to nonprofit corporations of particular jurisdictions, it is not feasible to draft a model provision to cover all transitional problems. Generally, however, the only transitional provisions required should be extended grace periods for certain provisions becoming applicable to existing domestic corporations, and upon expiration of these grace periods, all domestic and foreign corporations should become subject to all provisions of the revised act.

§ 17.01. **Application to Existing Domestic Corporations**

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.

Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 17.01. Substantially a reenactment of
OFFICIAL COMMENT

The fundamental principle underlying Section 17.01 is that the revised act should ultimately be made fully applicable to all existing business corporations as well as to all new nonprofit corporations formed after the effective date of the new statute. It is undesirable to “grandfather” existing corporations under earlier statutes since that results in the permanent coexistence of two different and overlapping systems of corporation law, with resulting confusion. This is particularly true of the revised act, which builds directly on the experience of many years with existing corporation statutes and contains few major substantive changes.

Section 17.01 applies this basic principle in its broadest sense by making the revised act applicable as of its “effective date” (prescribed in Section 17.07) to all domestic nonprofit corporations formed under general statutes for nonprofit corporations. Section 17.01 applies the revised act to all corporations to which that application is constitutionally permissible. In view of the universal adoption of “reservation of power” clauses 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.

§ 17.02. APPLICATION TO QUALIFIED FOREIGN CORPORATIONS

A foreign nonprofit corporation authorized to transact business in this state on the effective date of this [act] is subject to this [act] but is not required to obtain a new certificate of authority to transact business under this [act].


OFFICIAL COMMENT

Section 17.02 makes the revised act applicable on its effective date to all foreign nonprofit corporations that are qualified to transact business in the state on that date. But these corporations need not refile and obtain new certificates of authority under the act. While Chapter 15 of the revised act may change the rules applicable to foreign corporations in some 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.

§ 17.031401. SAVING PROVISIONS

(a) Except as provided in subsection (b), the repeal of a statute by this [act] does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
(4) any proceeding, reorganization, or dissolution commenced under the
statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in
accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this [act or rule] is reduced by this [act], the penalty or punishment, if not already imposed, shall be imposed in accordance with this [act].

(c) Members of a nonprofit corporation who were entitled to cumulate their votes for
the election of directors on [the date of enactment of this act] shall continue to be entitled to
cumulate their votes for the election of directors until otherwise provided in the articles of
incorporation or bylaws of the corporation.

(d) This [act] modifies, limits, or supersedes the federal Electronic Signatures in
Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but this [act] does not modify,
limit, or supersedes Section 101(c) of that act or authorize electronic delivery of any of the notices
described in Section 103(b) of that act.

Source Note: Subsections (a) and (b) are patterned
after Model Nonprofit Corporation Act, 3rd Ed. (2008), §
17.03, Cf Model Business Corporation Act, 3d Ed.
(2002) § 17.03; and are substantially a
reenactment of Revised Model Nonprofit
Corporation Act (1987) § 17.03. Subsection (d)
is patterned after Uniform Limited Partnership
Act (2001) § 1203, and Uniform Limited
Liability Company Act (2006) § 1102, and is
required by section 102(a)(2) of the Electronic
Signatures in Global and National Commerce
17.03.

OFFICIAL COMMENT

Section 17.03[1401](a) and (b) are similar to Section 16 of the Uniform Statute and Rule
Construction Act, which was promulgated by the National Conference of Commissioners on

Section 17.03[1401](d) is patterned after Uniform Limited Partnership Act (2001) § 1203,
and Uniform Limited Liability Company Act (2006) § 1102, and is required by section
102(a)(2)(B) of the Electronic Signatures in Global and National Commerce Act, codified at 15

§ 17.04[1402]. SEVERABILITY
If any provision of this [act] or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the [act] that can be given effect without the invalid provision or application; and to this end the provisions of the [act] are severable.


§ 17.051403. CONSISTENCY OF APPLICATION

In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

Source Note: Patterned after Model Entity Transactions Nonprofit Corporation Act, 3rd Ed. (2008), § 6011 7.05.

§ 17.061404. REPEAL

The following laws and parts of laws are repealed: [to be inserted by enacting state].


OFFICIAL COMMENT

The act is intended to be a complete substitute for earlier statutes of general applicability to nonprofit corporations and it is contemplated that all these statutes should normally be repealed when the revised act is enacted. A few states in the past have retained portions of earlier statutes while enacting integrated codifications of nonprofit corporation law. This practice is generally undesirable since it tends to cause unnecessary confusion in determining the applicable law as well as creating possible internal statutory conflicts.

§ 17.071405. EFFECTIVE DATE

This [act] takes effect .
The transition provisions of the revised act contemplate that a single effective date will be provided for the entire act. As indicated in the Introductory Comment to this chapter, however, some states may wish to make special provisions, including delayed effective dates, for particular sections.

Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 17.06.
Substantially a reenactment of Revised Model Nonprofit Corporation Act (1987), 3rd Ed. (2008), § 17.06.07.
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