

**Model Nonprofit Corporation Act
Third Edition**

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American Bar Association
Section on Business Law
Committee on Nonprofit Corporations

Task Force to Revise the Model Nonprofit Corporation Act
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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. Religious Corporations
- G. Attorney General [*Optional*]

[Subchapter] A
SHORT TITLE AND SAVINGS PROVISIONS

- § 1.01. Short title.
- § 1.02. Reservation of power to amend or repeal.
- § 1.03. Relationship of [act] to other laws.

§ 1.01. SHORT TITLE

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

§ 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.

§ 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].

[Subchapter] B
FILING DOCUMENTS

- § 1.20. Filing requirements.
- § 1.21. Forms.
- § 1.22. Filing, service, and copying fees.
- § 1.23. Effective time and date of filing.
- § 1.24. Correcting a filed record.
- § 1.25. Filing duty of secretary of state.

- § 1.26. Refusal of secretary of state to file record.
- § 1.27. Evidentiary effect of copy of filed record.
- § 1.28. Certificate of existence.
- § 1.29. Penalty for signing false record.

§ 1.20. FILING REQUIREMENTS

- (a) To be entitled to filing by the secretary of state under this [act], a record must satisfy the following requirements and the requirements of any other provision of this [act] that adds to or varies these requirements:
 - (1) This [act] requires or permits filing the record in the office of the secretary of state.
 - (2) The record contains the information required by this [act] and may contain other information.
 - (3) The record is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign nonprofit corporations need not be in English if accompanied by a reasonably authenticated English translation.
 - (4) The record is signed on behalf of the domestic or foreign entity as follows:
 - (i) if the entity is a domestic or foreign nonprofit corporation, by the chair of the board of directors, a member of a designated body, or an officer;
 - (ii) if directors or members of a designated body have not been selected or the corporation has not been formed, by an incorporator;
 - (iii) if the entity is not a domestic or foreign nonprofit corporation, by a person with authority to sign for the entity; or
 - (iv) if the entity is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
 - (5) The record states the name and capacity of the person signing it. The record may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.
 - (6) The record is delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If the record is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the record.

- (b) When the record is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this [act] or other law is paid or provision for payment is made in a manner permitted by the secretary of state.
- (c) Whenever a provision of this [act] permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following provisions apply:
 - (1) The manner in which the facts will operate upon the terms of the plan or filed record shall be set forth in the plan or filed record.
 - (2) The facts may include:
 - (i) any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;
 - (ii) a determination or action by any person or body, including the nonprofit corporation or any other party to a plan or filed record; or
 - (iii) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.
 - (3) As used in this subsection:
 - (i) “filed record” means a record filed with the secretary of state under any provision of this [act] except [Chapter] 15 or Section 16.21; and
 - (ii) “plan” means a plan of domestication, business conversion, entity conversion, merger or membership exchange.

§ 1.21. FORMS

The secretary of state may prescribe and furnish on request forms for filings required or permitted under this [act], but their use is not mandatory.

§ 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:

DOCUMENT	FEE
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(1)	Articles of incorporation	\$___.
(2)	Application for use of indistinguishable name	\$___.
(3)	Application for reserved name	\$___.
(4)	Notice of transfer of reserved name	\$___.
(5)	Application for registered name	\$___.
(6)	Application for renewal of registered name	\$___.
(7)	Corporation's statement of change of registered agent or registered office or both	\$___.
(8)	Agent's statement of change of registered office for each affected corporation, not to exceed a total of \$_____	\$___.
(9)	Agent's statement of resignation	No fee.
(10)	Articles of domestication	\$___.
(11)	Articles of charter surrender	\$___.
(12)	Articles of business conversion	\$___.
(13)	Articles of domestication and conversion	\$___.
(14)	Articles of entity conversion	\$___.
(15)	Amendment of articles of incorporation	\$___.
(16)	Restatement of articles of incorporation with amendment of articles	\$___.
(17)	Articles of merger or membership exchange	\$___.
(18)	Articles of dissolution	\$___.
(19)	Articles of revocation of dissolution	\$___.
(20)	Certificate of administrative dissolution	No fee.
(21)	Application for reinstatement following	

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|------|--|---------|
| | administrative dissolution | \$___. |
| (22) | Certificate of reinstatement | No fee. |
| (23) | Certificate of judicial dissolution | No fee. |
| (24) | Application for certificate of authority | \$___. |
| (25) | Application for amended certificate of authority | \$___. |
| (26) | Application for certificate of withdrawal | \$___. |
| (27) | Application for transfer of authority | \$___. |
| (28) | Certificate of revocation of authority to conduct activities | No fee. |
| (29) | Annual report | \$___. |
| (30) | Articles of correction | \$___. |
| (31) | Application for certificate of existence or authorization | \$___. |
| (32) | Any other document required or permitted to be filed by this [act] | \$___. |
- (b) The secretary of state shall collect a fee of \$ _____ each time process is served on the secretary of state under this [act]. The party to a proceeding causing service of process may recover this fee as costs if that party prevails in the proceeding.
- (c) The secretary of state shall collect the following fees for copying and certifying the copy of any record filed under this [act]:
- (1) \$ _____ a page for copying; and
 - (2) \$ _____ for the certificate.

Alternative B

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

§ 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.

§ 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.

§ 1.25. FILING DUTY OF SECRETARY OF STATE

- (a) A record delivered to the office of the secretary of state for filing that satisfies the requirements of Section 1.20 must be filed by the secretary of state.
- (b) The secretary of state files a record by recording it as filed on the date and time of receipt. After filing a record, the secretary of state shall deliver to the person making the filing or the person's representative a copy of the record with an acknowledgement of the date and time of filing.
- (c) If the secretary of state refuses to file a record, the secretary of state shall return it to the person making the filing or the person's representative within five days after the record was delivered, together with a brief explanation in the form of a record of the reason for the refusal to file it.
- (d) The duty of the secretary of state to file records under this section is ministerial. Except as provided in Section 2.03(b), the filing or refusal to file a record does not create a presumption that the record is valid or invalid or that information contained in the record

is correct or incorrect.

- (e) If a law other than this [act] prohibits the disclosure by the secretary of state of information contained in a record delivered for filing, the secretary of state shall file the record if it otherwise complies with this act but may redact such information so that it is not available to the public.

§ 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 appeal the refusal to 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*] under the following procedures:
 - (1) The appeal is commenced by petitioning the court to compel filing the record and by attaching to the petition the record and the explanation of the secretary of state for the refusal to file.
 - (2) The court may summarily order the secretary of state to file the record or take other action the court considers appropriate.
 - (3) The final decision of the court may be appealed as in other civil proceedings.

§ 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.

§ 1.28. CERTIFICATE OF EXISTENCE

- (a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic nonprofit corporation or a certificate of authorization for a qualified foreign nonprofit corporation.
- (b) A certificate of existence or authorization sets forth:

- (1) the name of the domestic nonprofit corporation or the name used by the foreign nonprofit corporation in this state;
 - (2) that:
 - (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 authorized to conduct activities in this state;
 - (3) that all fees, taxes, and penalties owed to this state have been paid, if:
 - (i) payment is reflected in the records of the secretary of state, and
 - (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
 - (4) that its most recent annual report required by Section 16.21 has been filed with the secretary of state;
 - (5) that articles of dissolution have not been filed; and
 - (6) other facts of record in the office of the secretary of state that may be requested by the applicant.
- (c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign nonprofit corporation is in existence or is authorized to conduct activities in this state.

§ 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.

[SUBCHAPTER] C
SECRETARY OF STATE

§ 1.30. Powers.

§ 1.30. POWERS

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

[Subchapter] D
DEFINITIONS

§ 1.40. [Act] definitions.

§ 1.41. Notice.

§ 1.40. [ACT] DEFINITIONS

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

- (1) “Articles” or “articles of incorporation” means the original articles of incorporation, all amendments thereof, and any other records filed with the secretary of state with respect to a domestic nonprofit corporation under any provision of this [act] except Section 16.21. If any record filed under this [act] restates the articles in their entirety, thenceforth the articles shall not include any prior filings.
- (2) “Board” or “board of directors” means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:
 - (i) the powers, functions, or authority of the board have been vested in, or are exercised by, the designated body; and
 - (ii) the provision of this [act] in which the term appears is relevant to the discharge by the designated body of its powers, functions, or authority.
- (3) “Business corporation” or “domestic business corporation” means a corporation incorporated under the laws of this state and subject to the provisions of the [*Model Business Corporation Act*].
- (4) “Bylaws” means the code or codes of rules (other than the articles of incorporation) adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.
- (5) “Charitable corporation” means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.
- (6) “Charitable purpose” means a purpose that:
 - (i) would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code, or

- (ii) is considered charitable under law other than this [act] or the Internal Revenue Code.
- (7) “Conspicuous” means so written, displayed, or presented that a reasonable person against whom the record is to operate should have noticed it. For example, text in italics, boldface, contrasting color or capitals, or that is underlined, is conspicuous.
- (8) “Corporation,” “domestic corporation,” “domestic nonprofit corporation,” or “nonprofit corporation” means a corporation incorporated under or subject to the provisions of this [act] that is not a foreign corporation.
- (9) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.
- (10) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt by the secretary of state.
- (11) “Designated body” means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles or bylaws in that person or group, would be required by this [act] to be exercised by the board or the members.
- (12) “Director” means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position. The term does not include a member of a designated body, as such.
- (13) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of this state.
- (14) “Effective date of notice” is provided for in Section 1.41.
- (15) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (16) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign business corporation.
- (17) “Eligible interests” means interests or shares.
- (18) “Employee” does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

- (19) “Entitled to vote” means entitled to vote on the matter under consideration pursuant to the articles of incorporation or bylaws of the nonprofit corporation or any applicable controlling provision of law.
- (20) “Entity” includes a domestic or foreign business corporation, domestic or foreign nonprofit corporation, domestic or foreign unincorporated entity, estate, trust, state, the United States, foreign government, or governmental subdivision.
- (21) “Filing entity” means an unincorporated entity that is created by filing a public organic record.
- (22) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.
- (23) “Foreign corporation” or “foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.
- (24) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.
- (25) “Fundamental transaction” means an amendment of the articles of incorporation or bylaws, merger, membership exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.
- (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.
- (28) “Includes” denotes a partial definition.
- (29) “Individual” means a natural person.
- (30) “Interest” means either or both of the following rights under the organic law of an unincorporated entity:
 - (i) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or
 - (ii) the right to receive notice or vote on issues involving its internal affairs,

other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

- (31) “Interest holder” means a person who holds of record an interest.
- (32) “Interest holder liability” means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:
 - (i) solely by reason of the person’s status as a shareholder, interest holder, or member; or
 - (ii) by the articles of incorporation, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.
- (33) “Internal Revenue Code” means the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended.
- (34) “Material interest” means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.
- (35) “Material relationship” means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.
- (36) “Means” denotes an exhaustive definition.
- (37) “Member” means:
 - (i) A person who has the right, in accordance with the articles of incorporation or bylaws and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction. See Section 6.02(d) (admission).
 - (ii) A designated body to the extent:
 - (A) the 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 nonprofit corporation.
- (39) “Membership corporation” means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall have members.
- (40) “Nonfiling entity” means an unincorporated entity that is not created by filing 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.
- (42) “Nonqualified foreign corporation” means a foreign corporation that is not authorized to conduct activities in this state.
- (43) “Notice” is provided for in Section 1.41.
- (44) “Officer” includes:
 - (i) a person who is an officer as provided in Section 8.40; and
 - (ii) if a nonprofit corporation is in the hands of a custodian, receiver, trustee or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this [act].
- (45) “Organic law” means the statute principally governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.
- (46) “Organic record” means a public organic record or the private organic rules.
- (47) “Person” includes an individual or an entity.
- (48) “Principal office” means the office (in or out of this state) designated in the annual report as the location of the principal executive office of a domestic or foreign nonprofit corporation.
- (49) “Private organic rules” means any record (other than the public organic record, if any) that determines the internal governance of an unincorporated entity. Where the private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.
- (50) “Proceeding” includes civil suit and criminal, administrative, and investigatory action.
- (51) “Public organic record” means the record, if any, that is filed of public record to

create an unincorporated entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

- (52) “Qualified foreign corporation” means a foreign corporation authorized to conduct activities in this state.
- (53) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (54) “Record date” means the date established under Section 7.07 on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this [act]. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (55) “Secretary” means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under Section 8.40(b) for custody of the minutes of the meetings of the board of directors, any designated body, committees, and the members, and for authenticating records of the nonprofit corporation.
- (56) “Shareholder” means the person in whose name shares are registered in the records of a domestic or foreign business corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with such a corporation.
- (57) “Shares” means the units into which the proprietary interests in a domestic or foreign business corporation are divided.
- (58) “Sign” means, with present intent to authenticate or adopt a record:
 - (i) to execute or adopt a tangible symbol; or
 - (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (59) “State,” when referring to a part of the United States, includes a state or commonwealth, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession of the United States, and any agency or governmental subdivision of any of the foregoing.
- (60) “Unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term

includes a general partnership, limited liability company, limited partnership, business or statutory trust, joint stock association, and unincorporated nonprofit association.

- (61) “United States” includes a district, authority, bureau, commission, department, and any other agency of the United States.
- (62) “Vote,” “voting” or “casting a vote” includes the giving of consent in the form of a record without a meeting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes such conduct as voting or casting a vote.
- (63) “Voting group” means one or more classes of members that under the articles of incorporation, bylaws, or this [act] are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation, bylaws, or this [act] to vote generally on the matter are for that purpose a single voting group.
- (64) “Voting power” means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

§ 1.41. NOTICE

- (a) Notice under this [act] must be in the form of a record unless oral notice is authorized by this [act] or is reasonable under the circumstances.
- (b) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.
- (c) Notice in the form of a record by a membership corporation to a member is effective:
 - (1) upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member’s address shown in the corporation’s current record of members, or
 - (2) when given if the notice is delivered in any other manner that the member has authorized.
- (d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

- (e) Except as provided in subsection (c), notice is effective at the earliest of the following:
 - (1) when received;
 - (2) when left at the recipient's residence or usual place of business;
 - (3) five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed;
 - (4) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.
- (f) Oral notice is effective when communicated, if communicated in a comprehensible manner.
- (g) If this [act] prescribes notice requirements for particular circumstances, those requirements govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this [act], those requirements govern.
- (h) With respect to electronic communications:
 - (1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:
 - (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
 - (B) it is in a form capable of being processed by that system.
 - (2) An electronic communication is received under paragraph (h)(1) even if no individual is aware of its receipt.
 - (3) Receipt of an electronic acknowledgement from an information processing system described in paragraph (h)(1) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
- (i) An authorization by a member of delivery of notices or communications by email or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. Such an authorization is deemed revoked if (i) the corporation is unable to deliver two consecutive notices or other communications to the member in the manner authorized; and (ii) the inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure

to treat the inability as a revocation does not invalidate any meeting or other action.

[Subchapter] E
REVIEW OF CONTESTED CORPORATE ACTION

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

§ 1.50. DEFINITIONS

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

§ 1.51. PROCEEDINGS PRIOR TO CORPORATE ACTION

- (a) Where under applicable law or the articles of incorporation or bylaws of a nonprofit corporation there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the date designated or appropriate therefor, the court may summarily order a meeting to be held upon the application of [*the attorney general in the case of a charitable corporation or*] any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue.
- (b) The court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the court may deem proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.

§ 1.52. REVIEW OF CONTESTED CORPORATE ACTION

- (a) Upon petition of a person whose status as, or whose rights or duties as, a member,

delegate, director, member of a designated body, or officer of a corporation are or may be affected by any corporate action, the court may hear and determine the validity of the corporate action.

- (b) The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other evidence that may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with Section 1.51.
- (c) Subsection (a) shall not apply if a nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to a corporate action, but the court may enforce the articles or bylaws if appropriate.

§ 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.

**[Subchapter] F
RELIGIOUS CORPORATIONS**

§ 1.60. Subordination to canon law.

§ 1.60. SUBORDINATION TO CANON LAW

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

**[Subchapter] G [Optional]
ATTORNEY GENERAL**

§ 1.70. Notice to attorney general.

§ 1.70. NOTICE TO ATTORNEY GENERAL [Optional]

- (a) The attorney general must be given notice of the commencement of any proceeding that this [act] authorizes the attorney general to bring but that has been commenced by another person.
- (b) Whenever any provision of this [act] requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a

proceeding:

- (1) if no proceeding has been commenced, the attorney general may take appropriate action including, but not limited to, seeking injunctive relief; and
- (2) if a proceeding has been commenced by a person other than the attorney general, the attorney general, as of right, may intervene in such proceeding.

[Chapter] 2

INCORPORATION

- § 2.01. Incorporators.
- § 2.02. Articles of incorporation.
- § 2.03. Incorporation.
- § 2.04. Liability for preincorporation transactions.
- § 2.05. Organization of corporation.
- § 2.06. Bylaws.

§ 2.01. INCORPORATORS

One or more persons may act as the incorporators of a nonprofit corporation by delivering articles of incorporation to the secretary of state for filing.

§ 2.02. ARTICLES OF INCORPORATION

- (a) The articles of incorporation must set forth:
 - (1) a name for the nonprofit corporation that satisfies the requirements of Section 4.01;
 - (2) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;
 - (3) that the corporation is incorporated under this [act]; and
 - (4) the name of each incorporator.
- (b) The articles of incorporation may set forth:
 - (1) the names of the individuals who are to serve as the initial directors;
 - (2) provisions creating one or more designated bodies;
 - (3) the names of the initial members of a designated body;
 - (4) whether the corporation will have members;

- (5) the names of the initial members, if any;
 - (6) provisions not inconsistent with law regarding:
 - (i) the purpose or purposes for which the nonprofit corporation is organized;
 - (ii) managing the business and regulating the affairs of the corporation;
 - (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, any designated body, and the members, if any;
 - (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or
 - (v) the distribution of assets on dissolution;
 - (7) any provision that this [act] requires or permits to be set forth in the articles or bylaws;
 - (8) a provision permitting or making obligatory indemnification of a director for liability (as defined in Section 8.50(5)) to any person for any action taken, or any failure to take any action, as a director, except liability for:
 - (i) receipt of a financial benefit to which the director is not entitled;
 - (ii) an intentional infliction of harm;
 - (iii) a violation of Section 8.33; or
 - (iv) an intentional violation of criminal law; and
 - (9) provisions required if the corporation is to be exempt from taxation under federal, state, or local law.
- (c) The liability of a director of a nonprofit corporation that is not a charitable corporation may be eliminated or limited by a provision of the articles of incorporation that a director shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:
- (1) the amount of a financial benefit received by the director to which the director is not entitled;
 - (2) an intentional infliction of harm;
 - (3) a violation of Section 8.33; or

- (4) an intentional violation of criminal law.
- (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this [act].
- (e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 1.20(c).
- (f) See Sections 3.01(a) (purposes), 8.31(d) (standards of liability for directors) and 8.58(c) (variation of indemnification).

§ 2.03. INCORPORATION

- (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.
- (b) The filing of the articles of incorporation by the secretary of state is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the nonprofit corporation.

§ 2.04. LIABILITY FOR PREINCORPORATION TRANSACTIONS

All persons purporting to act as or on behalf of a nonprofit corporation, knowing there was no incorporation under this [act], are jointly and severally liable for all liabilities created while so acting.

§ 2.05. ORGANIZATION OF CORPORATION

- (a) After incorporation:
 - (1) if initial directors or members of a designated body are named in the articles of incorporation, those persons must hold an organizational meeting, as appropriate, at the call of a majority of them, to complete the organization of the nonprofit corporation by electing directors (when the organization of the corporation is to be completed by a designated body), appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
 - (2) if initial directors or members of a designated body are not named in the articles, the incorporator or incorporators must hold an organizational meeting at the call of a majority of the incorporators:
 - (i) to elect directors and complete the organization of the nonprofit corporation; or

- (ii) to elect a board of directors who shall complete the organization of the corporation.
- (b) Action required or permitted by this [act] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in the form of a record describing the action taken and signed by each incorporator.
- (c) An organizational meeting may be held in or out of this state.

§ 2.06. BYLAWS

- (a) The incorporators or the board of directors of a nonprofit corporation may adopt initial bylaws for the corporation.
- (b) The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

[CHAPTER] 3 PURPOSES AND POWERS

- § 3.01. Purposes.
- § 3.02. General powers.
- § 3.03. Emergency powers.
- § 3.04. Ultra vires.

§ 3.01. PURPOSES

- (a) Every nonprofit corporation has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.
- (b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this [act] only if incorporating under this [act] is not prohibited by the other statute. The corporation shall be subject to all the limitations of the other statute.

§ 3.02. GENERAL POWERS

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

- (1) to sue and be sued, complain and defend in its corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it,

- by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the corporation;
 - (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
 - (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
 - (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
 - (7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or income;
 - (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment[, *except as limited by Section 8.32*];
 - (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
 - (10) to conduct its activities, locate offices, and exercise the powers granted by this [act] within or without this state;
 - (11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit[, *except as limited by Section 8.32*];
 - (12) to pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
 - (13) to make donations for charitable purposes;
 - (14) to impose dues, assessments, admission, and transfer fees on its members;
 - (15) to establish conditions for admission of members, admit members, and issue memberships;
 - (16) to carry on a business; and
 - (17) to make payments or donations, or do any other act, not inconsistent with law, that

further the purposes, activities, and affairs of the corporation.

§ 3.03. EMERGENCY POWERS

- (a) In anticipation of or during an emergency, the board of directors of a nonprofit corporation may:
 - (1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
 - (2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.
- (b) During an emergency, unless the articles of incorporation or bylaws provide otherwise:
 - (1) notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner; and
 - (2) one or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority.
- (c) Corporate action taken in good faith during an emergency to further the ordinary affairs of the nonprofit corporation:
 - (1) binds the corporation; and
 - (2) may not be used to impose liability on a director, officer, employee, or agent.
- (d) An emergency exists for purposes of this section if a quorum of the directors cannot readily be assembled because of some catastrophic event.

§ 3.04. ULTRA VIRES

- (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.
- (b) The power of a nonprofit corporation to act may be challenged:
 - (1) in a derivative proceeding under [Chapter] 13 by a member, director, or member of a designated body against the corporation to enjoin the act;
 - (2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director or member of a designated body, officer, employee, or agent of the corporation; or

- (3) in a proceeding by the attorney general under Section 14.30.
- (c) In a proceeding by a member, director, or member of a designated body under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

[CHAPTER] 4

NAME

- § 4.01. Corporate name.
- § 4.02. Reserved name.
- § 4.03. Registered name.

§ 4.01. CORPORATE NAME

- (a) The name of a nonprofit corporation may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 3.01 and its articles of incorporation.
- (b) Except as authorized by subsection (c) or (d), the name of a nonprofit corporation must be distinguishable upon the records of the secretary of state from:
 - (1) the name of a nonprofit or business corporation incorporated or authorized to conduct activities or transact business in this state;
 - (2) the name of a filing entity organized under the law of this state or authorized to transact business in this state;
 - (3) a name reserved or registered under Section 4.02 or 4.03; [*and*]
 - (4) the fictitious name adopted by a foreign nonprofit or business corporation or filing entity authorized to transact business in this state because its real name is unavailable[.] [;]
 - [(5) *a name reserved or registered under [cite provisions of the state's business corporation and other entity laws corresponding to Sections 4.02 and 4.03];*]
 - [(6) *the name of a limited liability company organized under the laws of this state or qualified to transact business in this state; and*]
 - [(7) *a fictitious name registered under [cite state's fictitious name law].*]
- (c) A nonprofit corporation may apply for authorization to use a name that is not distinguishable upon the records of the secretary of state from one or more of the names

described in subsection (b). The secretary of state shall permit use of the name applied for if:

- (1) the other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or
 - (2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (d) A nonprofit corporation may use a name that is otherwise unavailable under subsection (b) if the nonprofit corporation wishing to use the name:
- (1) has merged with the other entity;
 - (2) has been formed by reorganization of the other entity; or
 - (3) has acquired all or substantially all of the assets, including the name, of the other entity.
- (e) A name is distinguishable upon the records of the secretary of state only if the name differs from every other name of record in a way other than:
- (1) use of punctuation marks;
 - (2) use of a definite or indefinite article; and
 - (3) use of any of the following terms, or an abbreviation thereof, in any language to designate the status of an entity: corporation, company, incorporated, limited, association, fund, syndicate, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, trust, statutory trust, or business trust.
- (f) This [act] does not control the use of fictitious names.

§ 4.02. RESERVED NAME

- (a) A person may reserve the exclusive use of a name including a fictitious name for a foreign nonprofit corporation whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. Upon finding that the name applied for is available, the secretary of state shall reserve the name for the exclusive use of the applicant for 120 days.

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

§ 4.03. REGISTERED NAME

- (a) A nonqualified foreign corporation may register its name, or its name with any addition required by Section 15.06, if the name is distinguishable upon the records of the secretary of state from the names that are not available under Section 4.01(b).
- (b) A nonqualified foreign corporation registers its name, or its name with any addition required by Section 15.06, by delivering to the secretary of state for filing an application:
 - (1) setting forth:
 - (i) its name, or its name with any addition required by Section 15.06;
 - (ii) the date and state or other jurisdiction of its incorporation; and
 - (iii) a brief description of the nature of the activities in which it is engaged; and
 - (2) accompanied by a certificate of existence (or a document of similar import) from its state or other jurisdiction of incorporation.
- (c) The name is registered for the exclusive use of the applicant upon the effective date of the application. The registration is effective through December 31 of the following year.
- (d) A nonqualified foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.
- (e) A nonqualified foreign corporation whose registration is effective may thereafter become a qualified foreign corporation under the registered name or consent in a record to the use of that name by a corporation thereafter incorporated under this [act] or by another foreign corporation thereafter authorized to conduct activities in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

[CHAPTER] 5
REGISTERED OFFICE AND AGENT

- § 5.01. Requirement of registered office and registered agent.
- § 5.02. Change of registered office or registered agent.

- § 5.03. Resignation of registered agent.
- § 5.04. Service on corporation.

§ 5.01. REQUIREMENT OF REGISTERED OFFICE AND REGISTERED AGENT

Each nonprofit corporation must continuously maintain in this state:

- (1) a registered office, which may be the same as any of its places of business; and
- (2) a registered agent, which may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic nonprofit or business corporation or filing entity whose business office is identical with the registered office; or
 - (iii) a foreign nonprofit or business corporation or filing entity authorized to transact business in this state whose business office is identical with the registered office.

§ 5.02. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT

- (a) A nonprofit corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:
 - (1) the name of the corporation;
 - (2) the street address of its current registered office;
 - (3) if the current registered office is to be changed, the street address of the new registered office;
 - (4) the name of its current registered agent;
 - (5) if the current registered agent is to be changed, the name of the new registered agent and the new agent's signed consent in the form of a record (either as part of the statement or accompanying it) to the appointment; and
 - (6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (b) If the street address of a registered agent's business office is changed, the agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation in the form of a record of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the

change.

§ 5.03. RESIGNATION OF REGISTERED AGENT

- (a) A registered agent may resign as registered agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.
- (b) After filing the statement, the secretary of state shall deliver notice of the filing of the statement to the registered office (if not discontinued) and to the nonprofit corporation at its principal office.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

§ 5.04. SERVICE ON CORPORATION

- (a) The registered agent of a nonprofit corporation is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.
- (b) If a nonprofit corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by delivery of the process in record form to the secretary of the corporation at its principal office. Service is effective under this subsection as provided in Section 1.41(e).
- (c) This section does not prescribe the only means, or necessarily the required means, of serving a nonprofit corporation.

[CHAPTER] 6

MEMBERSHIPS AND FINANCIAL PROVISIONS

- A. Admission of Members
- B. Rights and Obligations of Members
- C. Resignation and Termination
- D. Delegates
- E. Financial Provisions

[Subchapter] A

ADMISSION OF MEMBERS

- § 6.01. No requirement of members.
- § 6.02. Admission.
- § 6.03. Consideration.

§ 6.01. NO REQUIREMENT OF MEMBERS

- (a) A nonprofit corporation is not required to have members.
- (b) Where the articles of incorporation or bylaws of a nonprofit corporation do not provide that it shall have members, or where a corporation has in fact no members entitled to vote on a matter, any provision of this [act] or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members of the corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a designated body of the corporation.

§ 6.02. ADMISSION

- (a) The articles of incorporation or bylaws of a membership corporation may establish criteria or procedures for admission of members.
- (b) A person may not be admitted as a member without the person’s consent.
- (c) If a membership corporation provides certificates of membership to the members, the certificates shall not be registered or transferable except as provided in the articles of incorporation or bylaws.
- (d) A person is not a member of a nonprofit corporation unless the person meets the definition of a “member” in Section 1.40, regardless of whether the corporation designates or refers to the person as a member.

§ 6.03. CONSIDERATION

Except as provided in its articles of incorporation or bylaws, a membership corporation may admit members for no consideration or for such consideration as is determined by the board of directors. The consideration may take any form, including promissory notes, intangible property, or past or future services. Payment of the consideration may be made at such times and upon such terms as are set forth in or authorized by the articles of incorporation, bylaws, or a resolution of the board.

**[Subchapter] B
RIGHTS AND OBLIGATIONS OF MEMBERS**

- § 6.10. Differences in rights and obligations of members.
- § 6.11. Transfers.
- § 6.12. Member’s liability to third parties.
- § 6.13. Member’s liability for dues, assessments, and fees.
- § 6.14. Creditor’s action against member.

§ 6.10. DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS

- (a) Except as otherwise provided in the articles of incorporation or bylaws, each member of a membership corporation has the same rights and obligations as every other member

with respect to voting, dissolution, membership transfer, and other matters.

- (b) See Section 10.22(a) (bylaw amendments requiring member approval).

§ 6.11. TRANSFERS

- (a) Except as provided in the articles of incorporation or bylaws, a member of a membership corporation may not transfer a membership or any right arising therefrom.
- (b) Where the right to transfer a membership has been provided, a restriction on that right shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member.

§ 6.12. MEMBER'S LIABILITY TO THIRD PARTIES

A member of a membership corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

§ 6.13. MEMBER'S LIABILITY FOR DUES, ASSESSMENTS, AND FEES

- (a) A membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws. Dues, assessments, and fees may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles or bylaws.
- (b) The amount and method of collection of dues, assessments, and fees may be fixed in the articles of incorporation or bylaws, or the articles or bylaws may authorize the board of directors or members to fix the amount and method of collection.
- (c) The articles of incorporation or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.
- (d) See Section 10.22(a) (bylaw amendments requiring member approval).

§ 6.14. CREDITOR'S ACTION AGAINST MEMBER

- (a) A proceeding may not be brought by a creditor of a membership corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless the proceeding would be useless.
- (b) All creditors of a membership corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) to

reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

[Subchapter] C

RESIGNATION AND TERMINATION

- § 6.20. Resignation.
- § 6.21. Termination and suspension.
- § 6.22. Purchase of memberships.

§ 6.20. RESIGNATION

- (a) A member of a membership corporation may resign at any time.
- (b) The resignation of a member does not relieve the member from any obligations incurred or commitments made prior to resignation.

§ 6.21. TERMINATION AND SUSPENSION

- (a) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.
- (b) A proceeding challenging a termination or suspension for any reason must be commenced within one year after the effective date of the termination or suspension.
- (c) The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.
- (d) See Section 10.22(a) (bylaw amendments requiring member approval).

§ 6.22. PURCHASE OF MEMBERSHIPS

- (a) Except as provided in the articles of incorporation or bylaws, a membership corporation that is not a charitable corporation may not purchase any of its memberships or any right arising therefrom.
- (b) See Sections 1.03(b) (application of other laws) and 10.22(a) (bylaw amendments requiring member approval).

[Subchapter] D

DELEGATES

- § 6.30. Delegates.

§ 6.30. DELEGATES

- (a) A membership corporation may provide in its articles of incorporation or bylaws for delegates.
- (b) The articles of incorporation or bylaws may set forth provisions relating to:
 - (1) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;
 - (2) calling, noticing, holding, and conducting meetings of delegates; and
 - (3) carrying on corporate activities during and between meetings of delegates.
- (c) An assembly or other organized group of delegates constitutes a designated body.

[Subchapter] E
FINANCIAL PROVISIONS

- § 6.40. Distributions prohibited.
- § 6.41. Compensation and other permitted payments.
- § 6.42. Capital contributions of members.
- § 6.43. Debt and security interests.
- § 6.44. Private foundations.

§ 6.40. DISTRIBUTIONS PROHIBITED

- (a) Except as permitted under Section 6.22 or 6.41, a nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, members of a designated body, or officers.
- (b) This section does not apply to a contract or transaction authorized pursuant to Section 8.60.

§ 6.41. COMPENSATION AND OTHER PERMITTED PAYMENTS

- (a) A nonprofit corporation may pay reasonable compensation or reimburse reasonable expenses to members, directors, members of a designated body, or officers for services rendered.
- (b) A nonprofit corporation may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in Section 6.22, or repay capital contributions, except when:
 - (1) the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or
 - (2) the fair value of the assets of the corporation remaining after the conferring of

benefits, contribution, repurchase, or repayment would be insufficient to meet its liabilities.

- (c) A nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by this [act].

§ 6.42. CAPITAL CONTRIBUTIONS OF MEMBERS

- (a) A membership corporation that is not a charitable corporation may provide in its articles of incorporation or bylaws that members, upon or subsequent to admission, must make capital contributions. Except as provided in the articles or bylaws, the amount shall be fixed by the board of directors. The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.
- (b) The adoption or amendment of a capital contribution requirement, whether or not approved by the members, shall not apply to a member who did not vote in favor of the adoption or amendment until 30 days after the member has been given notice of the adoption or amendment.

§ 6.43. DEBT AND SECURITY INTERESTS

- (a) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud, the judgment of the board of directors as to the value of the consideration received by the corporation is conclusive.
- (b) The board of directors may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the nonprofit corporation, or any interest therein. Unless otherwise restricted in the articles of incorporation or bylaws, the vote or consent of the members shall not be required to make effective such action by the board.

§ 6.44. PRIVATE FOUNDATIONS

- (a) Except as provided in subsection (b), a nonprofit corporation that is a private foundation as defined in Section 509(a) of the Internal Revenue Code shall:
 - (1) distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Internal Revenue Code;
 - (2) not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code;

- (3) not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code;
 - (4) not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Internal Revenue Code; and
 - (5) not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.
- (b) Subsection (a) does not apply to a nonprofit corporation incorporated before January 1, 1970 that has been properly relieved from the requirements of Section 508(e)(1) of the Internal Revenue Code by a timely judicial proceeding.

[CHAPTER] 7

MEMBER MEETINGS

Subchapter

- A. Procedures
- B. Voting
- C. Voting Agreements

[Subchapter] A

PROCEDURES

- § 7.01. Annual and regular meetings.
- § 7.02. Special meeting.
- § 7.03. Court-ordered meeting.
- § 7.04. Action without meeting.
- § 7.05. Notice of meeting.
- § 7.06. Waiver of notice.
- § 7.07. Record date.
- § 7.08. Conduct of meeting.
- § 7.09. Action by ballot.

§ 7.01. ANNUAL AND REGULAR MEETINGS

- (a) A membership corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.
- (b) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles of incorporation or bylaws.
- (c) Except as provided in subsection (e), annual and regular meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, annual and regular meetings shall be held at the nonprofit corporation's principal

office.

- (d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles of incorporation or bylaws does not affect the validity of any corporate action.
- (e) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

§ 7.02. SPECIAL MEETING

- (a) A membership corporation shall hold a special meeting of members:
 - (1) at the call of its board of directors or the persons authorized to do so by the articles of incorporation or bylaws; or
 - (2) if the holders of at least 10%, or such other amount up to 25% as the articles of incorporation or bylaws shall specify, of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more demands in the form of a record for the meeting describing the purpose for which it is to be held.
- (b) Unless otherwise provided in the articles of incorporation or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the meeting prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.
- (c) If not otherwise fixed under Section 7.03 or 7.07, the record date for determining members entitled to demand a special meeting is the date the first member signs a demand.
- (d) Except as provided in subsection (f), special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, special meetings shall be held at the corporation's principal office.
- (e) Only business within the purpose or purposes described in the meeting notice required by Section 7.05(c) may be conducted at a special meeting of the members.
- (f) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which

the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

§ 7.03. COURT-ORDERED MEETING

- (a) The [*name or describe*] court of the county where the principal office of a membership corporation (or, if not in this state, its registered office) is located may summarily order a meeting to be held:
 - (1) on application of any member entitled to participate in an annual or regular meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or
 - (2) on application of a member who signed a demand for a special meeting under Section 7.02, if:
 - (i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or
 - (ii) the special meeting was not held in accordance with the notice.
- (b) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§ 7.04. ACTION WITHOUT MEETING

- (a) Except as provided in the articles of incorporation or bylaws, action required or permitted by this [act] to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.
- (b) If not otherwise fixed under Section 7.03 or 7.07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a). A consent shall not be effective to take the corporate action referred to therein unless, within 60 days after the earliest date appearing on a consent delivered to the membership corporation in the manner required by this section, consents signed by members entitled to cast the required number of votes on the action are received by the corporation. A consent may be revoked by a signed notice in the form of

a record to that effect received by the corporation prior to receipt by the corporation of unrevoked consents sufficient in number to take corporate action.

- (c) A consent signed under this section has the effect of a meeting vote and may be described as such.
- (d) If this [act], the articles of incorporation, or the bylaws require that notice of proposed action be given to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, the membership corporation must deliver to the members not entitled to vote notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

§ 7.05. NOTICE OF MEETING

- (a) A membership corporation must give notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. Except as provided in the articles of incorporation or the bylaws, the notice must be given no fewer than 10 nor more than 60 days before the meeting date. Except as provided in this [act], the articles, or the bylaws, the corporation must give notice only to members entitled to vote at the meeting.
- (b) Unless this [act], the articles of incorporation, or the bylaws require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.
- (c) Notice of a special meeting must include a description of the purpose for which the meeting is called.
- (d) If not otherwise fixed under Section 7.03 or 7.07, the record date for determining members entitled to notice of and to vote at an annual or special meeting of the members is the day before the first notice is given to members.
- (e) Unless the articles of incorporation or bylaws require otherwise, if an annual, regular, or special meeting of the members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 7.07, notice of the adjourned meeting must be given under this section to the members entitled to vote on the new record date.

§ 7.06. WAIVER OF NOTICE

- (a) A member may waive any notice required by this [act], the articles of incorporation, or the bylaws before or after the date and time stated in the notice or of the meeting or

action. The waiver must be in the form of a record, be signed by the member entitled to the notice, and be delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

- (b) The attendance of a member at a meeting:
 - (1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
 - (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects at the meeting to considering the matter.

§ 7.07. RECORD DATE

- (a) The articles of incorporation or bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing a record date, the board of directors of the membership corporation may fix a future date as the record date.
- (b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members.
- (c) A determination of members entitled to notice of or to vote at a meeting of the members is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.
- (d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§ 7.08. CONDUCT OF MEETING

- (a) At each meeting of members, an individual must preside as chair. The chair shall be appointed:
 - (1) as provided in the articles of incorporation or bylaws;
 - (2) in the absence of a provision in the articles or bylaws, by the board of directors; or
 - (3) in the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.

- (b) Except as provided in the articles of incorporation or bylaws, the chair shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.
- (c) Any rules adopted for, and the conduct of, the meeting shall be fair to the members.
- (d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, nor any otherwise permissible revocations or changes thereto may be accepted.

§ 7.09. ACTION BY BALLOT

- (a) Except as otherwise restricted by the articles of incorporation or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the matter.
- (b) A ballot must:
 - (1) be in the form of a record;
 - (2) set forth each proposed action;
 - (3) provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director; and
 - (4) provide an opportunity to vote for or against each other proposed action.
- (c) Approval by ballot pursuant to this section of action other than election of directors is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- (d) All solicitations for votes by ballot must:
 - (1) indicate the number of responses needed to meet the quorum requirements;
 - (2) state the percentage of approvals necessary to approve each matter other than election of directors; and
 - (3) specify the time by which a ballot must be received by the membership corporation in order to be counted.
- (e) Except as otherwise provided in the articles of incorporation or bylaws, a ballot may not

be revoked.

[Subchapter] B VOTING

- § 7.20. Members list for meeting.
- § 7.21. Voting entitlement of members.
- § 7.22. Proxies.
- § 7.23. Acceptance of votes.
- § 7.24. Quorum and voting requirements for voting groups.
- § 7.25. Action by single and multiple voting groups.
- § 7.26. Different quorum or voting requirements.
- § 7.27. Voting for directors.
- § 7.28. Inspectors of election.

§ 7.20. MEMBERS LIST FOR MEETING

- (a) After fixing a record date for a meeting, a membership corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of that meeting of the members. The list must show the address of and number of votes each member is entitled to cast at the meeting.
- (b) The list of members must be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member's agent is entitled on demand in the form of a record to inspect and, subject to the requirements of Section 16.02(c), to copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.
- (c) The membership corporation must make the list of members available at the meeting, and a member or the member's agent is entitled to inspect the list at any time during the meeting or any adjournment.
- (d) If a membership corporation refuses to allow a member or the member's agent to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), 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, on application of the member, may:
 - (1) summarily order the inspection or copying at the corporation's expense;
 - (2) postpone the meeting for which the list was prepared until the inspection or copying is complete;

- (3) order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order; and
- (4) order other appropriate relief.
- (e) Refusal or failure to prepare or make available the list of members does not affect the validity of action taken at the meeting.
- (f) Instead of making the list of members available as provided in subsection (b), a membership corporation may state in a notice of meeting that the corporation has elected to proceed under this subsection. A member of a corporation that has elected to proceed under this subsection must state in the member's demand for inspection a proper purpose for which inspection is demanded. Within ten business days after receiving a demand under this subsection, the corporation must deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (b), unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation's offer must be in the form of a record and must indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand.

§ 7.21. VOTING ENTITLEMENT OF MEMBERS

Except as provided in the articles of incorporation or bylaws, each member is entitled to one vote on each matter voted on by the members.

§ 7.22. PROXIES

- (a) Except as otherwise provided in the articles of incorporation or bylaws, a member may vote in person or by proxy.
- (b) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form in the form of a record. An appointment form must contain or be accompanied by information from which it can be determined that the member or the member's agent or attorney-in-fact authorized the appointment of the proxy.
- (c) An appointment of a proxy is effective when a signed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate votes, or the secretary. An appointment is valid for 11 months unless a longer period, which may not exceed three years, is expressly provided in the appointment form.
- (d) The death or incapacity of the member appointing a proxy does not affect the right of the

membership corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the secretary before the proxy exercises his authority under the appointment.

- (e) Subject to Section 7.23 and to any express limitation on the proxy's authority stated in the appointment form, a membership corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

§ 7.23. ACCEPTANCE OF VOTES

- (a) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the membership corporation if acting in good faith is entitled to accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.
- (b) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the name of its member, the membership corporation if acting in good faith is nevertheless entitled to accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:
 - (1) the member is an entity and the name signed purports to be that of an officer or agent of the entity;
 - (2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;
 - (3) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;
 - (4) the name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the ballot, consent, waiver, or proxy appointment;
 - (5) two or more persons are the member as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.
- (c) The membership corporation is entitled to reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or

about the signatory's authority to sign for the member.

- (d) The membership corporation and its officer or agent who accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or Section 7.22(b) are not liable in damages to the member for the consequences of the acceptance or rejection.
- (e) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ 7.24. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS

- (a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Except as provided in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.
- (b) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.
- (c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or bylaws require a greater number of affirmative votes.
- (d) An amendment of the articles of incorporation or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by Section 7.26.
- (e) If a meeting cannot be organized because a quorum is not present, those members present may adjourn the meeting to such time and place as they may determine. Except as provided in the articles of incorporation or bylaws, when a meeting that has been adjourned for lack of a quorum is reconvened, those members present, although less than a quorum as fixed in this section, the articles, or the bylaws, nonetheless constitute a quorum.
- (f) The election of directors is governed by Section 7.27.

§ 7.25. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS

- (a) If this [act], the articles of incorporation, or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 7.24.

- (b) If this [act], the articles of incorporation, or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 7.24.

§ 7.26. DIFFERENT QUORUM OR VOTING REQUIREMENTS

- (a) The articles of incorporation or bylaws may provide for a higher or lower quorum or voting requirement for members (or voting groups of members) than is provided for by this [act].
- (b) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

§ 7.27. VOTING FOR DIRECTORS

- (a) Except as provided in the articles of incorporation or bylaws, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.
- (b) Members do not have a right to cumulate their votes for directors.

§ 7.28. INSPECTORS OF ELECTION

- (a) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.
- (b) The inspectors shall:
 - (1) ascertain the number of members and their voting power;
 - (2) determine the members present at a meeting;
 - (3) determine the validity of proxies and ballots;
 - (4) count all votes; and
 - (5) determine the result.
- (c) An inspector may, but need not, be a director, member of a designated body, member, officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting may not be an inspector.

[Subchapter] C
VOTING AGREEMENTS

§ 7.30. Voting agreements.

§ 7.30. VOTING AGREEMENTS

- (a) Two or more members may provide for the manner in which they will vote by signing an agreement in the form of a record for that purpose. A voting agreement may be valid for a period of up to ten years.
- (b) A voting agreement created under this section is specifically enforceable, except that a voting agreement is not enforceable to the extent that enforcement of the agreement would violate the purposes of the membership corporation.

[CHAPTER] 8
DIRECTORS AND OFFICERS

Subchapter

- A. Board of Directors
- B. Meetings and Action of the Board
- C. Directors
- D. Officers
- E. Indemnification and Advance for Expenses
- F. Conflicting Interest Transactions
- G. Business Opportunities

[Subchapter] A
BOARD OF DIRECTORS

- § 8.01 Requirement for and functions of board of directors.
- § 8.02 Qualifications of directors.
- § 8.03 Number of directors.
- § 8.04 Selection of directors.
- § 8.05 Terms of directors generally.
- § 8.06 Staggered terms for directors.
- § 8.07 Resignation of directors.
- § 8.08 Removal of directors by members or other persons.
- § 8.09 Removal of directors by judicial proceeding.
- § 8.10 Vacancy on board.
- § 8.11 Compensation of directors.
- § 8.12 Designated body.

§ 8.01. REQUIREMENT FOR AND FUNCTIONS OF BOARD OF DIRECTORS

- (a) A nonprofit corporation must have a board of directors.
- (b) Except as provided in Section 8.12, all corporate powers must be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation must be managed by or under the direction, and subject to the oversight, of its board of directors.

§ 8.02. QUALIFICATIONS OF DIRECTORS

A director of a nonprofit corporation must be an individual. The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles or bylaws so prescribe.

§ 8.03. NUMBER OF DIRECTORS

- (a) A board of directors must consist of three or more directors, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

§ 8.04. SELECTION OF DIRECTORS

- (a) The directors of a membership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner.
- (b) The directors of a nonmembership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than any initial directors) shall be elected by the board.

§ 8.05. TERMS OF DIRECTORS GENERALLY

- (a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons who are not members or who are designated in a manner other than by election or appointment, the term of a director may not exceed five years.
- (b) A decrease in the number of directors or term of office does not shorten an incumbent

director's term.

- (c) Except as provided in the articles of incorporation or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office unless otherwise provided in the articles of incorporation or bylaws.

§ 8.06. STAGGERED TERMS FOR DIRECTORS

The articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office and number of directors in each group do not need to be uniform.

§ 8.07. RESIGNATION OF DIRECTORS

- (a) A director may resign at any time by delivering a signed notice in the form of a record to the chair of the board of directors or to an executive officer or the secretary of the corporation.
- (b) A resignation is effective when the notice is delivered unless the notice specifies a later effective time.

§ 8.08. REMOVAL OF DIRECTORS BY MEMBERS OR OTHER PERSONS

- (a) Removal of directors of a membership corporation is subject to the following provisions:
 - (1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal. See Section 10.22(a) (bylaw amendments requiring member approval).
 - (2) Except as provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, or by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.
 - (3) The notice of a meeting of members at which removal of a director is to be considered must state that the purpose, or one of the purposes, of the meeting is removal of the director.
 - (4) The board of directors of a membership corporation may not remove a director

except as provided in subsection (c) or in the articles of incorporation or bylaws.

- (b) The board of directors may remove a director of a nonmembership corporation:
 - (1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.
 - (2) As provided in subsection (c).
- (c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:
 - (1) has been declared of unsound mind by a final order of court;
 - (2) has been convicted of a felony;
 - (3) has been found by a final order of court to have breached a duty as a director under [Subchapter] 8C;
 - (4) has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or
 - (5) does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.
- (d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation. See Section 10.30 (approval of amendments by third persons).
- (e) Except as provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

§ 8.09. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING

- (a) The [*name or describe*] court of the county where the principal office of a nonprofit corporation (or, if none in this state, its registered office) is located may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:
 - (1) the director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm

on the corporation; and

- (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.
- (b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) shall comply with all of the requirements of [Chapter] 13.
- (c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.
- (d) Nothing in this section limits the equitable powers of the court to order other relief.
- (e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff must give the attorney general notice in record form of the commencement of the proceeding.

§ 8.10. VACANCY ON BOARD

- (a) Except as otherwise provided in subsection (b), the articles of incorporation, or the bylaws, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by a majority of the directors remaining in office even if they constitute less than a quorum.
- (b) Except as provided in the articles of incorporation or bylaws, a vacancy in the position of a director who is:
 - (1) elected by a voting group of members, by a chapter or other organizational unit of members, or by a region or other geographic grouping of members, may be filled during the first three months after the vacancy occurs only by that voting group or chapter, unit, region, or grouping;
 - (2) appointed by persons other than the members, may be filled only by those persons; or
 - (3) designated in the articles of incorporation or bylaws may not be filled by action of the board of directors.
- (c) A vacancy that will occur at a specific later time (by reason of a resignation effective at a later time under Section 8.07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§ 8.11. COMPENSATION OF DIRECTORS

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix

the compensation of directors.

§ 8.12. DESIGNATED BODY

- (a) Some, but less than all, of the powers, authority or functions of the board of directors of a nonprofit corporation under this [act] may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:
 - (1) The provisions of this [chapter] and other provisions of law on the rights, duties, and liabilities of the board of directors or directors individually also apply to the designated body and to the members of the designated body individually. The provisions of this [chapter] and other provisions of law on meetings, notice, and the manner of acting of the board of directors also apply to the designated body in the absence of an applicable rule in the articles of incorporation, bylaws or internal operating rules of the designated body.
 - (2) To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors are relieved from their duties and liabilities with respect to those powers, authority, and functions.
 - (3) A provision of the articles of incorporation regarding indemnification of directors or limiting the liability of directors adopted pursuant to Section 2.02(b)(8) or (c) applies to members of the designated body, except as otherwise provided in the articles.
- (b) Some, but less than all, of the rights or obligations of the members of a nonprofit corporation under this [act] may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:
 - (1) The provisions of this [chapter] and other provisions of law on the rights and obligations of members also apply to the designated body and to the members of the designated body individually. The provisions of this [chapter] and other provisions of law on meetings, notice, and the manner of acting of members also apply to the designated body in the absence of an applicable provision in the articles of incorporation, bylaws or internal operating rules of the designated body.
 - (2) To the extent the rights or obligations of the members have been vested in the designated body, the members are relieved from responsibility with respect to those rights and obligations.
- (c) The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Except as otherwise provided by the articles or bylaws, a member of a designated body does not need to be:
 - (1) an individual,

- (2) a director, officer, or member of the nonprofit corporation, or
 - (3) a resident of this state.
- (d) See Section 10.22(a) (bylaw amendments requiring member approval).

[Subchapter] B
MEETINGS AND ACTION OF THE BOARD

- § 8.20 Meetings.
- § 8.21 Action without meeting.
- § 8.22 Call and notice of meeting.
- § 8.23 Waiver of notice.
- § 8.24 Quorum and voting.
- § 8.25 Board and advisory committees.

§ 8.20. MEETINGS

- (a) The board of directors may hold regular or special meetings in or out of this state.
- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

§ 8.21. ACTION WITHOUT MEETING

- (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this [act] to be taken by the board of directors may be taken without a meeting if each director signs a consent in the form of a record describing the action to be taken and delivers it to the nonprofit corporation.
- (b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the nonprofit corporation. The consent may specify the time at which the action taken in the consent is to be effective. A director's consent may be withdrawn by a revocation in the form of a record signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked consents signed by all the directors.
- (c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

§ 8.22. CALL AND NOTICE OF MEETING

- (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.
- (c) Unless the articles of incorporation or bylaws provide otherwise, the chair of the board, the highest ranking officer of the corporation, or 20% of the directors then in office may call and give notice of a meeting of the board of directors.
- (d) The articles of incorporation or bylaws may authorize oral notice of meetings of the board of directors.

§ 8.23. WAIVER OF NOTICE

- (a) A director may waive any notice required by this [act], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in the form of a record, signed by the director entitled to the notice, and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 8.24. QUORUM AND VOTING

- (a) Except as provided in subsection (b), the articles of incorporation, or the bylaws, a quorum of the board of directors consists of a majority of the directors in office before a meeting begins.
- (b) The articles of incorporation or bylaws may authorize a quorum of the board of directors to consist of no fewer than the greater of one-third of the number of directors in office or two directors.
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless a greater vote is required by the articles of incorporation or bylaws.
- (d) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to the action taken unless one of the following

applies:

- (1) The director objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting.
 - (2) The director dissents or abstains from the action and:
 - (i) the dissent or abstention is entered in the minutes of the meeting; or
 - (ii) the director delivers notice in the form of a record of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation promptly after adjournment of the meeting.
- (e) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§ 8.25. BOARD AND ADVISORY COMMITTEES

- (a) Unless this [act], the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees of the board that consist of one or more directors.
- (b) Unless this [act] otherwise provides, the creation of a committee and appointment of directors to it must be approved by the greater of:
 - (1) a majority of all the directors in office when the action is taken; or
 - (2) the number of directors required by the articles of incorporation or bylaws to take action under Section 8.24.
- (c) Sections 8.20 through 8.24 apply both to committees of the board and to their members.
- (d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under Section 8.01 except as limited by subsection (e).
- (e) A committee may not, however:
 - (1) authorize distributions;
 - (2) in the case of a membership corporation, approve or propose to members action that this [act] requires be approved by members;
 - (3) fill vacancies on the board of directors or, subject to subsection (g), on any of its committees; or

- (4) adopt, amend, or repeal bylaws.
- (f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 8.30.
- (g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification.
- (h) A nonprofit corporation may create or authorize the creation of one or more advisory committees whose members need not be directors. An advisory committee:
 - (1) is not a committee of the board; and
 - (2) may not exercise any of the powers of the board.

[Subchapter] C
DIRECTORS

- § 8.30 Standards of conduct for directors.
- § 8.31 Standards of liability for directors.
- § 8.32 Loans to or guarantees for directors and officers. [*Optional*]
- § 8.33 Directors' liability for unlawful distributions.

§ 8.30. STANDARDS OF CONDUCT FOR DIRECTORS

- (a) Each member of the board of directors, when discharging the duties of a director, shall act:
 - (1) in good faith, and
 - (2) in a manner the director reasonably believes to be in the best interests of the nonprofit corporation.
- (b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, must discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.
- (c) In discharging board or committee duties a director must disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

- (d) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted may rely on the performance by any of the persons specified in subsection (f)(1), (3), or (4) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.
- (e) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f).
- (f) A director may rely, in accordance with subsection (d) or (e), on:
 - (1) one or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;
 - (2) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:
 - (i) within the particular person's professional or expert competence, or
 - (ii) as to which the particular person merits confidence;
 - (3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; or
 - (4) in the case of a corporation engaged in religious activity, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the director reasonably believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.
- (g) A director is not a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

§ 8.31 STANDARDS OF LIABILITY FOR DIRECTORS

- (a) A director is not liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:
 - (1) none of the following, if interposed as a bar to the proceeding by the director, precludes liability:

- (i) subsection (d) or a provision in the articles of incorporation authorized by Section 2.02(c);
 - (ii) satisfaction of the requirements in Section 8.60 for validating a conflicting interest transaction; or
 - (iii) satisfaction of the requirements in Section 8.70 for disclaiming a business opportunity; and
- (2) the challenged conduct consisted or was the result of:
- (i) action not in good faith; or
 - (ii) a decision:
 - (A) which the director did not reasonably believe to be in the best interests of the corporation, or
 - (B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or
 - (iii) a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:
 - (A) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and
 - (B) after a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or
 - (iv) a sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or
 - (v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

- (b) The party seeking to hold the director liable:
 - (1) for money damages, also has the burden of establishing that:
 - (i) harm to the nonprofit corporation or its members has been suffered, and
 - (ii) the harm suffered was proximately caused by the director's challenged conduct; or
 - (2) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or
 - (3) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
- (c) Nothing contained in this section:
 - (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under Section 8.60(a)(3), alters the burden of proving the fact or lack of fairness otherwise applicable,
 - (2) alters the fact or lack of liability of a director under another section of this [act], such as the provisions governing the consequences of an unlawful distribution under Section 8.33, a conflicting interest transaction under Section 8.60, or taking advantage of a business opportunity under Section 8.70; or
 - (3) affects any rights to which the corporation or a director or member may be entitled under another statute of this state or the United States.
- (d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:
 - (1) the amount of a financial benefit received by the director to which the director is not entitled;
 - (2) an intentional infliction of harm;
 - (3) a violation of Section 8.33; or
 - (4) an intentional violation of criminal law.

§ 8.32. LOANS TO OR GUARANTEES FOR DIRECTORS AND OFFICERS

[Optional]

- (a) A nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.
- (b) This section does not apply to:
 - (1) an advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer;
 - (2) an advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;
 - (3) advances pursuant to [Subchapter] 8E;
 - (4) loans or advances pursuant to employee benefit plans;
 - (5) a loan secured by the principal residence of an officer; or
 - (6) a loan to pay relocation expenses of an officer.
- (c) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

§ 8.33 DIRECTORS' LIABILITY FOR UNLAWFUL DISTRIBUTIONS

- (a) A director who votes for or assents to a distribution made in violation of this [act] is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating this [act] if the party asserting liability establishes that, when taking the action, the director did not comply with Section 8.30.
- (b) A director held liable under subsection (a) for an unlawful distribution is entitled to:
 - (1) contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and
 - (2) recoupment from each person of the pro-rata portion of the amount of the unlawful distribution the person received, whether or not the person knew the distribution was made in violation of this [act].
- (c) A proceeding to enforce:
 - (1) the liability of a director under subsection (a) is barred unless it is commenced

within two years after the date on which the distribution was made; or

- (2) contribution or recoupment under subsection (b) is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a).

[Subchapter] D OFFICERS

- § 8.40. Officers.
- § 8.41. Duties of officers.
- § 8.42. Standards of conduct for officers.
- § 8.43. Resignation and removal of officers.
- § 8.44. Contract rights of officers.

§ 8.40. OFFICERS

- (a) The officers of a nonprofit corporation are the individuals who hold the offices described in its articles of incorporation or bylaws, or are appointed or elected in accordance with the articles and bylaws or as authorized by the board of directors.
- (b) The articles of incorporation or bylaws or the board of directors must assign to one of the officers responsibility for preparing or supervising the preparation of the minutes of the meetings of the board of directors and the members, if any, and for maintaining and authenticating the records of the corporation required to be kept under Sections 16.01(a) and 16.01(e).
- (c) The same individual may simultaneously hold more than one office in a nonprofit corporation.

§ 8.41. DUTIES OF OFFICERS

Each officer has the authority and must perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles and bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

§ 8.42. STANDARDS OF CONDUCT FOR OFFICERS

- (a) An officer with discretionary authority must discharge his or her duties under that authority:
 - (1) in good faith;
 - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

- (3) in a manner the officer reasonably believes to be in the best interests of the corporation.
- (b) The duty of an officer includes the obligation to inform:
- (1) the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports, of information about the affairs of the nonprofit corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to the superior officer, board, or committee; and
 - (2) his or her superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.
- (c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) one or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;
 - (2) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:
 - (i) within the particular person's professional or expert competence, or
 - (ii) as to which the particular person merits confidence;
 - (3) in the case of a corporation engaged in religious activity, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the officer reasonably believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

§ 8.43. RESIGNATION AND REMOVAL OF OFFICERS

- (a) An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board of directors or the appointing officer accepts the future effective time, the board or the appointing officer may designate a successor before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

- (b) Except as provided in the articles of incorporation or bylaws, an officer may be removed at any time with or without cause by:
 - (i) the board of directors;
 - (ii) the officer who appointed the officer being removed, unless the board provides otherwise; or
 - (iii) any other officer authorized by the articles, the bylaws or the board.
- (c) In this section, “appointing officer” means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

§ 8.44. CONTRACT RIGHTS OF OFFICERS

- (a) The appointment of an officer does not itself create contract rights.
- (b) An officer’s removal does not affect the officer’s contract rights, if any, with the nonprofit corporation. An officer’s resignation does not affect the corporation’s contract rights, if any, with the officer.

**[Subchapter] E
INDEMNIFICATION AND ADVANCE FOR EXPENSES**

- § 8.50 Subchapter definitions.
- § 8.51 Permissible indemnifications.
- § 8.52 Mandatory indemnification.
- § 8.53 Advance for expenses.
- § 8.54 Court-ordered indemnification and advance for expenses.
- § 8.55 Determination and authorization of indemnification.
- § 8.56 Indemnification of officers.
- § 8.57 Insurance.
- § 8.58 Variation of indemnification.

§ 8.50. SUBCHAPTER DEFINITIONS

In this [subchapter]:

- (1) “Corporation” includes any domestic or foreign predecessor entity of a nonprofit corporation in a merger, conversion, or domestication.
- (2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a nonprofit corporation or who, while a director or officer of the corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation,

partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" includes a member of a designated body. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

- (3) "Disinterested director" means a director who, at the time of a vote referred to in Section 8.53(c) or a vote or selection referred to in Section 8.55(b) or (c), is not:
- (i) a party to the proceeding, or
 - (ii) an individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.
- (4) "Expenses" includes counsel fees.
- (5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.
- (6) "Official capacity" means:
- (i) when used with respect to a director, the office of director in a nonprofit corporation; and
 - (ii) when used with respect to an officer, as contemplated in Section 8.56, the office in a corporation held by the officer.
- "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.
- (7) "Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.
- (8) "Proceeding" includes a threatened, pending, or completed proceeding.

§ 8.51. PERMISSIBLE INDEMNIFICATION

- (a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an individual who is a party to a proceeding because he or she is or was a director against

liability incurred in the proceeding if:

- (1) the individual:
 - (i) acted in good faith; and
 - (ii) reasonably believed:
 - (A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and
 - (B) in all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and
 - (iii) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; or
 - (2) the individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation (as authorized by Section 2.02(b)(8)).
- (b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(1)(ii)(B).
- (c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.
- (d) Unless ordered by a court under Section 8.54(a)(3), a nonprofit corporation may not indemnify a director:
- (1) in connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a); or
 - (2) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in an official capacity.

§ 8.52. MANDATORY INDEMNIFICATION

A nonprofit corporation must indemnify a director to the extent the director was successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by

the director in connection with the proceeding.

§ 8.53. ADVANCE FOR EXPENSES

- (a) A nonprofit corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because he or she is or was a director if the individual delivers to the corporation:
 - (1) an affirmation in the form of a record of his or her good faith belief that he or she has met the relevant standard of conduct described in Section 8.51 or that the proceeding involves conduct for which liability has been eliminated by Section 8.31(d) or under a provision of the articles of incorporation as authorized by Section 2.02(c); and
 - (2) an undertaking in the form of a record to repay any funds advanced if the individual is not entitled to mandatory indemnification under Section 8.52 and it is ultimately determined under Section 8.54 or 8.55 that the individual has not met the relevant standard of conduct described in Section 8.51.
- (b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director, but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.
- (c) Authorizations under this section must be made:
 - (1) by the board of directors:
 - (i) if there are two or more disinterested directors, by a majority vote of all the disinterested directors (a majority of whom will constitute a quorum for that purpose) or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or
 - (ii) if there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with Section 8.24(c), in which authorization directors who do not qualify as disinterested directors may participate; or
 - (2) by the members.

§ 8.54. COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES

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

- (1) order indemnification if the court determines that the director is entitled to mandatory indemnification under Section 8.52;
 - (2) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by Section 8.58(a); or
 - (3) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:
 - (i) to indemnify the director, or
 - (ii) to advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in Section 8.51(a), failed to comply with Section 8.53 or was adjudged liable in a proceeding referred to in Section 8.51(d)(1) or (d)(2), but if the director was adjudged so liable his or her indemnification must be limited to reasonable expenses incurred in connection with the proceeding.
- (b) If the court determines that the director is entitled to indemnification under subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it must also order the nonprofit corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3), it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

§ 8.55. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION

- (a) A nonprofit corporation may not indemnify a director under Section 8.51 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in Section 8.51.
- (b) The determination may be made:
 - (1) if there are two or more disinterested directors, by a majority vote of all the disinterested directors (a majority of whom will constitute a quorum for that purpose), or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;
 - (2) by special legal counsel:
 - (i) selected in the manner prescribed in subdivision (1); or

- (ii) if there are fewer than two disinterested directors, selected by the board of directors (in which selection directors who do not qualify as disinterested directors may participate); or
- (3) by the members.
- (c) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled under subsection (b)(2)(ii) to select special legal counsel.

§ 8.56. INDEMNIFICATION OF OFFICERS

- (a) A nonprofit corporation may indemnify and advance expenses under this [subchapter] to an officer of the corporation who is a party to a proceeding because he or she is or was an officer of the corporation
 - (1) to the same extent as a director; and
 - (2) if he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:
 - (i) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding, or
 - (ii) liability arising out of conduct that constitutes:
 - (A) receipt by the officer of a financial benefit to which the officer is not entitled,
 - (B) an intentional infliction of harm on the corporation or the members, or
 - (C) an intentional violation of criminal law.
- (b) The provisions of subsection (a)(2) apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.
- (c) An officer of a corporation who is not a director is entitled to mandatory indemnification under Section 8.52, and may apply to a court under Section 8.54 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

§ 8.57. INSURANCE

A nonprofit corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, serves or served at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this [subchapter].

§ 8.58. VARIATION OF INDEMNIFICATION

- (a) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification as permitted by Section 8.51 or advance funds to pay for or reimburse expenses as permitted by Section 8.53. An obligatory provision satisfies the requirements for authorization referred to in Sections 8.53(c) and 8.55(c). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with Section 8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.
- (b) Any provision pursuant to subsection (a) may not obligate the nonprofit corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the organic records, articles of incorporation, bylaws, or a resolution of the governors, board of directors, members or interest holders of a predecessor of the corporation in a fundamental transaction, or in a contract to which the predecessor is a party, existing at the time the fundamental transaction takes effect, is governed by:
 - (1) Section 9.23(a)(2) in the case of a domestication;
 - (2) Section 9.33(a)(2) in the case of a for-profit conversion;
 - (3) Section 9.42(a)(2) in the case of a foreign for-profit domestication and conversion;
 - (4) Section 9.54(a)(2) in the case of an entity conversion; or
 - (5) Section 11.07(a)(4) in the case of a merger.
- (c) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws,

limit any of the rights to indemnification or advance for expenses created by or pursuant to this [subchapter].

- (d) This [subchapter] does not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearance as a witness in a proceeding at a time when the director or officer is not a party.
- (e) This [subchapter] does not limit a nonprofit corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

[Subchapter] F
CONFLICTING INTEREST TRANSACTIONS

§ 8.60 Conflicting interest transactions; voidability.

§ 8.60 CONFLICTING INTEREST TRANSACTIONS; VOIDABILITY

- (a) A contract or transaction between a nonprofit corporation and one or more of its members, directors, members of a designated body, or officers or between a nonprofit corporation and any other entity in which one or more of its directors, members of a designated body, or officers are directors or officers, hold a similar position, or have a financial interest, is not void or voidable solely for that reason, or solely because the member, director, member of a designated body, or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his or their votes are counted for that purpose, if:
 - (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;
 - (2) the material facts as to the relationship or interest of the member, director, or officer and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or
 - (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors or the members.
- (b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction specified in subsection (a).
- (c) This section is applicable except as otherwise restricted in the articles of incorporation or

bylaws.

[Subchapter] G
BUSINESS OPPORTUNITIES

§ 8.70 Business opportunities.

§ 8.70 BUSINESS OPPORTUNITIES

- (a) The taking advantage, directly or indirectly, by a director of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the nonprofit corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated or entitled respecting the opportunity the director brings it to the attention of the corporation and action by the members or the directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in Section 8.60, as if the decision being made concerned a conflicting interest transaction.
- (b) In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) before taking advantage of the opportunity does not support an inference that the opportunity should have been first presented to the nonprofit corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.
- (c) As used in this section, "director" includes a member of a designated body.

[CHAPTER] 9
DOMESTICATION AND CONVERSION

Subchapter

- A. Preliminary Provisions
- B. Domestication
- C. For-profit Conversion
- D. Foreign For-profit Domestication and Conversion
- E. Entity Conversion

[Subchapter] A
PRELIMINARY PROVISIONS

- § 9.01. Definitions.
- § 9.02. Excluded transactions.
- § 9.03. Restrictions and required approvals.

§ 9.01. DEFINITIONS

In this [chapter]:

- (1) “Conversion” means a transaction authorized by [Subchapter] C, D, or E.
- (2) “Converting corporation” means the domestic or foreign nonprofit or business corporation that approves a conversion pursuant to this [chapter] or its organic law.
- (3) “Converting entity” means the domestic or foreign entity that approves a conversion pursuant to Section 9.50 or its organic law.
- (4) “Domesticated corporation” means the domesticating corporation as it continues in existence after a domestication.
- (5) “Domesticating corporation” means the domestic nonprofit corporation that adopts a plan of domestication pursuant to Section 9.21 or the foreign nonprofit corporation that approves a domestication pursuant to its organic law.
- (6) “Domestication” means a transaction authorized by [Subchapter] B.
- (7) “Surviving corporation” means the corporation as it continues in existence immediately after consummation of a for-profit conversion pursuant to [Subchapter] C, a foreign for-profit conversion and domestication pursuant to [Subchapter] D, or an entity conversion pursuant to [Subchapter] E.
- (8) “Surviving entity” means the unincorporated entity as it continues in existence immediately after consummation of an entity conversion pursuant to [Subchapter] E.

§ 9.02. EXCLUDED TRANSACTIONS

This [chapter] may not be used to effect a transaction that:

- (1) [converts a nonprofit insurance company to a for-profit stock corporation;]
- (2)
- (3)

§ 9.03. RESTRICTIONS AND REQUIRED APPROVALS

- (a) If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a merger or sale of its assets without the approval of the [*attorney general*], the [*department of insurance*] or the [*public utility commission*], the corporation or eligible

entity shall not be a party to a transaction under this [chapter] without the prior approval of that [agency].

- (b) Property held in trust by an entity or otherwise dedicated to a charitable purpose may not be diverted from its purpose by any transaction under this [chapter] unless the entity obtains an appropriate order of [court] [the attorney general] specifying the disposition of the property to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (c) Unless an entity that is a party to a transaction under this [chapter] obtains an appropriate order of [court] [the attorney general] under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction may not affect:
 - (1) any restriction imposed upon the entity by its organic records that may not be amended by its board of directors, governors, members, or interest holders or by a designated body;
 - (2) any restriction imposed upon property held by the entity by virtue of any trust under which it holds that property; or
 - (3) the existing rights of persons other than members, shareholders, or interest holders of the entity.
- (d) A person who is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a transaction under this [chapter] to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation or unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.
- (e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a transaction under this [chapter], to or for the entity that is the subject of the transaction, shall inure to the entity as it continues in existence after the transaction, subject to the express terms of the will or other instrument.

[Subchapter] B
DOMESTICATION

- § 9.20. Domestication.
- § 9.21. Action on a plan of domestication.
- § 9.22. Articles of domestication.
- § 9.23. Effect of domestication.
- § 9.24. Abandonment of a domestication.

§ 9.20. DOMESTICATION

- (a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the domestication is authorized by the law of the foreign jurisdiction.
- (b) A domestic nonprofit corporation may become a foreign nonprofit corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication in the manner provided in this [subchapter].
- (c) The plan of domestication must include:
 - (1) a statement of the jurisdiction in which the corporation is to be domesticated;
 - (2) the terms and conditions of the domestication;
 - (3) the manner and basis of canceling or reclassifying the memberships of the corporation following its domestication into memberships, obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing; and
 - (4) any desired amendments to the articles of incorporation or bylaws of the corporation following its domestication.
- (d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication; except that, subsequent to approval of the plan by the members, the plan may not be amended without the approval of the members to change:
 - (1) the amount or kind of memberships, obligations, rights to acquire memberships, cash, or other property to be received by the members under the plan;
 - (2) the articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by Section 10.05 or by comparable provisions of the laws of the other jurisdiction; or
 - (3) any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.
- (e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with Section 1.20(c).
- (f) If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before [*the effective date of this subchapter*] contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a

domestication of the corporation until such time as the provision is amended subsequent to that date.

- (g) See Sections 9.02 (prohibited transactions) and 9.03 (restrictions and required approvals).

§ 9.21. ACTION ON A PLAN OF DOMESTICATION

In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

- (1) The plan of domestication must be adopted by the board of directors.
- (2) After adopting the plan of domestication the board of directors must submit the plan to the members for their approval, if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (3) The board of directors may condition its submission of the plan of domestication to the members on any basis.
- (4) If the approval of the members is to be given at a meeting, the corporation must notify each member, whether or not entitled to vote, of the meeting of members at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and bylaws as they will be in effect immediately after the domestication.
- (5) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (3), requires a greater vote or a greater number of votes to be present, the approval of the plan of domestication by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (6) Separate voting by voting groups is required by each class of members that:
 - (i) are to be reclassified under the plan of domestication into a different class of memberships, or into obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;
 - (ii) would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation,

would require action by separate voting groups under Section 10.04; or

(iii) is entitled under the articles of incorporation or bylaws to vote as a voting group to approve an amendment of the articles.

(7) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors, members of a designated body, or members are parties, adopted or entered into before [*the effective date of this subchapter*], applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

§ 9.22. ARTICLES OF DOMESTICATION

(a) Articles of domestication must be signed on behalf of the domesticating corporation by any officer or other duly authorized representative. The articles must set forth:

(1) the name and jurisdiction of incorporation of the domesticating corporation;

(2) the name and jurisdiction of incorporation of the domesticated entity; and

(3) if the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with this [subchapter] or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the law of its jurisdiction of incorporation.

(b) If the domesticated corporation is a domestic nonprofit corporation, the articles of domestication shall either contain all of the provisions that Section 2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that Section 2.02(b) and (c) permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domesticated corporation must be included. The name of the domesticated corporation must satisfy the requirements of Section 4.01.

(c) The articles of domestication must be delivered to the secretary of state for filing, and take effect at the effective time provided in Section 1.23.

(d) If the domesticating corporation is a qualified foreign nonprofit corporation, its certificate of authority is cancelled automatically on the effective date of its domestication.

§ 9.23. EFFECT OF DOMESTICATION

(a) Except as otherwise provided in Section 9.03, when a domestication becomes effective:

- (1) the title to all real and personal property, both tangible and intangible, of the domesticating corporation remains in the domesticated corporation without reversion or impairment;
 - (2) the liabilities of the domesticating corporation remain the liabilities of the domesticated corporation;
 - (3) an action or proceeding pending against the domesticating corporation continues against the domesticated corporation as if the domestication had not occurred;
 - (4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a foreign corporation domesticating in this state;
 - (5) the memberships in the domesticating corporation are reclassified into memberships, obligations, rights to acquire memberships, or cash or other property in accordance with the terms of the domestication, and the members are entitled only to the rights provided by those terms; and
 - (6) the domesticating corporation is deemed to:
 - (i) be incorporated under and subject to the organic law of the domesticated corporation for all purposes; and
 - (ii) be the same corporation without interruption as the domesticating corporation.
- (b) The interest holder liability of a member in a foreign nonprofit corporation that is domesticated in this state is as follows:
- (1) The domestication does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent any such interest holder liability arose before the effective time of the articles of domestication.
 - (2) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.
 - (3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by paragraph (1), as if the domestication had not occurred.
 - (4) The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by paragraph (1), as if the domestication had not occurred.

§ 9.24. ABANDONMENT OF A DOMESTICATION

- (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this [subchapter], and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the members.
- (b) If a domestication is abandoned under subsection (a) after articles of domestication have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the domestication. The statement takes effect upon filing and the domestication is abandoned and does not become effective.
- (c) If the domestication of a foreign nonprofit corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication is abandoned and does not become effective.

[Subchapter] C FOR-PROFIT CONVERSION

- § 9.30. For-profit conversion.
- § 9.31. Action on a plan of for-profit conversion.
- § 9.32. Articles of for-profit conversion.
- § 9.33. Effect of for-profit conversion.
- § 9.34. Abandonment of a for-profit conversion.

§ 9.30. FOR-PROFIT CONVERSION

- (a) A domestic nonprofit corporation may become a domestic business corporation pursuant to a plan of for-profit conversion.
- (b) A domestic nonprofit corporation may become a foreign business corporation if the for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the foreign for-profit conversion shall be approved by the adoption by the domestic nonprofit corporation of a plan of for-profit conversion in the manner provided in this [subchapter].
- (c) The plan of for-profit conversion must include:
 - (1) the terms and conditions of the conversion;

- (2) the manner and basis of:
 - (i) issuing at least one share in the corporation following its conversion; and
 - (ii) otherwise reclassifying the memberships in the corporation, if any, following its conversion into shares and other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;
 - (3) any desired amendments to the articles of incorporation or bylaws of the corporation following its conversion; and
 - (4) if the domestic nonprofit corporation is to be converted to a foreign business corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.
- (d) The plan of for-profit conversion may also include a provision that the plan may be amended prior to filing articles of for-profit conversion, except that subsequent to approval of the plan by the members the plan may not be amended without the approval of the members to change:
- (1) the amount or kind of shares and other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the members under the plan;
 - (2) the articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by Section 10.05; or
 - (3) any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.
- (e) Terms of a plan of for-profit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with Section 1.20(c).
- (f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before [*the effective date of this subchapter*] contains a provision applying to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion of the corporation until such time as the provision is amended subsequent to that date.
- (g) See Sections 9.02 (prohibited transactions) and 9.03 (restrictions and required approvals).

§ 9.31. ACTION ON A PLAN OF FOR-PROFIT CONVERSION

In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign business corporation:

- (1) The plan of for-profit conversion must be adopted by the board of directors.
- (2) After adopting the plan of for-profit conversion, the board of directors must submit the plan to the members for their approval if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (3) The board of directors may condition its submission of the plan of for-profit conversion to the members on any basis.
- (4) If the approval of the members is to be given at a meeting, the corporation must notify each member of the meeting of members at which the plan of for-profit conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the for-profit conversion.
- (5) Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (3), require a greater vote or a greater number of votes to be present, the approval of the plan of for-profit conversion by the members requires the approval of each class of members of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group exists.
- (6) If any provision of the articles of incorporation, bylaws or an agreement to which any of the directors or members are parties, adopted or entered into before [*the effective date of this subchapter*], applies to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion of the corporation until such time as the provision is amended subsequent to that date.

§ 9.32. ARTICLES OF FOR-PROFIT CONVERSION

- (a) Articles of for-profit conversion must be signed on behalf of the converting corporation by any officer or other duly authorized representative. The articles must set forth:
 - (1) if the surviving corporation is a domestic business corporation, the name of the corporation immediately before the filing of the articles of for-profit conversion and if that name does not satisfy the requirements of [*the Model Business*

Corporation Act], or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of [*the Model Business Corporation Act*];

- (2) if the surviving corporation is a foreign business corporation, its name after the conversion and its jurisdiction of incorporation; and
 - (3) a statement that the plan of for-profit conversion was duly approved by the members in the manner required by this [act] and the articles of incorporation.
- (b) If the surviving corporation is a domestic business corporation, the articles of for-profit conversion shall either contain all of the provisions that [*the Model Business Corporation Act*] requires to be set forth in articles of incorporation of a domestic business corporation and any other desired provisions permitted by [*the Model Business Corporation Act*], or shall have attached articles of incorporation that satisfy the requirements of [*the Model Business Corporation Act*]. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted, except that the name and address of the initial registered agent of the business corporation must be included.
- (c) The articles of for-profit conversion must be delivered to the secretary of state for filing, and take effect at the effective time provided in Section 1.23.

§ 9.33. EFFECT OF FOR-PROFIT CONVERSION

- [(a)] Except as otherwise provided in Section 9.03, when a conversion of a domestic nonprofit corporation to a domestic or foreign business corporation becomes effective:
- (1) the title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;
 - (2) the liabilities of the corporation remain the liabilities of the corporation;
 - (3) an action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;
 - (4) the articles of incorporation of the domestic or foreign business corporation become effective;
 - (5) the memberships of the corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the plan of conversion, and the members are entitled only to the rights provided in the plan of for-profit conversion; and
 - (6) the corporation is deemed to:

- (i) be a domestic or foreign business corporation for all purposes; and
- (ii) be the same corporation without interruption as the nonprofit corporation.

[(b) *The interest holder liability of a member in a domestic nonprofit corporation that converts to a domestic business corporation is as follows:*

- (1) *The conversion does not discharge any interest holder liability of the member as a member of the nonprofit corporation to the extent any such interest holder liability arose before the effective time of the articles of for-profit conversion.*
- (2) *The member does not have interest holder liability for any debt, obligation or liability of the business corporation that arises after the effective time of the articles of for-profit conversion.*
- (3) *The laws of this state continue to apply to the collection or discharge of any interest holder liability preserved by paragraph (1), as if the conversion had not occurred.*
- (4) *The member has whatever rights of contribution from other members are provided by the laws of this state with respect to any interest holder liability preserved by paragraph (1), as if the conversion had not occurred.*

(c) *A member who becomes subject to interest holder liability for some or all of the debts, obligations or liabilities of the business corporation has interest holder liability only for those debts, obligations or liabilities of the business corporation that arise after the effective time of the articles of for-profit conversion.]*

§ 9.34. ABANDONMENT OF A FOR-PROFIT CONVERSION

- (a) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this [subchapter], and at any time before the for-profit conversion has become effective, it may be abandoned by the board of directors without action by the members.
- (b) If a for-profit conversion is abandoned under subsection (a) after articles of for-profit conversion have been filed with the secretary of state but before the for-profit conversion has become effective, a statement that the for-profit conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the for-profit conversion. The statement takes effect upon filing and the for-profit conversion is abandoned and does not become effective.

[Subchapter] D

FOREIGN FOR-PROFIT DOMESTICATION AND CONVERSION

- § 9.40. Foreign for-profit domestication and conversion.
- § 9.41. Articles of domestication and conversion.
- § 9.42. Effect of foreign for-profit domestication and conversion.
- § 9.43. Abandonment of a foreign for-profit domestication and conversion.

§ 9.40. FOREIGN FOR-PROFIT DOMESTICATION AND CONVERSION

A foreign business corporation may become a domestic nonprofit corporation if the domestication and conversion is permitted by the law of the foreign jurisdiction.

§ 9.41. ARTICLES OF DOMESTICATION AND CONVERSION

- (a) After the conversion of a foreign business corporation to a domestic nonprofit corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:
 - (1) the name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of Section 4.01;
 - (2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and
 - (3) a statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.
- (b) The articles of domestication and conversion shall either contain all of the provisions that Section 2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that Section 2.02(b) and (c) permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domestic business corporation must be included.
- (c) The articles of domestication and conversion must be delivered to the secretary of state for filing, and take effect at the effective time provided in Section 1.23.
- (d) If the foreign business corporation is authorized to transact business in this state under *[the foreign qualification provision of the Model Business Corporation Act]*, its certificate of authority shall be cancelled automatically on the effective date of its domestication and conversion.

§ 9.42. EFFECT OF FOREIGN FOR-PROFIT DOMESTICATION AND CONVERSION

- (a) When a domestication and conversion of a foreign business corporation to a domestic nonprofit corporation becomes effective:
 - (1) the title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;
 - (2) the liabilities of the corporation remain the liabilities of the corporation;
 - (3) an action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;
 - (4) the articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;
 - (5) memberships, securities, obligations, rights to acquire memberships or securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of the foreign jurisdiction; and
 - (6) the corporation is deemed to:
 - (i) be a domestic corporation for all purposes; and
 - (ii) be the same corporation without interruption as the foreign business corporation.

- (b) The interest holder liability of a shareholder of the foreign business corporation who becomes a member of the domestic nonprofit corporation in the domestication and conversion is as follows:
 - (1) The domestication and conversion does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent any such interest holder liability arose before the effective time of the articles of domestication and conversion.
 - (2) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation or liability of the corporation that arises after the effective time of the articles of domestication and conversion.
 - (3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by paragraph (1), as if the domestication and conversion had not occurred.

- (4) The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by paragraph (1), as if the domestication and conversion had not occurred.

[(c) A shareholder of a foreign business corporation who becomes subject to interest holder liability for some or all of the debts, obligations or liabilities of the corporation as a result of its domestication and conversion in this state has interest holder liability only for those debts, obligations or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.]

§ 9.43. ABANDONMENT OF A FOREIGN FOR-PROFIT DOMESTICATION AND CONVERSION

If the domestication and conversion of a foreign business corporation to a domestic nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the secretary of state, a statement that the domestication and conversion has been abandoned, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication and conversion is abandoned and does not become effective.

[Subchapter] E ENTITY CONVERSION

- § 9.50. Entity conversion authorized.
§ 9.51. Plan of entity conversion.
§ 9.52. Action on a plan of entity conversion.
§ 9.53. Articles of entity conversion.
§ 9.54. Effect of entity conversion.
§ 9.55. Abandonment of an entity conversion.

§ 9.50. ENTITY CONVERSION AUTHORIZED

- (a) A domestic nonprofit corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.
- (b) A domestic nonprofit corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.
- (c) A domestic unincorporated entity may become a domestic nonprofit corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity, and its interest holders will be entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the unincorporated entity. If

the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved, the entity conversion effectuated, and appraisal rights exercised, in accordance with the procedures in this [subchapter]. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion is subject to subsection (e) and Section 9.52(7). For purposes of applying this [subchapter]:

- (1) the unincorporated entity, its interest holders, interests and organic records taken together, are deemed to be a domestic nonprofit corporation, members, memberships and articles of incorporation, respectively and vice versa, as the context may require; and
 - (2) if the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group is deemed to be the board of directors.
- (d) A foreign unincorporated entity may become a domestic nonprofit corporation if the law of the foreign jurisdiction authorizes it to become a nonprofit corporation in another jurisdiction.
- (e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before [*the effective date of this subchapter*], applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.
- (f) See Sections 9.02 (prohibited transactions) and 9.03 (restrictions and required approvals).

§ 9.51. PLAN OF ENTITY CONVERSION

- (a) A plan of entity conversion must include:
- (1) a statement of the type of unincorporated entity the surviving entity will be and, if it will be a foreign unincorporated entity, its jurisdiction of organization;
 - (2) the terms and conditions of the conversion;
 - (3) the manner and basis of converting the memberships in the domestic nonprofit corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and
 - (4) the full text, as they will be in effect immediately following the conversion, of the organic documents of the surviving entity.

- (b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the members the plan may not be amended to change:
 - (1) the amount or kind of memberships or other securities, interests, obligations, rights to acquire memberships, securities or interests, cash, or other property to be received under the plan by the members;
 - (2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to Section 10.05; or
 - (3) any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.
- (c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with Section 1.20(c).

§ 9.52. ACTION ON A PLAN OF ENTITY CONVERSION

In the case of an entity conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity:

- (1) The plan of entity conversion must be adopted by the board of directors.
- (2) After adopting the plan of entity conversion, the board of directors must submit the plan to the members for their approval if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (3) The board of directors may condition its submission of the plan of entity conversion to the members on any basis.
- (4) If the approval of the members is to be given at a meeting, the corporation must notify each member, whether or not entitled to vote, of the meeting of members at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.
- (5) Unless the articles of incorporation, or the board of directors acting pursuant to

paragraph (3), requires a greater vote or a greater number of votes to be present, the approval of the plan of entity conversion by the members requires the approval of each class of members of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group exists.

- (6) If any provision of the articles of incorporation, bylaws or an agreement to which any of the directors or members are parties, adopted or entered into before [*the effective date of this subchapter*], applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended.
- (7) If as a result of the conversion one or more members of the corporation would become subject to interest holder liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such member, of a separate written consent to become subject to such interest holder liability.

§ 9.53. ARTICLES OF ENTITY CONVERSION

- (a) After the conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity has been adopted and approved as required by this [act], articles of entity conversion must be signed on behalf of the converting corporation by any officer or other duly authorized representative. The articles must:
 - (1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the surviving entity if the surviving entity is a domestic entity;
 - (2) state the type of unincorporated entity that the surviving entity will be and its jurisdiction of organization;
 - (3) state that the plan of entity conversion was duly approved in the manner required by this [act];
 - (4) if the surviving entity is a domestic filing entity, either contain all of the provisions required to be set forth in its public organic record and any other desired provisions that are permitted, or have attached a public organic record.
- (b) After the conversion of a domestic unincorporated entity to a domestic nonprofit corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion must be signed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles must:

- (1) set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of Section 4.01;
 - (2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity;
 - (3) either contain all of the provisions that Section 2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that Section 2.02(b) and (c) permits to be included in articles of incorporation, or have attached articles of incorporation.
- (c) After the conversion of a foreign unincorporated entity to a domestic nonprofit corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be executed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles must:
- (1) set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of Section 4.01;
 - (2) set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;
 - (3) set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by the law of the foreign jurisdiction; and
 - (4) either contain all of the provisions that Section 2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that Section 2.02(b) and (c) permits to be included in articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.
- (d) The articles of entity conversion must be delivered to the secretary of state for filing, and take effect at the effective time provided in Section 1.23. Articles of entity conversion filed under Section 9.53(a) or (b) may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.
- (e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to [Chapter] 15, its certificate of authority or other type of foreign qualification is cancelled automatically on the effective

date of its conversion.

§ 9.54. EFFECT OF ENTITY CONVERSION

- (a) Except as otherwise provided in Section 9.03, when a conversion under this [subchapter] becomes effective:
 - (1) the title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;
 - (2) the liabilities of the converting entity remain the liabilities of the surviving entity;
 - (3) an action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;
 - (4) in the case of a surviving entity that is a filing entity, its articles of incorporation or public organic record and its private organic rules become effective;
 - (5) in the case of a surviving entity that is a nonfiling entity, its private organic rules becomes effective;
 - (6) the memberships or interests of the converting entity are reclassified into memberships, interests, other securities, obligations, rights to acquire memberships, interests or securities, or into cash or other property in accordance with the plan of conversion; and the members or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and
 - (7) the surviving entity is deemed to:
 - (i) be incorporated or organized under and subject to the organic law of the converting entity for all purposes; and
 - (ii) be the same nonprofit corporation or unincorporated entity without interruption as the converting entity.
- (b) A member who becomes subject to interest holder liability for some or all of the debts, obligations or liabilities of the surviving entity has interest holder liability only for those debts, obligations or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.
- (c) The interest holder liability of an interest holder in an unincorporated entity that converts to a domestic nonprofit corporation is as follows:
 - (1) The conversion does not discharge any interest holder liability under the organic

law of the unincorporated entity to the extent any such interest holder liability arose before the effective time of the articles of entity conversion.

- (2) The interest holder does not have interest holder liability under the organic law of the unincorporated entity for any debt, obligation or liability of the corporation that arises after the effective time of the articles of entity conversion.
- (3) The provisions of the organic law of the unincorporated entity continue to apply to the collection or discharge of any interest holder liability preserved by paragraph (1), as if the conversion had not occurred.
- (4) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any interest holder liability preserved by paragraph (1), as if the conversion had not occurred.

§ 9.55. ABANDONMENT OF AN ENTITY CONVERSION

- (a) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this [subchapter], and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the members.
- (b) If an entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is abandoned and does not become effective.

[CHAPTER] 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Subchapter

- A. Amendment of Articles of Incorporation
- B. Amendment of Bylaws
- C. Special Rights

[Subchapter] A

AMENDMENT OF ARTICLES OF INCORPORATION

- § 10.01. Authority to amend.
- § 10.02. Amendment before issuance of memberships.
- § 10.03. Amendment of articles of membership corporation.
- § 10.04. Voting on amendments by voting groups.

- § 10.05. Amendment of articles of nonmembership corporation.
- § 10.06. Articles of amendment.
- § 10.07. Restated articles of incorporation.
- § 10.08. Amendment pursuant to reorganization.
- § 10.09. Effect of articles amendment.

§ 10.01. AUTHORITY TO AMEND

A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles.

§ 10.02. AMENDMENT BEFORE ISSUANCE OF MEMBERSHIPS

If a membership corporation has not yet issued memberships, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the articles of incorporation.

§ 10.03. AMENDMENT OF ARTICLES OF MEMBERSHIP CORPORATION

- (a) An amendment to the articles of incorporation of a membership corporation must be adopted in the following manner:
 - (1) Except as provided in paragraph (5), the proposed amendment must be adopted by the board of directors.
 - (2) Except as provided in Sections 10.05, 10.07, and 10.08, a proposed amendment must be submitted to the members entitled to vote for their approval.
 - (3) The board of directors must transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
 - (4) The board of directors may condition its submission of the amendment to the members on any basis.
 - (5) Except as provided in the articles of incorporation or bylaws, an amendment may be proposed by 10% or more of the members entitled to vote on the amendment or by such greater or lesser number of members as is specified in the articles. Paragraphs (1), (3), and (4) do not apply to an amendment proposed by the members under this paragraph.
 - (6) If the amendment is required to be approved by the members, and the approval is to be given at a meeting, the corporation must give notice to each member entitled

to vote on the amendment of the meeting of members at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

- (7) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (4), requires a greater vote or a greater number of members to be present, the approval of an amendment requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the amendment, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
 - (8) In addition to the adoption and approval of an amendment by the board of directors and members as required by this section, an amendment must also be approved by a designated body whose approval is required by the articles of incorporation or bylaws.
- (b) Unless the articles of incorporation provide otherwise, the board of directors of a membership corporation may adopt amendments to the corporation's articles of incorporation without approval of the members to:
- (1) extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
 - (2) delete the names and addresses of the initial directors or members of a designated body;
 - (3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;
 - (4) change the corporation name by substituting or deleting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name;
 - (5) restate without change all of the then operative provisions of the articles.

§ 10.04. VOTING ON AMENDMENTS BY VOTING GROUPS

- (a) Except as provided in the articles of incorporation or bylaws, if a nonprofit corporation has more than one class of members, the members of each class are entitled to vote as a separate voting group (if member voting is otherwise required by this [act]) on a proposed amendment to the articles of incorporation if the amendment would:
- (1) effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class;

- (2) effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class;
 - (3) change the rights, preferences, or limitations of all or part of the memberships of the class in a manner different than the amendment would affect another class;
 - (4) change the rights, preferences, or limitations of all or part of the memberships of the class by changing the rights, preferences, or limitations of another class;
 - (5) increase or decrease the number of memberships authorized for that class;
 - (6) increase the number of memberships authorized for another class; or
 - (7) authorize a new class of memberships.
- (b) If a class of members will be divided into two or more classes by an amendment to the articles of incorporation, the amendment must be approved by a majority of the members of each class that will be created.

§10.05. AMENDMENT OF ARTICLES OF NONMEMBERSHIP CORPORATION

Except as otherwise provided in the articles of incorporation, the board of directors of a nonmembership corporation may adopt amendments to the corporation's articles. An amendment adopted by the board of directors under this subsection must also be approved:

- (1) by a designated body whose approval is required by the articles of incorporation or bylaws;
- (2) if the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group; and
- (3) if the amendment changes or deletes a provisions regarding the designation of a director, by the individual designated at the time as that director.

§ 10.06 ARTICLES OF AMENDMENT

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this [act] and by the articles of incorporation, the nonprofit corporation must deliver to the secretary of state, for filing, articles of amendment, which must set forth:

- (1) the name of the corporation;
- (2) the text of the amendment adopted;
- (3) if the amendment provides for an exchange, reclassification, or cancellation of

memberships, provisions for implementing the amendment if not contained in the amendment itself, (which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with Section 1.20(c));

- (4) the date of the amendment's adoption; and
- (5) if the amendment:
 - (i) was adopted by the incorporators, board of directors, or a designated body without member approval, a statement that the amendment was adopted by the incorporators or by the board of directors or designated body, as the case may be, and that member approval was not required; or
 - (ii) required approval by the members, a statement that the amendment was duly approved by the members in the manner required by this [act] and by the articles of incorporation and bylaws.

§ 10.07. RESTATED ARTICLES OF INCORPORATION

- (a) The board of directors of a nonprofit corporation may restate its articles of incorporation at any time, without approval by the members or any other person, to consolidate all amendments into a single document without substantive change.
- (b) If restated articles of a membership corporation include one or more new amendments that require member approval, the amendments must be adopted and approved as provided in Sections 10.03 and 10.04.
- (c) A nonprofit corporation that restates its articles of incorporation must deliver to the secretary of state for filing articles of amendment under Section 10.06 which include a statement that the articles of amendment are a restatement that consolidates all amendments into a single record.
- (d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.
- (e) The secretary of state shall certify restated articles of incorporation as the articles of incorporation currently in effect.

§ 10.08. AMENDMENT PURSUANT TO REORGANIZATION

- (a) A nonprofit corporation's articles of incorporation may be amended without action by the board of directors, a designated body, or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

- (b) An individual designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:
 - (1) the name of the corporation;
 - (2) the text of each amendment approved by the court;
 - (3) the date of the court's order or decree approving the articles of amendment;
 - (4) the title of the reorganization proceeding in which the order or decree was entered; and
 - (5) a statement that the court had jurisdiction of the proceeding under federal statute.
- (c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 10.09 EFFECT OF ARTICLES AMENDMENT

- (a) Except as provided in subsections (b), (c), and (d), an amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the articles. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.
- (b) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its articles of incorporation unless the corporation obtains an appropriate order of [court] [the attorney general] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (c) Unless a nonprofit corporation obtains an appropriate order of [court] [the attorney general] under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its articles of incorporation may not affect:
 - (1) any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or
 - (2) the existing rights of persons other than its members.
- (d) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the articles of incorporation unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection does not apply to the

receipt of reasonable compensation for services rendered.

[Subchapter] B
AMENDMENT OF BYLAWS

- § 10.20. Amendment by board of directors or members.
- § 10.21. Bylaw increasing quorum or voting requirement for board of directors or designated body.
- § 10.22. Bylaw amendments requiring member approval.
- § 10.23. Effect of bylaw amendment.

§ 10.20. AMENDMENT BY BOARD OF DIRECTORS OR MEMBERS

- (a) Except as provided in the articles of incorporation or bylaws, the members of a membership corporation may amend or repeal the corporation's bylaws.
- (b) The board of directors of a membership corporation or nonmembership corporation may amend or repeal the corporation's bylaws, unless the articles of incorporation or bylaws or Sections 10.21 or 10.22 reserve that power exclusively to the members or a designated body in whole or part.

§ 10.21. BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR BOARD OF DIRECTORS OR DESIGNATED BODY

- (a) A bylaw that increases a quorum or voting requirement for the board of directors or a designated body may be amended or repealed:
 - (1) if originally adopted by the members, only by the members, unless the bylaws otherwise provide;
 - (2) if adopted by the board of directors or designated body, either by the members or by the board of directors or designated body.
- (b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors or a designated body may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors or designated body.
- (c) Action by the board of directors or a designated body under subsection (a) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors or a designated body must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

§ 10.22. BYLAW AMENDMENTS REQUIRING MEMBER APPROVAL

- (a) Except as provided in the articles of incorporation or bylaws, the board of directors or designated body of a membership corporation that has one or more members at the time may not adopt or amend a bylaw under:
 - (1) Section 6.10 providing that some of the members shall have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships or other matters;
 - (2) Section 6.13 levying dues, assessments, or fees on some or all of the members;
 - (3) Section 6.21 relating to the termination or suspension of members;
 - (4) Section 6.22 authorizing the purchase of memberships;
 - (5) Section 8.08(a):
 - (i) requiring cause to remove a director; or
 - (ii) specifying what constitutes cause to remove a director;
 - (6) Section 8.08(e) relating to the removal of a director who is designated in a manner other than election or appointment; or
 - (7) Section 8.12.
- (b) The board of directors or designated body of a membership corporation may not amend the articles of incorporation or bylaws to vary the application of subsection (a) to the corporation.
- (c) If a nonprofit corporation has more than one class of members, the members of a class are entitled to vote as a separate voting group on an amendment to the bylaws that:
 - (1) is described in subsection (a) if the amendment would affect the members of that class differently than the members of another class; or
 - (2) has any of the effects described in Section 10.04.
- (d) If a class of members will be divided into two or more classes by an amendment to the bylaws, the amendment must be approved by a majority of the members of each class that will be created.

§ 10.23. EFFECT OF BYLAW AMENDMENT

- (a) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its bylaws unless the corporation obtains an appropriate order of [court] [*the attorney general*] to the extent

required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

- (b) Unless a nonprofit corporation obtains an appropriate order of [court] [the attorney general] under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its bylaws may not affect:
 - (1) any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or
 - (2) the existing rights of persons other than its members.
- (c) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the bylaws unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

[Subchapter] C
SPECIAL RIGHTS

§ 10.30. Approval by third persons.

§ 10.30. APPROVAL BY THIRD PERSONS

- (a) The articles of incorporation may require that an amendment to the articles be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.
- (b) The articles of incorporation or bylaws may require that an amendment to the bylaws be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.
- (c) A requirement in the articles of incorporation or bylaws described in subsection (a) or (b) may only be amended with the approval in the form of a record of the specified person or group of persons.

[CHAPTER] 11
MERGERS AND MEMBERSHIP EXCHANGES

- § 11.01. Preliminary provisions and restrictions.
- § 11.02. Merger.
- § 11.03. Membership exchange.
- § 11.04. Action on a plan of merger or membership exchange.
- § 11.05. Merger with controlled corporation or between controlled corporations.
- § 11.06. Articles of merger or membership exchange.

§ 11.07. Effect of merger or membership exchange.

§ 11.08. Abandonment of a merger or membership exchange.

§11.01. PRELIMINARY PROVISIONS AND RESTRICTIONS

(a) As used in this [chapter]:

(1) “Exchanging entity” means the domestic or foreign nonprofit corporation or eligible entity in which all of one or more classes of memberships or classes or series of eligible interests are to be acquired in a membership exchange.

(2) “Membership exchange” means a transaction pursuant to Section 11.03.

(3) “Merger” means a transaction pursuant to Section 11.02.

(4) “Party to a merger” or “party to a membership exchange” means any domestic or foreign nonprofit corporation or eligible entity that:

(i) will merge under a plan of merger;

(ii) will acquire memberships or eligible interests of another corporation or an eligible entity in a membership exchange; or

(iii) is an exchanging entity.

(5) “Survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

(b) Property held in trust by an entity or otherwise dedicated to a charitable purpose may not be diverted from its purpose by a transaction under this [chapter] unless the entity obtains an appropriate order of [court] [*the attorney general*] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless an entity that is a party to a transaction under this [chapter] obtains an appropriate order of [court] [*the attorney general*] under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction may not affect:

(1) any restriction imposed upon the entity by its organic documents that may not be amended by its governors, members, or interest holders;

(2) any restriction imposed upon property held by the entity by virtue of any trust under which it holds that property; or

(3) the existing rights of persons other than members, shareholders, or interest

holders of the entity.

- (d) A person who is a member, interest holder or otherwise affiliated with a charitable corporation or an unincorporated entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a transaction under this [chapter] to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation or unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

§ 11.02. MERGER

- (a) One or more domestic nonprofit corporations may merge with one or more domestic or foreign nonprofit corporations or eligible entities pursuant to a plan of merger or two or more foreign nonprofit corporations or domestic or foreign eligible entities may merge into a new domestic nonprofit corporation to be created in the merger in the manner provided in this [chapter].
- (b) A foreign nonprofit corporation, or a foreign eligible entity, may be a party to a merger with a domestic nonprofit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the organic law of the corporation or eligible entity.
- (c) If the organic law of a domestic eligible entity does not prohibit a merger with a nonprofit corporation but does not provide procedures for the approval of such a merger, a plan of merger may be adopted and approved, and the merger may be effectuated, in accordance with the procedures in this [chapter]. For the purposes of applying this [chapter]:
 - (1) the eligible entity, its interest holders, eligible interests and organic records, shall be deemed to be a domestic nonprofit corporation, members, memberships, and articles of incorporation and bylaws, respectively, as the context may require; and
 - (2) if the business and affairs of the eligible entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.
- (d) The plan of merger must be in the form of a record and include:
 - (1) the name of each domestic or foreign nonprofit corporation or eligible entity that will merge and the name of the domestic or foreign nonprofit corporation or eligible entity that will be the survivor of the merger;
 - (2) the terms and conditions of the merger;
 - (3) the manner and basis of converting the memberships of each merging domestic or

foreign nonprofit membership corporation and the eligible interests of each merging domestic or foreign eligible entity into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

- (4) the articles of incorporation and bylaws of any corporation, or the organic records of any eligible entity, to be created by the merger; or if a new corporation or eligible entity is not to be created by the merger, any amendments to the survivor's articles or bylaws or organic records; and
 - (5) any other provisions relating to the merger that the parties desire be included in the plan of merger.
- (e) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the members of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such members the plan may not be amended to change:
- (1) the amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be received by the members of or owners of eligible interests in any party to the merger;
 - (2) the articles of incorporation or bylaws of any corporation, or the organic records of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by Section 10.05 or by comparable provisions of the organic law of any such foreign nonprofit or business corporation or domestic or foreign unincorporated entity; or
 - (3) any of the other terms or conditions of the plan, if the change would adversely affect such members in any material respect.
- (f) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 1.20(c).
- (g) See Section 11.01(b), (c), and (d) (restrictions).

§ 11.03. MEMBERSHIP EXCHANGE

- (a) Through a membership exchange:
- (1) a domestic nonprofit corporation may acquire, pursuant to a plan of membership exchange, all of the memberships of one or more classes of another domestic or foreign nonprofit corporation, or all of the eligible interests of one or more classes

or series of eligible interests of a domestic or foreign eligible entity, in exchange for memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

- (2) all of the memberships of one or more classes of a domestic nonprofit corporation may be acquired by another domestic or foreign nonprofit corporation or eligible entity, in exchange for memberships, eligible interests, securities, obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing, pursuant to a plan of membership exchange;
- (b) A foreign nonprofit corporation or eligible entity may be a party to a membership exchange only if the membership exchange is permitted by the organic law of the corporation or eligible entity.
- (c) If the organic law of a domestic eligible entity does not prohibit a membership exchange with a nonprofit corporation but does not provide procedures for the approval of an exchange of interests similar to a membership exchange, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a domestic eligible entity does not provide procedures for either an interest exchange or a merger, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures in this [chapter]. For the purposes of applying this [chapter]:
- (1) the eligible entity, its interest holders, eligible interests, and organic documents shall be deemed to be a domestic nonprofit corporation, members, memberships, and articles of incorporation and bylaws, respectively, as the context may require; and
 - (2) if the business and affairs of the eligible entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.
- (d) The plan of membership exchange must be in the form of a record and include:
- (1) the name of each domestic or foreign nonprofit corporation or eligible entity whose memberships or eligible interests will be acquired and the name of the corporation or eligible entity that will acquire those memberships or eligible interests;
 - (2) the terms and conditions of the membership exchange;
 - (3) the manner and basis of exchanging the memberships of a corporation or the eligible interests in an eligible entity whose memberships or eligible interests will

be acquired under the membership exchange into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

- (4) any changes desired to be made in the organic records of the exchanging entity; and
 - (5) any other provisions relating to the membership exchange that the parties desire be included in the plan of exchange.
- (e) The plan of membership exchange may also include a provision that the plan may be amended prior to filing articles of membership exchange, but if the members of a domestic nonprofit corporation that is a party to the membership exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such members the plan may not be amended to change:
- (1) the amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be issued by the domestic nonprofit corporation or to be received by its members, as the case may be; or
 - (2) any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.
- (f) Terms of a plan of membership exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 1.20(c).
- (g) Section 11.03 does not limit the power of a domestic nonprofit corporation to acquire memberships in another corporation or eligible interests in an eligible entity in a transaction other than a membership exchange.
- (h) If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic exchanging entity before [*the effective date of this section*] contains a provision applying to a merger or change in control of the exchanging entity that does not refer to a membership exchange, the provision shall be deemed to apply to a membership exchange of the exchanging entity until such time as the provision is amended subsequent to that date.
- (i) See Section 11.01(b), (c), and (d) (restrictions).

§ 11.04. ACTION ON A PLAN OF MERGER OR MEMBERSHIP EXCHANGE

In the case of a nonprofit corporation that is a party to a merger or membership exchange:

- (1) The plan of merger or membership exchange must be adopted by the board of directors.
- (2) Except as provided in paragraph (8), Section 11.05, or the articles of incorporation or bylaws, after adopting the plan of merger or membership exchange the board of directors must submit the plan to the members entitled to vote on the plan for their approval. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (3) The board of directors may condition its submission of the plan of merger or membership exchange to the members on any basis.
- (4) If the plan of merger or membership exchange is required to be approved by the members, and if the approval is to be given at a meeting, the nonprofit corporation must give notice to each member entitled to vote on the merger or membership exchange of the meeting of members at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or organic records of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation and bylaws or organic records of the new corporation or eligible entity.
- (5) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (3), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or membership exchange by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of memberships is entitled to vote as a separate group on the plan of merger or membership exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (6) Separate voting by voting groups is required:
 - (i) on a plan of merger, by each class of memberships that:
 - (A) are to be converted into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other

consideration; or any combination of the foregoing; or

- (B) would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 10.04.
 - (ii) on a plan of membership exchange, by each class of memberships included in the exchange, with each class constituting a separate voting group; and
 - (iii) on a plan of merger or membership exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or membership exchange.
- (7) If as a result of a merger or membership exchange one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or membership exchange requires the signature, by each such member, of a separate record consenting to become subject to such owner liability.
- (8) If a domestic nonprofit corporation that is a party to a merger does not have any members entitled to vote thereon, a plan of merger shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to paragraph (1).
- (9) In addition to the adoption and approval of the plan of merger by the board of directors and members as required by this section, the plan of merger must also be approved in the form of a record by any person or group of persons whose approval is required under Section 10.30 to amend the articles of incorporation or bylaws.

§ 11.05. MERGER WITH CONTROLLED CORPORATION OR BETWEEN CONTROLLED CORPORATIONS

- (a) A domestic or foreign entity that holds a membership in a domestic nonprofit corporation that carries at least 80 percent of the voting power of each class of membership of the controlled corporation that has voting power may merge the controlled corporation into itself or into another such controlled corporation, or merge itself into the controlled corporation, without the approval of the board of directors, designated body or members of the controlled corporation, unless the articles of incorporation or bylaws of any of the corporations or the organic records of a controlling unincorporated entity otherwise provide.
- (b) If under subsection (a) approval of a merger by the members of a controlled corporation is not required, the controlling entity shall, within ten days after the effective date of the

merger, notify each of the members of the controlled corporation that the merger has become effective.

- (c) Except as provided in subsections (a) and (b), a merger between a controlling entity and a controlled corporation is governed by the provisions of Chapter 11 applicable to mergers generally.
- (d) A merger pursuant to this section must also be approved in a record by a designated body whose approval is required to amend the articles of incorporation of the controlled corporation.

§ 11.06. ARTICLES OF MERGER OR MEMBERSHIP EXCHANGE

- (a) After a plan of merger or membership exchange has been adopted and approved as required by this [act], articles of merger or membership exchange shall be signed on behalf of each party to the merger or membership exchange by any officer or other duly authorized representative. The articles shall set forth:
 - (1) the names of the parties to the merger or membership exchange;
 - (2) if the articles of incorporation of the survivor of a merger or an exchanging nonprofit corporation are amended, or if a new corporation is created as a result of a merger, the amendments to the articles of incorporation of the survivor or exchanging corporation or the articles of incorporation of the new corporation;
 - (3) if the plan of merger or membership exchange required approval by the members of a domestic nonprofit corporation that was a party to the merger or membership exchange, a statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this [act] and the articles of incorporation or bylaws;
 - (4) if the plan of merger or membership exchange did not require approval by the members of a domestic nonprofit corporation that was a party to the merger or membership exchange, a statement to that effect; and
 - (5) as to each foreign nonprofit corporation or eligible entity that was a party to the merger or membership exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.
- (b) Terms of articles of merger or membership exchange may be made dependent on facts objectively ascertainable outside the articles in accordance with Section 1.20(c).
- (c) Articles of merger or membership exchange must be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation or eligible entity in a

membership exchange and shall take effect at the effective time provided in Section 1.23. Articles of merger or membership exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

§ 11.07. EFFECT OF MERGER OR MEMBERSHIP EXCHANGE

- (a) Subject to Sections 11.01(b), (c), and (d), when a merger becomes effective:
- (1) the domestic or foreign nonprofit corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;
 - (2) the separate existence of every domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor ceases;
 - (3) all property owned by, and every contract and other right possessed by, each domestic or foreign nonprofit corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;
 - (4) all liabilities of each domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor are vested in the survivor;
 - (5) the name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
 - (6) the articles of incorporation and bylaws or organic records of the survivor are amended to the extent provided in the plan of merger;
 - (7) the articles of incorporation and bylaws or organic records of a survivor that is created by the merger become effective; and
 - (8) the memberships of each corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; are converted.
- (b) Subject to Sections 11.01(b), (c), and (d), when a membership exchange becomes effective:
- (1) the memberships or eligible interests in the exchanging entity that are to be exchanged under the plan of membership exchange into memberships, eligible

interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; are exchanged; and

- (2) the articles of incorporation and bylaws or organic records of the exchanging entity are amended to the extent provided in the plan of membership exchange.
- (c) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or membership exchange has owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or membership exchange.
- (d) The effect of a merger or membership exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or membership exchange is as follows:
- (1) The merger or membership exchange does not discharge any owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or membership exchange.
 - (2) The person does not have owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder prior to the merger or membership exchange for any debt, obligation, or liability that arises after the effective time of the articles of merger or membership exchange.
 - (3) The provisions of the organic law of any entity for which the person had owner liability before the merger or membership exchange continue to apply to the collection or discharge of any owner liability preserved by paragraph (1), as if the merger or membership exchange had not occurred.
 - (4) The person has whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (1), as if the merger or membership exchange had not occurred.
- (e) A devise, bequest, gift, grant or promise contained in a will or other instrument, in trust or otherwise, made before or after a merger, to or for any of the parties to the merger, shall inure to the survivor, subject to the express terms of the will or other instrument.

§ 11.08. ABANDONMENT OF A MERGER OR MEMBERSHIP EXCHANGE

- (a) Unless otherwise provided in a plan of merger or membership exchange or in the organic law of a foreign nonprofit corporation or a domestic or foreign eligible entity that is a party to a merger or a membership exchange, after the plan has been adopted and

approved as required by this [chapter], and at any time before the merger or membership exchange has become effective, it may be abandoned by a domestic nonprofit corporation that is a party thereto without action by its members, in accordance with any procedures set forth in the plan of merger or membership exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or membership exchange.

- (b) If a merger or membership exchange is abandoned under subsection (a) after articles of merger or membership exchange have been filed with the secretary of state but before the merger or membership exchange has become effective, a statement that the merger or membership exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or membership exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or membership exchange. Upon filing, the statement shall take effect and the merger or membership exchange shall be deemed abandoned and shall not become effective.

[CHAPTER] 12

DISPOSITION OF ASSETS

§ 12.01. Disposition of assets not requiring member approval.

§ 12.02. Member approval of certain dispositions.

§ 12.03. Restrictions on dispositions of assets.

12.01. DISPOSITION OF ASSETS NOT REQUIRING MEMBER APPROVAL

- (a) Approval of the members of a nonprofit corporation is not required, unless the articles of incorporation or bylaws otherwise provide:
 - (1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:
 - (i) in the usual and regular course of its activities; or
 - (ii) if the corporation and its consolidated subsidiaries retain an activity that represented or was supported by at least 33 percent of total assets at the end of the most recently completed fiscal year;
 - (2) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its activities; or
 - (3) to transfer any or all of the corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

- (b) See Section 12.03 (restrictions on dispositions of assets).

12.02. MEMBER APPROVAL OF CERTAIN DISPOSITIONS

- (a) Except as provided in the articles of incorporation or bylaws, a sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 12.01, requires approval of the corporation's members.
- (b) A disposition that requires approval of the members under subsection (a) must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors must submit the proposed disposition to the members for their approval. The board of directors must also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (c) The board of directors may condition its submission of a disposition to the members under subsection (b) on any basis.
- (d) If a disposition is required to be approved by the members under subsection (a), and if the approval is to be given at a meeting, the nonprofit corporation must give notice to each member, whether or not entitled to vote, of the meeting of members at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.
- (e) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (f) After a disposition has been approved by the members under subsection (e), and at any time before the disposition has been consummated, it may be abandoned by the nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.
- (g) A disposition of assets in the course of dissolution under [Chapter] 14 is not governed by this section.
- (h) The assets of a direct or indirect consolidated subsidiary are deemed the assets of the parent nonprofit corporation for the purposes of this section.

- (i) In addition to the approval of a disposition of assets by the board of directors and members as required by this section, the disposition must also be approved in the form of a record by any person or group of persons whose approval is required under Section 10.30 to amend the articles of incorporation or bylaws.
- (j) See Section 12.03 (restrictions on dispositions of assets).

§ 12.03. RESTRICTIONS ON DISPOSITIONS OF ASSETS

- (a) Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by a transaction described in Section 12.01 or 12.02 unless the nonprofit corporation obtains an appropriate order from [*court*] [*the attorney general*] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (b) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with a disposition of assets unless the person is a charitable corporation or an unincorporated entity that has a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

[CHAPTER] 13 DERIVATIVE PROCEEDINGS

- § 13.01. Scope of [chapter].
- § 13.02. Standing.
- § 13.03. Demand.
- § 13.04. Stay of proceedings.
- § 13.05. Dismissal.
- § 13.06. Discontinuance or settlement.
- § 13.07. Security for costs; payment of expenses.
- § 13.08. Applicability to foreign corporations.
- § 13.09. Notice to attorney general.

§ 13.01. SCOPE OF [CHAPTER]

In this [chapter], “derivative proceeding” means a civil suit in the right of a domestic nonprofit corporation or, to the extent provided in Section 13.08, in the right of a foreign nonprofit corporation.

§ 13.02. STANDING

- (a) A derivative proceeding may be brought by:
 - (1) a member or members having five percent or more of the voting power, or by 50 members, whichever is less; or

- (2) any director or member of a designated body.
- (b) The plaintiff in a derivative proceeding must be a member, director, or member of a designated body at the time of bringing the proceeding. A plaintiff who is a member must also have been a member at the time of any action complained of in the derivative proceeding.

§ 13.03. DEMAND

A person may not commence a derivative proceeding until:

- (1) a demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and
- (2) 90 days have expired from the date the demand was effective unless the person has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

§ 13.04. STAY OF PROCEEDINGS

- (a) If the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.
- (b) See Section 13.06 (applicability to foreign corporations).

§ 13.05. DISMISSAL

- (a) A derivative proceeding shall be dismissed by the court on motion by the nonprofit corporation if one of the groups specified in subsection (b) or (e) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.
- (b) Unless a panel is appointed pursuant to subsection (e), the determination in subsection (a) shall be made by:
 - (1) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or
 - (2) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

- (c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint must allege with particularity facts establishing either:
 - (1) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or
 - (2) that the requirements of subsection (a) have not been met.
- (d) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the nonprofit corporation has the burden of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection (a) have not been met.
- (e) The court may appoint a panel of one or more independent persons upon motion by the nonprofit corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.
- (f) A person is independent for purposes of this section if the person does not have:
 - (1) a material interest in the outcome of the proceeding, or
 - (2) a material relationship with a person who has such an interest.
- (g) None of the following shall by itself cause a director to be considered not independent for purposes of this section:
 - (1) the nomination, election, or appointment of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;
 - (2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or
 - (3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

§ 13.06. DISCONTINUANCE OR SETTLEMENT

- (a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the members or a class of members of the nonprofit corporation, the court shall direct that notice be given to the members affected.
- (b) See Section 13.08 (applicability to foreign corporations).

§ 13.07. SECURITY FOR COSTS; PAYMENT OF EXPENSES

- (a) In any derivative proceeding brought under Section 13.02(a)(1), the nonprofit corporation shall be entitled at any stage of the proceeding to seek an order requiring the plaintiffs to give security for reasonable expenses, including attorney fees and expenses, that may be incurred by the corporation in connection with the proceeding, to which security the corporation may have recourse in such amount as the court determines upon termination of the proceeding. The amount of security may be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or excessive. Security may be denied or limited in the discretion of the court upon a preliminary showing, by application and upon such types of proof as may be required by the court, establishing prima facie that the requirement of full or partial security would impose undue hardship on plaintiffs and serious injustice would result.
- (b) On termination of the derivative proceeding the court may:
- (1) order the nonprofit corporation to pay the plaintiff's reasonable expenses (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;
 - (2) order the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or
 - (3) order a party to pay an opposing party's reasonable expenses (including counsel fees) incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.
- (c) See Section 13.08 (applicability to foreign corporations).

§ 13.08. APPLICABILITY TO FOREIGN CORPORATIONS

In any derivative proceeding in the right of a foreign nonprofit corporation, the matters covered by this [chapter] shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for Sections 13.04, 13.06, and 13.07.

§ 13.09. NOTICE TO ATTORNEY GENERAL

The plaintiff in a derivative proceeding must notify the attorney general within ten days after commencing the proceeding if it involves a charitable corporation.

[CHAPTER] 14

DISSOLUTION

Subchapter

- A. Voluntary Dissolution
- B. Administrative Dissolution
- C. Judicial Dissolution
- D. Miscellaneous

[Subchapter] A

VOLUNTARY DISSOLUTION

- § 14.01. Dissolution by incorporators or directors.
- § 14.02. Approval of dissolution.
- § 14.03. Articles of dissolution.
- § 14.04. Revocation of dissolution.
- § 14.05. Effect of dissolution.
- § 14.06. Known claims against dissolved corporation.
- § 14.07. Other claims against dissolved corporation.
- § 14.08. Court proceedings.
- § 14.09. Director duties.

§ 14.01. DISSOLUTION BY INCORPORATORS OR DIRECTORS

A majority of the incorporators or directors of a nonprofit corporation that has not commenced activity, or of a membership corporation that has not admitted any members, may dissolve the corporation by delivering to the secretary of state of state for filing articles of dissolution that set forth:

- (1) the name of the corporation;
- (2) the date of its incorporation;
- (3) either:
 - (i) that the corporation has not commenced activity; or
 - (ii) that the corporation is a membership corporation and has not admitted any members;
- (4) that no debt of the corporation remains unpaid;
- (5) that, except as provided in the articles of incorporation or bylaws, the net assets of the corporation remaining after winding up have been distributed to the members, if members were admitted; and

- (6) that a majority of the incorporators or directors authorized the dissolution.

§ 14.02. APPROVAL OF DISSOLUTION

- (a) The board of directors of a membership corporation may propose dissolution for submission to the members.
- (b) For a proposal to dissolve to be adopted:
 - (1) the board of directors must recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and
 - (2) the members entitled to vote must approve the proposal to dissolve as provided in subsection (e).
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (d) The nonprofit corporation must give notice to each member, whether or not entitled to vote, of the proposed meeting of members. The notice must also state:
 - (1) that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and
 - (2) how the assets of the corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.
- (e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the proposal, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (f) If the nonprofit corporation does not have any members entitled to vote on its dissolution, a proposal to dissolve shall be deemed adopted by the corporation when it has been adopted by the board of directors.
- (g) A charitable corporation must give the attorney general notice in the form of a record that it intends to dissolve before the time it delivers articles of dissolution to the secretary of state.

§ 14.03. ARTICLES OF DISSOLUTION

- (a) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:
 - (1) the name of the corporation;
 - (2) the date dissolution was authorized; and
 - (3) the dissolution was approved in the manner required by this [act] and by the articles of incorporation and bylaws.
- (b) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.
- (c) For purposes of this [subchapter], “dissolved corporation” means a nonprofit corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

§ 14.04. REVOCATION OF DISSOLUTION

- (a) A nonprofit corporation may revoke its dissolution within 120 days of its effective date.
- (b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members.
- (c) After the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
 - (1) the name of the corporation;
 - (2) the effective date of the dissolution that was revoked;
 - (3) the date that the revocation of dissolution was authorized;
 - (4) that the revocation of dissolution was approved in the manner required by this [act] and by the articles of incorporation and bylaws.
- (d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the nonprofit corporation resumes carrying on its activities as if dissolution had never occurred.

§ 14.05. EFFECT OF DISSOLUTION

- (a) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:
 - (1) collecting its assets;
 - (2) disposing of its properties that will not be distributed in kind;
 - (3) discharging or making provision for discharging its liabilities;
 - (4) distributing its remaining property as required by law and its articles of incorporation and bylaws; and otherwise as approved when the dissolution was approved or among the members per capita; and
 - (5) doing every other act necessary to wind up and liquidate its activities and affairs.
- (b) Dissolution of a nonprofit corporation does not:
 - (1) transfer title to the corporation's property;
 - (2) subject its directors, members of a designated body, or officers to standards of conduct different from those prescribed in Chapter 8;
 - (3) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (4) prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
 - (6) terminate the authority of the registered agent of the corporation.
- (c) Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by the dissolution of a nonprofit corporation unless and until the corporation obtains an order of [*court*] [*the attorney general*] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (d) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with the dissolution of the corporation unless the person is a charitable corporation or an unincorporated entity that

has a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

§ 14.06. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION

- (a) A dissolved nonprofit corporation may dispose of the known claims against it by delivering notice to its known claimants of the dissolution at any time after its effective date.
- (b) The notice must be in the form of a record and:
 - (1) describe information that must be included in a claim;
 - (2) provide a mailing address where a claim may be sent;
 - (3) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved nonprofit corporation must receive the claim; and
 - (4) state that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved nonprofit corporation is barred:
 - (1) if a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
 - (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.
- (d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§ 14.07. OTHER CLAIMS AGAINST DISSOLVED CORPORATION

- (a) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.
- (b) The notice must:
 - (1) be published one time in a newspaper of general circulation in the county where the principal office of the dissolved nonprofit corporation (or, if none in this state, its registered office) is or was last located;
 - (2) describe the information that must be included in a claim and provide a mailing

address where the claim must be sent; and

- (3) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.
- (c) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:
- (1) a claimant who was not given notice under Section 14.06;
 - (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on; or
 - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim that is not barred by Section 14.06(b) or Section 14.07(c) may be enforced:
- (1) against the dissolved nonprofit corporation, to the extent of its undistributed assets; or
 - (2) except as provided in Section 14.08(d), if the assets have been distributed in liquidation, against any person, other than a creditor of the dissolved corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less, but a distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

§ 14.08. COURT PROCEEDINGS

- (a) A dissolved nonprofit corporation that has published a notice under Section 14.07 may file an application with the [*name or describe*] court of the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 14.07(c).
- (b) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved nonprofit corporation to each claimant holding a contingent claim whose

contingent claim is shown on the records of the dissolved corporation.

- (c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved nonprofit corporation.
- (d) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the court under Section 14.08(a) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a person who received assets in liquidation.

§ 14.09. DIRECTOR DUTIES

- (a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets after payment or provision for claims.
- (b) Directors of a dissolved nonprofit corporation that has disposed of claims under Sections 14.06, 14.07, or 14.08 shall not be liable for breach of Section 14.09(a) with respect to claims against the dissolved corporation that are barred or satisfied under Sections 14.06, 14.07, or 14.08.

[Subchapter] B ADMINISTRATIVE DISSOLUTION

- § 14.20. Grounds for administrative dissolution.
- § 14.21. Procedure for administrative dissolution.
- § 14.22. Reinstatement following administrative dissolution.
- § 14.23. Appeal from denial of reinstatement.

§ 14.20. GROUNDS FOR ADMINISTRATIVE DISSOLUTION

The secretary of state may commence a proceeding under Section 14.21 to administratively dissolve a nonprofit corporation if:

- (1) the corporation does not pay within 120 days after they are due any taxes or penalties imposed by this [act] or other law which are collected by the secretary of state;
- (2) the corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

- (3) the corporation is without a registered agent or registered office in this state for 120 days or more;
- (4) the corporation does not give notice to the secretary of state within 120 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (5) the corporation's period of duration, if any, stated in its articles of incorporation expires.

§ 14.21. PROCEDURE FOR ADMINISTRATIVE DISSOLUTION

- (a) If the secretary of state determines that one or more grounds exist under Section 14.20 for dissolving a nonprofit corporation, the secretary of state shall serve the corporation with notice in the form of a record of that determination under Section 5.04.
- (b) If the nonprofit corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under Section 5.04, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under Section 5.04.
- (c) The administrative dissolution of a nonprofit corporation does not terminate the authority of its registered agent.
- (d) A person is not liable in contract, tort, or otherwise solely by reason of being a director, member of a designated body, officer, or member of a nonprofit corporation that was dissolved under this [subchapter], with respect to the activities or affairs of the corporation that have been continued, with or without knowledge of the dissolution.

§ 14.22. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION

- (a) A nonprofit corporation administratively dissolved under Section 14.21 may apply to the secretary of state for reinstatement. The application must state:
 - (1) the name of the corporation at the time of its administrative dissolution;
 - (2) a new name of the corporation if its prior name is not available at the time of the filing of the application for reinstatement;
 - (3) the effective date of its administrative dissolution; and
 - (4) that the grounds for dissolution either did not exist or have been eliminated.

- (b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the nonprofit corporation under Section 5.04.
- (c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the nonprofit corporation resumes carrying on its activities as if the administrative dissolution had never occurred.

§ 14.23. APPEAL FROM DENIAL OF REINSTATEMENT

- (a) If the secretary of state denies a nonprofit corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under Section 5.04 with a notice in the form of a record that explains the reason for denial.
- (b) The nonprofit corporation may appeal the denial of reinstatement to the [*name or describe*] court within 90 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.
- (c) The court may summarily order the secretary of state to reinstate the dissolved nonprofit corporation or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as in other civil proceedings.

**[Subchapter] C
JUDICIAL DISSOLUTION**

- § 14.30. Grounds for judicial dissolution.
- § 14.31. Procedure for judicial dissolution.
- § 14.32. Receivership or custodianship.
- § 14.33. Decree of dissolution.

§ 14.30 GROUND FOR JUDICIAL DISSOLUTION

The [*name or describe court or courts*] may dissolve a nonprofit corporation:

- (1) in a proceeding by the attorney general, if it is established that:
 - (i) the corporation obtained its articles of incorporation through fraud; or
 - (ii) the corporation has exceeded or abused, and is continuing to exceed or abuse the authority conferred upon it by law;

- (2) except as provided in the articles of incorporation or bylaws, in a proceeding by 50 members or members holding at least 5% of the voting power, whichever is less, or by a director or member of a designated body, if it is established that:
 - (i) the directors or a designated body are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;
 - (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
 - (iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;
 - (iv) the corporate assets are being misapplied or wasted; or
 - (v) the corporation has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members;
- (3) in a proceeding by a creditor, if it is established that:
 - (i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (ii) the corporation has admitted in a record that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

§ 14.31. PROCEDURE FOR JUDICIAL DISSOLUTION

- (a) Venue for a proceeding by the attorney general to dissolve a nonprofit corporation lies in [*name the county or counties*]. Venue for a proceeding brought by any other party named in Section 14.30 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.
- (b) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.
- (c) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the

court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

§ 14.32. RECEIVERSHIP OR CUSTODIANSHIP

- (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.
- (b) The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
- (c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
 - (1) the receiver:
 - (i) may dispose of all or any part of the assets of the nonprofit corporation wherever located, at a public or private sale, if authorized by the court; and
 - (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state;
 - (2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors and any designated body, to the extent necessary to manage the affairs of the corporation consistent with its mission and in the best interests of its members, if any, and creditors.
- (d) During a receivership, the court may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is consistent with the mission of the nonprofit corporation and in the best interests of the corporation, its members, and creditors.
- (e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.
- (f) This section does not apply to a nonprofit corporation that is a religious organization.

§ 14.33. DECREE OF DISSOLUTION

- (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 14.30 exist, it may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the nonprofit corporation's affairs in accordance with Section 14.05 and the notification of claimants in accordance with Sections 14.06 and 14.07.

[Subchapter] D
MISCELLANEOUS

§ 14.40. Deposit with state treasurer.

§ 14.40 DEPOSIT WITH STATE TREASURER

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the amount held.

[CHAPTER] 15
FOREIGN CORPORATIONS

Subchapter

- A. Certificate of Authority
- B. Withdrawal or Transfer of Authority
- C. Revocation of Certificate of Authority

[Subchapter] A
CERTIFICATE OF AUTHORITY

- § 15.01. Authority to conduct activities required.
- § 15.02. Consequences of conducting activities without authority.
- § 15.03. Application for certificate of authority.
- § 15.04. Amended certificate of authority.
- § 15.05. Effect of certificate of authority.
- § 15.06. Name of foreign corporation.
- § 15.07. Registered office and registered agent of foreign corporation.
- § 15.08. Change of registered office or registered agent of foreign corporation.
- § 15.09. Resignation of registered agent of foreign corporation.
- § 15.10. Service on foreign corporation.

§ 15.01. AUTHORITY TO CONDUCT ACTIVITIES REQUIRED

- (a) A foreign nonprofit corporation may not conduct activities in this state until it obtains a certificate of authority from the secretary of state.
- (b) The following activities, among others, do not constitute conducting activities within the meaning of subsection (a):
 - (1) maintaining, defending, or settling any proceeding;
 - (2) holding meetings of the board of directors, a designated body, members, or delegates or carrying on other activities concerning internal corporate affairs;
 - (3) maintaining bank accounts;
 - (4) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those memberships or securities;
 - (5) selling through independent contractors;
 - (6) soliciting or obtaining orders, whether by mail, electronically, or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
 - (8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (9) owning, without more, real or personal property;
 - (10) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
 - (11) soliciting or accepting contributions;
 - (12) conducting activities in interstate commerce.
- (c) The list of activities in subsection (b) is not exhaustive.

§ 15.02. CONSEQUENCES OF CONDUCTING ACTIVITIES WITHOUT AUTHORITY

- (a) A foreign nonprofit corporation conducting activities in this state without a certificate of

authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

- (b) The successor to a foreign nonprofit corporation that conducted activities in this state without a certificate of authority and the assignee of a cause of action arising out of those activities may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.
- (c) A court may stay a proceeding commenced by a foreign nonprofit corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.
- (d) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

§ 15.03. APPLICATION FOR CERTIFICATE OF AUTHORITY

A foreign nonprofit corporation may apply for a certificate of authority to conduct activities in this state by delivering an application to the secretary of state for filing. The application must set forth:

- (1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 15.06;
- (2) the name of the state or country under whose law it is incorporated;
- (3) its date of incorporation and period of duration, if any;
- (4) the street address of its principal office; and
- (5) the address of its registered office in this state and the name of its registered agent at that office; and
- (6) the names and usual business addresses of its current directors and officers.

§ 15.04. AMENDED CERTIFICATE OF AUTHORITY

- (a) A foreign nonprofit corporation authorized to conduct activities in this state must obtain an amended certificate of authority from the secretary of state if it changes:
 - (1) its name;
 - (2) the period of its duration; or

- (3) the state or country of its incorporation.
- (b) The requirements of Section 15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ 15.05. EFFECT OF CERTIFICATE OF AUTHORITY

- (a) A certificate of authority authorizes the foreign nonprofit corporation to which it is issued to conduct activities in this state, subject to the right of the state to revoke the certificate as provided in this [act].
- (b) A foreign nonprofit corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this [act] is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic nonprofit corporation of like character.
- (c) This [act] does not authorize this state to regulate the organization or internal affairs of a foreign nonprofit corporation authorized to conduct activities in this state.

§ 15.06. NAME OF FOREIGN CORPORATION

- (a) If the name of a foreign nonprofit corporation does not satisfy the requirements of Section 4.01, the foreign corporation, to obtain or maintain a certificate of authority to conduct activities in this state, may use a fictitious name to conduct activities in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- (b) Except as authorized by subsections (c) and (d), the name (including a fictitious name) of a foreign nonprofit corporation must be distinguishable upon the records of the secretary of state from:
 - (1) a name that is not available under Section 4.01; or
 - (2) a name reserved or registered under Section 4.02 or 4.03 or other law of this state.
- (c) A foreign nonprofit corporation may apply to the secretary of state for authorization to use in this state the name of another domestic or qualified foreign nonprofit corporation, domestic or qualified foreign business corporation, or domestic or qualified foreign filing entity that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:
 - (1) the other corporation or entity consents to the use and submits an undertaking in the form of a record satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

- (2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (d) A foreign nonprofit corporation may use in this state the name (including the fictitious name) of another domestic or foreign nonprofit or business corporation or other entity that is used in this state if the other corporation or entity is incorporated, organized, or authorized to transact business or conduct activities in this state and the foreign corporation:
 - (1) has merged with the other corporation or entity;
 - (2) has been formed by reorganization of the other corporation or entity; or
 - (3) has acquired all or substantially all of the assets, including the name, of the other corporation or entity.
- (e) If a foreign nonprofit corporation authorized to conduct activities in this state changes its name to one that does not satisfy the requirements of Section 4.01, it may not conduct activities in this state under the changed name until it adopts a name satisfying the requirements of Section 4.01 and obtains an amended certificate of authority under Section 15.04.

§ 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

Each foreign nonprofit corporation authorized to conduct activities in this state must continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic nonprofit or business corporation or unincorporated entity whose business office is identical with the registered office; or
 - (iii) a foreign nonprofit or business corporation or unincorporated entity authorized to transact business or conduct activities in this state whose business office is identical with the registered office.

§ 15.08. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION

- (a) A foreign nonprofit corporation authorized to conduct activities in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:
 - (1) its name;
 - (2) the street address of its current registered office;
 - (3) if the current registered office is to be changed, the street address of its new registered office;
 - (4) the name of its current registered agent;
 - (5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
 - (6) that after the changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (b) If a registered agent changes the street address of its business office, the agent may change the street address of the registered office of any foreign nonprofit corporation for which the person is the registered agent by delivering notice to the corporation in the form of a record of the change and signing and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ 15.09. RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION

- (a) The registered agent of a foreign nonprofit corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (b) After filing the statement, the secretary of state shall deliver a copy of the statement to the registered office if not discontinued. The secretary of state shall also deliver a copy to the foreign nonprofit corporation at its principal office address shown in its most recent annual report.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

§ 15.10. SERVICE ON FOREIGN CORPORATION

- (a) The registered agent of a foreign corporation authorized to conduct activities in this state

is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

- (b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:
 - (1) has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (2) has withdrawn from conducting activities in this state under Section 15.20; or
 - (3) has had its certificate of authority revoked under Section 15.31.
- (c) Service is perfected under subsection (b) at the earliest of:
 - (1) the date the foreign corporation receives the mail;
 - (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or
 - (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

[Subchapter] B
WITHDRAWAL OR TRANSFER OF AUTHORITY

- § 15.20. Withdrawal of foreign corporation.
- § 15.21. Automatic withdrawal upon certain conversions.
- § 15.22. Withdrawal upon conversion to a nonfiling entity.
- § 15.23. Transfer of authority.

§ 15.20. WITHDRAWAL OF FOREIGN CORPORATION

- (a) A foreign nonprofit corporation authorized to conduct activities in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:
 - (1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;
 - (2) that it is not conducting activities in this state and that it surrenders its authority to

conduct activities in this state;

- (3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct activities in this state;
 - (4) a mailing address to which the secretary of state may mail a copy of any process served on him under paragraph (3).
- (b) After the withdrawal of the foreign nonprofit corporation is effective, service of process on the secretary of state under this section with respect to activities of the foreign corporation in this state prior to withdrawal is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (a)(4).

§ 15.21. AUTOMATIC WITHDRAWAL UPON CERTAIN CONVERSIONS

A foreign nonprofit corporation authorized to conduct activities in this state that converts to a domestic business corporation or any form of domestic filing entity shall be deemed to have withdrawn on the effective date of the conversion.

§ 15.22. WITHDRAWAL UPON CONVERSION TO A NONFILING ENTITY

- (a) A foreign nonprofit corporation authorized to conduct activities in this state that converts to a domestic or foreign nonfiling entity must apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:
- (1) the name of the foreign nonprofit corporation and the name of the state or country under whose law it was incorporated before the conversion;
 - (2) that it surrenders its authority to conduct activities in this state as a foreign nonprofit corporation;
 - (3) the type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs;
 - (4) if it has been converted to a foreign unincorporated entity:
 - (i) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct activities in this state;
 - (ii) a mailing address to which the secretary of state may mail a copy of any

process served on the secretary of state under paragraph (i); and

- (iii) a commitment to notify the secretary of state in the future of any change in its mailing address.
- (b) After the withdrawal under this section of a corporation that has converted to a foreign unincorporated entity is effective, service of process on the secretary of state is service on the foreign unincorporated entity. Upon receipt of process, the secretary of state must mail a copy of the process to the foreign unincorporated entity at the mailing address set forth under subsection (a)(4).
- (c) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process must be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

§ 15.23. TRANSFER OF AUTHORITY

- (a) A foreign nonprofit corporation authorized to conduct activities in this state that converts to a foreign business corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the secretary of state if it transacts business in this state must file with the secretary of state an application for transfer of authority executed by any officer or other duly authorized representative. The application must set forth:
 - (1) the name of the corporation;
 - (2) the type of entity to which it has been converted and the jurisdiction whose laws govern its internal affairs;
 - (3) any other information that would be required in a filing under the laws of this state by an entity of the type the corporation has become seeking authority to transact business in this state.
- (b) The application for transfer of authority shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in Section 1.23.
- (c) Upon the effectiveness of the application for transfer of authority, the authority of the corporation under this [chapter] to conduct activities in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of entity.

[Subchapter] C REVOCATION OF CERTIFICATE OF AUTHORITY

§ 15.30. Grounds for revocation.

§ 15.31. Procedure for and effect of revocation.

§ 15.32. Appeal from revocation.

§ 15.30. GROUNDS FOR REVOCATION

The secretary of state may commence a proceeding under Section 15.31 to revoke the certificate of authority of a foreign nonprofit corporation authorized to conduct activities in this state if:

- (1) the foreign corporation does not deliver its annual report to the secretary of state within 120 days after it is due;
- (2) the foreign corporation does not pay within 120 days after they are due any taxes or penalties imposed by this [act] or other law;
- (3) the foreign corporation is without a registered agent or registered office in this state for 120 days or more;
- (4) the foreign corporation does not inform the secretary of state under Section 15.08 or 15.09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 120 days of the change, resignation, or discontinuance;
- (5) an incorporator, director, member of a designated body, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or
- (6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or did not survive a merger.

§ 15.31. PROCEDURE FOR AND EFFECT OF REVOCATION

- (a) The secretary of state, upon determining that one or more grounds exist under Section 15.30 for revocation of a certificate of authority, shall serve the foreign nonprofit corporation with notice of that determination under Section 15.10.
- (b) If the foreign nonprofit corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 120 days after service of the notice is perfected under Section 15.10, the secretary of state may revoke the foreign nonprofit corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under Section 15.10.

- (c) The authority of a foreign nonprofit corporation to conduct activities in this state ceases on the date shown on the certificate revoking its certificate of authority.
- (d) The secretary of state's revocation of a foreign nonprofit corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to conduct activities in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.
- (e) Revocation of a foreign nonprofit corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ 15.32. APPEAL FROM REVOCATION

- (a) A foreign nonprofit corporation may appeal the secretary of state's revocation of its certificate of authority to the [*name or describe*] court within 90 days after service of the certificate of revocation is perfected under Section 15.10. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.
- (b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (c) The court's final decision may be appealed as in other civil proceedings.

**[CHAPTER] 16
RECORDS AND REPORTS**

- Subchapter
- A. Records
 - B. Reports

**[Subchapter] A
RECORDS**

- § 16.01. Corporate records.
- § 16.02. Inspection of records by members.
- § 16.03. Scope of inspection right.
- § 16.04. Court-ordered inspection.
- § 16.05. Inspection of records by directors.

- § 16.06. Exception to notice requirements.
§ 16.07. Limitations on use of membership list.

§ 16.01. CORPORATE RECORDS

- (a) A nonprofit corporation must keep as permanent records minutes of all meetings of its members, board of directors, and any designated body, a record of all actions taken by the members, board of directors, or members of a designated body without a meeting, and a record of all actions taken by a committee of the board of directors or a designated body on behalf of the corporation.
- (b) A nonprofit corporation must maintain appropriate accounting records.
- (c) A membership corporation or its agent must maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.
- (d) A nonprofit corporation must maintain its records in written form or in any other form of a record.
- (e) A nonprofit corporation must keep a copy of the following records at its principal office:
- (1) its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;
 - (2) its bylaws or restated bylaws and all amendments to them currently in effect;
 - (3) the minutes and records described in subsection (a) for the past three years;
 - (4) all communications in the form of a record to members generally within the past three years, including the financial statements furnished for the past three years under Section 16.20;
 - (5) a list of the names and business addresses of its current directors and officers; and
 - (6) its most recent annual report delivered to the secretary of state under Section 16.21.

§ 16.02. INSPECTION OF RECORDS BY MEMBERS

- (a) A member of a nonprofit corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 16.01(e) if the member delivers to the corporation a signed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy.

- (b) A member of a nonprofit corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and delivers to the corporation a signed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy:
 - (1) excerpts from any records required to be maintained under Section 16.01(a), to the extent not subject to inspection under Section 16.02(a);
 - (2) accounting records of the corporation; and
 - (3) subject to Section 16.07, the membership list.
- (c) A member may inspect and copy the records described in subsection (b) only if:
 - (1) the member's demand is made in good faith and for a proper purpose;
 - (2) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and
 - (3) the records are directly connected with this purpose.
- (d) The right of inspection granted by this section may be abolished or limited by a nonprofit corporation's articles of incorporation or bylaws.
- (e) This section does not affect:
 - (1) the right of a member to inspect records under Section 7.20 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or
 - (2) the power of a court, independently of this [act], to compel the production of corporate records for examination.

§ 16.03. SCOPE OF INSPECTION RIGHT

- (a) A member's agent or attorney has the same inspection and copying rights as the member represented.
- (b) The right to copy records under Section 16.02 includes, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the member.
- (c) The nonprofit corporation may comply at its expense with a member's demand to inspect the record of members under Section 16.02(b)(3) by providing the member with a list of members that was compiled no earlier than the date of the member's demand.

- (d) The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

§ 16.04. COURT-ORDERED INSPECTION

- (a) If a nonprofit corporation does not allow a member who complies with Section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, 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 may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.
- (b) If a nonprofit corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Sections 16.02(b) and (c) may apply to the [*name or describe court*] in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.
- (c) If the court orders inspection and copying of the records demanded, it shall also order the nonprofit corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.
- (d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

§ 16.05. INSPECTION OF RECORDS BY DIRECTORS

- (a) A director of a nonprofit corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this [act].
- (b) The [*name or describe the court*] of the county where the nonprofit corporation's principal office (or if none in this state, its registered office) is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

- (c) If an order is issued, the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs (including reasonable counsel fees) incurred in connection with the application.

§ 16.06. EXCEPTION TO NOTICE REQUIREMENT

- (a) 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.
- (b) 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.

§ 16.07. LIMITATIONS ON USE OF MEMBERSHIP LIST

- (a) Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:
 - (1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
 - (2) used for any commercial purpose; or
 - (3) sold to or purchased by any person.
- (b) Instead of making a membership list available for inspection and copying under this [subchapter], a nonprofit corporation may elect to proceed under the procedures set forth in Section 7.20(f).

**[Subchapter] B
REPORTS**

- § 16.20. Financial statements for members.
- § 16.21. Annual report for secretary of state.

§ 16.20. FINANCIAL STATEMENTS FOR MEMBERS

- (a) Except as provided in the articles of incorporation or bylaws of a nonprofit corporation engaged in religious activity, upon a demand in the form of a record from a member, a

corporation must furnish that member with its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

- (b) If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the nonprofit corporation's accounting records:
 - (1) stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
 - (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

§ 16.21. ANNUAL REPORT FOR SECRETARY OF STATE

- (a) Each domestic nonprofit corporation, and each foreign nonprofit corporation authorized to conduct activities in this state, must deliver to the secretary of state for filing an annual report that sets forth:
 - (1) the name of the corporation and the state or country under whose law it is incorporated;
 - (2) the address of its registered office and the name of its registered agent at that office in this state;
 - (3) the address of its principal office; and
 - (4) the names and business addresses of its directors and principal officers.
- (b) Information in the annual report must be current as of the date the annual report is signed on behalf of the nonprofit corporation.
- (c) The first annual report must be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic nonprofit corporation was incorporated or a foreign nonprofit corporation applied for a certificate of authority under [Chapter] 15. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.
- (d) If an annual report does not contain the information required by this section, the secretary of state may deliver a notice in the form of a record to the reporting domestic or foreign

nonprofit corporation and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

- (e) See Sections 14.20(2) (grounds for administrative dissolution) and 15.30(1) (grounds for revocation).

[CHAPTER] 17

TRANSITION PROVISIONS

- § 17.01. Application to existing domestic corporations.
- § 17.02. Application to qualified foreign corporations.
- § 17.03. Saving provisions.
- § 17.04. Severability.
- § 17.05. Consistency of application.
- § 17.06. Repeal.
- § 17.07. Effective date.

§ 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.

§ 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].

§ 17.03. 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] 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 supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

§ 17.04. 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.

§ 17.05. 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.

§ 17.06. REPEAL

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

§ 17.07. EFFECTIVE DATE

This [act] takes effect _____.