

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

A Bill

ACT 1147 OF 1993
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

17
18
19 "THE ARKANSAS NONPROFIT CORPORATION ACT OF 1993."

20
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.

36 (d) Subchapter 4 means Sections 401 through Section 403 of this act.

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2 (e) Subchapter 5 means Sections 501 through Section 504 of this act.

3 (f) Subchapter 6 means Sections 601 through Section 630 of this act.

4 (g) Subchapter 7 means Sections 701 through Section 730 of this act.

5 (h) Subchapter 8 means Sections 801 through Section 858 of this act.

6 (i) Subchapter 10 means Sections 1001 through Section 1031 of this act.

7 (j) Subchapter 11 means Sections 1101 through Section 1108 of this act.

8 (k) Subchapter 12 means Sections 1201 through Section 1202 of this act.

9 (l) Subchapter 13 means Sections 1301 through Section 1302 of this act.

10 (m) Subchapter 14 means Sections 1401 through Section 1440 of this act.

11 (n) Subchapter 15 means Sections 1501 through Section 1532 of this act.

12 (o) Subchapter 17 means Sections 1701 through Section 1706 of this act.

13 (p) Subchapter 18 means Sections 1801 through Section 1809 of this act.

14

15 SECTION 120. Filing Requirements.

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

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

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

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

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

29 (f) The document must be executed:

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

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

34 (3) if the corporation is in the hands of a receiver, trustee, or
35 other court-appointed fiduciary, by that fiduciary.

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

4 (1) the corporate seal;

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

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

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

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

13

14 SECTION 121. Forms.

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

21

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

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

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

1	or both	\$25.00
2	(8) Agent's statement of change of registered	
3	office for each affected corporation	
4	not to exceed a total of	\$125.00
5	(9) Agent's statement of resignation	no fee
6	(10) Amendment of articles of incorporation	\$50.00
7	(11) Restatement of articles of incorporation	
8	with amendments	\$100.00
9	(12) Articles of merger	\$100.00
10	(13) Articles of dissolution	\$50.00
11	(14) Articles of revocation of dissolution	\$150.00
12	(15) Certificate of administrative dissolution	no fee
13	(16) Application for reinstatement following	
14	administrative dissolution	\$50.00
15	(17) Certificate of reinstatement	no fee
16	(18) Certificate of judicial dissolution	no fee
17	(19) Application for certificate of authority	\$300.00
18	(20) Application for amended certificate	
19	of authority	\$300.00
20	(21) Application for certificate of withdrawal	\$300.00
21	(22) Certificate of revocation of authority to	
22	transact business	no fee
23	(23) Articles of correction	\$30.00
24	(24) Application for certificate of existence	
25	or authorization	\$15.00
26	(25) Any other document required or permitted	
27	to be filed by this act.	\$25.00

28 (b) The Secretary of State shall collect a fee of twenty-five dollars
29 (\$25.00) upon being served with process under this Act. The party to a
30 proceeding causing service of process is entitled to recover the fee paid the
31 Secretary of State as costs if the party prevails in the proceeding.

32 (c) The Secretary of State shall collect the following fees for
33 copying and certifying the copy of any filed document relating to a domestic
34 or foreign corporation:

- 35 (1) Fifty cents (50¢) a page for copying; and

1 (2) Five dollars (\$5.00) for the certificate.

2

3 SECTION 123. Effective Date of Document.

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

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

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

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

14

15 SECTION 124. Correcting Filed Document.

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

19 (b) A document is corrected:

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

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

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

31

32 SECTION 125. Filing Duty of Secretary of State.

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

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

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

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

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

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

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

21

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

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

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

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

35

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

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

6

7 SECTION 128. Certificate of Existence.

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

10 (b) The certificate of existence sets forth:

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

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

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

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

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

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

28

29 SECTION 129. Penalty For Signing False Document.

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

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

34

35 SECTION 130. Powers.

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

3

4 SECTION 140. Act Definitions.

5 Unless the context otherwise requires in this Act:

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

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

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

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

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

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

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

34 (8) "Deliver" includes mail.

35 (9) "Designated Director" means a director who is authorized by the

1 articles or bylaws of a corporation to be appointed by any person,
2 corporation, or entity to a position as one or more of the directors of
3 the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) any rights such person has as a delegate;

1 (ii) any rights such person has to designate a director or directors;
2 or

3 (iii) any rights such person has as a director.

4 (23) "Membership" refers to the rights and obligations a member or
5 members have pursuant to a corporation's articles, bylaws and this Act.

6 (24) "Mutual benefit corporation" means a domestic corporation which is
7 formed as a mutual benefit corporation pursuant to subchapter 2, or is
8 required to be a mutual benefit corporation pursuant to section 1706,
9 formed to benefit, represent and serve a group of individuals or
10 entities.

11 (25) "Notice" is defined in section 141.

12 (26) "Person" includes any individual or entity.

13 (27) "Principal Office" means the office (in or out of this *state*) so
14 *designated in the bylaws or, if none, the registered office of a*
15 *domestic or foreign corporation.*

16 (28) "Proceeding" includes civil suit and criminal, administrative, and
17 investigatory action.

18 (29) "Public Benefit Corporation" means a domestic corporation which is
19 formed as a public benefit corporation pursuant to subchapter 2, or is
20 required to be a public benefit corporation pursuant to section 1706 to
21 perform good works, to benefit society or improve the human condition.

22 (30) "Record Date" means the date established under *subchapter 7* on
23 which a corporation determines the identify of its members for the
24 purposes of this Act.

25 (31) "Religious Corporation" means a domestic corporation which is
26 formed as a religious corporation pursuant to subchapter 2, or is
27 required to be a religious corporation pursuant to section 1706 for
28 religious purposes.

29 (32) "Secretary" means the corporate officer to whom the *bylaws or the*
30 *board of directors* has delegated responsibility under section 840(b) for
31 custody of the minutes of the directors' and members' meetings and for
32 authenticating the records of the corporation.

33 (33) "State," when referring to a part of the United States, includes a
34 state and commonwealth (and their agencies and governmental
35 subdivisions) and a territory, and insular possession (and their

1 agencies and governmental subdivisions) of the United States.

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

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

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

14

15 SECTION 141. Notice.

16 (a) Notice may be oral or written.

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

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

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

27 (1) when received;

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

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

34 (4) thirty days after its deposit in the United States Mail, as
35 evidenced by the postmark, if mailed correctly addressed and with other

1 than first class, registered or certified postage affixed.

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

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

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

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

20

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

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

29 "Upon the dissolution of the corporation, the board of directors shall,
30 after paying or making provision for the payment of all of the liabilities of
31 the corporation, dispose of all of the assets of the corporation exclusively
32 for the purposes of the corporation in such manner, or to such charitable,
33 educational, religious, literary, or scientific purposes as shall at the time
34 qualify as an exempt organization or organizations under section 501(c)(3) of
35 the Internal Revenue Code of 1986, or the corresponding provision of any

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

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

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

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

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

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

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

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

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

31

32 SECTION 160. Judicial Relief.

33 (a) If for any reason it is impractical or impossible for any
34 corporation to call or conduct a meeting of its members, delegates, or
35 directors, or otherwise obtain their consent, in the manner prescribed by its

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

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

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

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

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

32

33 SECTION 170. Religious Corporations-Constitutional Protections.

34 If religious doctrine governing the affairs of a religious corporation
35 is inconsistent with the provisions of this Act on the same subject, the

1 religious doctrine shall control to the extent required by the Constitution of
2 the United States or the constitution of this state or both.

3

4 SECTION 201. Incorporators.

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

8

9 SECTION 202. Articles of Incorporation.

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

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

13 (2) one of the following statements:

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

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

16 (iii) this corporation is a religious corporation.

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

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

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

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

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

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

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

29 (3) provisions not inconsistent with law regarding:

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

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

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

35 (4) any provision that under this Act is required or permitted to be

1 set forth in the bylaws.

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

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

5

6 SECTION 203. Incorporation.

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

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

13

14 SECTION 204. Liability for Preincorporation Transactions.

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

18

19 SECTION 205. Organization of Corporation.

20 (a) After incorporation:

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

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

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

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

33 (b) Action required or permitted by this Act to be taken by
34 incorporators at an organizational meeting may be taken without a meeting if
35 the action taken is evidenced by one or more written consents describing the

1 action taken and signed by each incorporator.

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

4

5 SECTION 206. Bylaws.

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

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

11

12 SECTION 207. Emergency Bylaws and Powers.

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

18 (1) how to call a meeting of the board;

19 (2) quorum requirements for the meeting; and

20 (3) designation of additional or substitute directors.

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

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

26 (1) binds the corporation; and

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

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

32

33 SECTION 301. Purposes.

34 (a) Every corporation incorporated under this Act has the purpose of
35 engaging in any lawful activity unless a more limited purpose is set forth in

1 the articles of incorporation.

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

6

7 SECTION 302. General Powers.

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

12 (1) to sue and be sued, complain and defend in its corporate names;

13 (2) to have a corporate seal, which may be altered at will, and to use
14 it, or a facsimile of it, by impressing or affixing or in any other
15 manner reproducing it;

16 (3) to make and amend bylaws not inconsistent with its articles of
17 incorporation or with the laws of this state, for regulating and
18 managing the affairs of the corporation;

19 (4) to purchase, receive, lease, or otherwise acquire, and own, hold,
20 improve, use, and otherwise deal with, real or personal property, or any
21 legal or equitable interest in property, wherever located;

22 (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise
23 dispose of all or any part of its property;

24 (6) to purchase, receive, subscribe for, or otherwise acquire, own,
25 hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of,
26 and deal in and with, shares or other interests in, or obligations of
27 any entity;

28 (7) to make contracts and guaranties, incur liabilities, borrow money,
29 issue notes, bonds, and other obligations, and secure any of its
30 obligations by mortgage or pledge of any of its property, franchises, or
31 income;

32 (8) to lend money, invest and revest its funds, and receive and hold
33 real and personal property as security for repayment, except as limited
34 by section 832;

35 (9) to be a promoter, partner, member, associate or manager of any

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

21

22 SECTION 303. Emergency Powers.

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

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

25 (1) modify lines of succession to accommodate the incapacity of any

26 director, officer, employee, or agent; and

27 (2) relocate the principal office, designate alternative principal

28 offices or regional offices, or authorize the officer to do so.

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

30 bylaws provide otherwise:

31 (1) notice of a meeting of the board of directors need be given only

32 to those directors it is practicable to reach and may be given in any

33 practicable manner, including by publication and radio; and

34 (2) one or more officers of the corporation present at a meeting of

35 the board of directors may be deemed to be directors for the meeting, in

1 order of rank and within the same rank in order of seniority, as
2 necessary to achieve a quorum.

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

5 (1) binds the corporation; and

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

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

11

12 SECTION 304. Ultra Vires.

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

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

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

26

27 SECTION 401. Corporate Name.

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

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

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

35 (2) a corporate name reserved or registered under section 402 or 403

1 of this Act or Arkansas Code Annotated, Section 4-27-402 or Arkansas
2 Code Annotated, Section 4-26-402; or

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

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

9 The Secretary of State shall authorize use of the name applied for if;

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

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

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

21 (1) has merged with the other corporation;

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

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

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

26

27 SECTION 402. Reserved Name.

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

34 (b) The owner of a reserved corporate name may transfer the
35 reservation to another person by delivering to the Secretary of State a signed

1 notice of the transfer that states the name and address of the transferee.

2

3 SECTION 403. Registered Name.

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

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

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

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

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

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

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

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

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

35

1 SECTION 501. Registered Office and Registered Agent.

2 Each corporation must continuously maintain in this state:

3 (1) a registered office with the same address as that of the
4 registered agent; and

5 (2) a registered agent, who may be:

6 (i) an individual who resides in this state and whose office is
7 identical with the registered office;

8 (ii) a domestic business or nonprofit corporation whose office is
9 identical with the registered office; or

10 (iii) a foreign business or nonprofit corporation authorized to
11 transact business in this state whose office is identical with the
12 registered office.

13

14 SECTION 502. Change of Registered Office or Registered Agent.

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

18 (1) the name of the corporation;

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

20 (3) if the current registered office is to be changed, the street
21 address of the new registered office;

22 (4) the name of its current registered agent;

23 (5) if the current registered agent is to be changed, the name of the
24 new registered agent and the new agents' written consent (either on the
25 statement or attached to it) to the appointment; and

26 (6) that after the change or changes are made, the street addresses of
27 its registered office and the office of its registered agent will be
28 identical.

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

1

2 SECTION 503. Resignation of Registered Agent.

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

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

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

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

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

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

19

20 SECTION 504. Service on Corporation.

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

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

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

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

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

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

35

1 SECTION 601. Admission

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

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

6

7 SECTION 602. Consideration

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

11

12 SECTION 603. No Requirement Of Members

13 A corporation is not required to have members.

14

15 SECTION 610. Differences In Rights And Obligations Of Members

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

21

22 SECTION 611. Transfers

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

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

28 (c) Where transfer rights have been provided, no restriction on them
29 shall be binding with respect to a member holding a membership issued prior to
30 the adoption of the restriction unless the restriction is approved by the
31 members and the affected member.

32

33 SECTION 612. Member's Liability To Third Parties

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

1

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

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

7

8 SECTION 614. Creditor's Action Against Member

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

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

19

20 SECTION 620. Resignation

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

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

25

26 SECTION 621. Termination, Expulsion And Suspension

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

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

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

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

35 (ii) an opportunity for the member to be heard, orally or in writing,

1 not less than five days before the effective date of the
2 expulsion, suspension or termination by a person or persons
3 authorized to decide that the proposed expulsion, termination or
4 suspension not take place; or

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

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

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

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

17

18 SECTION 622. Purchase Of Memberships

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

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

25

26 SECTION 630. Delegates

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

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

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

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

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

1

2 SECTION 701. Annual And Regular Meetings

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

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

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

11 (d) At the annual meeting:

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

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

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

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

22

23 SECTION 702. Special Meeting

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

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

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

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

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

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

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

13

14 SECTION 703. Court-Ordered Meeting

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

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

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

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

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

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

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

1 matters), and enter other orders necessary to accomplish the purpose or
2 purposes of the meeting.

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

6

7 SECTION 704. Action By Written Consent

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

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

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

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

26

27 SECTION 705. Notice Of Meeting

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

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

35 (c) Notice is fair and reasonable if:

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

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

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

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

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

23

24 SECTION 706. Waiver Of Notice

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

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

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

34 (2) waives objection to consideration of a particular matter at the
35 meeting that is not within the purpose or purposes described in the

1 meeting notice, unless the member objects to considering the matter when
2 it is presented.

3

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

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

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

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

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

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

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

5

6 SECTION 708. Action By Written Ballot

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

11 (b) A written ballot shall:

12 (1) set forth each proposed action; and

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

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

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

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

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

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

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

30

31 SECTION 720. Members' List For Meeting

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

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

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

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

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

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

25 (2) used for any commercial purpose; or

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

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

30

31 SECTION 721. Voting Entitlement Generally

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

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

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

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

7

8 SECTION 722. Quorum Requirements

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

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

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

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

19

20 SECTION 723. Voting Requirements

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

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

27

28 SECTION 724. Proxies

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

32 (b) An appointment of a proxy is effective when received by the
33 secretary or other officer or agent authorized to tabulate votes. An
34 appointment is valid for 11 months unless a different period is expressly
35 provided in the appointment form; provided however that no proxy shall be

1 valid for more than three years from its date of execution.

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

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

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

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

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

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

18

19 SECTION 725. Cumulative Voting For Directors

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

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

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

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

33 (c) A director elected by cumulative voting may be removed by the
34 members without cause if the requirements of section 808 are met unless the
35 votes cast against removal, or not consenting in writing in such removal,

1 would be sufficient to elect such director if voted cumulatively at an
2 election at which the same total number of votes were cast (or, if such action
3 is taken by written ballot, all memberships entitled to vote were voted) and
4 the entire number of directors authorized at the time of the director's most
5 recent election were then being elected.

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

8

9 SECTION 726. Other Methods Of Electing Directors

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

14

15 SECTION 727. Corporation's Acceptance Of Votes

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

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

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

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

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

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

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

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

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

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

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

24

25 SECTION 730. Voting Agreements

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

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

33

34 SECTION 801. Requirement For and Duties of Board.

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

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

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

9

10 SECTION 802. Qualification of Directors.

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

13

14 SECTION 803. Number of Directors.

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

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

21

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

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

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

35

1 SECTION 805. Terms of Directors Generally.

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

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

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

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

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

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

20

21 SECTION 806. Staggered Terms for Directors.

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

25

26 SECTION 807. Resignation of Directors.

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

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

35

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

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

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

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

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

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

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

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

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

34 (i) If, at the beginning of a director's term on the board, the
35 articles or bylaws provide that the director may be removed for missing a

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

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

8 (1) limit the application of this section; and

9 (2) set forth the vote and procedures by which the board or any person
10 may remove with or without cause a director elected by the members or
11 the board.

12

13 SECTION 809. Removal of Designated or Appointed Directors.

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

16 (b) Appointed Directors:

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

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

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

25

26 SECTION 810. Removal of Directors by Judicial Proceeding.

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

35 (b) The Court that removes a director may bar the director from

1 serving on the board for a period prescribed by the court.

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

4

5 SECTION 811. Vacancy on Board.

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

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

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

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

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

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

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

30

31 SECTION 812. Compensation of Directors.

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

34

35 SECTION 820. Regular and Special Meetings.

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

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

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

12

13 SECTION 821. Action Without Meeting.

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

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

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

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

27

28 SECTION 822. Call and Notice of Meetings.

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

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

35 (c) In corporations without members any board action to remove a

1 director or to approve a matter that would require approval by the members if
2 the corporation had members, shall not be valid unless each director is given
3 at least seven days' written notice that the matter will be voted upon at a
4 directors' meeting or unless notice is waived pursuant to section 823.

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

8

9 SECTION 823. Waiver of Notice.

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

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

20

21 SECTION 824. Quorum and Voting.

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

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

28

29 SECTION 825. Committees of the Board.

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

34 (b) The creation of a committee and appointment of members to it must
35 be approved by the greater of:

- 1 (1) a majority of a quorum of the directors when the action is taken;
2 or
3 (2) the number of directors required by the articles or bylaws to take
4 action under section 824.
5 (c) Sections 820 through 824, which govern meetings, action without
6 meetings, notice and waiver of notice, and quorum and voting requirements of
7 the board, apply to committees of the board and their members as well.
8 (d) To the extent specified by the board of directors or in the
9 articles or bylaws, each committee of the board may exercise the board's
10 authority under section 801.
11 (e) A committee of the board may not, however:
12 (1) authorize distributions;
13 (2) approve or recommend to members dissolution, merger or the sale,
14 pledge or transfer of all or substantially all of the corporation's
15 assets;
16 (3) elect, appoint or remove directors or fill vacancies on the board
17 or on any of its committees; or
18 (4) adopt, amend or repeal the articles or bylaws.
19 (f) The creation of, delegation of authority to, or action by a
20 committee does not alone constitute compliance by a director with the
21 standards of conduct described in section 830.

22

23 *SECTION 830. General Standards for Directors.*

- 24 (a) A director shall discharge his or her duties as a director,
25 including his or her duties as a member of a committee:
26 (1) in good faith;
27 (2) with the care an ordinarily prudent person in a like position
28 would exercise under similar circumstances; and
29 (3) in a manner the director reasonably believes to be in the best
30 interests of the corporation.
31 (b) In discharging his or her duties, a director is entitled to rely
32 on information, opinions, reports, or statements, including financial
33 statements and other financial data, if prepared or presented by:
34 (1) one or more officers or employees of the corporation whom the
35 director reasonably believes to be reliable and competent in the matters

1 presented;

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

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

8 (4) 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 director believes justify reliance and
11 confidence and whom the director believes to be reliable and competent
12 in the matters presented.

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

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

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

23

24 SECTION 831. Director Conflict of Interest.

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

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

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

34 (3) the material facts of the transaction and the director's interest
35 were disclosed or known to the members and they authorized, approved, or

1 ratified the transaction.

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

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

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

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

28

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

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

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

34

35 SECTION 833. Liability for Unlawful Distributions.

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

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

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

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

15 SECTION 840. Required Officers.

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

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

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

25 SECTION 842. Standards of Conduct for Officers.

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

28 (1) in good faith;

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

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

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

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

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

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

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

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

18

19 SECTION 843. Resignation and Removal of Officers.

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

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

28

29 SECTION 844. Contract Rights of Officers.

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

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

35

1 SECTION 845. Officers' Authority to Execute Documents.

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

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

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

12

13 SECTION 850. Subchapter Definitions.

14 In this subchapter:

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

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

29 (3) "Expenses" include counsel fees.

30 (4) "Liability" means the obligation to pay a judgment, settlement,
31 penalty, fine (including an excise tax assessed with respect to an
32 employee benefit plan), or reasonable expenses actually incurred with
33 respect to a proceeding.

34 (5) "Official capacity" means: (i) when used with respect to a
35 director, the office of director in a corporation; and (ii) when used

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

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

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

13

14 SECTION 851. Authority to Indemnify.

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

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

19 (2) reasonably believed:

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

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

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

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

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

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

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

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

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

11

12 SECTION 852. Mandatory Indemnification.

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

18

19 SECTION 853. Advance for Expenses.

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

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

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

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

33 (b) The undertaking required by subsection (a) (2) must be an unlimited
34 general obligation of the director but need not be secured and may be accepted
35 without reference to financial ability to make repayment.

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

3

4 SECTION 854. Court-ordered Indemnification.

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

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

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

20

21 SECTION 855. Determination and Authorization of Indemnification.

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

27 (b) The determination shall be made:

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

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

35 (3) by special legal counsel:

1 (i) selected by the board of directors or its committee in the manner
2 prescribed in subdivision (1) or (2); or

3 (ii) if a quorum of the board cannot be obtained under subdivision (1)
4 and a committee cannot be designated under subdivision (2),
5 selected by majority vote of the full board (in which selection
6 directors who are parties may participate); or

7 (4) by the members of a mutual benefit corporation, but directors who
8 are at the time parties to the proceeding may not vote on the
9 determination.

10 (c) Authorization of indemnification and evaluation as to
11 reasonableness of expenses shall be made in the same manner as the
12 determination that indemnification is permissible, except that if the
13 determination is made by special legal counsel, authorization of
14 indemnification and evaluation as to reasonableness of expenses shall be made
15 by those entitled under subsection (b)(3) to select counsel.

16 (d) A director of a public benefit corporation may not be indemnified
17 until 20 days after the effective date of written notice to the attorney
18 general of the proposed indemnification.

19

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

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

22 (1) an officer of the corporation who is not a director is entitled to
23 mandatory indemnification under section 852, and is entitled to apply
24 for court-ordered indemnification under section 854 in each case, to the
25 same extent as a director;

26 (2) the corporation may indemnify and advance expenses under this
27 subchapter to an officer, employee, or agent of the corporation who is
28 not a director to the same extent as to a director; and

29 (3) a corporation may also indemnify and advance expenses to an
30 officer, employee, or agent who is not a director to the extent,
31 consistent with public policy, that may be provided by its articles of
32 incorporation, bylaws, general or specific action of its board of
33 directors, or contract.

34

35 SECTION 857. Insurance.

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

12

13 SECTION 858. Application of Subchapter.

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

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

25

26 SECTION 1001. Authority to Amend.

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

32

33 SECTION 1002. Amendment by Directors.

34 (a) Unless the articles provide otherwise, a corporation's board of
35 directors may adopt one or more amendments to the corporation's articles

1 without member approval;

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

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

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

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

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

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

26

27 SECTION 1003. Amendment by Directors and Members.

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

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

1 selected;

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

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

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

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

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

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

23

24 SECTION 1004. Class Voting by Members on Amendments.

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

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

33 (1) affect the rights, privileges, preferences, restrictions or
34 conditions of that class as to voting, dissolution, redemption or
35 transfer of memberships in a manner different than such amendment would

1 affect another class;

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

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

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

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

11 (6) authorize a new class of memberships.

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

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

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

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

28

29 SECTION 1005. Articles of Amendment.

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

32 (1) the name of the corporation;

33 (2) the text of each amendment adopted;

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

35 (4) if approval of members was not required, a statement to that

1 effect and a statement that the amendment was approved by a sufficient
2 vote of the board of directors or incorporators;

3 (5) if approval by members was required:

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

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

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

17

18 SECTION 1006. Restated Articles of Incorporation.

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

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

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

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

35 (e) If the board seeks to have the restatement approved by the members

1 by written ballot or written consent, the material soliciting the approval
2 shall contain or be accompanied by a copy or summary of the restatement that
3 identifies any amendments or other change it would make in the articles.

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

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

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

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

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

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

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

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

27

28 SECTION 1007. Amendment Pursuant to Judicial Reorganization.

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

34 (b) The individual or individuals designated by the court shall
35 deliver to the Secretary of State articles of amendment setting forth:

- 1 (1) the name of the corporation;
- 2 (2) the text of each amendment approved by the court;
- 3 (3) the date of the court's order or decree approving the articles of
4 amendment;
- 5 (4) the title of the reorganization proceeding in which the order or
6 decree was entered; and
- 7 (5) a statement that the court had jurisdiction of the proceeding
8 under federal statute.

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

13

14 SECTION 1008. Effect of Amendment and Restatement.

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

23

24 SECTION 1020. Amendment by Directors.

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

35

1 SECTION 1021. Amendment by Directors and Members.

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

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

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

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

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

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

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

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

31

32 SECTION 1022. Class Voting By Members On Amendments.

33 (a) The members of a class in a public benefit corporation are
34 entitled to vote as a class on a proposed amendment to the bylaws if the
35 amendment would change the rights of that class as to voting in a manner

1 different than such amendment affects another class or members of another
2 class.

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

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

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

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

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

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

19 (6) authorize a new class of memberships.

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

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

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

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

33

34 SECTION 1030. Approval by Third Parties.

35 The articles may require an amendment to the articles or bylaws to be

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

4

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

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

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

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

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

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

28

29 SECTION 1101. Approval Of Plan Of Merger

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

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

34 (1) the name of each corporation planning to merge and the name of the
35 surviving corporation into which each plans to merge;

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

13

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

15 Corporations

16 (a) Without the prior approval of the Chancery Court of the county in

17 which the corporation's principal office (or, if none in this state, its

18 registered office) is located, a public benefit or religious corporation may

19 merge only with:

- 20 (1) a public benefit or religious corporation;
- 21 (2) a foreign corporation that would qualify under this Act as a
- 22 public benefit or religious corporation; or
- 23 (3) a mutual benefit corporation, provided the public benefit or
- 24 religious corporation is the surviving corporation and continues to be a
- 25 public benefit corporation or religious corporation after the merger.

26 (b) Without an order of the Chancery Court of the county in which the

27 corporation's principal office (or, if none in this state, its registered

28 office) is located, no member of a public benefit or religious corporation may

29 receive or keep anything as a result of a merger other than a membership or

30 membership in the surviving public benefit or religious corporation. The

31 court shall approve the transaction if it is in the public interest.

32

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

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

35 members (acting pursuant to subsection (c)) require a greater vote or voting

1 by class, a plan of merger to be adopted must be approved:

2 (1) by the board;

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

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

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

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

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

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

1 immediately after the merger takes effect.

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

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

14

15 SECTION 1104. Articles Of Merger

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

20 (1) the plan of merger;

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

24 (3) if approval by members was required:

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

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

34 (4) if approval of the plan by some person or persons other than
35 the members or the board is required pursuant to section 1103(a)(3), a

1 statement that the approval was obtained.

2

3 SECTION 1105. Effect Of Merger

4 When a merger takes effect:

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

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

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

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

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

20

21 SECTION 1106. Merger With Foreign Corporation

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

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

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

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

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

1

2 SECTION 1107. Bequests, Devises And Gifts

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

8

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

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

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

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

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

30

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

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

35 (1) sell, lease, exchange, or otherwise dispose of all, or

1 substantially all, of its property in the usual and regular course of
2 its activities; or

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

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

9

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

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

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

19 (1) by the board;

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

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

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

34 (d) The board may condition its submission of the proposed
35 transaction, and the members may condition their approval of the transaction,

1 on receipt of a higher percentage of affirmative votes or on any other basis.

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

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

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

19

20 SECTION 1301. Prohibited Distributions

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

23

24 SECTION 1302. Authorized Distributions

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

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

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

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

33

34 SECTION 1401. Dissolution by Incorporators Or Directors And Third

35 Persons

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

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

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

12

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

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

17 (1) by the board;

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

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

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

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

33 (d) If the board seeks to have dissolution approved by the members at
34 a membership meeting, the corporation shall give notice to its members of the
35 proposed membership meeting in accordance with section 705. The notice must

1 also state that the purpose, or one of the purposes, of the meeting is to
2 consider dissolving the corporation and contain or be accompanied by a copy or
3 summary of the plan of dissolution.

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

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

10

11 SECTION 1403. Articles Of Dissolution

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

15 (1) the name of the corporation;

16 (2) the date dissolution was authorized;

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

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

22 (5) if approval by members was required:

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

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

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

35 (b) A corporation is dissolved upon the effective date of its articles

1 of dissolution.

2

3 SECTION 1404. Effect Of Dissolution

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

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

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

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

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

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

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

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

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

34 (b) Dissolution of a corporation does not:

35 (1) transfer title to the corporation's property;

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

11

12 SECTION 1405. Known Claims Against Dissolved Corporation

13 (a) A dissolved corporation may dispose of the known claims against it
14 by following the procedure described in this section.

15 (b) The dissolved corporation shall notify its known claimants in
16 writing of the dissolution at any time after its effective date. The written
17 notice must:

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

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

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

31 (d) For purposes of this section "claim" does not include a contingent
32 liability or a claim based on an event occurring after the effective date of
33 dissolution.

34

35 SECTION 1406. Unknown Claims Against Dissolved Corporation

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

4 (b) The notice must:

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

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

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

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

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

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

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

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

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

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

33

34 SECTION 1420. Grounds For Administrative Dissolution

35 The Secretary of State may commence a proceeding under section 1421 to

1 administratively dissolve a corporation if:

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

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

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

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

12

13 SECTION 1421. Procedure For And Effect Of Administrative Dissolution

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

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

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

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

31

32 SECTION 1422. Reinstatement Following Administrative Dissolution

33 (a) A corporation administratively dissolved under section 1421 may
34 apply to the Secretary of State for reinstatement within two years after the
35 effective date of dissolution. The application must:

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

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

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

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

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

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

20

21 SECTION 1423. Appeal From Denial Of Reinstatement

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

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

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

35 (d) The court's final decision may be appealed as in other civil

1 proceedings.

2

3 SECTION 1430. Grounds For Judicial Dissolution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) there are reasonable alternatives to dissolution;
- 2 (2) dissolution is in the public interest, if the corporation is a
- 3 public benefit corporation; and
- 4 (3) dissolution is the best way of protecting the interests of
- 5 members, if the corporation is a mutual benefit corporation.
- 6

7 SECTION 1431. Procedure For Judicial Dissolution

8 (a) Venue for a proceeding by the attorney general to dissolve a

9 corporation lies in the Chancery Court of Pulaski County. Venue for a

10 proceeding brought by any other party named in Section 1430 lies in the

11 Chancery Court of the county where a corporation's principal office (or, if

12 none in this state, its registered office) is or was last located.

13 (b) It is not necessary to make directors or members parties to a

14 proceeding to dissolve a corporation unless relief is sought against them

15 individually.

16 (c) A court in a proceeding brought to dissolve a corporation may

17 issue injunctions, appoint a receiver or custodian pendente lite with all

18 powers and duties the court directs, take other action required to preserve

19 the corporate assets wherever located, and carry on the activities of the

20 corporation until a full hearing can be held.

21

22 SECTION 1432. Receivership Or Custodianship

23 (a) A court in a judicial proceeding brought to dissolve a public

24 benefit or mutual benefit corporation may appoint one or more receivers to

25 wind up and liquidate, or one or more custodians to manage, the affairs of the

26 corporation. The court shall hold a hearing, after notifying all parties to

27 the proceeding and any interested persons designated by the court, before

28 appointing a receiver or custodian. The court appointing a receiver or

29 custodian has exclusive jurisdiction over the corporation and all of its

30 property wherever located.

31 (b) The court may appoint an individual, or a domestic or foreign

32 business or nonprofit corporation (authorized to transact business in this

33 state) as a receiver or custodian. The court may require the receiver or

34 custodian to post bond, with or without sureties, in an amount the court

35 directs.

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

3 Among other powers:

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

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

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

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

24

25 SECTION 1433. Decree Of Dissolution

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

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

35

1 SECTION 1440. Deposit With State Treasurer

2 Assets of a dissolved corporation that should be transferred to a
3 creditor, claimant, or member of the corporation who cannot be found or who is
4 not competent to receive them, shall be reduced to cash subject to known trust
5 restrictions and deposited with the state treasurer for safekeeping; provided,
6 however, that in the state treasurer's discretion property may be received and
7 held in kind. When the creditor, claimant, or member furnishes satisfactory
8 proof of entitlement to the amount deposited or property held in kind, the
9 state treasurer shall deliver to the creditor, member or other person or his
10 or her representative that amount or property.

11

12 SECTION 1501. Authority To Transact Business Required

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

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

17 (1) maintaining, defending, or settling any proceeding;

18 (2) holding meetings of the board of directors or members or carrying
19 on other activities concerning internal corporate affairs;

20 (3) maintaining bank accounts;

21 (4) maintaining offices or agencies for the transfer, exchange, and
22 registration of memberships or securities or maintaining trustees or
23 depositaries with respect to those securities;

24 (5) selling through independent contractors;

25 (6) soliciting or obtaining orders, whether by mail or through
26 employees or agents or otherwise, if the orders require acceptance
27 outside this state before they become contracts;

28 (7) creating or acquiring indebtedness, mortgages, and security
29 interests in real or personal property;

30 (8) securing or collecting debts or enforcing mortgages and security
31 interests in property securing the debts;

32 (9) owning, without more, real or personal property;

33 (10) conducting an isolated transaction that is completed within 30
34 days and that is not one in the course of repeated transactions of a
35 like nature;

1 (11) transacting business in interstate commerce.

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

3

4 SECTION 1502. Consequences Of Transacting Business Without Authority

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

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

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

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

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

31

32 SECTION 1503. Application For Certificate Of Authority

33 (a) A foreign corporation may apply for a certificate of authority to
34 transact business in this state by delivering an application to the Secretary
35 of State. The application must set forth:

- 1 (1) the name of the foreign corporation or, if its name is unavailable
2 for use in this state, a corporate name that satisfies the requirements
3 of section 1506;
- 4 (2) the name of the state or country under whose law it is
5 incorporated;
- 6 (3) the date of incorporation and period of duration;
- 7 (4) the street address of its principal office;
- 8 (5) the address of its registered office in this state and the name of
9 its registered agent at that office;
- 10 (6) the names and usual business or home addresses of its current
11 directors and officers;
- 12 (7) whether the foreign corporation has members; and
- 13 (8) whether the corporation, if it had been incorporated in this
14 state, would be a public benefit, mutual benefit or religious
15 corporation.

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

21 SECTION 1504. Amended Certificate Of Authority

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

- 25 (1) its corporate name;
- 26 (2) the period of its duration; or
- 27 (3) the state or country of its incorporation.

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

32 SECTION 1505. Effect Of Certificate Of Authority

33 (a) A certificate of authority authorizes the foreign corporation to
34 which it is issued to transact business in this state subject, however, to the
35 right of the state to revoke the certificate as provided in this Act.

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

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

9

10 SECTION 1506. Corporate Name Of Foreign Corporation

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

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

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

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

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

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

33 (1) the other corporation consents to the use in writing and submits
34 an undertaking in form satisfactory to the Secretary of State to change
35 its name to a name that is distinguishable upon the records of the

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

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

10 (1) has merged with the other corporation;

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

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

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

19

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

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

24 (1) a registered office with the same address as that of its
25 registered agent; and

26 (2) a registered agent, who may be:

27 (i) an individual who resides in this state and whose office is
28 identical with the registered office;

29 (ii) a domestic business or nonprofit corporation whose office is
30 identical with the registered office; or

31 (iii) a foreign business or nonprofit corporation authorized to transact
32 business in this state whose office is identical with the
33 registered office.

34

35 SECTION 1508. Change Of Registered Office Or Registered Agent Of

1 Foreign Corporation

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

5 (1) its name;

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

7 (3) if the current registered office is to be changed, the street
8 address of its new registered office;

9 (4) the name of its current registered agent;

10 (5) if the current registered agent is to be changed, the name of its
11 new registered agent and the new agent's written consent (either on the
12 statement or attached to it) to the appointment; and

13 (6) that after the change or changes are made, the street addresses of
14 its registered office and the office of its registered agent will be
15 identical.

16 (b) If a registered agent changes the street address of its business
17 office, the agent may change the address of the registered office of any
18 foreign corporation for which the agent is the registered agent by notifying
19 the corporation in writing of the change and signing (either manually or in
20 facsimile) and delivering to the Secretary of State for filing a statement of
21 change that complies with the requirements of subsection (a) and recites that
22 the corporation has been notified of the change.

23

24 SECTION 1509. Resignation Of Registered Agent Of Foreign Corporation

25 (a) The registered agent of a foreign corporation may resign as agent
26 by signing and delivering to the Secretary of State for filing the original
27 and two exact or conformed copies of a statement of resignation. The
28 statement of resignation may include a statement that the registered office is
29 also discontinued.

30 (b) After filing the statement, the Secretary of State shall attach
31 the filing receipt to one copy and mail the copy and receipt to the registered
32 office if not discontinued. The Secretary of State shall mail the other copy
33 *to the foreign corporation at its principal office address, if known.*

34 (c) The agency is terminated, and the registered office discontinued
35 if so provided, on the 31st day after the date on which the statement was

1 filed.

2

3 SECTION 1510. Service On Foreign Corporation

4 (a) The registered agent of a foreign corporation authorized to
5 transact business in this state is the corporation's agent for service of
6 process, notice, or demand required or permitted by law to be served on the
7 foreign corporation.

8 (b) A foreign corporation may be served by registered or certified
9 mail, return receipt requested, addressed to the secretary of the foreign
10 corporation at its principal office shown in its application for a certificate
11 of authority if the foreign corporation:

12 (1) has no registered agent or its registered agent cannot with
13 reasonable diligence be served;

14 (2) has withdrawn from transacting business in this state under
15 section 1520; or

16 (3) has had its certificate of authority revoked under section 1531.

17 (c) Service is perfected under subsection (b) at the earliest of:

18 (1) the date the foreign corporation receives the mail;

19 (2) the date shown on the return receipt, if signed on behalf of the
20 foreign corporation; or

21 (3) five days after its deposit in the United States Mail, as
22 evidenced by the postmark if mailed postpaid and correctly addressed.

23 (d) This section does not prescribe the only means, or necessarily the
24 required means, of serving a foreign corporation.

25

26 SECTION 1520. Withdrawal Of Foreign Corporation

27 (a) A foreign corporation authorized to transact business in this
28 state may not withdraw from this state until it obtains a certificate of
29 withdrawal from the Secretary of State.

30 (b) A foreign corporation authorized to transact business in this
31 state may apply for a certificate of withdrawal by delivering an application
32 to the Secretary of State for filing. The application must set forth:

33 (1) the name of the foreign corporation and the name of the state or
34 country under whose law it is incorporated;

35 (2) that it is not transacting business in this state and that it

1 surrenders its authority to transact business in this state;
2 (3) that it revokes the authority of its registered agent to accept
3 service on its behalf and appoints the Secretary of State as its agent
4 for service of process in any proceeding based on a cause of action
5 arising during the time it was authorized to do business in this state;
6 (4) a mailing address to which the Secretary of State may mail a copy
7 of any process served on him or her under subdivision (3); and
8 (5) a commitment to notify the Secretary of State in the future of any
9 change in the mailing address.
10 (c) After the withdrawal of the corporation is effective, service of
11 process on the Secretary of State under this section is service on the foreign
12 corporation. Upon receipt of process, the Secretary of State shall mail a
13 copy of the process to the foreign corporation at the post office address set
14 forth in its application for withdrawal.

15

16 SECTION 1530. Grounds For Revocation

17 (a) The Secretary of State may commence a proceeding under section
18 1531 to revoke the certificate of authority of a foreign corporation
19 authorized to transact business in this state if:

20 (1) the foreign corporation does not pay within 120 days after
21 they are due any franchise taxes or penalties imposed by this Act or other
22 law;

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

25 (3) the foreign corporation does not inform the Secretary of State
26 under section 1508 or 1509 that its registered agent or registered
27 office has changed, that its registered agent has resigned, or that its
28 registered office has been discontinued within 90 days of the change,
29 resignation, or discontinuance;

30 (4) an incorporator, director, officer, or agent of the foreign
31 corporation signed a document such person knew was false in any material
32 respect with intent that the document be delivered to the Secretary of
33 State for filing; or

34 (5) the Secretary of State received a duly authenticated certificate
35 from the Secretary of State or other official having custody of

1 corporate records in the state or country under whose law the foreign
2 corporation is incorporated stating that it has been dissolved or
3 disappeared as the result of a merger.

4 (b) The attorney general may commence a proceeding under section 1531
5 to revoke the certificate of authority of a foreign corporation authorized to
6 transact business in this state if:

7 (1) the corporation has continued to exceed or abuse the authority
8 conferred upon it by law; or

9 (2) the corporation would have been a public benefit corporation had
10 it been incorporated in this state and that its corporate assets in this
11 state are being fraudulently misapplied or wasted.

12

13 SECTION 1531. Procedure And Effect Of Revocation

14 (a) The Secretary of State upon determining that one or more grounds
15 exist under section 1530 for revocation of a certificate of authority shall
16 serve the foreign corporation with written notice of that determination under
17 section 1510.

18 (b) The attorney general upon determining that one or more grounds
19 exist under section 1530(b) for revocation of a certificate of authority shall
20 request the Secretary of State to serve, and the Secretary of State shall
21 serve the foreign corporation with written notice of that determination under
22 section 1510.

23 (c) If the foreign corporation does not correct each ground for
24 revocation or demonstrate to the reasonable satisfaction of the Secretary of
25 State that each ground for revocation determined by the Secretary of State
26 does not exist within 60 days after service of the notice is perfected under
27 section 1510, the Secretary of State may revoke the foreign corporation's
28 certificate of authority by signing a certificate of revocation that recites
29 the ground or grounds for revocation and its effective date. The Secretary of
30 State shall file the original of the certificate and serve a copy on the
31 foreign corporation under section 1510.

32 (d) The authority of a foreign corporation to transact business in
33 this state ceases on the date shown on the certificate revoking its
34 certificate of authority.

35 (e) The Secretary of State's revocation of a foreign corporation's

1 certificate of authority appoints the Secretary of State the foreign
2 corporation's agent for service of process in any proceeding based on a cause
3 of action that arose during the time the foreign corporation was authorized to
4 transact business in this state. Service of process on the Secretary of State
5 under this subsection is service on the foreign corporation. Upon receipt of
6 process, the Secretary of State shall mail a copy of the process to the
7 secretary of the foreign corporation at its principal office shown in its
8 *application for a certificate of authority* or in any subsequent communications
9 received from the corporation stating the current mailing address of its
10 principal office.

11 (f) Revocation of a foreign corporation's certificate of authority
12 does not terminate the authority of the registered agent of the corporation.
13

14 SECTION 1532. Appeal From Revocation

15 (a) A foreign corporation may appeal the Secretary of State's
16 revocation of its certificate of authority to the Chancery Court of Pulaski
17 County within 30 days after the service of the certificate of revocation is
18 perfected under section 1510. The foreign corporation appeals by petitioning
19 the court to set aside the revocation and attaching to the petition copies of
20 its certificate of authority and the Secretary of State's certificate of
21 revocation.

22 (b) The court may summarily order the Secretary of State to reinstate
23 the certificate of authority or may take any other action the court considers
24 appropriate.

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

27

28 SECTION 1701. Application To Existing Domestic Corporations

29 All provisions of this chapter shall apply to all domestic corporations
30 incorporated on or after its effective date as specified in section 1706. A
31 corporation incorporated prior to such effective date under any general
32 statute of this state providing for incorporation of nonprofit corporations
33 may elect to be governed by the provisions of this chapter by amending its
34 articles of incorporation to provide that it shall be so governed. Such
35 election may be made at any time on or after midnight, December 31, 1993, but

1 once made shall be irrevocable. The amendment to the articles of
2 incorporation effecting such election must be approved by the affirmative vote
3 of at least two-thirds (2/3) of the members of the corporation or if such
4 corporation has no members, by the affirmative vote of at least two-thirds
5 (2/3) of the directors of the corporation. Domestic corporations existing
6 prior to midnight, December 31, 1993, which do not elect to be governed by its
7 provisions shall continue to be governed by pre-existing law. *Except for any*
8 *applicable corporate franchise tax laws or any applicable income tax exemption*
9 *laws referenced herein, nothing in this act shall be deemed to apply to*
10 *domestic corporations or associations regulated by the Insurance Commissioner*
11 *under Title 23 of the Arkansas Code or related laws as non-profit corporations*
12 *including but not limited to hospital or medical service corporations, health*
13 *maintenance organizations, and fraternal benefit societies.*

14

15 SECTION 1702. Application To Qualified Foreign Corporations

16 A foreign corporation authorized to transact business in this state on
17 the effective date of this Act is subject to this Act but is not required to
18 obtain a new certificate of authority to transact business under this Act.
19 *Except for any applicable corporate franchise tax laws or any applicable*
20 *income tax exemption laws referenced herein, nothing in this act shall be*
21 *deemed to apply to foreign corporations and associations regulated by the*
22 *Insurance Commissioner under Title 23 of the Arkansas Code or related laws as*
23 *non-profit foreign corporations including but not limited to foreign hospital*
24 *or medical service corporations, health maintenance organizations, and*
25 *fraternal benefit societies.*

26

27 SECTION 1703. Saving Provisions

28 (a) Except as provided in subsection (b), the repeal of a statute by
29 this Act does not affect:

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

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

35 (3) any violation of the statute or any penalty, forfeiture, or

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

6 (5) any meeting of members or directors or action by written consent
7 noticed or any action taken before its repeal as a result of a meeting
8 of members or directors or action by written consent.

9 (b) If a penalty or punishment imposed for violation of a statute
10 repealed by this Act is reduced by this Act, the penalty or punishment if not
11 already imposed shall be imposed in accordance with this Act.

12

13 SECTION 1704. Severability

14 If any provision of this Act or its application to any person or
15 circumstance is held invalid by a court of competent jurisdiction, the
16 invalidity does not affect other provisions or applications of the Act that
17 can be given effect without the invalid provision or application, and to this
18 end the provisions of the Act are severable.

19

20 SECTION 1705. Effective Date

21 This Act takes effect January 1, 1994.

22

23 SECTION 1706. Public Benefit, Mutual Benefit And Religious Corporations

24 Upon electing to be governed by the provisions of this Act, each
25 domestic corporation existing on the effective date of this Act that becomes
26 subject to this Act shall be designated as a public benefit, mutual benefit or
27 religious corporation as follows:

28 (1) Any corporation designated by statute as a public benefit
29 corporation, a mutual benefit corporation or a religious
30 corporation is the type of corporation designated by statute;

31 (2) Any corporation that does not come within subsection (1) but is
32 organized primarily or exclusively for religious purposes is a religious
33 corporation;

34 (3) Any corporation that does not come within subsection (1) or (2)
35 but that is recognized as exempt under section 501(c)(3) of the Internal

1 Revenue Code, or any successor section, is a public benefit corporation;
2 (4) Any corporation that does not come within subsection (1), (2), or
3 (3), but that is organized for a public or charitable purpose and that
4 upon dissolution must distribute its assets to a public benefit
5 corporation, the United States, a state or a person that is recognized
6 as exempt under section 501(c)(3) of the Internal Revenue Code, or any
7 successor section, is a public benefit corporation; and
8 (5) Any corporation that does not come within subsection (1), (2),
9 (3), or (4) is a mutual benefit corporation.

10

11 SECTION 1801. Corporate Authority

12 *Arkansas Code 4-28-209(5) is amended to read as follows:*

13 (5) To make contracts and incur liabilities; borrow money; issue its notes,
14 bonds, and other obligations; to act as a trustee; and secure any of its
15 obligations by mortgage or pledge of all or any of its property,
16 franchises and income;

17

18 SECTION 1802. *Arkansas Code 23-42-102(2) is amended to read as follows:*

19 "(2) `Agent' means any individual, other than a broker-dealer, who
20 represents a broker-dealer or issuer in effecting or attempting to effect
21 purchases or sales of securities.

22 (A) `Agent' does not include an individual who represents an issuer in:

23 (i) Effecting transactions in a security exempted by §

24 23-42-503(a)(1)-(5), (9), (10), or (11), and any other transactions in a
25 security exempted by other clauses of § 23-42-503 which the commissioner may
26 by rule or order prescribe;

27 (ii) Effecting transactions exempted by § 23-42-504 unless otherwise
28 required by § 23-42-504; or

29 (iii) Effecting transactions with existing employees, partners, or
30 directors of the issuer if no commission or other remuneration is paid or
31 given directly or indirectly for soliciting any person in this state.

32 (B) A partner, officer, or director of a broker-dealer or issuer, or a
33 person occupying a similar status or performing similar functions, is an agent
34 only if he otherwise comes within this definition"

35

1 SECTION 1803. Statutory Life Insurance Beneficiaries

2 Arkansas Code 4-28-103 is amended by inserting an additional subsection
3 at the end thereof to read as follows:

4 (d) Notwithstanding any other law or regulation to the contrary, any
5 religious, educational, charitable or benevolent institution, organization,
6 corporation, association or trust (including but not limited to charitable
7 remainder trusts) may be named beneficiary and/or owner of the policy or
8 contract by any applicant for insurance upon his or her own life in any policy
9 of life insurance issued by any life insurance company authorized to do
10 business in this state or in the state of domicile of the applicant for
11 insurance. The applicant for insurance shall be deemed to have an unlimited
12 insurable interest in his or her own life and is entitled to name any of said
13 institutions as beneficiary of such insurance, and said beneficiaries and/or
14 owners shall have the right to receive all death benefits provided for by such
15 policy and to exercise the rights of ownership if granted same. As to any
16 life insurance policies heretofore issued by insurers naming any of the
17 aforementioned institutions as beneficiaries and/or owners, if the applicant
18 for insurance was also the insured, said beneficiaries and/or owners shall be
19 entitled to receive all death benefits provided by the policy and to exercise
20 the rights of ownership if granted same.

21

22 SECTION 1804. Income Tax

23 Arkansas Code 26-51-303 is amended to read as follows:

24 (a) The following organizations shall be exempt from taxation under
25 this act:

26 (1) Fraternal benefit societies, orders, or associations:

27 (A) Operating under the lodge system or for the exclusive benefit of
28 the members of a fraternity itself operating under the lodge
29 system; and

30 (B) Providing for the payment of life, sick, accident, or other
31 benefits to the members of such society, order, or association or
32 their dependents;

33 (2) Domestic life and disability insurance companies and foreign
34 insurance companies;

35 (3) Cemetery corporations;

1 (4) Business leagues, chambers of commerce, or boards of trade not
2 organized for profit and no part of the net earnings of which inures to
3 the benefit of any private stockholders or individuals;

4 (5) Civic leagues or organizations not organized for profit but
5 operated exclusively for the promotion of social welfare;

6 (6) Farmers or other mutual hail, cyclone, or fire insurance
7 companies, or other domestic insurance companies writing lines of
8 insurance other than those specified in subdivisions (1) and (2) of this
9 section, mutual ditch or irrigation companies, mutual or cooperative
10 telephone companies, or like organizations of a purely local character,
11 but only if eighty-five percent (85%) or more of the income of the
12 organization consists solely of assessments, dues, and fees collected
13 from members for the sole purpose of meeting losses and expenses;

14 (7) Farmers, fruit growers, or like organizations organized and
15 operated as sales agent for the purpose of marketing the products of
16 members and turning back to them the proceeds of sales, less the
17 necessary selling expenses, on the basis of the quantity of produce
18 furnished by them;

19 (8) Labor, agricultural, or horticultural organizations, no part of
20 the net earnings of which inures to the benefit of any private
21 stockholder or member;

22 (9) Corporations, trusts, and any community chest, fund, or
23 foundation, organized and operated exclusively for religious,
24 charitable, scientific, literary, or educational purposes, or for the
25 prevention of cruelty to children or animals, no part of the net
26 earnings of which inures to the benefit of any private shareholder or
27 individual, no substantial part of the activities of which is carrying
28 on propaganda, or otherwise attempting to influence legislation, and
29 which does not participate in, or intervene in (including the publishing
30 or distributing of statements), any political campaign on behalf of (or
31 in opposition to) any candidate for public office.

32 (b) Every organization claiming exemption under this Act shall notify
33 the Revenue Division, Department of Finance and Administration, State of
34 Arkansas of its exempt status. Each such organization shall provide such
35 additional information as the Revenue Division also shall reasonably require

1 for verification of the organization's exempt status; provided, however, that
2 any organization which is determined to be exempt from income taxation under
3 the provisions of the Internal Revenue Code of 1986 for any one or more of the
4 purposes set forth in section (a) above shall verify its exempt status
5 hereunder by delivery to the Revenue Division of a copy of the document
6 declaring its exempt status under the Internal Revenue Code of 1986.

7

8 SECTION 1805. Charitable Remainder Trusts

9 Section 664 of Title 26 of the United States Code as in effect on
10 January 1, 1993, and the regulations of the Secretary of the Treasury
11 promulgated thereunder and in effect on January 1, 1993, are adopted for the
12 purpose of computing tax liability of charitable remainder trusts and their
13 beneficiaries under the Arkansas income tax act of 1929, as amended, § 26-51-
14 101 et seq. Furthermore, any other provisions of the federal income tax law
15 and regulations are necessary for interpreting and implementing 26 USC § 664
16 are adopted to the extent as in effect on January 1, 1993.

17

18 SECTION 1806. Arkansas Code 23-63-201 is hereby amended to add new
19 subsection (d) at the end of the section to read as follows:

20 "(d) (1) The Commissioner may, in his reasonable discretion guided by
21 the standards herein contained and consistent with the purpose hereinafter set
22 forth, issue a special permit to make fixed dollar life only annuity
23 agreements with donors to any duly organized domestic or foreign non-stock
24 corporation or association conducted without profit and engaged in active
25 operation for at least five (5) years prior thereto solely in bona fide
26 charitable, religious, missionary, educational or philanthropic activities.
27 The Commissioner may approve the issuance of a permit to such a corporation or
28 association that has not itself been engaged in active operation for five (5)
29 years if he is reasonably satisfied that such entity is affiliated with a
30 corporation or association of this description that has been in operation for
31 such period and that there is readily available to the entity requesting the
32 permit an adequate level of management expertise. The permit shall authorize
33 such corporation or association to receive gifts of money conditioned upon, or
34 in return for, its agreement to pay an annuity to the donor, or his nominee,
35 and to make and carry out such annuity agreement. Every such corporation or

1 association shall, before making such agreements, file with the Commissioner
2 for his approval either:

3 (i) a schedule of its maximum annuity rates which shall be
4 computed on the basis of the annuity standard adopted by it for calculating
5 its reserves; or

6 (ii) a statement certifying that it adopts and will adhere to the
7 annuity rates as published from time to time by the Committee on Gift
8 Annuities of Dallas, Texas, or its successor, until such corporation or
9 association advises the Commissioner to the contrary in writing. At such
10 latter time the corporation or association shall then file a schedule of its
11 new proposed maximum annuity rates for approval. Filings and approvals
12 required herein shall be subject to the provisions of Arkansas Code §§23-79-
13 109 and 23-19-110.

14 (2) Each such domestic corporation or association shall maintain
15 reserves with respect to the annuity or income stream which it has agreed to
16 pay to a charitable donor either by:

17 (i) calculation of such reserves upon the obligation of the
18 permittee to the donor annuitant in the manner set forth at A.C.A. §23-84-106
19 and the sections therein incorporated; or

20 (ii) Segregating and maintaining in a separate account or
21 accounts reserves in an amount equal to the aggregate values (determined at
22 the dates of contribution) of all assets received from donors with respect to
23 annuities for annuitants who are then living; provided that such reserves
24 shall be invested in securities meeting the requirements of A.C.A. §§ 22-63-
25 801 - 23-63-833; 23-63-835; 23-63-839; and 23-63-840; and provided further
26 that

27 (3) Each such domestic corporation or association maintaining reserves
28 in the manner described at A.C.A. §23-84-104, et seq. shall maintain net
29 admitted assets at least equal to the greater of (i) the sum of its reserves
30 on its outstanding agreements, calculated in accordance with §23-84-104, and a
31 surplus of ten percent (10%) of such reserves; or (ii) the amount of fifty
32 thousand dollars (\$50,000). Each such domestic corporation or association
33 maintaining reserves in the manner described at subdivision 2(b) hereof shall
34 maintain net admitted assets at least equal to the amount of said reserves.
35 In determining reserves a deduction shall be made for all or any portion of an

1 annuity risk which is reinsured by a life insurance company authorized to do
2 business in this state. The required admitted assets shall be invested only
3 in securities permitted by the provisions of §§23-63-801 - 23-63-833; 23-63-
4 835; 23-63-839; and 23-63-840.

5 (4) No such corporation or association organized under the laws of
6 another state shall be permitted to make such annuity agreements in this state
7 unless it complies with all requirements of this subsection (d) imposed upon
8 like domestic corporations or associations, except it may invest its reserves
9 and surplus funds in securities permitted by the laws of the state of
10 domicile.

11 (5) No such corporation or association shall make or issue in this
12 state any annuity contract before obtaining a permit issued in accordance with
13 the provisions of this subsection. If the Commissioner finds, after notice
14 and hearing, that any such corporation or association, having such a permit,
15 has failed to comply with the requirements of this subsection, he may revoke
16 or suspend such permit, or order the permittee to cease making new annuity
17 contracts until it complies. All such corporations or associations shall be
18 required to file an annual financial statement of their operations and
19 accounts and schedule of outstanding annuities with reserves applicable
20 thereto within ninety (90) days of the end of their fiscal year. Such report
21 is to be prepared by a Certified Public Accountant in accordance with
22 generally accepted accounting principles detailing the financial condition and
23 status of the corporation or association as of the just concluded fiscal year;
24 the Commissioner may, in his reasonable discretion, either dispense with the
25 requirement of annual statements by such corporations or associations or
26 accept a sworn statement by two (2) or more of its principal officers in such
27 form as will satisfy the Commissioner that the requirements of this section
28 are being met.

29 (6) Purpose. This subsection (d) is added to provide a formalized
30 system whereby established not-for-profit corporations and foundations may,
31 for purposes consistent with their charitable charge, grant or issue annuities
32 upon an agreed basis with charitable donors. *It is for the further purpose of*
33 *providing assurance that not-for-profit corporations or associations indulging*
34 *in this type of insurance activity maintain at least minimal reserves to*
35 *assure charitable donors that the income stream for which they bargained is,*

1 in fact, available to them."

2

3 SECTION 1807. Arkansas Code 23-42-503(a) is amended to read as follows:

4 "(a) The following securities are exempted from §§ 23-42-501 and
5 23-42-502:

6 (1) (A) Any security, including a revenue obligation, issued or guaranteed
7 by the United States, any state, any political subdivision of a state, or any
8 agency or corporate or other instrumentality of one (1) or more of the
9 foregoing, or any certificate of deposit for any of the foregoing;

10 (B) Any securities that are offered and sold pursuant to Section 4(5)
11 of the Securities Act of 1933 or that are "mortgage related securities" as
12 that term is defined in section 3(a)(41) of the Securities Exchange Act of
13 1934 are not securities exempt from registration under this section in the
14 same manner as obligations issued or guaranteed as to principal and interest
15 by the United States or any agency or instrumentality thereof. These
16 instruments, commonly referred to as private mortgage-backed securities, may
17 be exempt from the registration requirements of this chapter provided that the
18 transaction or the securities are otherwise exempt under this section. This
19 provision specifically overrides the preemption of state law contained in
20 section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984,
21 Public Law 98-440, of the United States;

22 (2) Any security issued or guaranteed by Canada, any Canadian province,
23 any political subdivision of any Canadian province, any agency or corporate or
24 other instrumentality of one (1) or more of the foregoing, or by any other
25 foreign government with which the United States currently maintains diplomatic
26 relations, if the security is recognized as a valid obligation by the issuer
27 or guarantor;

28 (3) Any security issued by and representing an interest in or a debt of
29 any bank organized under the laws of the United States, or any federally
30 insured savings bank, or any bank, savings institution, or trust company
31 organized and supervised under the laws of any state, or any bank holding
32 company regulated under the Bank Holding Company Act of 1956, as amended;

33 (4) Any security issued by and representing an interest in or a debt of
34 any state or federal savings and loan association, or any federally insured
35 savings bank, or any building and loan or similar association organized under

1 the laws of any state and authorized to do business in this state, or any
2 savings and loan holding company regulated by the Federal Savings and Loan
3 Insurance Corporation;

4 (5) Any security issued by any federal credit union or any credit union,
5 industrial loan association, or similar association organized and supervised
6 under the laws of this state;

7 (6) Any security issued or guaranteed by any railroad, other common
8 carrier, public utility, or holding company which is:

9 (A) Subject to the jurisdiction of the Interstate Commerce Commission;

10 (B) A registered holding company under the Public Utility Holding
11 Company Act of 1935 or a subsidiary of such a company within the meaning of
12 that act;

13 (C) Regulated in respect of its rates and charges by a governmental
14 authority of the United States or any state; or

15 (D) Regulated in respect of the issuance or guarantee of the security
16 by a governmental authority of the United States, any state, Canada, or any
17 Canadian province;

18 (7) (A) Any security listed or approved for listing upon notice of
19 issuance on the New York Stock Exchange, the American Stock Exchange, the
20 Midwest Stock Exchange, or any other stock exchange approved by the
21 commissioner;

22 (B) Any security listed or designated, or approved for listing or
23 designation upon notice of issuance, on an interdealer quotation system, if
24 such interdealer quotation system has adopted the criteria for listing or
25 designation as set forth in Securities Act Release No. 6810 (Dec. 16, 1988);
26 53 Federal Register 52550 (December 28, 1988); provided, however, that the
27 commissioner shall have authority, after notice and hearing, to terminate this
28 exemption as to a system upon written findings of fact and conclusions of law
29 which are subject to judicial review, that the listing or designation
30 standards have been so changed or insufficiently applied that the protection
31 to investors contemplated by the exemption no longer exists;

32 (C) Any other security of an issuer exempt under subdivision (a) (7) (A)
33 or (B) of this section which is of senior or substantially equal rank;

34 (D) Any security called for by subscription rights or warrants listed
35 or approved pursuant to subdivision (a) (7) (A) or (B) of this section;

1 (E) Any warrant or right to purchase or subscribe to any of the
2 foregoing;

3 (8) Any security issued by any person organized and operated not for
4 private profit but exclusively for religious, educational, benevolent,
5 charitable, fraternal, social, athletic, or reformatory purposes, or as a
6 chamber of commerce or trade or professional association;

7 (9) Any commercial paper which arises out of a current transaction or the
8 proceeds of which have been or are to be used for current transactions, and
9 which evidences an obligation to pay cash within nine (9) months of the date
10 of issuance, exclusive of days of grace, or any renewal of the paper which is
11 likewise limited, or any guarantee of the paper or of the renewal;

12 (10) Any investment contract or other security issued in connection with
13 an employees' stock purchase, savings, pension, profit sharing, stock bonus,
14 stock option, or similar benefit plan if, in the case of plans which do not
15 meet the requirements for qualification under the United States Internal
16 Revenue Code, there is filed with the commissioner prior to any offer or sale
17 a notice specifying the terms of the plan and the commissioner does not by
18 order disallow the exemption within ten (10) days;

19 (11) Any annuity contract issued by any not-for-profit corporation as
20 defined in Arkansas Code Annotated Section 4-28-202 and Section 140(6) of this
21 act under a permit issued by the Insurance Department of the State of
22 Arkansas; and

23 (12) Any security as to which the commissioner by rule or order finds
24 that registration is not necessary or appropriate in the public interest or
25 for the protection of investors."

26 SECTION 1808. All provisions of this act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

29

30 SECTION 1809. All laws and parts of laws in conflict with this act are
31 hereby repealed.

32

/s/ Senator Harriman

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APPROVED: 4/14/93

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