

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Harriman**

A Bill

SENATE BILL 330

For An Act To Be Entitled

8 "AN ACT TO CREATE THE NONPROFIT CORPORATION ACT OF 1993,
9 TO AMEND SECTION 7 OF ACT NO. 176 OF 1963, AS AMENDED, TO
10 GRANT NOT-FOR-PROFIT CORPORATIONS THE POWER TO ISSUE
11 ANNUITY CONTRACTS, TO AMEND SECTION 13 OF ACT NO. 254 OF
12 1959, AS AMENDED, TO EXCLUDE ANNUITY CONTRACTS FROM THE
13 DEFINITION OF 'SECURITY', TO DEFINE THE IDENTITY OF
14 ELIGIBLE LIFE INSURANCE BENEFICIARIES; AND TO AMEND
15 ARTICLES 3, SECTION 6, OF ACT 118 OF 1929, AS AMENDED, TO
16 DEFINE TAX EXEMPT ENTITIES AND THEIR FILING REQUIREMENTS."

Subtitle

18 "THE ARKANSAS NONPROFIT CORPORATION ACT OF 1993."

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 101. Short Title.

24 This Act shall be known and may be cited as the "Arkansas Nonprofit
25 Corporation Act of 1993."

26
27 SECTION 102. Reservation of Power to Amend or Repeal.

28 The General Assembly has power to amend or repeal all or part of this
29 Act at any time and all domestic and foreign corporations subject to this Act
30 are governed by the amendment or repeal.

31
32 SECTION 103. Subchapter defined.

33 (a) Subchapter 1 means Sections 101 through Section 170 of this act.

34 (b) Subchapter 2 means Sections 201 through Section 207 of this act.

35 (c) Subchapter 3 means Sections 301 through Section 304 of this act.

- 1 (d) Subchapter 4 means Sections 401 through Section 403 of this act.
- 2
- 3 (e) Subchapter 5 means Sections 501 through Section 504 of this act.
- 4 (f) Subchapter 6 means Sections 601 through Section 630 of this act.
- 5 (g) Subchapter 7 means Sections 701 through Section 730 of this act.
- 6 (h) Subchapter 8 means Sections 801 through Section 858 of this act.
- 7 (i) Subchapter 10 means Sections 1001 through Section 1031 of this act.
- 8 (j) Subchapter 11 means Sections 1101 through Section 1108 of this act.
- 9 (k) Subchapter 12 means Sections 1201 through Section 1202 of this act.
- 10 (l) Subchapter 13 means Sections 1301 through Section 1302 of this act.
- 11 (m) Subchapter 14 means Sections 1401 through Section 1440 of this act.
- 12 (n) Subchapter 15 means Sections 1501 through Section 1532 of this act.
- 13 (o) Subchapter 17 means Sections 1701 through Section 1706 of this act.
- 14 (p) Subchapter 18 means Sections 1801 through Section 1809 of this act.

15

16 SECTION 120. Filing Requirements.

17 (a) A document must satisfy the requirements of this section, and of
18 any other section that adds to or varies these requirements, to be entitled to
19 filing by the Secretary of State.

20 (b) This Act must require or permit filing the document in the office
21 of the Secretary of State.

22 (c) The document must contain the information required by this Act. It
23 may contain other information as well.

24 (d) The document must be typewritten or printed.

25 (e) The document must be in the English language. However, a
26 corporate name need not be in English if written in English letters or Arabic
27 or Roman numerals, and the certificate of existence required of foreign
28 corporations need not be in English if accompanied by a reasonably
29 authenticated English translation.

30 (f) The document must be executed:

31 (1) by the presiding officer of its board of directors of a domestic
32 or foreign corporation, its president, or by another of its officers;

33 (2) if directors have not been selected or the corporation has not
34 been formed, by an incorporator; or

35 (3) if the corporation is in the hands of a receiver, trustee, or

1 other court-appointed fiduciary, by that fiduciary.

2 (g) The person executing a document shall sign it and state beneath or
3 opposite the signature his or her name and the capacity in which he or she
4 signs. The document may, but need not, contain:

5 (1) the corporate seal;

6 (2) an attestation by the secretary or an assistant secretary; or

7 (3) an acknowledgement, verification, or proof.

8 (h) If the Secretary of State has prescribed a mandatory form for a
9 document under section 121, the document must be in or on the prescribed form.

10 (i) The document must be delivered to the office of the Secretary of
11 State for filing and must be accompanied by one exact or conformed copy
12 (except as provided in sections 503 and 1509), the correct filing fee, and any
13 franchise tax, license fee, or penalty required by this Act or other law.

14

15 SECTION 121. Forms.

16 (a) The Secretary of State may prescribe and furnish on request, forms
17 for: (1) an application for a certificate of existence; (2) a foreign
18 corporation's application for a certificate of authority to transact business
19 in this state; and (3) a foreign corporation's application for a certificate
20 of withdrawal report. If the Secretary of State so requires, use of these
21 forms is mandatory.

22

23 SECTION 122. Filing, Service, and Copying Fees.

24 (a) The Secretary of State shall collect the following fees when the
25 documents described in this subsection are delivered for filing:

	Document	Fee
26		
27		
28	(1) Articles of incorporation	\$50.00
29	(2) Application for use of indistinguishable	
30	name	no fee
31	(3) Application for reserved name	\$25.00
32	(4) Notice of transfer of reserved name	\$25.00
33	(5) Application for registered name	\$50.00
34	(6) Application for renewal of registered name	\$25.00
35	(7) Corporation's statement of change of	

1	registered agent or registered office	
2	or both	\$25.00
3	(8) Agent's statement of change of registered	
4	office for each affected corporation	
5	not to exceed a total of	\$125.00
6	(9) Agent's statement of resignation	no fee
7	(10) Amendment of articles of incorporation	\$50.00
8	(11) Restatement of articles of incorporation	
9	with amendments	\$100.00
10	(12) Articles of merger	\$100.00
11	(13) Articles of dissolution	\$50.00
12	(14) Articles of revocation of dissolution	\$150.00
13	(15) Certificate of administrative dissolution	no fee
14	(16) Application for reinstatement following	
15	administrative dissolution	\$50.00
16	(17) Certificate of reinstatement	no fee
17	(18) Certificate of judicial dissolution	no fee
18	(19) Application for certificate of authority	\$300.00
19	(20) Application for amended certificate	
20	of authority	\$300.00
21	(21) Application for certificate of withdrawal	\$300.00
22	(22) Certificate of revocation of authority to	
23	transact business	no fee
24	(23) Articles of correction	\$30.00
25	(24) Application for certificate of existence	
26	or authorization	\$15.00
27	(25) Any other document required or permitted	
28	to be filed by this act.	\$25.00
29	(b) The Secretary of State shall collect a fee of twenty-five dollars	
30	(\$25.00) upon being served with process under this Act. The party to a	
31	proceeding causing service of process is entitled to recover the fee paid the	
32	Secretary of State as costs if the party prevails in the proceeding.	
33	(c) The Secretary of State shall collect the following fees for	
34	copying and certifying the copy of any filed document relating to a domestic	
35	or foreign corporation:	

- 1 (1) Fifty cents (50¢) a page for copying; and
- 2 (2) Five dollars (\$5.00) for the certificate.

3

4 SECTION 123. Effective Date of Document.

5 (a) Except as provided in subsection (b), a document is effective:

6 (1) at the time of filing on the date it is filed, as evidenced by the
7 Secretary of State's endorsement on the original document; or

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

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

15

16 SECTION 124. Correcting Filed Document.

17 (a) A domestic or foreign corporation may correct a document filed by
18 the Secretary of State if the document: (1) contains an incorrect statement,
19 or (2) was defectively executed, attested, sealed, verified, or acknowledged.

20 (b) A document is corrected:

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

26 (2) by delivering the articles of correction to the Secretary of
27 State.

28 (c) Articles of correction are effective on the effective date of the
29 document they correct except as to persons relying on the uncorrected document
30 and adversely affected by the correction. As to those persons, articles of
31 correction are effective when filed.

32

33 SECTION 125. Filing Duty of Secretary of State.

34 (a) If a document delivered to the office of the Secretary of State
35 for filing satisfies the requirements of section 120, the Secretary of State

1 shall file it.

2 (b) The Secretary of State files a document by stamping or otherwise
3 endorsing "Filed," together with the Secretary of State's name and official
4 title and the date and the time of receipt, on both the original and copy of
5 the document and on the receipt for the filing fee. After filing a document,
6 except as provided in sections 503 and 1510, the Secretary of State shall
7 deliver the document copy, with the filing fee receipt (or acknowledgement of
8 receipt if no fee is required) attached, to the domestic or foreign
9 corporation or its representative.

10 (c) Upon refusing to file a document, the Secretary of State shall
11 return it to the domestic or foreign corporation or its representative within
12 five days after the document was delivered, together with a brief, written
13 explanation of the reason or reasons for the refusal.

14 (d) The Secretary of State's duty to file documents under this section
15 is ministerial. Filing or refusal to file a document does not:

16 (1) affect the validity or invalidity of the document in whole or in
17 part;

18 (2) relate to the correctness or incorrectness of information
19 contained in the document; or

20 (3) create a presumption that the document is valid or invalid or that
21 information contained in the document is correct or incorrect.

22

23 SECTION 126. Appeal From Secretary of State's Refusal to File Document.

24 (a) If the Secretary of State refuses to file a document delivered for
25 filing to the Secretary of State's office, the domestic or foreign corporation
26 may appeal the refusal to the chancery court in the county where the
27 corporation's principal office, or if there is none in this state, its
28 registered office, is or will be located. The appeal is commenced by
29 petitioning the court to complete filing the document and by attaching to the
30 petition the document and the Secretary of State's explanation of the refusal
31 to file.

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

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

1

2 SECTION 127. Evidentiary Effect of Copy of Filed Document.

3 A certificate attached to a copy of a document bearing the Secretary of
4 State's signature (which may be in facsimile) and the seal of this state, is
5 conclusive evidence that the original document is on file with the Secretary
6 of State.

7

8 SECTION 128. Certificate of Existence.

9 (a) Any person may apply to the Secretary of State to furnish a
10 certificate of existence for a domestic or foreign corporation.

11 (b) The certificate of existence sets forth:

12 (1) the domestic corporation's corporate name or the foreign
13 corporation's corporate name used in this state;

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

18 (3) that all fees, taxes, and penalties owed to this state have been
19 paid, if (i) payment is reflected in the records of the Secretary of
20 State and (ii) nonpayment affects the good standing of the domestic or
21 foreign corporation;

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

23 (5) other facts of record in the office of the Secretary of State that
24 may be requested by the applicant.

25 (c) Subject to any qualification stated in the certificate, a
26 certificate of existence issued by the Secretary of State may be relied upon
27 as conclusive evidence that the domestic or foreign corporation is in good
28 standing in this state.

29

30 SECTION 129. Penalty For Signing False Document.

31 (a) A person commits an offense by signing a document such person
32 knows is false in any material respect with intent that the document be
33 delivered to the Secretary of State for filing.

34 (b) An offense under this section is a Class C misdemeanor.

35

1 SECTION 130. Powers.

2 The Secretary of State has the power reasonably necessary to perform the
3 duties required of him by this chapter.

4

5 SECTION 140. Act Definitions.

6 Unless the context otherwise requires in this Act:

7 (1) "Approved by (or approval by) the members" means approved or
8 ratified by the affirmative vote of a majority of the votes represented
9 and voting at a duly held meeting at which a quorum is present (which
10 affirmative votes also constitute a majority of the required quorum) or
11 by a written ballot or written consent in conformity with this Act or by
12 the affirmative vote, written ballot or written consent of such greater
13 proportion, including the votes of all the members of any class, unit or
14 grouping as may be provided in the articles, bylaws or this Act for any
15 specified member action.

16 (2) "Articles of incorporation" or "articles" include amended and
17 restated articles of incorporation and articles of merger.

18 (3) "Board" or "board of directors" means the board of directors
19 except that no person or group of persons are the board of directors
20 because of powers delegated to that person or group pursuant to section
21 801.

22 (4) "Bylaws" means the code or codes of rules (other than the
23 articles) adopted pursuant to this Act for the regulation or management
24 of the affairs of the corporation irrespective of the name or names by
25 which such rules are designated.

26 (5) "Class" refers to a group of memberships which have the same
27 rights with respect to voting, dissolution, redemption and transfer.
28 For the purpose of this section, rights shall be considered the same if
29 they are determined by a formula applied uniformly.

30 (6) "Corporation" means public benefit, mutual benefit and religious
31 corporation.

32 (7) "Delegates" means those person elected or appointed to vote in a
33 representative assembly for the election of a director or directors or
34 on other matters.

35 (8) "Deliver" includes mail.

1 (9) "Designated Director" means a director who is authorized by the
2 articles or bylaws of a corporation to be appointed by any person,
3 corporation, or entity to a position as one or more of the directors of
4 the corporation.

5 (10) "Directors" means individuals, designated in the articles or
6 bylaws or elected by the incorporators, and their successors and
7 individuals elected or appointed by any other name or title to act as
8 members of the board.

9 (11) "Distribution" means the payment of a dividend or any part of the
10 income or profit of a corporation to its members, directors or officers.

11 (12) "Domestic corporation" means a corporation organized under the
12 laws of this state.

13 (13) "Effective Date of Notice" is defined in section 141.

14 (14) "Employee" does not include an officer or director who is not
15 otherwise employed by the corporation.

16 (15) "Entity" includes corporation and foreign corporation; business
17 corporation and foreign business corporation; profit and nonprofit
18 unincorporated association; corporation sole; business trust, estate,
19 partnership, trust, and two or more persons having a joint or common
20 economic interest; and state, United States; and foreign government.

21 (16) "File," "filed," or "filing" means filed in the office of the
22 Secretary of State.

23 (17) "Foreign corporation" means a corporation organized under a law
24 other than the law of this state which would be a nonprofit corporation
25 if formed under the laws of this state.

26 (18) "Governmental subdivision" includes authority, county, district,
27 and municipality.

28 (19) "Includes" denotes a partial definition.

29 (20) "Individual" includes the estate of an incompetent individual.

30 (21) "Means" denotes a complete definition.

31 (22) "Member" means (without regard to what a person is called in the
32 articles or bylaws) any person or persons who on more than one occasion,
33 pursuant to a provision of a corporation's articles or bylaws, have the
34 right to vote for the election of a director or directors.

35 A person is not a member by virtue of any of the following:

- 1 (i) any rights such person has as a delegate;
- 2 (ii) any rights such person has to designate a director or directors;
- 3 or
- 4 (iii) any rights such person has as a director.
- 5 (23) "Membership" refers to the rights and obligations a member or
- 6 members have pursuant to a corporation's articles, bylaws and this Act.
- 7 (24) "Mutual benefit corporation" means a domestic corporation which is
- 8 formed as a mutual benefit corporation pursuant to subchapter 2, or is
- 9 required to be a mutual benefit corporation pursuant to section 1706,
- 10 formed to benefit, represent and serve a group of individuals or
- 11 entities.
- 12 (25) "Notice" is defined in section 141.
- 13 (26) "Person" includes any individual or entity.
- 14 (27) "Principal Office" means the office (in or out of this *state*) so
- 15 *designated in the bylaws or, if none, the registered office of a*
- 16 *domestic or foreign corporation.*
- 17 (28) "Proceeding" includes civil suit and criminal, administrative, and
- 18 investigatory action.
- 19 (29) "Public Benefit Corporation" means a domestic corporation which is
- 20 formed as a public benefit corporation pursuant to subchapter 2, or is
- 21 required to be a public benefit corporation pursuant to section 1706 to
- 22 perform good works, to benefit society or improve the human condition.
- 23 (30) "Record Date" means the date established under *subchapter 7* on
- 24 which a corporation determines the identify of its members for the
- 25 purposes of this Act.
- 26 (31) "Religious Corporation" means a domestic corporation which is
- 27 formed as a religious corporation pursuant to subchapter 2, or is
- 28 required to be a religious corporation pursuant to section 1706 for
- 29 religious purposes.
- 30 (32) "Secretary" means the corporate officer to whom the *bylaws or the*
- 31 *board of directors* has delegated responsibility under section 840(b) for
- 32 custody of the minutes of the directors' and members' meetings and for
- 33 authenticating the records of the corporation.
- 34 (33) "State," when referring to a part of the United States, includes a
- 35 state and commonwealth (and their agencies and governmental

1 subdivisions) and a territory, and insular possession (and their
2 agencies and governmental subdivisions) of the United States.

3 (34) "United States" includes any district, authority, bureau,
4 commission, department, and any other agency of the United States.

5 (35) "Vote" includes authorization by written ballot and written
6 consent.

7 (36) "Voting power" means the total number of votes entitled to be cast
8 for the election of directors at the time the determination of voting
9 power is made, excluding a vote which is contingent upon the happening
10 of a condition or event that has not occurred at the time. Where a
11 class is entitled to vote as a class for directors, the determination of
12 voting power of the class shall be based on the percentage of the number
13 of directors the class is entitled to elect out of the total number of
14 authorized directors.

15

16 SECTION 141. Notice.

17 (a) Notice may be oral or written.

18 (b) Notice may be communicated in person; by telephone, telegraph,
19 teletype, telecopier, facsimile, or other form of wire or wireless
20 communication; or by mail or private carrier; if these forms of personal
21 notice are impracticable, notice may be communicated by a newspaper of general
22 circulation in the area where published; or by radio, television, or other
23 form of public broadcast communication.

24 (c) Oral notice is effective when communicated if communicated in a
25 comprehensible manner.

26 (d) Written notice, if in a comprehensible form, is effective at the
27 earliest of the following:

28 (1) when received;

29 (2) five days after its deposit in the United States Mail, as
30 evidenced by the postmark, if mailed correctly addressed and with first
31 class postage affixed;

32 (3) on the date shown on the return receipt, if sent by registered or
33 certified mail, return receipt requested, and the receipt is signed by
34 or on behalf of the addressee;

35 (4) thirty days after its deposit in the United States Mail, as

1 evidenced by the postmark, if mailed correctly addressed and with other
2 than first class, registered or certified postage affixed.

3 (e) Written notice is correctly addressed to a member of a domestic or
4 foreign corporation if addressed to the member's address shown in the
5 corporation's current list of members.

6 (f) A written notice or report delivered as part of a newsletter,
7 magazine or other publication regularly sent to members shall constitute a
8 written notice or report if addressed or delivered to the member's address
9 shown in the corporation's current list of members, or in the case of members
10 who are residents of the same household and who have the same address in the
11 corporation's current list of members, if addressed or delivered to one of
12 such members, at the address appearing on the current list of members.

13 (g) Written notice is correctly addressed to a domestic or foreign
14 corporation (authorized to transact business in this state), other than in its
15 capacity as a member, if addressed to its registered agent or to its secretary
16 at its principal office.

17 (h) If section 705(b) or any other provision of this Act prescribes
18 notice requirements for particular circumstances, those requirements govern.
19 If articles or bylaws prescribe notice requirements, not inconsistent with
20 this section or other provisions of this Act, those requirements govern.

21

22 SECTION 150. Internal Revenue Section 501(c)(3) Organizations and
23 Private Foundations.

24 (a) Notwithstanding any provision of Arkansas law or in the articles
25 of incorporation to the contrary, the articles of incorporation of each
26 corporation organized under this Act which is an exempt charitable, religious,
27 literary, educational, or scientific organization as described in section
28 501(c)(3) of the Internal Revenue Code of 1986 shall be deemed to contain the
29 following provisions:

30 "Upon the dissolution of the corporation, the board of directors shall,
31 after paying or making provision for the payment of all of the liabilities of
32 the corporation, dispose of all of the assets of the corporation exclusively
33 for the purposes of the corporation in such manner, or to such charitable,
34 educational, religious, literary, or scientific purposes as shall at the time
35 qualify as an exempt organization or organizations under section 501(c)(3) of

1 the Internal Revenue Code of 1986, or the corresponding provision of any
2 future United States Internal Revenue Law, as the board of trustees shall
3 determine. Any such assets not so disposed of shall be disposed of by the
4 chancery court of the county in which the principal office of the corporation
5 is then located, exclusively for such purposes or to such organization or
6 organizations, as said court shall determine, which are organized and operated
7 exclusively for such purposes."

8 (b) Notwithstanding any provision of Arkansas law or in the articles
9 of incorporation to the contrary, the articles of incorporation of each
10 corporation which is subject to this Act and which is a private foundation as
11 defined in section 509(a) of the Internal Revenue Code of 1986 shall be deemed
12 to contain the following provisions:

13 (1) Shall distribute such amounts for each taxable year at such time
14 and in such manner as not to subject the corporation to tax under
15 section 4942 of the Code.

16 (2) Shall not engage in any act of self-dealing as defined in section
17 4941(d) of the Code.

18 (3) Shall not retain any excess business holdings as defined in
19 section 4943(c) of the Code.

20 (4) Shall not make any taxable expenditures as defined in section 4944
21 of the Code.

22 (5) Shall not make any taxable expenditures as defined in section
23 4945(d) of the Code.

24 (c) The articles of incorporation of any corporation described in
25 subsection (b) of this section may be amended to expressly exclude the
26 application of subsection (b) and in the event of such amendment, subsection
27 (b) shall not apply to that corporation.

28 All references in this section to sections of the Code shall be to such
29 sections of the Internal Revenue Code of 1986 as amended from time to time, or
30 to corresponding provisions of subsequent internal revenue laws of the United
31 States.

32

33 SECTION 160. Judicial Relief.

34 (a) If for any reason it is impractical or impossible for any
35 corporation to call or conduct a meeting of its members, delegates, or

1 directors, or otherwise obtain their consent, in the manner prescribed by its
2 articles, bylaws, or this Act, then upon petition of a director, officer,
3 delegate, or member, a Chancery Court sitting in the County of the principal
4 office of the corporation may order that such a meeting be called or that a
5 written ballot or other form of obtaining the vote of members, delegates, or
6 directors be authorized, in such a manner as the court finds fair and
7 equitable under the circumstances.

8 (b) The court shall, in an order issued pursuant to this section,
9 provide for a method of notice reasonably designed to give actual notice to
10 all persons who would be entitled to notice of a meeting held pursuant to the
11 articles, bylaws and this Act, whether or not the method results in actual
12 notice to all such persons or conforms to the notice requirements that would
13 otherwise apply. In a proceeding under this section the court may determine
14 who the members or directors are.

15 (c) The order issued pursuant to this section may dispense with any
16 requirement relating to the holding of or voting at meetings or obtaining
17 votes, including any requirement as to quorums or as to the number or
18 percentage of votes needed for approval, that would otherwise be imposed by
19 the articles, bylaws, or this Act.

20 (d) Whenever practical any order issued pursuant to this section shall
21 limit the subject matter of meetings or other forms of consent authorized to
22 items, including amendments to the articles or bylaws, the resolution of which
23 will or may enable the corporation to continue managing its affairs without
24 further resort to this section; provided, however, that an order under this
25 section may also authorize the obtaining of whatever votes and approvals are
26 necessary for the dissolution, merger or sale of assets.

27 (e) Any meeting or other method of obtaining the vote of members,
28 delegates, or directors conducted pursuant to an order issued under this
29 section, and that complies with all the provisions of such order, is for all
30 purposes a valid meeting or vote, as the case may be, and shall have the same
31 force and effect as if it complied with every requirement imposed by the
32 articles, bylaws and this Act.

33

34 SECTION 170. Religious Corporations-Constitutional Protections.

35 If religious doctrine governing the affairs of a religious corporation

1 is inconsistent with the provisions of this Act on the same subject, the
2 religious doctrine shall control to the extent required by the Constitution of
3 the United States or the constitution of this state or both.

4

5 SECTION 201. Incorporators.

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

9

10 SECTION 202. Articles of Incorporation.

11 (a) The articles of incorporation must set forth:

12 (1) a corporate name for the corporation that satisfies the
13 requirements of section 401;

14 (2) one of the following statements:

15 (i) this corporation is a public benefit corporation;

16 (ii) this corporation is a mutual benefit corporation; and

17 (iii) this corporation is a religious corporation.

18 (3) the street address of the corporation's initial registered office
19 and the name of its initial registered agent at that office;

20 (4) the name and address of each incorporator;

21 (5) whether or not the corporation will have members; and

22 (6) provisions not inconsistent with law regarding the distribution of
23 assets on dissolution.

24 (b) The articles of incorporation may set forth:

25 (1) the purpose or purposes for which the corporation is organized,
26 which may be, either alone or in combination with other purposes, the
27 transaction of any lawful activity;

28 (2) the names and addresses of the individuals who are to serve as the
29 initial directors;

30 (3) provisions not inconsistent with law regarding:

31 (i) managing and regulating the affairs of the corporation;

32 (ii) defining, limiting, and regulating the powers of the corporation,
33 its board of directors and members (or any class of members); and

34 (iii) the characteristics, qualifications, rights, limitations and
35 obligations attaching to each or any class of members.

1 (4) any provision that under this Act is required or permitted to be
2 set forth in the bylaws.

3 (c) Each incorporator named in the articles must sign the articles.

4 (d) The articles of incorporation need not set forth any of the
5 corporate powers enumerated in this Act.

6

7 SECTION 203. Incorporation.

8 (a) Unless a delayed effective date is specified, the corporate
9 existence begins when the articles of incorporation are filed.

10 (b) The Secretary of State's filing of the articles of incorporation
11 is conclusive proof that the incorporation satisfied all conditions precedent
12 to incorporation except in a proceeding by the state to cancel or revoke the
13 incorporation or involuntarily dissolve the corporation.

14

15 SECTION 204. Liability for Preincorporation Transactions.

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

19

20 SECTION 205. Organization of Corporation.

21 (a) After incorporation:

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

27 (2) if initial directors are not named in the articles, the
28 incorporator or incorporators shall hold an organizational meeting at
29 the call of a majority of the incorporators:

30 (i) to elect directors and complete the organization of the
31 corporation; or

32 (ii) to elect a board of directors who shall complete the organization
33 of the corporation.

34 (b) Action required or permitted by this Act to be taken by
35 incorporators at an organizational meeting may be taken without a meeting if

1 the action taken is evidenced by one or more written consents describing the
2 action taken and signed by each incorporator.

3 (c) An organizational meeting may be held in or out of this state in
4 accordance with section 820.

5

6 SECTION 206. Bylaws.

7 (a) The incorporators or board of directors of a corporation shall
8 adopt bylaws for the corporation.

9 (b) The bylaws may contain any provision for regulating and managing
10 the affairs of the corporation that is not inconsistent with law or the
11 articles of incorporation.

12

13 SECTION 207. Emergency Bylaws and Powers.

14 (a) Unless the articles provide otherwise the directors of a
15 corporation may adopt, amend or repeal bylaws to be effective only in an
16 emergency defined in subsection (d). The emergency bylaws, which are subject
17 to amendment or repeal by the members, may provide special procedures
18 necessary for managing the corporation during the emergency, including:

- 19 (1) how to call a meeting of the board;
- 20 (2) quorum requirements for the meeting; and
- 21 (3) designation of additional or substitute directors.

22 (b) All provisions of the regular bylaws consistent with the emergency
23 bylaws remain effective during the emergency. The emergency bylaws are not
24 effective after the emergency ends.

25 (c) Corporate action taken in good faith in accordance with the
26 emergency bylaws:

- 27 (1) binds the corporation; and
- 28 (2) may not be used to impose liability on a corporate director,
29 officer, employee, or agent.

30 (d) An emergency exists for purposes of this section if a quorum of
31 the corporation's directors cannot readily be assembled because of some
32 catastrophic event.

33

34 SECTION 301. Purposes.

35 (a) Every corporation incorporated under this Act has the purpose of

1 engaging in any lawful activity unless a more limited purpose is set forth in
2 the articles of incorporation.

3 (b) A corporation engaging in an activity that is subject to
4 regulation under another statute of this state may incorporate under this Act
5 only if incorporation under this Act is not prohibited by the other statute.
6 The corporation shall be subject to all limitations of the other statute.

7

8 SECTION 302. General Powers.

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

- 13 (1) to sue and be sued, complain and defend in its corporate names;
14 (2) to have a corporate seal, which may be altered at will, and to use
15 it, or a facsimile of it, by impressing or affixing or in any other
16 manner reproducing it;
17 (3) to make and amend bylaws not inconsistent with its articles of
18 incorporation or with the laws of this state, for regulating and
19 managing the affairs of the corporation;
20 (4) to purchase, receive, lease, or otherwise acquire, and own, hold,
21 improve, use, and otherwise deal with, real or personal property, or any
22 legal or equitable interest in property, wherever located;
23 (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise
24 dispose of all or any part of its property;
25 (6) to purchase, receive, subscribe for, or otherwise acquire, own,
26 hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of,
27 and deal in and with, shares or other interests in, or obligations of
28 any entity;
29 (7) to make contracts and guaranties, incur liabilities, borrow money,
30 issue notes, bonds, and other obligations, and secure any of its
31 obligations by mortgage or pledge of any of its property, franchises, or
32 income;
33 (8) to lend money, invest and revest its funds, and receive and hold
34 real and personal property as security for repayment, except as limited
35 by section 832;

- 1 (9) to be a promoter, partner, member, associate or manager of any
- 2 partnership, joint venture, trust or other entity;
- 3 (10) to conduct its activities, locate offices, and exercise the powers
- 4 granted by this Act within or without this state;
- 5 (11) to elect or appoint directors, officers, employees, and agents of
- 6 the corporation, define their duties, and fix their compensation;
- 7 (12) to pay pensions and establish pension plans, pension trusts, and
- 8 other benefit and incentive plans for any or all of its current or
- 9 former directors, officers, employees, and agents;
- 10 (13) to make donations not inconsistent with law for the public welfare
- 11 or for charitable, religious, scientific, or educational purposes and
- 12 for other purposes that further the corporate interest;
- 13 (14) to impose dues, assessments, admission and transfer fees upon its
- 14 members;
- 15 (15) to establish conditions for admission of members, admit members
- 16 and issue memberships;
- 17 (16) to carry on a business;
- 18 (17) to serve as a trustee of a trust in which it or an entity
- 19 affiliated by common program or purpose has a beneficial interest; and
- 20 (18) to do all things necessary or convenient, not inconsistent with
- 21 law, to further the activities and affairs of the corporation.

22

23 SECTION 303. Emergency Powers.

24 (a) In anticipation of or during an emergency defined in subsection

25 (d), the board of directors of a corporation may:

- 26 (1) modify lines of succession to accommodate the incapacity of any
- 27 director, officer, employee, or agent; and
- 28 (2) relocate the principal office, designate alternative principal
- 29 offices or regional offices, or authorize the officer to do so.

30 (b) During an emergency defined in subsection (d), unless emergency

31 bylaws provide otherwise:

- 32 (1) notice of a meeting of the board of directors need be given only
- 33 to those directors it is practicable to reach and may be given in any
- 34 practicable manner, including by publication and radio; and
- 35 (2) one or more officers of the corporation present at a meeting of

1 the board of directors may be deemed to be directors for the meeting, in
2 order of rank and within the same rank in order of seniority, as
3 necessary to achieve a quorum.

4 (c) Corporate action taken in good faith during an emergency under
5 this section to further the ordinary affairs of the corporation:

6 (1) binds the corporation; and

7 (2) may not be used to impose liability on a corporate director,
8 officer, employee, or agent.

9 (d) An emergency exists for purposes of this section if a quorum of
10 the corporation's directors cannot readily be assembled because of some
11 catastrophic event.

12

13 SECTION 304. Ultra Vires.

14 (a) Except as provided in subsection (b), the validity of corporate
15 action may not be challenged on the ground that the corporation lacks or
16 lacked power to act.

17 (b) A corporation's power to act may be challenged in a proceeding
18 against the corporation to enjoin an act where a third party has not acquired
19 rights. The proceeding may be brought by the attorney general, a director, or
20 by a member or members in a derivative proceeding.

21 (c) A corporation's power to act may be challenged in a proceeding
22 against an incumbent or former director, officer, employee or agent of the
23 corporation. The proceeding may be brought by a director, the corporation,
24 directly, derivatively, or through a receiver, a trustee or other legal
25 representative, or in the case of a public benefit corporation, by the
26 attorney general.

27

28 SECTION 401. Corporate Name.

29 (a) A corporate name may not contain language stating or implying that
30 the corporation is organized for a purpose other than that permitted by
31 section 301 and its articles of incorporation.

32 (b) Except as authorized by subsections (c) and (d), a corporate name
33 must be distinguishable upon the records of the Secretary of State from:

34 (1) the corporate name of a nonprofit or business corporation
35 incorporated or authorized to do business in this state;

1 (2) a corporate name reserved or registered under section 402 or 403
2 of this Act or Arkansas Code Annotated, Section 4-27-402 or Arkansas
3 Code Annotated, Section 4-26-402; or

4 (3) the fictitious name of a foreign business or nonprofit corporation
5 authorized to transact business in this state because its real name is
6 unavailable;

7 (c) A corporation may apply to the Secretary of State for
8 authorization to use a name that is not distinguishable upon the Secretary of
9 State's records from one or more of the names described in subsection (b).
10 The Secretary of State shall authorize use of the name applied for if;

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

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

18 (d) A corporation may use the name (including the fictitious name) of
19 another domestic or foreign business or nonprofit corporation that is used in
20 this state if the other corporation is incorporated or authorized to do
21 business in this state and the proposed user corporation:

22 (1) has merged with the other corporation;

23 (2) has been formed by reorganization of the other corporation; or

24 (3) has acquired all or substantially all of the assets, including the
25 corporate name, of the other corporation.

26 (e) This Act does not control the use of fictitious names.

27

28 SECTION 402. Reserved Name.

29 (a) A person may reserve the exclusive use of a corporate name,
30 including a fictitious name for a foreign corporation whose corporate name is
31 not available by delivering an application to the Secretary of State for
32 filing. Upon finding that the corporate name applied for is available, the
33 Secretary of State shall reserve the name for the applicant's exclusive use
34 for a nonrenewable 120-day period.

35 (b) The owner of a reserved corporate name may transfer the

1 reservation to another person by delivering to the Secretary of State a signed
2 notice of the transfer that states the name and address of the transferee.

3

4 SECTION 403. Registered Name.

5 (a) A foreign corporation may register its corporate name, or its
6 corporate name with any change required by section 1506, if the name is
7 distinguishable upon the records of the Secretary of State from:

8 (1) the corporate name of a nonprofit or business corporation
9 incorporated or authorized to do business in this state; and

10 (2) a corporate name reserved under section 402 or Arkansas Code
11 Annotated, Section 4-27-402 or Arkansas Code Annotated, Section 4-26-402
12 or registered under this section.

13 (b) A foreign corporation registers its corporate name, or its
14 corporate name with any change required by section 1506, by delivering to the
15 Secretary of State an application:

16 (1) setting forth its corporate name, or its corporate name with any
17 change required by section 1506, the state or country and date of its
18 incorporation, and a brief description of the nature of the activities
19 in which it is engaged; and

20 (2) accompanied by a certificate of existence (or a document of
21 similar import) from the state or country of incorporation.

22 (c) The name is registered for the applicant's exclusive use upon the
23 effective date of the application.

24 (d) A foreign corporation whose registration is effective may renew it
25 for successive years by delivering to the Secretary of State for filing a
26 renewal application, which complies with the requirements of subsection (b),
27 between October 1 and December 31 of the preceding year. The renewal
28 application renews the registration for the following calendar year.

29 (e) A foreign corporation whose registration is effective may
30 thereafter qualify as a foreign corporation under that name or consent in
31 writing to the use of that name by a corporation thereafter incorporated under
32 this Act or by another foreign corporation thereafter authorized to transact
33 business in this state. The registration terminates when the domestic
34 corporation is incorporated or the foreign corporation qualifies or consents
35 to the qualification of another foreign corporation under the registered name.

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SECTION 501. Registered Office and Registered Agent.

Each corporation must continuously maintain in this state:

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

SECTION 502. Change of Registered Office or Registered Agent.

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

- (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 agents' written consent (either on the statement or attached to it) to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) and recites

1 that the corporation has been notified of the change.

2

3 SECTION 503. Resignation of Registered Agent.

4 (a) A registered agent may resign as registered agent by signing and
5 delivering to the Secretary of State the original and two exact or conformed
6 copies of a statement of resignation. The statement may include a statement
7 that the registered office is also discontinued.

8 (b) After filing the statement the Secretary of State shall mail one
9 copy to the registered office (if not discontinued) and the other copy to the
10 corporation at its principal office, if known. Service is perfected under
11 this subsection on the earliest of:

12 (1) the date the corporation receives the mail;

13 (2) the date shown on the return receipt, if signed on
14 behalf of the corporation; or

15 (3) five days after its deposit in the U.S. Mail, if mailed
16 and correctly addressed with first class postage affixed.

17 (c) The agency appointment is terminated, and the registered office
18 discontinued if so provided, on the 31st day after the date on which the
19 statement was filed.

20

21 SECTION 504. Service on Corporation.

22 (a) A corporation's registered agent is the corporation's agent for
23 service of process, notice, or demand required or permitted by law to be
24 served on the corporation.

25 (b) If a corporation has no registered agent, or the agent cannot with
26 reasonable diligence be served, the corporation may be served by registered or
27 certified mail, return receipt requested, addressed to the secretary of the
28 corporation at its principal office, if known the earliest of:

29 (1) the date the corporation receives the mail;

30 (2) the date shown on the return receipt, if signed on behalf of the
31 corporation; or

32 (3) five days after its deposit in the U.S. Mail, if mailed and
33 correctly addressed with first class postage affixed.

34 (c) This section does not prescribe the only means, or necessarily the
35 required means, of serving a corporation.

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SECTION 601. Admission

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his or her consent.

SECTION 602. Consideration

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

SECTION 603. No Requirement Of Members

A corporation is not required to have members.

SECTION 610. Differences In Rights And Obligations Of Members

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

SECTION 611. Transfers

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership of any right arising therefrom.

(c) Where transfer rights have been provided, no restriction on them shall 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 members and the affected member.

SECTION 612. Member's Liability To Third Parties

A member of a corporation is not, as such, personally liable for the

1 acts, debts, liabilities, or obligations of the corporation.

2

3 SECTION 613. Member's Liability For Dues, Assessments And Fees

4 A member may become liable to the corporation for dues, assessments or
5 fees; provided, however, that an article or bylaw provision or a resolution
6 adopted by the board authorizing or imposing dues, assessments or fees does
7 not, of itself, create liability.

8

9 SECTION 614. Creditor's Action Against Member

10 (a) No proceeding may be brought by a creditor to reach the liability,
11 if any, of a member to the corporation unless final judgment has been rendered
12 in favor of the creditor against the corporation and execution has been
13 returned unsatisfied in whole or in part or unless such proceeding would be
14 useless.

15 (b) All creditors of the corporation, with or without reducing their
16 claims to judgment, may intervene in any creditor's proceeding brought under
17 subdivision (a) to reach and apply unpaid amounts due the corporation. Any or
18 all members who owe amounts to the corporation may be joined in such
19 proceeding.

20

21 SECTION 620. Resignation

22 (a) A member may resign at any time.

23 (b) The resignation of a member does not relieve the member from any
24 obligations the member may have to the corporation as a result of obligations
25 incurred or commitments made prior to resignation.

26

27 SECTION 621. Termination, Expulsion And Suspension

28 (a) No member of a public benefit or mutual benefit corporation may be
29 expelled or suspended, and no membership or memberships in such corporations
30 may be terminated or suspended except pursuant to a procedure that is fair and
31 reasonable and is carried out in good faith.

32 (b) A procedure is fair and reasonable when either:

33 (1) the articles or bylaws set forth a procedure that provides:

34 (i) not less than fifteen days prior written notice of the expulsion,
35 suspension or termination and the reasons therefore; and

1 (ii) an opportunity for the member to be heard, orally or in writing,
2 not less than five days before the effective date of the
3 expulsion, suspension or termination by a person or persons
4 authorized to decide that the proposed expulsion, termination or
5 suspension not take place; or

6 (2) it is fair and reasonable taking into consideration all of the
7 relevant facts and circumstances.

8 (c) Any written notice given by mail must be given by first-class or
9 certified mail sent to the last address of the member shown on the
10 corporation's records.

11 (d) Any proceeding challenging an expulsion, suspension or
12 termination, including a proceeding in which defective notice is alleged, must
13 be commenced within one year after the effective date of the expulsion,
14 suspension or termination.

15 (e) A member who has been expelled or suspended may be liable to the
16 corporation for dues, assessments or fees as a result of obligations incurred
17 or commitments made prior to expulsion or suspension.

18

19 SECTION 622. Purchase Of Memberships

20 (a) A public benefit or religious corporation may not purchase any of
21 its memberships or any right arising therefrom

22 (b) A mutual benefit corporation may purchase the membership of a
23 member who resigns or whose membership is terminated for the amount and
24 pursuant to the conditions set forth in or authorized by its articles or
25 bylaws. No payment shall be made in violation of chapter 13.

26

27 SECTION 630. Delegates

28 (a) A corporation may provide in its articles or bylaws for delegates
29 having some or all of the authority of members.

30 (b) The articles or bylaws may set forth provisions relating to:

31 (1) the characteristics, qualifications, rights, limitation and
32 obligations of delegates including their selection and removal;

33 (2) calling, noticing, holding and conducting meetings of delegates;
34 and

35 (3) carrying on corporate activities during and between meetings of

1 delegates.

2

3 SECTION 701. Annual And Regular Meetings

4 (a) A corporation with members shall hold a membership meeting annually
5 at a time stated in or fixed in accordance with the bylaws.

6 (b) A corporation with members may hold regular membership meetings at
7 times stated in or fixed in accordance with the bylaws.

8 (c) Annual and regular membership meetings may be held in or out of
9 this state at the place stated in or fixed in accordance with the bylaws. If
10 no place is stated in or fixed in accordance with the bylaws, annual and
11 regular meetings shall be held at the corporation's principal office.

12 (d) At the annual meeting:

13 (1) The president and chief financial officer shall report on the
14 activities and financial condition of the corporation; and

15 (2) The members shall consider and act upon such other matters as may
16 be raised consistent with the notice requirements of sections 705.

17 (e) At regular meetings the members shall consider and act upon such
18 matters as may be raised consistent with the notice requirements of sections
19 705.

20 (f) The failure to hold an annual or regular meeting at a time stated
21 in or fixed in accordance with a corporation's bylaws does not affect the
22 validity of any corporate action.

23

24 SECTION 702. Special Meeting

25 (a) A corporation with members shall hold a special meeting of members:

26 (1) on call of its board or the person or persons authorized to do so
27 by the articles or bylaws; or

28 (2) except as provided in the articles or bylaws of a religious
29 corporation if the holders of at least five percent of the voting power
30 of any corporation sign, date, and deliver to any corporate officer one
31 or more written demands for the meeting describing the purpose or
32 purposes for which it is to be held.

33 (b) The close of business on the thirtieth day before delivery of the
34 demand or demands for a special meeting to any corporate officer is the record
35 date for the purpose of determining whether the five percent requirement of

1 subsection (a) has been met.

2 (c) If a notice for a special meeting demanded under subsection (a) (2)
3 is not given pursuant to section 705 within thirty days after the date the
4 written demand or demands are delivered to a corporate officer, regardless of
5 the requirements of subsection (d), a person signing the demand or demands may
6 set the time and place of the meeting and give notice pursuant to section 705.

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

11 (e) Only those matters that are within the purpose or purposes
12 described in the meeting notice required by section 705 may be conducted at a
13 special meeting of members.

14

15 SECTION 703. Court-Ordered Meeting

16 (a) The Chancery Court of the county in which a corporation's
17 principal office (or, if none in this state, its registered office) is located
18 may summarily order a meeting to be held:

19 (1) on application of any member or other person entitled to
20 participate in an annual or regular meeting, if an annual meeting was
21 not held within the earlier of 6 months after the end of the
22 corporation's fiscal year or 15 months after its last annual meeting; or

23 (2) on application of any member or other person entitled to
24 participate in a regular meeting, if a regular meeting is not held
25 within 40 days after the date it was required to be held; or

26 (3) on application of a member who signed a demand for a special
27 meeting valid under section 702 or a person or persons entitled to call
28 a special meeting, if:

29 (i) notice of the special meeting was not given within 30 days after
30 the date the demand was delivered to a corporate officer; or

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

32 (b) The court may fix the time and place of the meeting, specify a
33 record date for determining members entitled to notice of and to vote at the
34 meeting, prescribe the form and content of the meeting notice, fix the quorum
35 required for specific matters to be considered at the meeting (or direct that

1 the votes represented at the meeting constitute a quorum for action on those
2 matters), and enter other orders necessary to accomplish the purpose or
3 purposes of the meeting.

4 (c) If the court orders a meeting, it may also order the corporation
5 to pay the member's costs (including reasonable counsel fees) incurred to
6 obtain the order.

7

8 SECTION 704. Action By Written Consent

9 (a) Unless limited or prohibited by the articles or bylaws, action
10 required or permitted by this Act to be approved by the members may be
11 approved without a meeting of members if the action is approved by members
12 holding at least eighty percent of the voting power. The action must be
13 evidenced by one or more written consents describing the action taken, signed
14 by those members representing at least eighty percent of the voting power, and
15 delivered to the corporation for inclusion in the minutes or filing with the
16 corporate records.

17 (b) If not otherwise determined under section 703 or 707, the record
18 date for determining members entitled to take action without a meeting is the
19 date the first member signs the consent under subsection (a).

20 (c) A consent signed under this section has the effect of a meeting
21 vote and may be described as such in any document filed with the Secretary of
22 State.

23 (d) Written notice of member approval pursuant to this section shall
24 be given to all members who have not signed the written consent. If written
25 notice is required, member approval pursuant to this section shall be
26 effective ten days after such written notice is given.

27

28 SECTION 705. Notice Of Meeting

29 (a) A corporation shall give notice consistent with its bylaws of
30 meetings of members in a fair and reasonable manner.

31 (b) Any notice that conforms to the requirements of subsection (c) is
32 fair and reasonable, but other means of giving notice may also be fair and
33 reasonable when all the circumstances are considered; provided, however, that
34 notice of matters referred to in subsection (c)(2) must be given as provided
35 in subsection (c).

1 (c) Notice is fair and reasonable if:

2 (1) the corporation notifies its members of the place, date, and time
3 of each annual, regular and special meeting of members no fewer than 10
4 (or if notice is mailed by other than first class or registered mail,
5 30) nor more than 60 days before the meeting date;

6 (2) notice of an annual or regular meeting includes a description of
7 any matter or matters that must be approved by the members under
8 sections 831, 856, 1003, 1021, 1104, 1202, 1401, or 1402; and

9 (3) notice of a special meeting includes a description of the matter
10 or matters for which the meeting is called.

11 (d) Unless the bylaws require otherwise, if an annual, regular or
12 special meeting of members is adjourned to a different date, time or place,
13 notice need not be given of the new date, time or place, if the new date, time
14 or place is announced at the meeting before adjournment. If a new record date
15 for the adjourned meeting is or must be fixed under section 707, however,
16 notice of the adjourned meeting must be given under this section to the
17 members of record as of the new record date.

18 (e) When giving notice of an annual, regular or special meeting of
19 members, a corporation shall give notice of a matter a member intends to raise
20 at the meeting if: (1) requested in writing to do so by a person entitled to
21 call a special meeting; and (2) the request is received by the secretary or
22 president of the corporation at least ten days before the corporation gives
23 notice of the meeting.

24

25 SECTION 706. Waiver Of Notice

26 (a) A member may waive any notice required by this Act, the articles,
27 or bylaws before or after the date and time stated in the notice. The waiver
28 must be in writing, be signed by the member entitled to the notice, and be
29 delivered to the corporation for inclusion in the minutes or filing with the
30 corporate records.

31 (b) A member's attendance at a meeting:

32 (1) waives objection to lack of notice or defective notice of the
33 meeting, unless the member at the beginning of the meeting objects to
34 holding the meeting or transacting business at the meeting;

35 (2) waives objection to consideration of a particular matter at the

1 meeting that is not within the purpose or purposes described in the
2 meeting notice, unless the member objects to considering the matter when
3 it is presented.
4

5 SECTION 707. Record Date - Determining Members Entitled To Notice And
6 Vote

7 (a) The bylaws of a corporation may fix or provide the manner of
8 fixing a date as the record date for determining the members entitled to
9 notice of a members' meeting. If the bylaws do not fix or provide for fixing
10 such a record date, the board may fix a future date as such a record date. If
11 no such record date is fixed, members at the close of business on the business
12 day preceding the day on which notice is given, or if notice is waived, at the
13 close of business on the business day preceding the day on which the meeting
14 is held, are entitled to notice of the meeting.

15 (b) The bylaws of a corporation may fix or provide the manner of
16 fixing a date as the record date for determining the members entitled to vote
17 at a members' meeting. If the bylaws do not fix or provide for fixing such a
18 record date, the board may fix a future date as such a record date. If no
19 such record date is fixed, members on the date of the meeting who are
20 otherwise eligible to vote are entitled to vote at the meeting.

21 (c) The bylaws may fix or provide the manner for determining a date as
22 the record date for the purpose of determining the members entitled to
23 exercise any rights in respect of any other lawful action. If the bylaws do
24 not fix or provide for fixing such a record date, the board may fix in advance
25 such a record date. If no such record date is fixed, members at the close of
26 business on the day on which the board adopts the resolution relating thereto,
27 or the 60th day prior to the date of such other action, whichever is later,
28 are entitled to exercise such rights.

29 (d) A record date fixed under this section may not be more than 70
30 days before the meeting or action requiring a determination of members occurs.

31 (e) A determination of members entitled to notice of or to vote at a
32 membership meeting is effective for any adjournment of the meeting unless the
33 board fixes a new date for determining the right to notice or the right to
34 vote, which it must do if the meeting is adjourned to a date more than 70 days
35 after the record date for determining members entitled to notice of the

1 original meeting.

2 (f) If a court orders a meeting adjourned to a date more than 120 days
3 after the date fixed for the original meeting, it may provide that the
4 original record date for notice or voting continues in effect or it may fix a
5 new record date for notice or voting.

6

7 SECTION 708. Action By Written Ballot

8 (a) Unless prohibited or limited by the articles or bylaws, any action
9 that may be taken at any annual, regular or special meeting of members may be
10 taken without a meeting if the corporation delivers a written ballot to every
11 member entitled to vote on the matter.

12 (b) A written ballot shall:

13 (1) set forth each proposed action; and

14 (2) provide an opportunity to vote for or against each proposed
15 action.

16 (c) Approval by written ballot pursuant to this section shall be valid
17 only when the number of votes cast by ballot equals or exceeds the quorum
18 required to be present at a meeting authorizing the action, and the number of
19 approvals equals or exceeds the number of votes that would be required to
20 approve the matter at a meeting at which the total number of votes cast was
21 the same as the number of votes cast by ballot.

22 (d) All solicitations for votes by written ballot shall:

23 (1) indicate the number of responses needed to meet the quorum
24 requirements;

25 (2) state the percentage of approvals necessary to approve each matter
26 other than election of directors; and

27 (3) specify the time by which a ballot must be received by the
28 corporation in order to be counted.

29 (e) Except as otherwise provided in the articles or bylaws, a written
30 ballot may not be revoked.

31

32 SECTION 720. Members' List For Meeting

33 (a) After fixing a record date for a notice of a meeting, a
34 corporation shall prepare an alphabetical list of the names of all its members
35 who are entitled to notice of the meeting. The list must show the address and

1 number of votes each member is entitled to vote at the meeting. The
2 corporation shall prepare on a current basis through the time of the
3 membership meeting a list of members, if any, who are entitled to vote at the
4 meeting, but not entitled to notice of the meeting. This list shall be
5 prepared on the same basis and be part of the list of members.

6 (b) The list of members must be available for inspection by any member
7 for the purpose of communication with other members concerning the meeting,
8 beginning two business days after notice is given of the meeting for which the
9 list was prepared and continuing through the meeting, at the corporation's
10 principal office or at a reasonable place identified in the meeting notice in
11 the city where the meeting will be held. A member, a member's agent, or
12 attorney is entitled on written demand to inspect and, subject to the
13 limitations of subsection (d), to copy the list, at a reasonable time and at
14 the member's expense, during the period it is available for inspection.

15 (c) The corporation shall make the list of members available at the
16 meeting, and any member, a member's agent, or attorney is entitled to inspect
17 the list at any time during the meeting or any adjournment.

18 (d) Without consent of the board, a membership list or any part
19 thereof may not be obtained or used by any person for any purpose unrelated to
20 a member's interest as a member. Without limiting the generality of the
21 foregoing, or without the consent of the board a membership list or any part
22 thereof may not be:

23 (1) used to solicit money or property unless such money or property
24 will be used solely to solicit the votes of the members in an election
25 to be held by the corporation;

26 (2) used for any commercial purpose; or

27 (3) sold to or purchased by any person.

28 (e) The articles or bylaws of a religious corporation may limit or
29 abolish the rights of a member under this section to inspect and copy any
30 corporate record.

31

32 SECTION 721. Voting Entitlement Generally

33 (a) Unless the articles or bylaws provide otherwise, each member is
34 entitled to one vote on each matter voted on by the members. When more than
35 one (1) membership is held by a single entity, the member shall be entitled to

1 one (1) vote for each such membership.

2 (b) Unless the articles or bylaws provide otherwise, if a membership
3 stands of record in the names of two or more persons, their acts with respect
4 to voting shall have the following effect:

5 (1) If only one votes, such act binds all; and

6 (2) If more than one votes, the vote shall be divided on a prorata
7 basis.

8

9 SECTION 722. Quorum Requirements

10 (a) Unless this Act, the articles, or bylaws provide for a higher or
11 lower quorum, ten percent of the votes entitled to be case on a matter must be
12 represented at a meeting of members to constitute a quorum on that matter.

13 (b) A bylaw amendment to decrease the quorum for any member action may
14 be approved by the members or, unless prohibited by the bylaws, by the board.

15 (c) A bylaw amendment to increase the quorum required for any member
16 action must be approved by the members.

17 (d) Unless one-third or more of the voting power is present in person
18 or by proxy, the only matters that may be voted upon at an annual or regular
19 meeting of members are those matters that are described in the meeting notice.

20

21 SECTION 723. Voting Requirements

22 (a) Unless this Act, the articles, or the bylaws require a greater
23 vote or voting by class, if a quorum is present, the affirmative vote of the
24 votes represented and voting (which affirmative votes also constitute a
25 majority of the required quorum) is the act of the members.

26 (b) A bylaw amendment to increase or decrease the vote required for
27 any member action must be approved by the members.

28

29 SECTION 724. Proxies

30 (a) Unless the articles or bylaws prohibit or limit proxy voting, a
31 member may appoint a proxy to vote or otherwise act for the member by signing
32 an appointment form either personally or by an attorney-in-fact.

33 (b) An appointment of a proxy is effective when received by the
34 secretary or other officer or agent authorized to tabulate votes. An
35 appointment is valid for 11 months unless a different period is expressly

1 provided in the appointment form; provided however that no proxy shall be
2 valid for more than three years from its date of execution.

3 (c) An appointment of a proxy is revocable by the member.

4 (d) The death or incapacity of the member appointing a proxy does not
5 affect the right of the corporation to accept the proxy's authority unless
6 notice of the death or incapacity is received by the secretary or other
7 officer or agent authorized to tabulate votes before the proxy exercises
8 authority under the appointment.

9 (e) Appointment of a proxy is revoked by the person appointing the
10 proxy:

11 (1) attending any meeting and voting in person; or

12 (2) signing and delivering to the secretary or other officer or agent
13 authorized to tabulate proxy votes either a writing stating that the
14 appointment of the proxy is revoked or a subsequent appointment form.

15 (f) Subject to section 727 and any express limitation on the proxy's
16 authority appearing on the face of the appointment form, a corporation is
17 entitled to accept the proxy's vote or other action as that of the member
18 making the appointment.

19

20 SECTION 725. Cumulative Voting For Directors

21 (a) If the articles or bylaws provide for cumulative voting by
22 members, members may so vote, by multiplying the number of votes the members
23 are entitled to cast by the number of directors for whom they are entitled to
24 vote, and cast the product for a single candidate or distribute the product
25 among two or more candidates.

26 (b) Cumulative voting is not authorized at a particular meeting
27 unless:

28 (1) the meeting notice or statement accompanying the notice states
29 that cumulative voting will take place; or

30 (2) a member gives notice during the meeting and before the vote is
31 taken of the member's intent to cumulate votes, and if one member gives
32 this notice all other members participating in the election are entitled
33 to cumulate their votes without giving further notice.

34 (c) A director elected by cumulative voting may be removed by the
35 members without cause if the requirements of section 808 are met unless the

1 votes cast against removal, or not consenting in writing in such removal,
2 would be sufficient to elect such director if voted cumulatively at an
3 election at which the same total number of votes were cast (or, if such action
4 is taken by written ballot, all memberships entitled to vote were voted) and
5 the entire number of directors authorized at the time of the director's most
6 recent election were then being elected.

7 (d) Members may not cumulatively vote if the directors and members are
8 identical.

9

10 SECTION 726. Other Methods Of Electing Directors

11 A corporation may provide in its articles or bylaws for election of
12 directors by members or delegates: (1) on the basis of chapter or other
13 organizational unit; (2) by region or other geographic unit; (3) by
14 preferential voting; or (4) by any other reasonable method.

15

16 SECTION 727. Corporation's Acceptance Of Votes

17 (a) If the name signed on a vote, consent, waiver, or proxy
18 appointment corresponds to the name of a member, the corporation if acting in
19 good faith is entitled to accept the vote, consent, waiver, or proxy
20 appointment and give it effect as the act of the member.

21 (b) If the name signed on a vote, consent, waiver, or proxy
22 appointment does not correspond to the record name of a member, the
23 corporation if acting in good faith is nevertheless entitled to accept the
24 vote, consent, waiver, or proxy appointment and give it effect as the act of
25 the member if:

26 (1) the member is an entity and the name signed purports to be that of
27 an officer or agent of the entity;

28 (2) the name signed purports to be that of an attorney-in-fact of the
29 member and if the corporation requests, evidence acceptable to the
30 corporation of the signatory's authority to sign for the member has been
31 presented with respect to the vote, consent, waiver, or proxy
32 appointment;

33 (3) two or more persons hold the membership as co-tenants or
34 fiduciaries and the name signed purports to be the name of at least one
35 of the co-holders and the person signing appears to be acting on behalf

1 of all the co-holders; and

2 (4) in the case of a mutual benefit corporation:

3 (i) the name signed purports to be that of an administrator, executor,
4 guardian, or conservator representing the member and, if the
5 corporation requests, evidence of fiduciary status acceptable to
6 the corporation has been presented with respect to the vote,
7 consent, waiver, or proxy appointment;

8 (ii) the name signed purports to be that of a receiver or trustee in
9 bankruptcy of the member, and, if the corporation requests,
10 evidence of this status acceptable to the corporation has been
11 presented with respect to the vote, consent, waiver, or proxy
12 appointment.

13 (c) The corporation is entitled to reject a vote, consent, waiver, or
14 proxy appointment if the secretary or other officer or agent authorized to
15 tabulate votes, acting in good faith, has reasonable basis for doubt about the
16 validity of the signature on it or about the signatory's authority to sign for
17 the member.

18 (d) The corporation and its officer or agent who accepts or rejects a
19 vote, consent, waiver, or proxy appointment in good faith and in accordance
20 with the standards of this section are not liable in damages to the member for
21 the consequences of the acceptance or rejection.

22 (e) Corporate action based on the acceptance or rejection of a vote,
23 consent, waiver, or proxy appointment under this section is valid unless a
24 court of competent jurisdiction determines otherwise.

25

26 SECTION 730. Voting Agreements

27 (a) Two or more members may provide for the manner in which they will
28 vote by signing an agreement for that purpose. Such agreements may be valid
29 for a period of up to ten years. For public benefit corporations such
30 agreements must have a reasonable purpose not inconsistent with the
31 corporation's public or charitable purposes.

32 (b) A voting agreement created under this section is specifically
33 enforceable.

34

35 SECTION 801. Requirement For and Duties of Board.

1 (a) Each corporation must have a board of directors.

2 (b) Except as provided in this Act or subsection (c), all corporate
3 powers shall be exercised by or under the authority of, and the affairs of the
4 corporation managed under the direction of, its board.

5 (c) The articles may authorize a person or persons to exercise some or
6 all of the powers which would otherwise be exercised by a board. To the
7 extent so authorized any such person or persons shall have the duties and
8 responsibilities of the directors, and the directors shall be relieved to that
9 extent from such duties and responsibilities.

10

11 SECTION 802. Qualification of Directors.

12 All directors must be individuals. The articles or bylaws may prescribe
13 other qualifications for directors.

14

15 SECTION 803. Number of Directors.

16 (a) A board of directors must consist of three or more individuals,
17 with the number specified in or fixed in accordance with the articles or
18 bylaws.

19 (b) The number of directors may be increased or decreased (but to no
20 fewer than three) from time to time by amendment to or in the manner
21 prescribed in the articles or bylaws.

22

23 SECTION 804. Election, Designation and Appointment of Directors.

24 (a) If the corporation has members, all the directors (except the
25 initial directors) shall be elected at the first annual meeting of members,
26 and at each annual meeting thereafter, unless the articles or bylaws provide
27 some other time or method of election, or provide that some of the directors
28 are appointed by some other person or are designated. Designation occurs when
29 the articles or bylaws name an individual as a director or designate the
30 holder of some office or position as a director.

31 (b) If the corporation does not have members, all the directors
32 (except the initial directors) shall be elected, appointed or designated as
33 provided in the articles or bylaws. If no method of designation or
34 appointment is set forth in the articles or bylaws, the directors (other than
35 the initial directors) shall be elected by the board.

1

2 SECTION 805. Terms of Directors Generally.

3 (a) The articles or bylaws must specify the term of directors. Except
4 for designated or appointed directors, the terms of directors may not exceed
5 the lesser of six years or the stated duration of the corporation. In the
6 absence of any term specified in the articles or bylaws, the term of each
7 director shall be one year. Directors may be elected for successive terms,
8 unless otherwise provided in the articles or bylaws.

9 (b) A decrease in the number of directors or term of office does not
10 shorten an incumbent director's term.

11 (c) Except as provided in the articles or bylaws:

12 (1) the term of a director filling a vacancy in the office of a
13 director elected by members expires at the next election of directors by
14 members; and

15 (2) the term of a director filling any other vacancy expires at the
16 end of the unexpired term that such director is filling.

17 (d) Despite the expiration of a director's term, the director
18 continues to serve until the director's successor is elected, designated or
19 appointed and qualifies, or until there is a decrease in the number of
20 directors.

21

22 SECTION 806. Staggered Terms for Directors.

23 The articles or bylaws may provide for staggering the terms of directors
24 by dividing the total number of directors into groups. The terms of office of
25 the several groups need not be uniform.

26

27 SECTION 807. Resignation of Directors.

28 (a) A director may resign at any time by delivering written notice to
29 the board of directors, its presiding officer or to the president or
30 secretary.

31 (b) A resignation is effective when the notice is effective unless the
32 notice specifies a later effective date. If a resignation is made effective
33 at a later date, the board may fill the pending vacancy before the effective
34 date if the board provides that the successor does not take office until the
35 effective date.

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SECTION 808. Removal of Directors Elected by Members or Directors.

(a) The members may remove one or more directors elected by them without cause.

(b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsection (b) - (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) - (e).

(h) A director elected by the board may be removed without cause by the vote of a majority of the directors present at a meeting which is called for the purpose of removing the director and for which the meeting notice stated that the purpose, or one of the purposes, of the meeting is removal of the director, or by the vote of such greater number as is set forth in the articles or bylaws; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the

1 articles or bylaws provide that the director may be removed for missing a
2 specified number of board meetings, the board may remove the director for
3 failing to attend the specified number of meetings. The director may be
4 removed only if a majority of the directors present at a meeting which is
5 called for the purpose of removing the director and for which the meeting
6 notice stated that the purpose, or one of the purposes, of the meeting is
7 removal of the director, vote for the removal.

8 (j) The articles or bylaws of a religious corporation may:

- 9 (1) limit the application of this section; and
10 (2) set forth the vote and procedures by which the board or any person
11 may remove with or without cause a director elected by the members or
12 the board.

13

14 SECTION 809. Removal of Designated or Appointed Directors.

15 (a) A designated director may be removed by an amendment to the
16 articles or bylaws deleting or changing the designation.

17 (b) Appointed Directors:

18 (1) Except as otherwise provided in the articles or bylaws, an
19 appointed director may be removed without cause by the person appointing
20 the director;

21 (2) The person removing the director shall do so by giving written
22 notice of the removal to the director and either the presiding officer
23 of the board or the corporation's president or secretary; and

24 (3) A removal is effective when the notice is effective unless the
25 notice specifies a future effective date.

26

27 SECTION 810. Removal of Directors by Judicial Proceeding.

28 (a) The Chancery Court of the county where a corporation's principal
29 office is located may remove any director of the corporation from office in a
30 proceeding commenced either by the corporation or its members holding at least
31 10 percent of the voting power of any class, if the Court finds that (1) the
32 director engaged in fraudulent or dishonest conduct, or gross abuse of
33 authority or discretion, with respect to the corporation, or a final judgment
34 has been entered finding that the director has violated a duty set forth in
35 sections 830-833, and (2) removal is in the best interest of the corporation.

1 (b) The Court that removes a director may bar the director from
2 serving on the board for a period prescribed by the court.

3 (c) The articles or bylaws of a religious corporation may limit or
4 prohibit the application of this section.

5

6 SECTION 811. Vacancy on Board.

7 (a) Unless the articles or bylaws provide otherwise, and except as
8 provided in subsections (b) and (c), if a vacancy occurs on a board of
9 directors, including a vacancy resulting from an increase in the number of
10 directors:

11 (1) the members, if any, may fill the vacancy; if the vacant office
12 was held by a director elected by a class, chapter or other
13 organizational unit or by region or other geographic grouping, only
14 members of the class, chapter, unit or grouping are entitled to vote to
15 fill the vacancy if it is filled by the members;

16 (2) the board of directors may fill the vacancy; or

17 (3) if the directors remaining in office constitute fewer than a
18 quorum of the board, they may fill the vacancy by the affirmative vote
19 of a majority of all the directors remaining in office.

20 (b) Unless the articles or bylaws provide otherwise, if a vacant
21 office was held by an appointed director, only the person who appointed the
22 director may fill the vacancy.

23 (c) If a vacant office was held by a designated director, the vacancy
24 shall be filled as provided in the articles or bylaws. In the absence of an
25 applicable article or bylaw provision, the vacancy may not be filled by the
26 board.

27 (d) A vacancy that will occur at a specific later date (by reason of a
28 resignation effective at a later date under section 807(b) or otherwise) may
29 be filled before the vacancy occurs but the new director may not take office
30 until the vacancy occurs.

31

32 SECTION 812. Compensation of Directors.

33 Unless the articles or bylaws provide otherwise, a board of directors
34 may fix the compensation of directors.

35

1 SECTION 820. Regular and Special Meetings.

2 (a) If the time and place of a directors' meeting is fixed by the
3 bylaws or the board, the meeting is a regular meeting. All other meetings are
4 special meetings.

5 (b) A board of directors may hold regular or special meetings in or
6 out of this state.

7 (c) Unless the articles or bylaws provide otherwise, a board may
8 permit any or all directors to participate in a regular or special meeting by,
9 or conduct the meeting through the use of, any means of communication by which
10 all directors participating may simultaneously hear each other during the
11 meeting. A director participating in a meeting by this means is deemed to be
12 present in person at the meeting.

13

14 SECTION 821. Action Without Meeting.

15 (a) Unless the articles or bylaws provide otherwise, action required
16 or permitted by this Act to be taken at a board of directors' meeting may be
17 taken without a meeting if the action is taken by all members of the board.
18 The action must be evidenced by one or more written consents describing the
19 action taken, signed by each director, and included in the minutes filed with
20 the corporate records reflecting the action taken.

21 (b) Action taken under this section is effective when the last
22 director signs the consent, unless the consent specifies a different effective
23 date.

24 (c) A consent delivered by facsimile transmittal shall constitute a
25 valid signed consent under this section.

26 (d) A consent signed under this section has the effect of a meeting
27 vote and may be described as such in any document.

28

29 SECTION 822. Call and Notice of Meetings.

30 (a) Unless the articles, bylaws or subsection (c) provide otherwise,
31 regular meetings of the board may be held without notice.

32 (b) Unless the articles, bylaws or subsection (c) provide otherwise,
33 special meetings of the board must be preceded by at least two days' notice to
34 each director of the date, time, and place, but not the purpose, of the
35 meeting.

1 (c) In corporations without members any board action to remove a
2 director or to approve a matter that would require approval by the members if
3 the corporation had members, shall not be valid unless each director is given
4 at least seven days' written notice that the matter will be voted upon at a
5 directors' meeting or unless notice is waived pursuant to section 823.

6 (d) Unless the articles or bylaws provide otherwise, the presiding
7 officer of the board, the president or twenty percent of the directors then in
8 office may call and give notice of a meeting of the board.

9

10 SECTION 823. Waiver of Notice.

11 (a) A director may at any time waive any notice required by this Act,
12 the articles or bylaws. Except as provided in subsection (b), the waiver must
13 be in writing, signed by the director entitled to the notice, and filed with
14 the minutes of the corporate records. A signed waiver delivered by facsimile
15 transmittal shall constitute a valid waiver of notice under this section.

16 (b) A director's attendance at or participation in a meeting waives
17 any required notice of the meeting unless the director upon arriving at the
18 meeting or prior to the vote on a matter not noticed in conformity with this
19 Act, the articles or bylaws objects to lack of notice and does not thereafter
20 vote for or assent to the objected to action.

21

22 SECTION 824. Quorum and Voting.

23 (a) Except as otherwise provided in this Act, the articles or bylaws,
24 a quorum of a board of directors consists of a majority of the directors in
25 office immediately before a meeting begins.

26 (b) If a quorum is present when a vote is taken, the affirmative vote
27 of a majority of directors present is the act of the board unless this Act,
28 the articles or bylaws require the vote of a greater number of directors.

29

30 SECTION 825. Committees of the Board.

31 (a) Unless prohibited or limited by the articles or bylaws, a board of
32 directors may create one or more committees of the board and appoint members
33 of the board to serve on them. Each committee shall have two or more
34 directors, who serve at the pleasure of the board.

35 (b) The creation of a committee and appointment of members to it must

1 be approved by the greater of:

2 (1) a majority of a quorum of the directors when the action is taken;
3 or

4 (2) the number of directors required by the articles or bylaws to take
5 action under section 824.

6 (c) Sections 820 through 824, which govern meetings, action without
7 meetings, notice and waiver of notice, and quorum and voting requirements of
8 the board, apply to committees of the board and their members as well.

9 (d) To the extent specified by the board of directors or in the
10 articles or bylaws, each committee of the board may exercise the board's
11 authority under section 801.

12 (e) A committee of the board may not, however:

13 (1) authorize distributions;

14 (2) approve or recommend to members dissolution, merger or the sale,
15 pledge or transfer of all or substantially all of the corporation's
16 assets;

17 (3) elect, appoint or remove directors or fill vacancies on the board
18 or on any of its committees; or

19 (4) adopt, amend or repeal the articles or bylaws.

20 (f) The creation of, delegation of authority to, or action by a
21 committee does not alone constitute compliance by a director with the
22 standards of conduct described in section 830.

23

24 *SECTION 830. General Standards for Directors.*

25 (a) A director shall discharge his or her duties as a director,
26 including his or her duties as a member of a committee:

27 (1) in good faith;

28 (2) with the care an ordinarily prudent person in a like position
29 would exercise under similar circumstances; and

30 (3) in a manner the director reasonably believes to be in the best
31 interests of the corporation.

32 (b) In discharging his or her duties, a director is entitled to rely
33 on information, opinions, reports, or statements, including financial
34 statements and other financial data, if prepared or presented by:

35 (1) one or more officers or employees of the corporation whom the

1 director reasonably believes to be reliable and competent in the matters
2 presented;

3 (2) legal counsel, public accountants or other persons as to matters
4 the director reasonably believes are within the person's professional or
5 expert competence;

6 (3) a committee of the board of which the director is not a member, as
7 to matters within its jurisdiction, if the director reasonably believes
8 the committee merits confidence; or

9 (4) in the case of religious corporations, religious authorities and
10 ministers, priests, rabbis or other persons whose position or duties in
11 the religious organization the director believes justify reliance and
12 confidence and whom the director believes to be reliable and competent
13 in the matters presented.

14 (c) A director is not acting in good faith if the director has
15 knowledge concerning the matter in question that makes reliance otherwise
16 permitted by subsection (b) unwarranted.

17 (d) A director is not liable to the corporation, any member, or any
18 other person for any action taken or not taken as a director, if the director
19 acted in compliance with this section.

20 (e) A director shall not be deemed to be a trustee with respect to the
21 corporation or with respect to any property held or administered by the
22 corporation, including without limit, property that may be subject to
23 restrictions imposed by the donor or transferor of such property.

24

25 SECTION 831. Director Conflict of Interest.

26 (a) A conflict of interest transaction is a transaction with the
27 corporation in which a director of the corporation has a direct or indirect
28 interest. A conflict of interest transaction is not voidable or the basis for
29 imposing liability on the director if any of the following is true:

30 (1) the transaction was fair to the corporation at the time it was
31 entered into;

32 (2) the material facts of the transaction and the director's interest
33 were disclosed or known to the board of directors and the board
34 authorized, approved, or ratified the transaction; or

35 (3) the material facts of the transaction and the director's interest

1 were disclosed or known to the members and they authorized, approved, or
2 ratified the transaction.

3 (b) For purposes of this section, a director of the corporation has an
4 indirect interest in a transaction if (1) another entity in which the director
5 has a material interest or in which the director is a general partner is a
6 party to the transaction or (2) another entity of which the director is a
7 director, officer, or trustee is a party to the transaction.

8 (c) For purposes of subsection (a) (2) a conflict of interest
9 transaction is authorized, approved, or ratified, if it receives the
10 affirmative vote of a majority of the directors on the board, who have no
11 direct or indirect interest in the transaction, but a transaction may not be
12 authorized, approved, or ratified under this section by less than a majority
13 of the entire board of directors.

14 (d) For purposes of subsection (a) (3), a conflict of interest
15 transaction is authorized, approved, or ratified by the members if it receives
16 a majority of the votes entitled to be counted under this subsection. Votes
17 cast by or voted under the control of a director who has a direct or indirect
18 interest in the transaction, and votes cast by or voted under the control of
19 an entity described in subsection (b) (1), may not be counted in a vote of
20 members to determine whether to authorize, approve, or ratify a conflict of
21 interest transaction under subsection (a) (3). The vote of these members,
22 however, is counted in determining whether the transaction is approved under
23 other sections of this Act. A majority of the voting power, whether or not
24 present, that are entitled to be counted in a vote on the transaction under
25 this subsection constitutes a quorum for the purpose of taking action under
26 this section.

27 (e) The articles, bylaws, or a resolution of the board may impose
28 additional requirements on conflict of interest transactions.

29

30 SECTION 832. Loans to or Guaranties for Directors and Officers.

31 (a) A corporation may not lend money to or guaranty the obligation of
32 a director or officer of the corporation.

33 (b) The fact that a loan or guaranty is made in violation of this
34 section does not affect the borrower's liability on the loan.

35

1 SECTION 833. Liability for Unlawful Distributions.

2 (a) Unless a director complies with the applicable standards of
3 conduct described in section 830, a director who votes for or assents to a
4 distribution made in violation of this Act is personally liable to the
5 corporation for the amount of the distribution that exceeds what could have
6 been distributed without violating this Act.

7 (b) A director held liable for an unlawful distribution under
8 subsection (a) is entitled to contribution:

9 (1) from every other director who voted for or assented to the
10 distribution without complying with the applicable standards of conduct
11 described in section 830; and

12 (2) from each person who received an unlawful distribution for the
13 amount of the distribution whether or not the person receiving the
14 distribution knew it was made in violation of this Act.

15

16 SECTION 840. Required Officers.

17 (a) Unless otherwise provided in the articles or bylaws, a corporation
18 shall have a president, a secretary, a treasurer and such other officers as
19 are appointed by the board.

20 (b) The bylaws or the board shall delegate to one of the officers
21 responsibility for preparing minutes of the directors' and members' meetings
22 and for authenticating records of the corporation.

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

25

26 SECTION 842. Standards of Conduct for Officers.

27 (a) An officer with discretionary authority shall discharge his or her
28 duties under that authority:

29 (1) in good faith;

30 (2) with the care an ordinarily prudent person in a like position
31 would exercise under similar circumstances; and

32 (3) in a manner the officer reasonably believes to be in the best
33 interests of the corporation and its members, if any.

34 (b) In discharging his or her duties an officer is entitled to rely on
35 information, opinions, reports, or statements, including financial statements

1 and other financial data, if prepared or presented by:

2 (1) one or more officers or employees of the corporation who the
3 officer reasonably believes to be reliable and competent in the matters
4 presented;

5 (2) legal counsel, public accountants or other persons as to matters
6 the officer reasonably believes are within the person's professional or
7 expert competence; or

8 (3) in the case of religious corporations, religious authorities and
9 ministers, priests, rabbis or other persons whose position or duties in
10 the religious organization the officer believes justify reliance and
11 confidence and who the officer believes to be reliable and competent in
12 the matters presented.

13 (c) An officer is not acting in good faith if the officer has
14 knowledge concerning the matter in question that makes reliance otherwise
15 permitted by subsection (b) unwarranted.

16 (d) An officer is not liable to the corporation, any member, or other
17 person for any action taken or not taken as an officer, if the officer acted
18 in compliance with this section.

19

20 SECTION 843. Resignation and Removal of Officers.

21 (a) An officer may resign at any time by delivering notice to the
22 corporation. A resignation is effective when the notice is effective unless
23 the notice specifies a future effective date. If a resignation is made
24 effective at a future date and the corporation accepts the future effective
25 date, its board of directors may fill the pending vacancy before the effective
26 date if the board provides that the successor does not take office until the
27 effective date.

28 (b) A board may remove any officer at any time with or without cause.

29

30 SECTION 844. Contract Rights of Officers.

31 (a) The appointment of an officer does not itself create contract
32 rights.

33 (b) An officer's removal does not affect the officer's contract
34 rights, if any, with the corporation. An officer's resignation does not
35 affect the corporation's contract rights, if any, with the officer.

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SECTION 845. Officers' Authority to Execute Documents.

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in Category 1 below or by one officer in Category 1 below and one officer in Category 2 below.

Category 1 - The presiding officer of the board and the president.

Category 2 - A vice president, the secretary, treasurer and executive director.

SECTION 850. Subchapter Definitions.

In this subchapter:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "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 actually incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a

1 director, the office of director in a corporation; and (ii) when used
2 with respect to an individual other than a director, as contemplated in
3 section 856, the office in a corporation held by the officer or the
4 employment or agency relationship undertaken by the employee or agent on
5 behalf of the corporation. "Official capacity" does not include service
6 for any other foreign or domestic business or nonprofit corporation or
7 any partnership, joint venture, trust, employee benefit plan, or other
8 enterprise.

9 (6) "Party" includes an individual who was, is or is threatened to be
10 made a named defendant or respondent in a proceeding.

11 (7) "Proceeding" means any threatened, pending, or completed action,
12 suit or proceeding whether civil, criminal, administrative, or
13 investigative and whether formal or informal.

14
15 SECTION 851. Authority to Indemnify.

16 (a) Except as provided in subsection (d), a corporation may indemnify
17 an individual made a party to a proceeding because the individual is or was a
18 director against liability incurred in the proceeding if the individual:

19 (1) conducted himself or herself in good faith; and

20 (2) reasonably believed:

21 (i) in the case of conduct in his or her official capacity with the
22 corporation, that his or her conduct was in its best interests;
23 and

24 (ii) in all other cases, that his or her conduct was at least not
25 opposed to its best interests; and

26 (3) in the case of any criminal proceeding, had no reasonable cause to
27 believe his or her conduct was unlawful.

28 (b) A director's conduct with respect to an employee benefit plan for
29 a purpose the director reasonably believed to be in the interests of the
30 participants in and beneficiaries of the plan is conduct that satisfies the
31 requirements of subsection (a) (2) (ii).

32 (c) The termination of a proceeding by judgment, order, settlement,
33 conviction, or upon a plea of nolo contendere or its equivalent is not, of
34 itself, determinative that the director did not meet the standard of conduct
35 described in this section.

1 (d) A corporation may not indemnify a director under this section:

2 (1) in connection with a proceeding by or in the right of the
3 corporation in which the director was adjudged liable to the
4 corporation; or

5 (2) in connection with any other proceeding charging improper personal
6 benefit to the director, whether or not involving action in his or her
7 official capacity, in which the director was adjudged liable on the
8 basis that personal benefit was improperly received by the director.

9 (e) Indemnification permitted under this section in connection with a
10 proceeding by or in the right of the corporation is limited to reasonable
11 expenses incurred in connection with the proceeding.

12

13 SECTION 852. Mandatory Indemnification.

14 Unless limited by its articles of incorporation, a corporation shall
15 indemnify a director who was wholly successful, on the merits or otherwise, in
16 the defense of any proceeding to which the director was a party because he or
17 she is or was a director of the corporation against reasonable expenses
18 actually incurred by the director in connection with the proceeding.

19

20 SECTION 853. Advance for Expenses.

21 (a) A corporation may pay for or reimburse the reasonable expenses
22 incurred by a director who is a party to a proceeding in advance of final
23 disposition of the proceeding if:

24 (1) the director furnishes the corporation a written affirmation of
25 his or her good faith belief that he or she has met the standard of
26 conduct described in section 851;

27 (2) the director furnishes the corporation a written undertaking,
28 executed personally or on the director's behalf, to repay the advance if
29 it is ultimately determined that the director did not meet the standard
30 of conduct; and

31 (3) a determination is made that the facts then known to those making
32 the determination would not preclude indemnification under this
33 subchapter.

34 (b) The undertaking required by subsection (a) (2) must be an unlimited
35 general obligation of the director but need not be secured and may be accepted

1 without reference to financial ability to make repayment.

2 (c) Determinations and authorizations of payments under this section
3 shall be made in the manner specified in section 855.

4

5 SECTION 854. Court-ordered Indemnification.

6 Unless limited by a corporation's articles of incorporation, a director
7 of the corporation who is a party to a proceeding may apply for
8 indemnification to the court conducting the proceeding or to another court of
9 competent jurisdiction. On receipt of an application, the court after giving
10 any notice the court considers necessary may order indemnification in the
11 amount it considers proper if it determines:

12 (1) the director is entitled to mandatory indemnification under
13 section 852, in which case the court shall also order the corporation to
14 pay the director's reasonable expenses incurred to obtain court-ordered
15 indemnification; or

16 (2) the director is fairly and reasonably entitled to indemnification
17 in view of all the relevant circumstances, whether or not the director
18 met the standard of conduct set forth in section 851(a) or was adjudged
19 liable as described in section 851(d), but if the director was adjudged
20 so liable indemnification is limited to reasonable expenses incurred.

21

22 SECTION 855. Determination and Authorization of Indemnification.

23 (a) A corporation may not indemnify a director under section 851
24 unless authorized in the specific case after a determination has been made
25 that indemnification of the director is permissible in the circumstances
26 because the director has met the standards of conduct set forth in section
27 851.

28 (b) The determination shall be made:

29 (1) by the board of directors by majority vote of a quorum consisting
30 of directors not at the time parties to the proceeding;

31 (2) if a quorum cannot be obtained under subdivision (1), by majority
32 vote of a committee duly designated by the board of directors (in which
33 designation directors who are parties may participate), consisting
34 solely of two or more directors not at the time parties to the
35 proceeding;

- 1 (3) by special legal counsel:
- 2 (i) selected by the board of directors or its committee in the manner
- 3 prescribed in subdivision (1) or (2); or
- 4 (ii) if a quorum of the board cannot be obtained under subdivision (1)
- 5 and a committee cannot be designated under subdivision (2),
- 6 selected by majority vote of the full board (in which selection
- 7 directors who are parties may participate); or
- 8 (4) by the members of a mutual benefit corporation, but directors who
- 9 are at the time parties to the proceeding may not vote on the
- 10 determination.
- 11 (c) Authorization of indemnification and evaluation as to
- 12 reasonableness of expenses shall be made in the same manner as the
- 13 determination that indemnification is permissible, except that if the
- 14 determination is made by special legal counsel, authorization of
- 15 indemnification and evaluation as to reasonableness of expenses shall be made
- 16 by those entitled under subsection (b)(3) to select counsel.
- 17 (d) A director of a public benefit corporation may not be indemnified
- 18 until 20 days after the effective date of written notice to the attorney
- 19 general of the proposed indemnification.

20

21 SECTION 856. Indemnification of Officers, Employees and Agents.

22 Unless limited by a corporation's articles of incorporation:

23 (1) an officer of the corporation who is not a director is entitled to

24 mandatory indemnification under section 852, and is entitled to apply

25 for court-ordered indemnification under section 854 in each case, to the

26 same extent as a director;

27 (2) the corporation may indemnify and advance expenses under this

28 subchapter to an officer, employee, or agent of the corporation who is

29 not a director to the same extent as to a director; and

30 (3) a corporation may also indemnify and advance expenses to an

31 officer, employee, or agent who is not a director to the extent,

32 consistent with public policy, that may be provided by its articles of

33 incorporation, bylaws, general or specific action of its board of

34 directors, or contract.

35

1 SECTION 857. Insurance.

2 A corporation may purchase and maintain insurance on behalf of an
3 individual who is or was a director, officer, employee, or agent of the
4 corporation, or who, while a director, officer, employee, or agent of the
5 corporation, is or was serving at the request of the corporation as a
6 director, officer, partner, trustee, employee, or agent of another foreign or
7 domestic business or nonprofit corporation, partnership, joint venture, trust,
8 employee benefit plan, or other enterprise, against liability asserted against
9 or incurred by him or her in that capacity or arising from his or her status
10 as a director, officer, employee, or agent, whether or not the corporation
11 would have power to indemnify the person against the same liability under
12 section 851 or 852.

13

14 SECTION 858. Application of Subchapter.

15 (a) A provision treating a corporation's indemnification of or advance
16 for expenses to directors that is contained in its articles of incorporation,
17 bylaws, a resolution of its members or board of directors, or in a contract or
18 otherwise, is valid only if and to the extent the provision is consistent with
19 this subchapter. If articles of incorporation limit indemnification or
20 advance for expenses, indemnification and advance for expenses are valid only
21 to the extent consistent with the articles.

22 (b) This subchapter does not limit a corporation's power to pay or
23 reimburse expenses incurred by a director in connection with appearing as a
24 witness in a proceeding at a time when the director has not been made a named
25 defendant or respondent to the proceeding.

26

27 SECTION 1001. Authority to Amend.

28 A corporation may amend its articles of incorporation at any time to add
29 or change a provision that is required or permitted in the articles or to
30 delete a provision not required in the articles. Whether a provision is
31 required or permitted in the articles is determined as of the effective date
32 of the amendment.

33

34 SECTION 1002. Amendment by Directors.

35 (a) Unless the articles provide otherwise, a corporation's board of

1 directors may adopt one or more amendments to the corporation's articles
2 without member approval;

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

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

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

9 (4) to change the corporate name by substituting the word
10 "corporation," "incorporated," "company," "limited," or the abbreviation
11 "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in
12 the name, or by adding, deleting or changing a geographical attribution
13 to the name; or

14 (5) to make any other change expressly permitted by this Act to be
15 made by director action.

16 (b) If a corporation has no members, its incorporators, until
17 directors have been chosen, and thereafter its board of directors, may adopt
18 one or more amendments to the corporation's articles subject to any approval
19 required pursuant to section 1030. The corporation shall provide notice of
20 any meeting at which an amendment is to be voted upon. The notice shall be in
21 accordance with section 822(c). The notice must also state that the purpose,
22 or one of the purposes, of the meeting is to consider a proposed amendment to
23 the articles and contain or be accompanied by a copy or summary of the
24 amendment or state the general nature of the amendment. The amendment must be
25 approved by a majority of the directors in office at the time the amendment is
26 adopted.

27

28 SECTION 1003. Amendment by Directors and Members.

29 (a) Unless this Act, the articles, bylaws, the members (acting
30 pursuant to subsection (b)), or the board of directors (acting pursuant to
31 subsection (c)) require a greater vote or voting by class, an amendment to a
32 corporation's articles to be adopted must be approved:

33 (1) by the board if the corporation is a public benefit or religious
34 corporation and the amendment does not relate to the number of
35 directors, the composition of the board, the term of office of

1 directors, or the method or way in which directors are elected or
2 selected;

3 (2) except as provided in subsection 1002(a), by the members by two-
4 thirds of the votes cast or a majority of the voting power, whichever is
5 less; and

6 (3) in writing by a person or persons whose approval is required by a
7 provision of the articles authorized by section 1030.

8 (b) The members may condition the amendment's adoption on receipt of a
9 higher percentage of affirmative votes or on any other basis.

10 (c) If the board initiates an amendment to the articles or board
11 approval is required by subsection (a) to adopt an amendment to the articles,
12 the board may condition the amendment's adoption on receipt of a higher
13 percentage of affirmative votes or any other basis.

14 (d) If the board or the members seek to have the amendment approved by
15 the members at a membership meeting, the corporation shall give notice to its
16 members of the proposed membership meeting in writing in accordance with
17 section 705. The notice must state that the purpose, or one of the purposes,
18 of the meeting is to consider the proposed amendment and contain or be
19 accompanied by a copy or summary of the amendment.

20 (e) If the board or the members seek to have the amendment approved by
21 the members by written consent or written ballot, the material soliciting the
22 approval shall contain or be accompanied by a copy or summary of the
23 amendment.

24

25 SECTION 1004. Class Voting by Members on Amendments.

26 (a) The members of a class in a public benefit corporation are
27 entitled to vote as a class on a proposed amendment to the articles if the
28 amendment would change the rights of that class as to voting in a manner
29 different than such amendment affects another class or members of another
30 class.

31 (b) The members of a class in a mutual benefit corporation are
32 entitled to vote as a class on a proposed amendment to the articles if the
33 amendment would:

34 (1) affect the rights, privileges, preferences, restrictions or
35 conditions of that class as to voting, dissolution, redemption or

1 transfer of memberships in a manner different than such amendment would
2 affect another class;

3 (2) change the rights, privileges, preferences, restrictions or
4 conditions of that class as to voting, dissolution, redemption or
5 transfer by changing the rights, privileges, preferences, restrictions
6 or conditions of another class.

7 (3) increase or decrease the number of memberships authorized for that
8 class;

9 (4) increase the number of memberships authorized for another class;

10 (5) effect an exchange, reclassification or termination of the
11 memberships of that class; or

12 (6) authorize a new class of memberships.

13 (c) The members of a class of a religious corporation are entitled to
14 vote as a class on a proposed amendment to the articles only if a class vote
15 is provided for in the articles or bylaws.

16 (d) If a class is to be divided into two or more classes as a result
17 of an amendment to the articles of a public benefit or mutual benefit
18 corporation, the amendment must be approved by the members of each class that
19 would be created by the amendment.

20 (e) Except as provided in the articles or bylaws of a religious
21 corporation, if a class vote is required to approve an amendment to the
22 articles of a corporation, the amendment must be approved by the members of
23 the class by two-thirds of the votes cast by the class or a majority of the
24 voting power of the class, whichever is less.

25 (f) A class of members of a public benefit or mutual benefit
26 corporation is entitled to the voting rights granted by this section although
27 the articles and bylaws provide that the class may not vote on the proposed
28 amendment.

29

30 SECTION 1005. Articles of Amendment.

31 A corporation amending its articles shall deliver to the Secretary of
32 State articles of amendment setting forth:

33 (1) the name of the corporation;

34 (2) the text of each amendment adopted;

35 (3) the date of each amendment's adoption;

1 (4) if approval of members was not required, a statement to that
2 effect and a statement that the amendment was approved by a sufficient
3 vote of the board of directors or incorporators;

4 (5) if approval by members was required:

5 (i) the designation, number of memberships outstanding, number of
6 votes entitled to be cast by each class entitled to vote
7 separately on the amendment, and number of votes of each class
8 indisputably voting on the amendment; and

9 (ii) either the total number of votes cast for and against the
10 amendment by each class entitled to vote separately on the
11 amendment or the total number of undisputed votes cast for the
12 amendment by each class and a statement that the number cast for
13 the amendment by each class was sufficient for approval by that
14 class.

15 (6) if approval of the amendment by some person or persons other than
16 the members, the board or the incorporators is required pursuant to
17 section 1030, a statement that the approval was obtained.

18
19 SECTION 1006. Restated Articles of Incorporation.

20 (a) A corporation's board of directors may restate its articles of
21 incorporation at any time with or without approval by members or any other
22 person.

23 (b) The restatement may include one or more amendments to the
24 articles. If the restatement includes an amendment requiring approval by the
25 members or any other person, it must be adopted as provided in section 1003.

26 (c) If the restatement includes an amendment requiring approval by
27 members, the board must submit the restatement to the members for their
28 approval.

29 (d) If the board seeks to have the restatement approved by the members
30 at a membership meeting, the corporation shall notify each of its members of
31 the proposed membership meeting in writing in accordance with section 705.
32 The notice must also state that the purpose, or one of the purposes, of the
33 meeting is to consider the proposed restatement and contain or be accompanied
34 by a copy or summary of the restatement that identifies any amendments or
35 other change it would make in the articles.

1 (e) If the board seeks to have the restatement approved by the members
2 by written ballot or written consent, the material soliciting the approval
3 shall contain or be accompanied by a copy or summary of the restatement that
4 identifies any amendments or other change it would make in the articles.

5 (f) A restatement requiring approval by the members must be approved
6 by the same vote as an amendment to articles under section 1003.

7 (g) If the restatement includes an amendment requiring approval
8 pursuant to section 1030, the board must submit the restatement for such
9 approval.

10 (h) A corporation restating its articles shall deliver to the
11 Secretary of State articles of restatement setting forth the name of the
12 corporation and the text of the restated articles of incorporation together
13 with a certificate setting forth:

14 (1) whether the restatement contains an amendment to the articles
15 requiring approval by the members or any other person other than the
16 board of directors and, if it does not, that the board of directors
17 adopted the restatement; or

18 (2) if the restatement contains an amendment to the articles requiring
19 approval by the members, the information required in section 1005; and

20 (3) if the restatement contains an amendment to the articles requiring
21 approval by a person whose approval is required pursuant to section
22 1030, a statement that such approval was obtained.

23 (i) Duly adopted restated articles of incorporation supersede the
24 original articles of incorporation and all amendments to them.

25 (j) The Secretary of State may certify restated articles of
26 incorporation, as the articles of incorporation currently in effect, without
27 including the certificate information required by subsection (h).

28

29 SECTION 1007. Amendment Pursuant to Judicial Reorganization.

30 (a) A corporation's articles may be amended without board approval or
31 approval by the members or approval required pursuant to section 1030 to carry
32 out a plan of reorganization ordered or decreed by a court of competent
33 jurisdiction under federal statute if the articles after amendment contain
34 only provisions required or permitted by section 202.

35 (b) The individual or individuals designated by the court shall

1 deliver to the Secretary of State articles of amendment setting forth:

2 (1) the name of the corporation;

3 (2) the text of each amendment approved by the court;

4 (3) the date of the court's order or decree approving the articles of
5 amendment;

6 (4) the title of the reorganization proceeding in which the order or
7 decree was entered; and

8 (5) a statement that the court had jurisdiction of the proceeding
9 under federal statute.

10 (c) This section does not apply after entry of a final decree in the
11 reorganization proceeding even though the court retains jurisdiction of the
12 proceeding for limited purposes unrelated to consummation of the
13 reorganization plan.

14

15 SECTION 1008. Effect of Amendment and Restatement.

16 An amendment to articles of incorporation does not affect a cause of
17 action existing against or in favor of the corporation, a proceeding to which
18 the corporation is a party, any requirement or limitation imposed upon the
19 corporation or any property held by it by virtue of any trust upon which such
20 property is held by the corporation or the existing rights of persons other
21 than members of the corporation. An amendment changing a corporation's name
22 does not abate a proceeding brought by or against the corporation in its
23 former name.

24

25 SECTION 1020. Amendment by Directors.

26 If a corporation has no members, its incorporators, until directors have
27 been chosen, and thereafter its board of directors, may adopt one or more
28 amendments to the corporation's bylaws subject to any approval required
29 pursuant to section 1030. The corporation shall provide notice of any meeting
30 of directors at which an amendment is to be approved. The notice shall be in
31 accordance with section 822(c). The notice must also state that the purpose,
32 or one of the purposes, of the meeting is to consider a proposed amendment of
33 the bylaws and contain or be accompanied by a copy or summary of the amendment
34 or state the general nature of the amendment. The amendment must be approved
35 by a majority of the directors in office at the time the amendment is adopted.

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SECTION 1021. Amendment by Directors and Members.

(a) Unless this Act, the articles, bylaws, the members (acting pursuant to subsection (b)), or the board of directors (acting pursuant to subsection (c)) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted must be approved:

(1) by the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(2) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by section 1030.

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required by subsection (a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

SECTION 1022. Class Voting By Members On Amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the

1 amendment would change the rights of that class as to voting in a manner
2 different than such amendment affects another class or members of another
3 class.

4 (b) The members of a class in a mutual benefit corporation are
5 entitled to vote as a class on a proposed amendment to the bylaws if the
6 amendment would:

7 (1) affect the rights, privileges, preferences, restrictions or
8 conditions of that class as to voting, dissolution, redemption or
9 transfer of memberships in a manner different than such amendment would
10 affect another class;

11 (2) change the rights, privileges, preferences, restrictions or
12 conditions of that class as to voting, dissolution, redemption or
13 transfer by changing the rights, privileges, preferences, restrictions
14 or conditions of another class;

15 (3) increase or decrease the number of memberships authorized for that
16 class;

17 (4) increase the number of memberships authorized for another class;

18 (5) effect an exchange, reclassification or termination of all or part
19 of the memberships of that class; or

20 (6) authorize a new class of memberships.

21 (c) The members of a class of a religious corporation are entitled to
22 vote as a class on a proposed amendment to the bylaws only if a class vote is
23 provided for in the articles or bylaws.

24 (d) If a class is to be divided into two or more classes as a result
25 of an amendment to the bylaws, the amendment must be approved by the members
26 of each class that would be created by the amendment; and

27 (e) If a class vote is required to approve an amendment to the bylaws,
28 the amendment must be approved by the members of the class by two-thirds of
29 the votes cast by the class or a majority of the voting power of the class,
30 whichever is less.

31 (f) A class of members is entitled to the voting rights granted by
32 this section although the articles and bylaws provide that the class may not
33 vote on the proposed amendment.

34

35 SECTION 1030. Approval by Third Parties.

1 The articles may require an amendment to the articles or bylaws to be
2 approved in writing by a specified person or persons other than the board.
3 Such an article provision may only be amended with the approval in writing of
4 such person or persons.

5

6 SECTION 1031. Amendment Terminating Members or Redeeming or Canceling
7 Memberships.

8 (a) Any amendment to the articles or bylaws of a public benefit or
9 mutual benefit corporation that would terminate all members or any class of
10 members or redeem or cancel all memberships or any class of memberships must
11 meet the requirements of the Act and this section, unless otherwise provided
12 in the articles or bylaws.

13 (b) Before adopting a resolution proposing such an amendment, the
14 board of a mutual benefit corporation shall give notice of the general nature
15 of the amendment to the members.

16 (c) After adopting a resolution proposing such an amendment, the
17 notice to members proposing such amendment shall include one statement of up
18 to 500 words opposing the proposed amendment if such statement is submitted by
19 any five members or members having three percent or more of the voting power,
20 whichever is less, not later than twenty days after the board has voted to
21 submit such amendment to the members for their approval. In public benefit
22 corporations the production and mailing costs shall be paid by the requesting
23 members. In mutual benefit corporations the production and mailing costs
24 shall be paid by the corporation.

25 (d) Any such amendment shall be approved by the members by two-thirds
26 of the votes cast by each class.

27 (e) The provisions of section 621 shall not apply to any amendment
28 meeting the requirements of the Act and this section.

29

30 SECTION 1101. Approval Of Plan Of Merger

31 (a) Subject to the limitations set forth in section 1102, two or more
32 nonprofit corporations may merge, if the plan of merger is approved or
33 provided in section 1103.

34 (b) The plan of merger must set forth:

35 (1) the name of each corporation planning to merge and the name of the

- 1 surviving corporation into which each plans to merge;
- 2 (2) the terms and conditions of the planned merger;
- 3 (3) the manner and basis, if any, of converting the memberships of
- 4 each public benefit or religious corporation into memberships of the
- 5 surviving corporation; and
- 6 (4) if the merger involves a mutual benefit corporation, the manner
- 7 and basis, if any, of converting memberships of each merging corporation
- 8 into memberships, obligations or securities of the surviving or any
- 9 other corporation or into cash or other property in whole or in part.
- 10 (c) The plan of merger may set forth:
- 11 (1) any amendments to the articles of incorporation or bylaws of the
- 12 surviving corporation to be effected by the planned merger; and
- 13 (2) other provisions relating to the planned merger.
- 14

15 SECTION 1102. Limitations On Mergers By Public Benefit Or Religious

16 Corporations

- 17 (a) Without the prior approval of the Chancery Court of the county in
- 18 which the corporation's principal office (or, if none in this state, its
- 19 registered office) is located, a public benefit or religious corporation may
- 20 merge only with:
- 21 (1) a public benefit or religious corporation;
- 22 (2) a foreign corporation that would qualify under this Act as a
- 23 public benefit or religious corporation; or
- 24 (3) a mutual benefit corporation, provided the public benefit or
- 25 religious corporation is the surviving corporation and continues to be a
- 26 public benefit corporation or religious corporation after the merger.
- 27 (b) Without an order of the Chancery Court of the county in which the
- 28 corporation's principal office (or, if none in this state, its registered
- 29 office) is located, no member of a public benefit or religious corporation may
- 30 receive or keep anything as a result of a merger other than a membership or
- 31 membership in the surviving public benefit or religious corporation. The
- 32 court shall approve the transaction if it is in the public interest.
- 33

34 SECTION 1103. Action On Plan By Board, Members And Third Persons

- 35 (a) Unless this Act, the articles, bylaws or the board of directors or

1 members (acting pursuant to subsection (c)) require a greater vote or voting
2 by class, a plan of merger to be adopted must be approved:

3 (1) by the board;

4 (2) by the members, if any, by two-thirds of the votes cast or a
5 majority of the voting power, whichever is less; and

6 (3) in writing by any person or persons whose approval is required by
7 a provision of the articles authorized by section 1030 for an amendment
8 to the articles or bylaws.

9 (b) If the corporation does not have members, the merger must be
10 approved by a majority of the directors in office at the time the merger is
11 approved. In addition the corporation shall provide notice of any directors'
12 meeting at which such approval is to be obtained in accordance with section
13 822(c). The notice must also state that the purpose, or one of the purposes,
14 of the meeting is to consider the proposed merger.

15 (c) The board may condition its submission of the proposed merger, and
16 the members may condition their approval of the merger, on receipt of a higher
17 percentage of affirmative votes or on any other basis.

18 (d) If the board seeks to have the plan approved by the members at a
19 membership meeting, the corporation shall give notice to its members of the
20 proposed membership meeting in accordance with section 705. The notice must
21 also state that the purpose, or one of the purposes, of the meeting is to
22 consider the plan of merger and contain or be accompanied by a copy or summary
23 of the plan. The copy or summary of the plan for members of the surviving
24 corporation shall include any provision that, if contained in a proposed
25 amendment of the articles of incorporation or bylaws, would entitle members to
26 vote on the provision. The copy or summary of the plan for members of the
27 disappearing corporation shall include a copy or summary of the articles and
28 bylaws that will be in effect immediately after the merger takes effect.

29 (e) If the board seeks to have the plan approved by the members by
30 written consent or written ballot, the material soliciting the approval shall
31 contain or be accompanied by a copy or summary of the plan. The copy or
32 summary of the plan for members of the surviving corporation shall include any
33 provision that, if contained in a proposed amendment to the articles of
34 incorporation or bylaws, would entitle members to vote on the provision. The
35 copy or summary of the plan for members of the disappearing corporation shall

1 include a copy or summary of the articles and bylaws that will be in effect
2 immediately after the merger takes effect.

3 (f) Voting by a class of members is required on a plan of merger if
4 the plan contains a provision that, if contained in a proposed amendment to
5 articles of incorporation or bylaws, would entitle the class of members to
6 vote as a class on the proposed amendment under section 1004 or 1022. The
7 plan is approved by a class of members by two-thirds of the votes cast by the
8 class or a majority of the voting power of the class, whichever is less.

9 (g) After a merger is adopted, and at any time before articles of
10 merger are filed, the planned merger may be abandoned (subject to any
11 contractual rights) without further action by members or other persons who
12 approved the plan in accordance with the procedure set forth in the plan of
13 merger or, if none is set forth, in the manner determined by the board of
14 directors.

15

16 SECTION 1104. Articles Of Merger

17 After a plan of merger is approved by the board of directors, and if
18 required by section 1103, by the members and any other persons, the surviving
19 or acquiring corporation shall deliver to the Secretary of State articles of
20 merger setting forth:

21 (1) the plan of merger;

22 (2) if approval of members was not required, a statement to that
23 effect and a statement that the plan was approved by a sufficient vote
24 of the board of directors;

25 (3) if approval by members was required:

26 (i) the designation, number of memberships outstanding, number of
27 votes entitled to be cast by each class entitled to vote
28 separately on the plan, and number of votes of each class
29 indisputably voting on the plan; and

30 (ii) either the total number of votes cast for and against the plan by
31 each class entitled to vote separately on the plan or the total
32 number of undisputed votes cast for the plan by each class and a
33 statement that the number cast for the plan by each class was
34 sufficient for approval by that class;

35 (4) if approval of the plan by some person or persons other than

1 the members or the board is required pursuant to section 1103(a)(3), a
2 statement that the approval was obtained.

3

4 SECTION 1105. Effect Of Merger

5 When a merger takes effect:

6 (1) every other corporation party to the merger merges into the
7 surviving corporation and the separate existence of every corporation
8 except the surviving corporation ceases;

9 (2) the title to all real estate and other property owned by each
10 corporation party to the merger is vested in the surviving corporation
11 without reversion or impairment subject to any and all conditions to
12 which the property was subject prior to the merger;

13 (3) the surviving corporation has all liabilities and obligations of
14 each corporation party to the merger;

15 (4) a proceeding pending against any corporation party to the merger
16 may be continued as if the merger did not occur or the surviving
17 corporation may be substituted in the proceeding for the corporation
18 whose existence ceased; and

19 (5) the articles of incorporation and bylaws of the surviving
20 corporation are amended to the extent provided in the plan of merger.

21

22 SECTION 1106. Merger With Foreign Corporation

23 (a) Except as provided in section 1102, one or more foreign nonprofit
24 corporations may merge with one or more domestic nonprofit corporations if:

25 (1) the merger is permitted by the law of the state or country under
26 whose law each foreign corporation is incorporated and each foreign
27 corporation complies with that law in effecting the merger;

28 (2) the foreign corporation complies with section 1104 if it is the
29 surviving corporation of the merger; and

30 (3) each domestic nonprofit corporation complies with the applicable
31 provisions of sections 1101 through 1103 and, if it is the surviving
32 corporation of the merger, with section 1104.

33 (b) Upon the merger taking effect, the surviving foreign business or
34 nonprofit corporation is deemed to have irrevocably appointed the Secretary of
35 State as its agent for service of process in any proceeding brought against

1 it.

2

3 SECTION 1107. Bequests, Devises And Gifts

4 Any bequest, devise, gift, grant, or promise contained in a will or
5 other instrument of donation, subscription, or conveyance, that is made to a
6 constituent corporation and that takes effect or remains payable after the
7 merger, inures to the surviving corporation unless the will or other
8 instrument otherwise specifically provides.

9

10 SECTION 1108 Continuation Of Prior Corporate Existence For Limited
11 Purpose.

12 (a) The corporate existence of each constituent corporation which has
13 been dissolved through merger or consolidation shall be continued indefinitely
14 for the limited purpose of enabling the constituent corporation to execute
15 through its own officers formal deeds, conveyances, assignments, and other
16 instruments evidencing the transfer from the constituent to the surviving
17 corporation, or new corporation created by consolidation, of any or all real
18 and personal properties which have passed from the constituent to the
19 surviving or consolidated corporation by operation of law.

20 (b) The execution of the instruments shall not be essential to effect
21 the transfer of title from the constituent to the surviving or consolidated
22 corporation, inasmuch as the transfer will take effect through operation of
23 law; but the power to execute such instruments is given to the end that it may
24 be exercised:

25 (1) In respect to properties located in foreign jurisdictions which
26 may not recognize a transmittal of title by operation of law under the
27 merger and consolidation statutes of this state; and

28 (2) In any other situation where the directors of the surviving or
29 consolidated corporation consider the execution of the instruments
30 desirable.

31

32 SECTION 1201. Sale Of Assets In Regular Course Of Activities And
33 Mortgage Of Assets

34 (a) A corporation may on the terms and conditions and for the
35 consideration determined by the board of directors:

1 (1) sell, lease, exchange, or otherwise dispose of all, or
2 substantially all, of its property in the usual and regular course of
3 its activities; or

4 (2) mortgage, pledge, dedicate to the repayment of indebtedness
5 (whether with or without recourse), or otherwise encumber any or all of
6 its property whether or not in the usual and regular course of its
7 activities.

8 (b) Unless the articles require it, approval of the members or any
9 other person of a transaction described in subsection (a) is not required.

10

11 SECTION 1202. Sale Of Assets Other Than In Regular Course Of Activities

12 (a) A corporation may sell, lease, exchange, or otherwise dispose of
13 all, or substantially all, of its property (with or without the goodwill)
14 other than in the usual and regular course of its activities on the terms and
15 conditions and for the consideration determined by the corporation's board if
16 the proposed transaction is authorized by subsection (b).

17 (b) Unless this Act, the articles, bylaws, or the board of directors
18 or members (acting pursuant to subsection (d)) require a greater vote or
19 voting by class, the proposed transaction to be authorized must be approved:

20 (1) by the board;

21 (2) by the members by two-thirds of the votes cast or a majority of
22 the voting power, whichever is less; and

23 (3) in writing by any person or persons whose approval is required by
24 a provision of the articles authorized by section 1030 for an amendment
25 to the articles or bylaws.

26 (c) If the corporation does not have members the transaction must be
27 approved by a vote of a majority of the directors in office at the time the
28 transaction is approved. In addition the corporation shall provide notice of
29 any directors' meeting at which such approval is to be obtained in accordance
30 with section 822(c). The notice must also state that the purpose, or one of
31 the purposes, of the meeting is to consider the sale, lease, exchange, or
32 other disposition of all, or substantially all, of the property or assets of
33 the corporation and contain or be accompanied by a copy or summary of a
34 description of the transaction.

35 (d) The board may condition its submission of the proposed

1 transaction, and the members may condition their approval of the transaction,
2 on receipt of a higher percentage of affirmative votes or on any other basis.

3 (e) If the corporation seeks to have the transaction approved by the
4 members at a membership meeting, the corporation shall give notice to its
5 members of the proposed membership meeting in accordance with section 705.
6 The notice must also state that the purpose, or one of the purposes, of the
7 meeting is to consider the sale, lease, exchange, or other disposition of all,
8 or substantially all, of the property or assets of the corporation and contain
9 or be accompanied by a copy or summary of a description of the transaction.

10 (f) If the board needs to have the transaction approved by the members
11 by written consent or written ballot, the material soliciting the approval
12 shall contain or be accompanied by a copy or summary of a description of the
13 transaction.

14 (g) After a sale, lease, exchange, or other disposition of property is
15 authorized, the transaction may be abandoned (subject to any contractual
16 rights), without further action by the members or any other person who
17 approved the transaction in accordance with the procedure set forth in the
18 resolution proposing the transaction or, if none is set forth, in the manner
19 determined by the board of directors.

20

21 SECTION 1301. Prohibited Distributions

22 Except as authorized by section 1302, a corporation shall not make any
23 distributions.

24

25 SECTION 1302. Authorized Distributions

26 (a) A mutual benefit corporation may purchase its memberships if after
27 the purchase is completed:

28 (1) the corporation would be able to pay its debts as they become due
29 in the usual course of its activities; and

30 (2) the corporation's total assets would at least equal the sum of its
31 total liabilities.

32 (b) Corporations may make distributions upon dissolution in conformity
33 with subchapter 14 of this Act.

34

35 SECTION 1401. Dissolution by Incorporators Or Directors And Third

1 Persons

2 (a) A majority of the incorporators or directors of a corporation that
3 has no members may, subject to any approval required by the articles or
4 bylaws, dissolve the corporation by delivering to the Secretary of State
5 articles of dissolution.

6 (b) The corporation shall give notice of any meeting at which
7 dissolution will be approved. The notice shall be in accordance with section
8 822(c). The notice must also state that the purpose, or one of the purposes,
9 of the meeting is to consider dissolution of the corporation.

10 (c) The incorporators or directors in approving dissolution shall
11 adopt a plan of dissolution indicating to whom the assets owned or held by the
12 corporation will be distributed after all creditors have been paid.

13

14 SECTION 1402. Dissolution By Directors, Members And Third Persons

15 (a) Unless this Act, the articles, bylaws or the board of directors or
16 members (acting pursuant to subsection (c)) require a greater vote or voting
17 by class, dissolution is authorized if it is approved:

18 (1) by the board;

19 (2) by the members, if any, by two-thirds of the votes cast or a
20 majority of the voting power, whichever is less; and

21 (3) in writing by any person or persons whose approval is required by
22 a provision of the articles authorized by section 1030 for an amendment
23 to the articles or bylaws.

24 (b) If the corporation does not have members, dissolution must be
25 approved by a vote of a majority of the directors in office at the time the
26 transaction is approved. In addition, the corporation shall provide notice of
27 any directors' meeting at which such approval is to be obtained in accordance
28 with section 822(c). The notice must also state that the purpose, or one of
29 the purposes, of the meeting is to consider dissolution of the corporation and
30 contain or be accompanied by a copy or summary of the plan of dissolution.

31 (c) The board may condition its submission of the proposed
32 dissolution, and the members may condition their approval of the dissolution
33 on receipt of a higher percentage of affirmative votes or on any other basis.

34 (d) If the board seeks to have dissolution approved by the members at
35 a membership meeting, the corporation shall give notice to its members of the

1 proposed membership meeting in accordance with section 705. The notice must
2 also state that the purpose, or one of the purposes, of the meeting is to
3 consider dissolving the corporation and contain or be accompanied by a copy or
4 summary of the plan of dissolution.

5 (e) If the board seeks to have dissolution approved by the members by
6 written consent or written ballot, the material soliciting the approval shall
7 contain or be accompanied by a copy or summary of the plan of dissolution.

8 (f) The plan of dissolution shall indicate to whom the assets owned or
9 held by the corporation will be distributed after all creditors have been
10 paid.

11

12 SECTION 1403. Articles Of Dissolution

13 (a) At any time after dissolution is authorized, the corporation may
14 dissolve by delivering to the Secretary of State articles of dissolution
15 setting forth:

16 (1) the name of the corporation;

17 (2) the date dissolution was authorized;

18 (3) a statement that dissolution was approved by a sufficient vote of
19 the board;

20 (4) if approval of members was not required, a statement to that
21 effect and a statement that dissolution was approved by a sufficient
22 vote of the board of directors or incorporators;

23 (5) if approval by members was required:

24 (i) the designation, number of memberships outstanding, number of
25 votes entitled to be cast by each class entitled to vote
26 separately on dissolution, and number of votes of each class
27 indisputably voting on dissolution; and

28 (ii) either the total number of votes cast for and against dissolution
29 by each class entitled to vote separately on dissolution or the
30 total number of undisputed votes cast for dissolution by each
31 class and a statement that the number cast for dissolution by each
32 class was sufficient for approval by that class.

33 (6) if approval of dissolution by some person or persons other than
34 the members, the board or the incorporators is required pursuant to
35 section 1402(a)(3), a statement that the approval was obtained.

1 (b) A corporation is dissolved upon the effective date of its articles
2 of dissolution.

3

4 SECTION 1404. Effect Of Dissolution

5 (a) A dissolved corporation continues its corporate existence but may
6 not carry on any activities except those appropriate to wind up and liquidate
7 its affairs, including:

8 (1) preserving and protecting its assets and minimizing its
9 liabilities;

10 (2) discharging or making provision for discharging its liabilities
11 and obligations;

12 (3) disposing of its properties that will not be distributed in kind;

13 (4) returning, transferring or conveying assets held by the
14 corporation upon a condition requiring return, transfer or conveyance,
15 which condition occurs by reason of the dissolution, in accordance with
16 such condition;

17 (5) transferring, subject to any contractual or legal requirements,
18 its assets as provided in or authorized by its articles of incorporation
19 or bylaws;

20 (6) if the corporation is a public benefit or religious corporation,
21 and no provision has been made in its articles or bylaws for
22 distribution of assets on dissolution, transferring, subject to any
23 contractual or legal requirement, its assets: (i) to one or more
24 persons described in section 501(c)(3) of the Internal Revenue Code, or
25 (ii) if the dissolved corporation is not described in section 501(c)(3)
26 of the Internal Revenue Code, to one or more public benefit or religious
27 corporations;

28 (7) if the corporation is a mutual benefit corporation and no
29 provision has been made in its articles or bylaws for distribution of
30 assets on dissolution, transferring its assets to its members or, if it
31 has no members, to those persons whom the corporation holds itself out
32 as benefitting or serving; and

33 (8) doing every other act necessary to wind up and liquidate its
34 assets and affairs.

35 (b) Dissolution of a corporation does not:

- 1 (1) transfer title to the corporation's property;
- 2 (2) subject its directors or officers to standards of conduct
- 3 different from those prescribed in chapter 8;
- 4 (3) change quorum or voting requirements for its board or members;
- 5 change provision for selection, resignation, or removal of its directors
- 6 or officers or both; or change provisions for amending its bylaws;
- 7 (4) prevent commencement of a proceeding by or against the corporation
- 8 in its corporate name;
- 9 (5) abate or suspend a proceeding pending by or against the
- 10 corporation on the effective date of dissolution; or
- 11 (6) terminate the authority of the registered agent.

12

13 SECTION 1405. Known Claims Against Dissolved Corporation

14 (a) A dissolved corporation may dispose of the known claims against it

15 by following the procedure described in this section.

16 (b) The dissolved corporation shall notify its known claimants in

17 writing of the dissolution at any time after its effective date. The written

18 notice must:

- 19 (1) describe information that must be included in a claim;
- 20 (2) provide a mailing address where a claim may be sent;
- 21 (3) state the deadline, which may not be fewer than 120 days from the
- 22 effective date of the written notice, by which the dissolved corporation
- 23 must receive the claim; and
- 24 (4) state that the claim will be barred if not received by the
- 25 deadline.

26 (c) A claim against the dissolved corporation is barred:

- 27 (1) if a claimant who was given written notice under subsection (b)
- 28 does not deliver the claim to the dissolved corporation by the deadline;
- 29 (2) if a claimant whose claim was rejected by the dissolved
- 30 corporation does not commence a proceeding to enforce the claim within
- 31 90 days from the effective date of the rejection notice.

32 (d) For purposes of this section "claim" does not include a contingent

33 liability or a claim based on an event occurring after the effective date of

34 dissolution.

35

1 SECTION 1406. Unknown Claims Against Dissolved Corporation

2 (a) At any time after dissolution is authorized, a corporation may
3 also publish notice of its dissolution and request that persons with claims
4 against the corporation present them in accordance with the notice.

5 (b) The notice must:

6 (1) be published one time in a newspaper of general circulation in the
7 county where the corporation's principal office (or, if none in this
8 state, its registered office) is or was last located;

9 (2) describe the information that must be included in a claim and
10 provide a mailing address where the claim may be sent; and

11 (3) state that a claim against the corporation will be barred unless a
12 proceeding to enforce the claim is commenced within one year after
13 publication of the notice.

14 (c) If the corporation publishes a newspaper notice in accordance with
15 subsection (b), the claim of each of the following claimants is barred unless
16 the claimant commences a proceeding to enforce the claim against the
17 corporation within one year after the publication date of the newspaper
18 notice:

19 (1) a claimant who did not receive written notice under section 1407;

20 (2) a claimant whose claim was timely sent to the corporation but not
21 acted on; and

22 (3) a claimant whose claim is contingent or based on an event
23 occurring after the effective date of dissolution.

24 (d) A claim may be enforced under this section:

25 (1) against the corporation, to the extent of its undistributed
26 assets; or

27 (2) if the assets have been distributed in liquidation, against any
28 person, other than a creditor of the corporation, to whom the
29 corporation distributed its property to the extent of the distributee's
30 pro rata share of the claim or the corporate assets distributed to such
31 person in liquidation, whichever is less, but the distributee's total
32 liability for all claims under this section may not exceed the total
33 amount of assets distributed to the distributee.

34

35 SECTION 1420. Grounds For Administrative Dissolution

1 The Secretary of State may commence a proceeding under section 1421 to
2 administratively dissolve a corporation if:

3 (1) the corporation does not pay within 60 days after they are due any
4 taxes or penalties imposed by this Act;

5 (2) the corporation is without a registered agent or registered office
6 in this state for 120 days or more;

7 (3) the corporation does not notify the secretary of state within 120
8 days that its registered agent or registered office has been changed,
9 that its registered agent has resigned, or that its registered office
10 has been discontinued; or

11 (4) the corporation's period of duration, if any, stated in its
12 articles of incorporation expires.

13

14 SECTION 1421. Procedure For And Effect Of Administrative Dissolution

15 (a) Upon determining that one or more grounds exist under section 1420
16 for dissolving a corporation, the Secretary of State shall serve the
17 corporation with written notice of that determination under section 504.

18 (b) If the corporation does not correct each ground for dissolution or
19 demonstrate to the reasonable satisfaction of the Secretary of State that each
20 ground determined by the Secretary of State does not exist within at least 60
21 days after service of the notice is perfected under section 504, the Secretary
22 of State may administratively dissolve the corporation by signing a
23 certificate of dissolution that recites the ground or grounds for dissolution
24 and its effective date. The Secretary of State shall file the original of the
25 certificate and serve a copy on the corporation under section 504.

26 (c) A corporation administratively dissolved continues its corporate
27 existence but may not carry on any activities except those necessary to wind
28 up and liquidate its affairs under section 1404 and notify its claimants under
29 sections 1405 and 1406.

30 (d) The administrative dissolution of a corporation does not terminate
31 the authority of its registered agent.

32

33 SECTION 1422. Reinstatement Following Administrative Dissolution

34 (a) A corporation administratively dissolved under section 1421 may
35 apply to the Secretary of State for reinstatement within two years after the

1 effective date of dissolution. The application must:

2 (1) recite the name of the corporation and the effective date of its
3 administrative dissolution;

4 (2) state that the ground or grounds for dissolution either did not
5 exist or have been eliminated;

6 (3) state that the corporation's name satisfies the requirements of
7 section 401; and

8 (4) contain an affidavit or a certificate from the Department of
9 Finance and Administration reciting that all state taxes owed by the
10 corporation have been paid.

11 (b) If the Secretary of State determines that the application contains
12 the information required by subsection (a) and that the information is
13 correct, the secretary of state shall cancel the certificate of dissolution
14 and prepare a certificate of reinstatement reciting that determination and the
15 effective date of reinstatement, file the original of the certificate, and
16 serve a copy on the corporation under section 504.

17 (c) When reinstatement is effective, it relates back to and takes
18 effect as of the effective date of the administrative dissolution and the
19 corporation shall resume carrying on its activities as if the administrative
20 dissolution had never occurred.

21

22 SECTION 1423. Appeal From Denial Of Reinstatement

23 (a) The Secretary of State, upon denying a corporation's application
24 for reinstatement following administrative dissolution, shall serve the
25 corporation under section 504 with a written notice that explains the reasons
26 for denial.

27 (b) The corporation may appeal the denial of reinstatement to the
28 Chancery Court of Pulaski County within 90 days after service of the notice of
29 denial is perfected. The corporation appeals by petitioning the court to set
30 aside the dissolution and attaching to the petition copies of the Secretary of
31 State's certificate of dissolution, the corporation's application for
32 reinstatement, and the Secretary of State's notice of denial.

33 (c) The court may summarily order the Secretary of State to reinstate
34 the dissolved corporation or may take other action the court considers
35 appropriate.

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

3

4 SECTION 1430. Grounds For Judicial Dissolution

5 (a) The Chancery Court may dissolve a corporation:

6 (1) in a proceeding by the attorney general if it is established that:

7 (i) the corporation obtained its articles of incorporation through
8 fraud;

9 (ii) the corporation has continued to exceed or abuse the authority
10 conferred upon it by law; or

11 (iii) the corporation is a public benefit corporation and the corporate
12 assets are being fraudulently misapplied or wasted.

13 (2) except as provided in the articles or bylaws of a religious
14 corporation, in a proceeding by 50 members or members holding 5% of the
15 voting power, whichever is less, or by a director or any person
16 specified in the articles, if it is established that:

17 (i) the directors are deadlocked in the management of the corporate
18 affairs, and the members, if any, are unable to breach the
19 deadlock;

20 (ii) the directors or those in control of the corporation have acted,
21 are acting or will act in a manner that is illegal or fraudulent;

22 (iii) the members are deadlocked in voting power and have failed, for a
23 period that includes at least two consecutive annual meeting
24 dates, to elect successors to directors whose terms have, or would
25 otherwise have, expired; or

26 (iv) the corporate assets are being fraudulently misapplied or wasted.

27 (3) in a proceeding by a creditor if it is established that:

28 (i) the creditor's claim has been reduced to judgment, the execution
29 on the judgment returned unsatisfied and the corporation is
30 insolvent; or

31 (ii) the corporation has admitted in writing that the creditor's claim
32 is due and owing and the corporation is insolvent.

33 (4) in a proceeding by the corporation to have its voluntary
34 dissolution continued under court supervision.

35 (b) Prior to dissolving a corporation, the court shall consider

1 whether:

2 (1) there are reasonable alternatives to dissolution;

3 (2) dissolution is in the public interest, if the corporation is a
4 public benefit corporation; and

5 (3) dissolution is the best way of protecting the interests of
6 members, if the corporation is a mutual benefit corporation.

7

8 SECTION 1431. Procedure For Judicial Dissolution

9 (a) Venue for a proceeding by the attorney general to dissolve a
10 corporation lies in the Chancery Court of Pulaski County. Venue for a
11 proceeding brought by any other party named in Section 1430 lies in the
12 Chancery Court of the county where a corporation's principal office (or, if
13 none in this state, its registered office) is or was last located.

14 (b) It is not necessary to make directors or members parties to a
15 proceeding to dissolve a corporation unless relief is sought against them
16 individually.

17 (c) A court in a proceeding brought to dissolve a corporation may
18 issue injunctions, appoint a receiver or custodian pendente lite with all
19 powers and duties the court directs, take other action required to preserve
20 the corporate assets wherever located, and carry on the activities of the
21 corporation until a full hearing can be held.

22

23 SECTION 1432. Receivership Or Custodianship

24 (a) A court in a judicial proceeding brought to dissolve a public
25 benefit or mutual benefit corporation may appoint one or more receivers to
26 wind up and liquidate, or one or more custodians to manage, the affairs of the
27 corporation. The court shall hold a hearing, after notifying all parties to
28 the proceeding and any interested persons designated by the court, before
29 appointing a receiver or custodian. The court appointing a receiver or
30 custodian has exclusive jurisdiction over the corporation and all of its
31 property wherever located.

32 (b) The court may appoint an individual, or a domestic or foreign
33 business or nonprofit corporation (authorized to transact business in this
34 state) as a receiver or custodian. The court may require the receiver or
35 custodian to post bond, with or without sureties, in an amount the court

1 directs.

2 (c) The court shall describe the powers and duties of the receiver or
3 custodian in its appointing order, which may be amended from time to time.

4 Among other powers:

5 (1) the receiver (i) may dispose of all or any part of the assets of
6 the corporation wherever located, at a public or private sale, if
7 authorized by the court; provided, however, that the receiver's power to
8 dispose of the assets of the corporation is subject to any trust and
9 other restrictions that would be applicable to the corporation; and (ii)
10 may sue and defend in the receiver's or custodian's name as receiver or
11 custodian of the corporation in all courts of this state;

12 (2) the custodian may exercise all of the powers of the corporation,
13 through or in place of its board of directors or officers, to the extent
14 necessary to manage the affairs of the corporation in the best interests
15 of its members and creditors.

16 (d) The court during a receivership may redesignate the receiver a
17 custodian, and during a custodianship may redesignate the custodian a
18 receiver, if doing so is in the best interests of the corporation, its members
19 and creditors.

20 (e) The court from time to time during the receivership or
21 custodianship may order compensation paid and expense disbursements or
22 reimbursements made to the receiver or custodian and the receiver or
23 custodian's counsel from the assets of the corporation or proceeds from the
24 sale of the assets.

25

26 SECTION 1433. Decree Of Dissolution

27 (a) If after a hearing the court determines that one or more grounds
28 for judicial dissolution described in section 1430 exist, it may enter a
29 decree dissolving the corporation and specifying the effective date of the
30 dissolution, and the clerk of the court shall deliver a certified copy of the
31 decree to the Secretary of State, who shall file it.

32 (b) After entering the decree of dissolution, the court shall direct
33 the winding up and liquidation of the corporation's affairs in accordance with
34 section 1406 and the notification of its claimants in accordance with section
35 1407 and 1408.

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SECTION 1440. Deposit With State Treasurer

Assets of a dissolved 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 subject to known trust restrictions and deposited with the state treasurer for safekeeping; provided, however, that in the state treasurer's discretion property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, member or other person or his or her representative that amount or property.

SECTION 1501. Authority To Transact Business Required

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

- (1) maintaining, defending, or settling any proceeding;
- (2) holding meetings of the board of directors or members 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 securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (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

1 like nature;

2 (11) transacting business in interstate commerce.

3 (c) The list of activities in subsection (b) is not exhaustive.

4

5 SECTION 1502. Consequences Of Transacting Business Without Authority

6 (a) A foreign corporation transacting business in this state without a
7 certificate of authority may not maintain a proceeding in any court in this
8 state until it obtains a certificate of authority.

9 (b) The successor to a foreign corporation that transacted business in
10 this state without a certificate of authority and the assignee of a cause of
11 action arising out of that business may not maintain a proceeding on that
12 cause of action in any court in this state until the foreign corporation or
13 its successor obtains a certificate of authority.

14 (c) A court may stay a proceeding commenced by a foreign corporation,
15 its successor, or assignee until it determines whether the foreign corporation
16 or its successor requires a certificate of authority. If it so determines,
17 the court may further stay the proceeding until the foreign corporation or its
18 successor obtains the certificate.

19 (d) A foreign corporation is liable for a civil penalty of not more
20 than \$5,000.00 and not less than \$100.00 if it transacts business in this
21 state without a certificate of authority. The Secretary of State shall
22 promulgate regulations for the calculation of the appropriate penalty, taking
23 into consideration the size and assets of the corporation, the number of days
24 the corporation has transacted business within the state and the amount of
25 business transacted. The Secretary of State may institute proceedings in the
26 Chancery Court of Pulaski County to collect all penalties due under this
27 subsection.

28 (e) Notwithstanding subsections (a) and (b), the failure of a foreign
29 corporation to obtain a certificate of authority does not impair the validity
30 of its corporate acts or prevent it from defending any proceeding in this
31 state.

32

33 SECTION 1503. Application For Certificate Of Authority

34 (a) A foreign corporation may apply for a certificate of authority to
35 transact business in this state by delivering an application to the Secretary

1 of State. The application must set forth:

2 (1) the name of the foreign corporation or, if its name is unavailable
3 for use in this state, a corporate name that satisfies the requirements
4 of section 1506;

5 (2) the name of the state or country under whose law it is
6 incorporated;

7 (3) the date of incorporation and period of duration;

8 (4) the street address of its principal office;

9 (5) the address of its registered office in this state and the name of
10 its registered agent at that office;

11 (6) the names and usual business or home addresses of its current
12 directors and officers;

13 (7) whether the foreign corporation has members; and

14 (8) whether the corporation, if it had been incorporated in this
15 state, would be a public benefit, mutual benefit or religious
16 corporation.

17 (b) The foreign corporation shall deliver with the completed
18 application a certificate of existence (or a document of similar import) duly
19 authenticated by the Secretary of State or other official having custody of
20 corporate records in the state or country under whose law it is incorporated.

21

22 SECTION 1504. Amended Certificate Of Authority

23 (a) A foreign corporation authorized to transact business in this
24 state must obtain an amended certificate of authority from the Secretary of
25 State if it changes:

26 (1) its corporate name;

27 (2) the period of its duration; or

28 (3) the state or country of its incorporation.

29 (b) The requirements of section 1503 for obtaining an original
30 certificate of authority apply to obtaining an amended certificate under this
31 section.

32

33 SECTION 1505. Effect Of Certificate Of Authority

34 (a) A certificate of authority authorizes the foreign corporation to
35 which it is issued to transact business in this state subject, however, to the

1 right of the state to revoke the certificate as provided in this Act.

2 (b) A foreign corporation with a valid certificate of authority has
3 the same rights and enjoys the same privileges as and, except as otherwise
4 provided by this Act, is subject to the same duties, restrictions, penalties,
5 and liabilities now or later imposed on, a domestic corporation of like
6 character.

7 (c) This Act does not authorize this state to regulate the
8 organization or internal affairs of a foreign corporation authorized to
9 transact business in this state.

10

11 SECTION 1506. Corporate Name Of Foreign Corporation

12 (a) If the corporate name of a foreign corporation does not satisfy
13 the requirements of section 401, the foreign corporation, to obtain or
14 maintain a certificate of authority to transact business in this state, may
15 use a fictitious name to transact business in this state if its real name is
16 unavailable and it delivers to the Secretary of State for filing a copy of the
17 resolution of its board of directors, certified by its secretary, adopting the
18 fictitious name.

19 (b) Except as authorized by subsections (c) and (d), the corporate
20 name (including a fictitious name) of a foreign corporation must be
21 distinguishable upon the records of the Secretary of State from:

22 (1) the corporate name of a nonprofit or business corporation
23 incorporated or authorized to transact business in this state;

24 (2) a corporate name reserved or registered under section 402 or 403
25 of this Act or section 4-27-402 or 4-27-403; and

26 (3) the fictitious name of another foreign business or nonprofit
27 corporation authorized to transact business in this state.

28 (c) A foreign corporation may apply to the Secretary of State for
29 authorization to use in this state the name of another corporation
30 (incorporated or authorized to transact business in this state) that is not
31 distinguishable upon the records of the Secretary of State from the name
32 applied for. The Secretary of State shall authorize use of the name applied
33 for if:

34 (1) the other corporation consents to the use in writing and submits
35 an undertaking in form satisfactory to the Secretary of State to change

1 its name to a name that is distinguishable upon the records of the
2 Secretary of State from the name of the applying corporation; or
3 (2) the applicant delivers to the Secretary of State a certified copy
4 of a final judgment of a court of competent jurisdiction establishing
5 the applicant's right to use the name applied for in this state.

6 (d) A foreign corporation may use in this state the name (including
7 the fictitious name) of another domestic or foreign business or nonprofit
8 corporation that is used in this state if the other corporation is
9 incorporated or authorized to transact business in this state and the foreign
10 corporation:

- 11 (1) has merged with the other corporation;
- 12 (2) has been formed by reorganization of the other corporation; or
- 13 (3) has acquired all or substantially all of the assets, including the
14 corporate name, of the other corporation.

15 (e) If a foreign corporation authorized to transact business in this
16 state changes its corporate name to one that does not satisfy the requirements
17 of section 401, it shall not transact business in this state under the changed
18 name until it adopts a name satisfying the requirements of section 401 and
19 obtains an amended certificate of authority under section 1504.

20

21 SECTION 1507. Registered Office And Registered Agent Of Foreign
22 Corporation

23 Each foreign corporation authorized to transact business in this state
24 must continuously maintain in this state:

- 25 (1) a registered office with the same address as that of its
26 registered agent; and
- 27 (2) a registered agent, who may be:
 - 28 (i) an individual who resides in this state and whose office is
29 identical with the registered office;
 - 30 (ii) a domestic business or nonprofit corporation whose office is
31 identical with the registered office; or
 - 32 (iii) a foreign business or nonprofit corporation authorized to transact
33 business in this state whose office is identical with the
34 registered office.

35

1 SECTION 1508. Change Of Registered Office Or Registered Agent Of
2 Foreign Corporation

3 (a) A foreign corporation authorized to transact business in this
4 state may change its registered office or registered agent by delivering to
5 the Secretary of State for filing a statement of change that sets forth:

6 (1) its name;

7 (2) the street address of its current registered office;

8 (3) if the current registered office is to be changed, the street
9 address of its new registered office;

10 (4) the name of its current registered agent;

11 (5) if the current registered agent is to be changed, the name of its
12 new registered agent and the new agent's written consent (either on the
13 statement or attached to it) to the appointment; and

14 (6) that after the change or changes are made, the street addresses of
15 its registered office and the office of its registered agent will be
16 identical.

17 (b) If a registered agent changes the street address of its business
18 office, the agent may change the address of the registered office of any
19 foreign corporation for which the agent is the registered agent by notifying
20 the corporation in writing of the change and signing (either manually or in
21 facsimile) and delivering to the Secretary of State for filing a statement of
22 change that complies with the requirements of subsection (a) and recites that
23 the corporation has been notified of the change.

24

25 SECTION 1509. Resignation Of Registered Agent Of Foreign Corporation

26 (a) The registered agent of a foreign corporation may resign as agent
27 by signing and delivering to the Secretary of State for filing the original
28 and two exact or conformed copies of a statement of resignation. The
29 statement of resignation may include a statement that the registered office is
30 also discontinued.

31 (b) After filing the statement, the Secretary of State shall attach
32 the filing receipt to one copy and mail the copy and receipt to the registered
33 office if not discontinued. The Secretary of State shall mail the other copy
34 *to the foreign corporation at its principal office address, if known.*

35 (c) The agency is terminated, and the registered office discontinued

1 if so provided, on the 31st day after the date on which the statement was
2 filed.

3

4 SECTION 1510. Service On Foreign Corporation

5 (a) The registered agent of a foreign corporation authorized to
6 transact business in this state is the corporation's agent for service of
7 process, notice, or demand required or permitted by law to be served on the
8 foreign corporation.

9 (b) A foreign corporation may be served by registered or certified
10 mail, return receipt requested, addressed to the secretary of the foreign
11 corporation at its principal office shown in its application for a certificate
12 of authority if the foreign corporation:

13 (1) has no registered agent or its registered agent cannot with
14 reasonable diligence be served;

15 (2) has withdrawn from transacting business in this state under
16 section 1520; or

17 (3) has had its certificate of authority revoked under section 1531.

18 (c) Service is perfected under subsection (b) at the earliest of:

19 (1) the date the foreign corporation receives the mail;

20 (2) the date shown on the return receipt, if signed on behalf of the
21 foreign corporation; or

22 (3) five days after its deposit in the United States Mail, as
23 evidenced by the postmark if mailed postpaid and correctly addressed.

24 (d) This section does not prescribe the only means, or necessarily the
25 required means, of serving a foreign corporation.

26

27 SECTION 1520. Withdrawal Of Foreign Corporation

28 (a) A foreign corporation authorized to transact business in this
29 state may not withdraw from this state until it obtains a certificate of
30 withdrawal from the Secretary of State.

31 (b) A foreign corporation authorized to transact business in this
32 state may apply for a certificate of withdrawal by delivering an application
33 to the Secretary of State for filing. The application must set forth:

34 (1) the name of the foreign corporation and the name of the state or
35 country under whose law it is incorporated;

1 (2) that it is not transacting business in this state and that it
2 surrenders its authority to transact business in this state;

3 (3) that it revokes the authority of its registered agent to accept
4 service on its behalf and appoints the Secretary of State as its agent
5 for service of process in any proceeding based on a cause of action
6 arising during the time it was authorized to do business in this state;

7 (4) a mailing address to which the Secretary of State may mail a copy
8 of any process served on him or her under subdivision (3); and

9 (5) a commitment to notify the Secretary of State in the future of any
10 change in the mailing address.

11 (c) After the withdrawal of the corporation is effective, service of
12 process on the Secretary of State under this section is service on the foreign
13 corporation. Upon receipt of process, the Secretary of State shall mail a
14 copy of the process to the foreign corporation at the post office address set
15 forth in its application for withdrawal.

16

17 SECTION 1530. Grounds For Revocation

18 (a) The Secretary of State may commence a proceeding under section
19 1531 to revoke the certificate of authority of a foreign corporation
20 authorized to transact business in this state if:

21 (1) the foreign corporation does not pay within 120 days after
22 they are due any franchise taxes or penalties imposed by this Act or other
23 law;

24 (2) the foreign corporation is without a registered agent or
25 registered office in this state for 120 days or more;

26 (3) the foreign corporation does not inform the Secretary of State
27 under section 1508 or 1509 that its registered agent or registered
28 office has changed, that its registered agent has resigned, or that its
29 registered office has been discontinued within 90 days of the change,
30 resignation, or discontinuance;

31 (4) an incorporator, director, officer, or agent of the foreign
32 corporation signed a document such person knew was false in any material
33 respect with intent that the document be delivered to the Secretary of
34 State for filing; or

35 (5) the Secretary of State received a duly authenticated certificate

1 from the Secretary of State or other official having custody of
2 corporate records in the state or country under whose law the foreign
3 corporation is incorporated stating that it has been dissolved or
4 disappeared as the result of a merger.

5 (b) The attorney general may commence a proceeding under section 1531
6 to revoke the certificate of authority of a foreign corporation authorized to
7 transact business in this state if:

8 (1) the corporation has continued to exceed or abuse the authority
9 conferred upon it by law; or

10 (2) the corporation would have been a public benefit corporation had
11 it been incorporated in this state and that its corporate assets in this
12 state are being fraudulently misapplied or wasted.

13

14 SECTION 1531. Procedure And Effect Of Revocation

15 (a) The Secretary of State upon determining that one or more grounds
16 exist under section 1530 for revocation of a certificate of authority shall
17 serve the foreign corporation with written notice of that determination under
18 section 1510.

19 (b) The attorney general upon determining that one or more grounds
20 exist under section 1530(b) for revocation of a certificate of authority shall
21 request the Secretary of State to serve, and the Secretary of State shall
22 serve the foreign corporation with written notice of that determination under
23 section 1510.

24 (c) If the foreign corporation does not correct each ground for
25 revocation or demonstrate to the reasonable satisfaction of the Secretary of
26 State that each ground for revocation determined by the Secretary of State
27 does not exist within 60 days after service of the notice is perfected under
28 section 1510, the Secretary of State may revoke the foreign corporation's
29 certificate of authority by signing a certificate of revocation that recites
30 the ground or grounds for revocation and its effective date. The Secretary of
31 State shall file the original of the certificate and serve a copy on the
32 foreign corporation under section 1510.

33 (d) The authority of a foreign corporation to transact business in
34 this state ceases on the date shown on the certificate revoking its
35 certificate of authority.

1 (e) The Secretary of State's revocation of a foreign corporation's
2 certificate of authority appoints the Secretary of State the foreign
3 corporation's agent for service of process in any proceeding based on a cause
4 of action that arose during the time the foreign corporation was authorized to
5 transact business in this state. Service of process on the Secretary of State
6 under this subsection is service on the foreign corporation. Upon receipt of
7 process, the Secretary of State shall mail a copy of the process to the
8 secretary of the foreign corporation at its principal office shown in its
9 *application for a certificate of authority* or in any subsequent communications
10 received from the corporation stating the current mailing address of its
11 principal office.

12 (f) Revocation of a foreign corporation's certificate of authority
13 does not terminate the authority of the registered agent of the corporation.
14

15 SECTION 1532. Appeal From Revocation

16 (a) A foreign corporation may appeal the Secretary of State's
17 revocation of its certificate of authority to the Chancery Court of Pulaski
18 County within 30 days after the service of the certificate of revocation is
19 perfected under section 1510. The foreign corporation appeals by petitioning
20 the court to set aside the revocation and attaching to the petition copies of
21 its certificate of authority and the Secretary of State's certificate of
22 revocation.

23 (b) The court may summarily order the Secretary of State to reinstate
24 the certificate of authority or may take any other action the court considers
25 appropriate.

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

28

29 SECTION 1701. Application To Existing Domestic Corporations

30 All provisions of this chapter shall apply to all domestic corporations
31 incorporated on or after its effective date as specified in section 1706. A
32 corporation incorporated prior to such effective date under any general
33 statute of this state providing for incorporation of nonprofit corporations
34 may elect to be governed by the provisions of this chapter by amending its
35 articles of incorporation to provide that it shall be so governed. Such

1 election may be made at any time on or after midnight, December 31, 1993, but
2 once made shall be irrevocable. The amendment to the articles of
3 incorporation effecting such election must be approved by the affirmative vote
4 of at least two-thirds (2/3) of the members of the corporation or if such
5 corporation has no members, by the affirmative vote of at least two-thirds
6 (2/3) of the directors of the corporation. Domestic corporations existing
7 prior to midnight, December 31, 1993, which do not elect to be governed by its
8 provisions shall continue to be governed by pre-existing law. *Except for any*
9 *applicable corporate franchise tax laws or any applicable income tax exemption*
10 *laws referenced herein, nothing in this act shall be deemed to apply to*
11 *domestic corporations or associations regulated by the Insurance Commissioner*
12 *under Title 23 of the Arkansas Code or related laws as non-profit corporations*
13 *including but not limited to hospital or medical service corporations, health*
14 *maintenance organizations, and fraternal benefit societies.*

15

16 SECTION 1702. Application To Qualified Foreign Corporations

17 A foreign corporation authorized to transact business in this state on
18 the effective date of this Act is subject to this Act but is not required to
19 obtain a new certificate of authority to transact business under this Act.
20 *Except for any applicable corporate franchise tax laws or any applicable*
21 *income tax exemption laws referenced herein, nothing in this act shall be*
22 *deemed to apply to foreign corporations and associations regulated by the*
23 *Insurance Commissioner under Title 23 of the Arkansas Code or related laws as*
24 *non-profit foreign corporations including but not limited to foreign hospital*
25 *or medical service corporations, health maintenance organizations, and*
26 *fraternal benefit societies.*

27

28 SECTION 1703. Saving Provisions

29 (a) Except as provided in subsection (b), the repeal of a statute by
30 this Act does not affect:

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

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

1 (3) any violation of the statute or any penalty, forfeiture, or
2 punishment incurred because of the violation, before its repeal;

3 (4) any proceeding, reorganization, or dissolution commenced under the
4 statute before its repeal, and the proceeding, reorganization, or
5 dissolution may be completed in accordance with the statute as if it had
6 not been repealed; or

7 (5) any meeting of members or directors or action by written consent
8 noticed or any action taken before its repeal as a result of a meeting
9 of members or directors or action by written consent.

10 (b) If a penalty or punishment imposed for violation of a statute
11 repealed by this Act is reduced by this Act, the penalty or punishment if not
12 already imposed shall be imposed in accordance with this Act.

13

14 SECTION 1704. Severability

15 If any provision of this Act or its application to any person or
16 circumstance is held invalid by a court of competent jurisdiction, the
17 invalidity does not affect other provisions or applications of the Act that
18 can be given effect without the invalid provision or application, and to this
19 end the provisions of the Act are severable.

20

21 SECTION 1705. Effective Date

22 This Act takes effect January 1, 1994.

23

24 SECTION 1706. Public Benefit, Mutual Benefit And Religious Corporations

25 Upon electing to be governed by the provisions of this Act, each
26 domestic corporation existing on the effective date of this Act that becomes
27 subject to this Act shall be designated as a public benefit, mutual benefit or
28 religious corporation as follows:

29 (1) Any corporation designated by statute as a public benefit
30 corporation, a mutual benefit corporation or a religious
31 corporation is the type of corporation designated by statute;

32 (2) Any corporation that does not come within subsection (1) but is
33 organized primarily or exclusively for religious purposes is a religious
34 corporation;

35 (3) Any corporation that does not come within subsection (1) or (2)

1 but that is recognized as exempt under section 501(c)(3) of the Internal
2 Revenue Code, or any successor section, is a public benefit corporation;
3 (4) Any corporation that does not come within subsection (1), (2), or
4 (3), but that is organized for a public or charitable purpose and that
5 upon dissolution must distribute its assets to a public benefit
6 corporation, the United States, a state or a person that is recognized
7 as exempt under section 501(c)(3) of the Internal Revenue Code, or any
8 successor section, is a public benefit corporation; and
9 (5) Any corporation that does not come within subsection (1), (2),
10 (3), or (4) is a mutual benefit corporation.

11

12 SECTION 1801. Corporate Authority

13 *Arkansas Code 4-28-209(5) is amended to read as follows:*

14 (5) To make contracts and incur liabilities; borrow money; issue its notes,
15 bonds, and other obligations; to act as a trustee; and secure any of its
16 obligations by mortgage or pledge of all or any of its property,
17 franchises and income;

18

19 SECTION 1802. *Arkansas Code 23-42-102(2) is amended to read as follows:*

20 "(2) `Agent' means any individual, other than a broker-dealer, who
21 represents a broker-dealer or issuer in effecting or attempting to effect
22 purchases or sales of securities.

23 (A) `Agent' does not include an individual who represents an issuer in:

24 (i) Effecting transactions in a security exempted by §
25 23-42-503(a)(1)-(5), (9), (10), or (11), and any other transactions in a
26 security exempted by other clauses of § 23-42-503 which the commissioner may
27 by rule or order prescribe;

28 (ii) Effecting transactions exempted by § 23-42-504 unless otherwise
29 required by § 23-42-504; or

30 (iii) Effecting transactions with existing employees, partners, or
31 directors of the issuer if no commission or other remuneration is paid or
32 given directly or indirectly for soliciting any person in this state.

33 (B) A partner, officer, or director of a broker-dealer or issuer, or a
34 person occupying a similar status or performing similar functions, is an agent
35 only if he otherwise comes within this definition"

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SECTION 1803. Statutory Life Insurance Beneficiaries

Arkansas Code 4-28-103 is amended by inserting an additional subsection at the end thereof to read as follows:

(d) Notwithstanding any other law or regulation to the contrary, any religious, educational, charitable or benevolent institution, organization, corporation, association or trust (including but not limited to charitable remainder trusts) may be named beneficiary and/or owner of the policy or contract by any applicant for insurance upon his or her own life in any policy of life insurance issued by any life insurance company authorized to do business in this state or in the state of domicile of the applicant for insurance. The applicant for insurance shall be deemed to have an unlimited insurable interest in his or her own life and is entitled to name any of said institutions as beneficiary of such insurance, and said beneficiaries and/or owners shall have the right to receive all death benefits provided for by such policy and to exercise the rights of ownership if granted same. As to any life insurance policies heretofore issued by insurers naming any of the aforementioned institutions as beneficiaries and/or owners, if the applicant for insurance was also the insured, said beneficiaries and/or owners shall be entitled to receive all death benefits provided by the policy and to exercise the rights of ownership if granted same.

SECTION 1804. Income Tax

Arkansas Code 26-51-303 is amended to read as follows:

- (a) The following organizations shall be exempt from taxation under this act:*
 - (1) Fraternal benefit societies, orders, or associations:*
 - (A) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and*
 - (B) Providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;*
 - (2) Domestic life and disability insurance companies and foreign insurance companies;*

- 1 (3) Cemetery corporations;
- 2 (4) Business leagues, chambers of commerce, or boards of trade not
3 organized for profit and no part of the net earnings of which inures to
4 the benefit of any private stockholders or individuals;
- 5 (5) Civic leagues or organizations not organized for profit but
6 operated exclusively for the promotion of social welfare;
- 7 (6) Farmers or other mutual hail, cyclone, or fire insurance
8 companies, or other domestic insurance companies writing lines of
9 insurance other than those specified in subdivisions (1) and (2) of this
10 section, mutual ditch or irrigation companies, mutual or cooperative
11 telephone companies, or like organizations of a purely local character,
12 but only if eighty-five percent (85%) or more of the income of the
13 organization consists solely of assessments, dues, and fees collected
14 from members for the sole purpose of meeting losses and expenses;
- 15 (7) Farmers, fruit growers, or like organizations organized and
16 operated as sales agent for the purpose of marketing the products of
17 members and turning back to them the proceeds of sales, less the
18 necessary selling expenses, on the basis of the quantity of produce
19 furnished by them;
- 20 (8) Labor, agricultural, or horticultural organizations, no part of
21 the net earnings of which inures to the benefit of any private
22 stockholder or member;
- 23 (9) Corporations, trusts, and any community chest, fund, or
24 foundation, organized and operated exclusively for religious,
25 charitable, scientific, literary, or educational purposes, or for the
26 prevention of cruelty to children or animals, no part of the net
27 earnings of which inures to the benefit of any private shareholder or
28 individual, no substantial part of the activities of which is carrying
29 on propaganda, or otherwise attempting to influence legislation, and
30 which does not participate in, or intervene in (including the publishing
31 or distributing of statements), any political campaign on behalf of (or
32 in opposition to) any candidate for public office.
- 33 (b) Every organization claiming exemption under this Act shall notify
34 the Revenue Division, Department of Finance and Administration, State of
35 Arkansas of its exempt status. Each such organization shall provide such

1 additional information as the Revenue Division also shall reasonably require
2 for verification of the organization's exempt status; provided, however, that
3 any organization which is determined to be exempt from income taxation under
4 the provisions of the Internal Revenue Code of 1986 for any one or more of the
5 purposes set forth in section (a) above shall verify its exempt status
6 hereunder by delivery to the Revenue Division of a copy of the document
7 declaring its exempt status under the Internal Revenue Code of 1986.

8

9 SECTION 1805. Charitable Remainder Trusts

10 Section 664 of Title 26 of the United States Code as in effect on
11 January 1, 1993, and the regulations of the Secretary of the Treasury
12 promulgated thereunder and in effect on January 1, 1993, are adopted for the
13 purpose of computing tax liability of charitable remainder trusts and their
14 beneficiaries under the Arkansas income tax act of 1929, as amended, § 26-51-
15 101 et seq. Furthermore, any other provisions of the federal income tax law
16 and regulations are necessary for interpreting and implementing 26 USC § 664
17 are adopted to the extent as in effect on January 1, 1993.

18

19 SECTION 1806. Arkansas Code 23-63-201 is hereby amended to add new
20 subsection (d) at the end of the section to read as follows:

21 *"(d) (1) The Commissioner may, in his reasonable discretion guided by*
22 *the standards herein contained and consistent with the purpose hereinafter set*
23 *forth, issue a special permit to make fixed dollar life only annuity*
24 *agreements with donors to any duly organized domestic or foreign non-stock*
25 *corporation or association conducted without profit and engaged in active*
26 *operation for at least five (5) years prior thereto solely in bona fide*
27 *charitable, religious, missionary, educational or philanthropic activities.*
28 *The Commissioner may approve the issuance of a permit to such a corporation or*
29 *association that has not itself been engaged in active operation for five (5)*
30 *years if he is reasonably satisfied that such entity is affiliated with a*
31 *corporation or association of this description that has been in operation for*
32 *such period and that there is readily available to the entity requesting the*
33 *permit an adequate level of management expertise. The permit shall authorize*
34 *such corporation or association to receive gifts of money conditioned upon, or*
35 *in return for, its agreement to pay an annuity to the donor, or his nominee,*

1 and to make and carry out such annuity agreement. Every such corporation or
2 association shall, before making such agreements, file with the Commissioner
3 for his approval either:

4 (i) a schedule of its maximum annuity rates which shall be
5 computed on the basis of the annuity standard adopted by it for calculating
6 its reserves; or

7 (ii) a statement certifying that it adopts and will adhere to the
8 annuity rates as published from time to time by the Committee on Gift
9 Annuities of Dallas, Texas, or its successor, until such corporation or
10 association advises the Commissioner to the contrary in writing. At such
11 latter time the corporation or association shall then file a schedule of its
12 new proposed maximum annuity rates for approval. Filings and approvals
13 required herein shall be subject to the provisions of Arkansas Code §§23-79-
14 109 and 23-19-110.

15 (2) Each such domestic corporation or association shall maintain
16 reserves with respect to the annuity or income stream which it has agreed to
17 pay to a charitable donor either by:

18 (i) calculation of such reserves upon the obligation of the
19 permittee to the donor annuitant in the manner set forth at A.C.A. §23-84-106
20 and the sections therein incorporated; or

21 (ii) Segregating and maintaining in a separate account or
22 accounts reserves in an amount equal to the aggregate values (determined at
23 the dates of contribution) of all assets received from donors with respect to
24 annuities for annuitants who are then living; provided that such reserves
25 shall be invested in securities meeting the requirements of A.C.A. §§ 22-63-
26 801 - 23-63-833; 23-63-835; 23-63-839; and 23-63-840; and provided further
27 that

28 (3) Each such domestic corporation or association maintaining reserves
29 in the manner described at A.C.A. §23-84-104, et seq. shall maintain net
30 admitted assets at least equal to the greater of (i) the sum of its reserves
31 on its outstanding agreements, calculated in accordance with §23-84-104, and a
32 surplus of ten percent (10%) of such reserves; or (ii) the amount of fifty
33 thousand dollars (\$50,000). Each such domestic corporation or association
34 maintaining reserves in the manner described at subdivision 2(b) hereof shall
35 maintain net admitted assets at least equal to the amount of said reserves.

1 In determining reserves a deduction shall be made for all or any portion of an
2 annuity risk which is reinsured by a life insurance company authorized to do
3 business in this state. The required admitted assets shall be invested only
4 in securities permitted by the provisions of §§23-63-801 - 23-63-833; 23-63-
5 835; 23-63-839; and 23-63-840.

6 (4) No such corporation or association organized under the laws of
7 another state shall be permitted to make such annuity agreements in this state
8 unless it complies with all requirements of this subsection (d) imposed upon
9 like domestic corporations or associations, except it may invest its reserves
10 and surplus funds in securities permitted by the laws of the state of
11 domicile.

12 (5) No such corporation or association shall make or issue in this
13 state any annuity contract before obtaining a permit issued in accordance with
14 the provisions of this subsection. If the Commissioner finds, after notice
15 and hearing, that any such corporation or association, having such a permit,
16 has failed to comply with the requirements of this subsection, he may revoke
17 or suspend such permit, or order the permittee to cease making new annuity
18 contracts until it complies. All such corporations or associations shall be
19 required to file an annual financial statement of their operations and
20 accounts and schedule of outstanding annuities with reserves applicable
21 thereto within ninety (90) days of the end of their fiscal year. Such report
22 is to be prepared by a Certified Public Accountant in accordance with
23 generally accepted accounting principles detailing the financial condition and
24 status of the corporation or association as of the just concluded fiscal year;
25 the Commissioner may, in his reasonable discretion, either dispense with the
26 requirement of annual statements by such corporations or associations or
27 accept a sworn statement by two (2) or more of its principal officers in such
28 form as will satisfy the Commissioner that the requirements of this section
29 are being met.

30 (6) Purpose. This subsection (d) is added to provide a formalized
31 system whereby established not-for-profit corporations and foundations may,
32 for purposes consistent with their charitable charge, grant or issue annuities
33 upon an agreed basis with charitable donors. It is for the further purpose of
34 providing assurance that not-for-profit corporations or associations indulging
35 in this type of insurance activity maintain at least minimal reserves to

1 assure charitable donors that the income stream for which they bargained is,
2 in fact, available to them."

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4 SECTION 1807. Arkansas Code 23-42-503(a) is amended to read as follows:

5 "(a) The following securities are exempted from §§ 23-42-501 and
6 23-42-502:

7 (1) (A) Any security, including a revenue obligation, issued or guaranteed
8 by the United States, any state, any political subdivision of a state, or any
9 agency or corporate or other instrumentality of one (1) or more of the
10 foregoing, or any certificate of deposit for any of the foregoing;

11 (B) Any securities that are offered and sold pursuant to Section 4(5)
12 of the Securities Act of 1933 or that are "mortgage related securities" as
13 that term is defined in section 3(a)(41) of the Securities Exchange Act of
14 1934 are not securities exempt from registration under this section in the
15 same manner as obligations issued or guaranteed as to principal and interest
16 by the United States or any agency or instrumentality thereof. These
17 instruments, commonly referred to as private mortgage-backed securities, may
18 be exempt from the registration requirements of this chapter provided that the
19 transaction or the securities are otherwise exempt under this section. This
20 provision specifically overrides the preemption of state law contained in
21 section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984,
22 Public Law 98-440, of the United States;

23 (2) Any security issued or guaranteed by Canada, any Canadian province,
24 any political subdivision of any Canadian province, any agency or corporate or
25 other instrumentality of one (1) or more of the foregoing, or by any other
26 foreign government with which the United States currently maintains diplomatic
27 relations, if the security is recognized as a valid obligation by the issuer
28 or guarantor;

29 (3) Any security issued by and representing an interest in or a debt of
30 any bank organized under the laws of the United States, or any federally
31 insured savings bank, or any bank, savings institution, or trust company
32 organized and supervised under the laws of any state, or any bank holding
33 company regulated under the Bank Holding Company Act of 1956, as amended;

34 (4) Any security issued by and representing an interest in or a debt of
35 any state or federal savings and loan association, or any federally insured

1 savings bank, or any building and loan or similar association organized under
2 the laws of any state and authorized to do business in this state, or any
3 savings and loan holding company regulated by the Federal Savings and Loan
4 Insurance Corporation;

5 (5) Any security issued by any federal credit union or any credit union,
6 industrial loan association, or similar association organized and supervised
7 under the laws of this state;

8 (6) Any security issued or guaranteed by any railroad, other common
9 carrier, public utility, or holding company which is:

10 (A) Subject to the jurisdiction of the Interstate Commerce Commission;

11 (B) A registered holding company under the Public Utility Holding
12 Company Act of 1935 or a subsidiary of such a company within the meaning of
13 that act;

14 (C) Regulated in respect of its rates and charges by a governmental
15 authority of the United States or any state; or

16 (D) Regulated in respect of the issuance or guarantee of the security
17 by a governmental authority of the United States, any state, Canada, or any
18 Canadian province;

19 (7) (A) Any security listed or approved for listing upon notice of
20 issuance on the New York Stock Exchange, the American Stock Exchange, the
21 Midwest Stock Exchange, or any other stock exchange approved by the
22 commissioner;

23 (B) Any security listed or designated, or approved for listing or
24 designation upon notice of issuance, on an interdealer quotation system, if
25 such interdealer quotation system has adopted the criteria for listing or
26 designation as set forth in Securities Act Release No. 6810 (Dec. 16, 1988);
27 53 Federal Register 52550 (December 28, 1988); provided, however, that the
28 commissioner shall have authority, after notice and hearing, to terminate this
29 exemption as to a system upon written findings of fact and conclusions of law
30 which are subject to judicial review, that the listing or designation
31 standards have been so changed or insufficiently applied that the protection
32 to investors contemplated by the exemption no longer exists;

33 (C) Any other security of an issuer exempt under subdivision (a) (7) (A)
34 or (B) of this section which is of senior or substantially equal rank;

35 (D) Any security called for by subscription rights or warrants listed

1 or approved pursuant to subdivision (a) (7) (A) or (B) of this section;

2 (E) Any warrant or right to purchase or subscribe to any of the
3 foregoing;

4 (8) Any security issued by any person organized and operated not for
5 private profit but exclusively for religious, educational, benevolent,
6 charitable, fraternal, social, athletic, or reformatory purposes, or as a
7 chamber of commerce or trade or professional association;

8 (9) Any commercial paper which arises out of a current transaction or the
9 proceeds of which have been or are to be used for current transactions, and
10 which evidences an obligation to pay cash within nine (9) months of the date
11 of issuance, exclusive of days of grace, or any renewal of the paper which is
12 likewise limited, or any guarantee of the paper or of the renewal;

13 (10) Any investment contract or other security issued in connection with
14 an employees' stock purchase, savings, pension, profit sharing, stock bonus,
15 stock option, or similar benefit plan if, in the case of plans which do not
16 meet the requirements for qualification under the United States Internal
17 Revenue Code, there is filed with the commissioner prior to any offer or sale
18 a notice specifying the terms of the plan and the commissioner does not by
19 order disallow the exemption within ten (10) days;

20 (11) Any annuity contract issued by any not-for-profit corporation as
21 defined in Arkansas Code Annotated Section 4-28-202 and Section 140(6) of this
22 act under a permit issued by the Insurance Department of the State of
23 Arkansas; and

24 (12) Any security as to which the commissioner by rule or order finds
25 that registration is not necessary or appropriate in the public interest or
26 for the protection of investors."

27 SECTION 1808. All provisions of this act of a general and permanent
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
29 Code Revision Commission shall incorporate the same in the Code.

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31 SECTION 1809. All laws and parts of laws in conflict with this act are
32 hereby repealed.

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/s/ Senator Harriman

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