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## **South Carolina Nonprofit Corporation Act**

### **ARTICLE 1 General Provisions**

**SECTION 33-31-101.** Short title.

This chapter may be cited as the South Carolina Nonprofit Corporation Act of 1994.

**SECTION 33-31-102.** Reservation of power to amend or repeal.

The General Assembly of South Carolina has power to amend or repeal all or any part of Chapter 31, Title 33 at any time, and all domestic and foreign corporations subject to Chapter 31 of this title are governed by the amendment or repeal.

**SECTION 33-31-120.** Filing requirements.

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (b) This chapter must require or permit filing the document in the office of the Secretary of State.
- (c) The document must contain the information required by this chapter. It may contain other information as well.
- (d) The document must be in a medium and form as permitted by the Secretary of State.
- (e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
- (f) The document must be executed:
  - (1) by the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;
  - (2) if directors have not been selected or the corporation has not been formed by an incorporator; or
  - (3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that

fiduciary.

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

- (1) the corporate seal;
- (2) an attestation by the Secretary or an assistant secretary; or
- (3) an acknowledgement, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under Section 33-31-121, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy, except as provided in Sections 33-31-503 and 33-31-1509, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.

The 2005 amendment, in subsection (d), substituted "in a medium and form as permitted by the Secretary of State" for "typewritten or printed".

**SECTION 33-31-121. Forms.**

(a) The Secretary of State may prescribe and furnish on request forms for:

- (1) an application for a certificate of existence;
- (2) a foreign corporation's application for a certificate of authority to transact business in South Carolina;
- (3) a foreign corporation's application for a certificate of withdrawal; and
- (4) the notice of change of principal office. If the Secretary of State so requires, use of these forms is mandatory.

The Secretary of State through regulation may prescribe a mandatory form with regard to any other forms required or permitted by Chapter 31, Title 33 to be filed in his office. All mandatory forms must comply with the statutory requirements contained in Chapter 31.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

**SECTION 33-31-122. Filing, service, and copying fees.**

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

- (1) Articles of incorporation \$25.00
- (2) Application for use of indistinguishable name \$10.00
- (3)

Application for reserved name \$10.00 (4) Notice of transfer of reserved name \$ 3.00 (5) Application for registered name \$10.00 (6) Application for renewal of registered name \$10.00 (7) Corporation's statement of change of registered agent or registered office or both \$10.00 (8) Agent's statement of change of registered office for each affected corporation \$ 2.00 (9) Agent's statement of resignation \$ 3.00 (10) Amendment of articles of incorporation \$10.00 (11) Restatement of articles of incorporation with amendments \$10.00 (12) Articles of merger \$10.00 (13) Articles of dissolution \$10.00 (14) Articles of revocation of dissolution \$10.00 (15) Certificate of administrative dissolution No Fee (16) Application for reinstatement following administrative dissolution \$25.00 (17) Certificate of reinstatement No Fee (18) Certificate of judicial dissolution No Fee (19) Application for certificate of authority \$10.00 (20) Application for amended certificate of authority \$10.00 (21) Application for certificate of withdrawal \$10.00 (22) Certificate of revocation of authority to transact business No Fee (23) Notice of change of principle office \$10.00 (24) Articles of correction \$10.00 (25) Application for certificate of existence or authorization \$10.00 (26) Notification by existing corporation \$10.00 (27) Irrevocable election to be governed \$25.00 (28) Any other document required or permitted to be filed by this chapter \$10.00

(b) The Secretary of State shall collect a fee of ten dollars each time process is served on him under Chapter 31 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

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

- (1) for copying, one dollar for the first page and fifty cents for each additional page; and
- (2) two dollars for the certificate.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-123.** Effective date of document.

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

- (1) at the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or
- (2) at the time specified in the document as its effective time on the date it is filed.

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

**SECTION 33-31-124.** Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document:

(1) contains an incorrect statement; or

(2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

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

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

**SECTION 33-31-125.** Filing duty of the Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 33-31-120, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing "filed", together with his name and official title and date and time of receipt, on both the original and document copy, together with a further endorsement that the document is a true copy of the original document. After filing a document, except as provided in Sections 33-31-503 and 33-31-1510, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative and the document copy must be retained as part of the permanent records of the corporation.

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

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

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

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

(3) except as provided in Section 33-31-127, create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**SECTION 33-31-126.** Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the court of common pleas for Richland County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

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

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

**SECTION 33-31-127.** Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his signature, which may be in facsimile, and the seal of this State, is conclusive evidence that the original document is on file with the Secretary of State and must be taken and received in all courts, public offices, official bodies, and in all proceedings as prima facie evidence of the facts therein stated.

**SECTION 33-31-128.** Certificate of existence.

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

(b) The certificate of existence or authorization sets forth:

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

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

(3) that all fees, taxes, and penalties owed to the Secretary of State have been paid;

(4) that the Secretary of State has not mailed notice to the corporation pursuant to either Section 33-31-1421 or 33-31-1531 that the corporation is subject to being dissolved or its authority revoked;

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

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

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign

corporation is in existence or is authorized to transact business in this State.

**SECTION 33-31-129.** Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect, including an omission of a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading, with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed five hundred dollars.

(c) A person who violates subsection (a) is liable to any person who is damaged by the violation.

**SECTION 33-31-130.** Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State's office by this chapter.

**SECTION 33-31-140.** Definitions.

Unless the context otherwise requires;

(1) "Approved by the members" or "approval by the members" means approved or ratified by the members entitled to vote on the issue through either:

(a) the affirmative vote of a majority of the votes of the members represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of the greater proportion including the votes of any required proportion of the members of any class as the articles, bylaws, or this chapter may provide for specified types of member action; or

(b) a written ballot or written consent in conformity with this chapter.

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

(3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

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

(5) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this section, rights are considered the same if

they are determined by a formula applied uniformly.

(6) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color or typing in capitals or underlined is conspicuous.

(7) "Corporation" means public benefit, mutual benefit, and religious corporation.

(8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(9) "Deliver" includes mail.

(10) "Directors" means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which these persons are described.

(11) "Distribution" means the direct or indirect transfer of assets or any part of the income or profit of a corporation to its members, directors, or officers. The term does not include:

(a) the payment of compensation in a reasonable amount to its members, directors, or officers for services rendered;

(b) conferring benefits on its members in conformity with its purposes; or

(c) repayment of debt obligations in the normal and ordinary course of conducting activities.

(12) "Domestic corporation" means a corporation.

(13) "Effective date of notice" is defined in Section 33-31-141.

(14) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

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

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

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

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

(19) "Includes" denotes a partial definition.

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

(21) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any future federal tax code or succeeding statute of like tenor and effect, and any reference to a section of the Internal Revenue Code also shall mean the corresponding section of any future federal tax code.

(22) "Means" denotes a complete definition.

(23)(a) "Member" means a person entitled, pursuant to a domestic or foreign corporation's articles or bylaws, without regard to what a person is called in the articles or bylaws, to vote on more than one occasion for the election of a director or directors or any other matter which under the terms of this chapter requires approval by the members.

(b) A person is not a member by virtue of any of the following:

(A) any rights the person has as a delegate;

(B) any rights the person has to designate or appoint a director or directors; or

(C) any rights the person has as a director.

(24) "Membership" refers to the rights and obligations a member has pursuant to a corporation's articles, bylaws, and this chapter.

(25) "Mutual benefit corporation" means a domestic corporation which either is formed as a mutual benefit corporation pursuant to Sections 33-31-201 through 33-31-207, is designated a mutual benefit corporation by a statute, or does not come within the definition of public benefit or religious corporation.

(26) "Notice" is defined in Section 33-31-141.

(27) "Person" includes any individual or entity.

(28) "Principal office" means the office, in or out of this State, so designated in the articles of incorporation, application for certificate of authority, or in a notice of change of principal office filed pursuant to either Section 33-31-505 or 33-31-1515 where the principal office of a domestic or foreign corporation is located.

(29) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(30) "Public benefit corporation" means a domestic corporation which is formed as a public benefit corporation pursuant to Sections 33-31-201 through 33-31-207 or is required to be a public benefit corporation pursuant to Section 33-31-1707.

(31) "Record date" means the date established under Sections 33-31-601 through 33-31-640 or Sections 33-31-701 through 33-31-730 on which a corporation determines the identity of its members and their membership rights for the purposes of this chapter. The determinations must be made as of the time of



close of transactions on the record date unless another time for doing so is specified at the time the record date is fixed.

(32) "Religious corporation" means a domestic corporation which is formed as a religious corporation pursuant to Sections 33-31-201 through 33-31-207 or is required to be a religious corporation pursuant to Section 33-31-1707.

(33) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 33-31-840(b) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

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

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

(36) "Vote" includes authorization by written ballot and written consent.

(37) "Voting power" means the total number of votes entitled to be cast on the issue at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event which has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

#### **SECTION 33-31-141. Notice.**

(a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile transmission (FAX), or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communications.

(c) Oral notice is permissible if reasonable under the circumstances and is effective when communicated if communicated in a comprehensible manner. Oral notice also includes notice through broadcast transmission.

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

(1) when received;

(2) five days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;

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

(4) fifteen days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

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

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

(g) Written notice is correctly addressed to a domestic or foreign corporation, authorized to transact business in this State, other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent Notice of Change of Principal Office and if none has been filed, in its articles of incorporation or application for certificate of authority.

(h) If Section 33-31-705(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

**SECTION 33-31-150.** Private foundations.

Except where otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in Section 509(a) of the Internal Revenue Code:

(a) shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Internal Revenue Code;

(b) may not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code;

(c) may not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code;

(d) may not make any taxable expenditures as defined in Section 4944 of the Internal Revenue Code;

(e) may not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

**SECTION 33-31-151.** Express amendment excluding application of Section 33-31-150.

A corporation may amend its articles of incorporation expressly to include the application of Section 33-31-150, or any portion of that section.

**SECTION 33-31-152.** Rights of State are not impaired.

Nothing in Sections 33-31-150, 33-31-151, 62-7-405(f), and 62-7-405(g) impairs the rights and powers of the courts or the Attorney General of this State with respect to a corporation.

HISTORY: 1994 Act No. 384, Section 1; 2005 Act No. 66, Section 3, eff January 1, 2006.

#### Effect of Amendment

The 2005 amendment substituted "62-7-405(f), and 62-7-405(g)" for "62-7-506, and 62-7-507".

**SECTION 33-31-155.** Authority to dispose of assets from a dissolved nonprofit corporation or eleemosynary organization.

(A) Persons serving as directors or trustees at the time of dissolution of a nonprofit corporation or eleemosynary organization created pursuant to Section 33-31-10 and located in Florence County for the public good other than religious purposes are invested with the authority to dispose of any remaining assets of the corporation by resolution pursuant to the requirements of this section.

(B) The corporation's charter does not have to be reinstated for the disposition of such assets.

(C) The directors or trustees must call a special meeting for the limited purpose of disposing of the corporate assets remaining after dissolution. Notwithstanding any other provision of law, a quorum shall not be required for the conducting of the special meeting. Notice of such meeting must be published in a newspaper of general circulation, in the county in which the organization was perfected, for a period of one week prior to the meeting date.

(D) The assets may only be disposed of if a majority of the directors or trustees present and voting cast a favorable majority for such disposition. The assets must be distributed in such a manner to ensure their continued use for public and civic purposes.

(E) If persons serving as directors or trustees at the time of dissolution are deceased or have not taken action to dispose of assets of a dissolved nonprofit eleemosynary organization within five years of dissolution, any remaining assets escheat to the general fund of the State..

**SECTION 33-31-160.** Judicial relief.

(a) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas for the county in which the principal office designated on the last filed notice of change of principal office, articles, or application for authority to transact business is located, or if none within South Carolina, then the Richland County Court of Common Pleas, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably

designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

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

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

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

**SECTION 33-31-170.** Attorney General.

(a) The Attorney General must be given notice of the commencement of any proceeding that this chapter authorizes the Attorney General to bring but that has been commenced by another person.

(b) Whenever a provision of this chapter requires that notice be given to the Attorney General before or after commencing a proceeding or permits the Attorney General to commence a proceeding:

(1) if no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief;

(2) if a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in the proceeding..

**SECTION 33-31-171.** Investigation by Attorney General authorized.

The Attorney General, or any of his assistants or representatives when authorized by the Attorney General, may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State. Every such corporation shall permit the Attorney General or any of his authorized assistants or representatives to examine and take copies of all its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, bylaws, and any and all other records of any such corporation as often as the Attorney General may deem it necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its charter rights and privileges or in violation of any law of this State.

**SECTION 33-31-172.** Requesting permission to make examinations.

A written request must be made to the president or another officer of the nonprofit corporation at the time the Attorney General or his assistants or representatives desire to examine the affairs of the corporation, and it is the duty of the officer or his agent to immediately permit the Attorney General, or his authorized assistants or representatives, to inspect and examine any of the documents of the corporation.

**SECTION 33-31-173.** Use of information is restricted.

The Attorney General, or his authorized assistants or representatives, may not make public or use any document, copy, or other information derived in the course of an examination authorized by Sections 33-31-170 through 33-31-175, except in a judicial proceeding to which the State is a party or in a suit by the State to revoke the certificate of authority or cause the articles of the corporation to be forfeited or to collect penalties for a violation of the laws of this State or for the information of any officer of this State charged with the enforcement of its laws.

**SECTION 33-31-174.** Forfeiture of right to operate for refusing examination.

A foreign nonprofit corporation operating in this State under certificate of authority granted under the laws of this State, or any officer or agent thereof, or any domestic nonprofit corporation which fails or refuses to permit the Attorney General or his authorized assistants or representatives to examine or take copies of any of its documents as provided in Sections 33-31-170 through 33-31-175, whether they be situated within or without this State, shall forfeit its right to operate in this State and its articles of incorporation or certificate of authority shall be canceled or forfeited..

**SECTION 33-31-175.** Provisions are cumulative.

The provisions of Sections 33-31-170 through 33-31-175 are cumulative of all other laws now in force in this State and may not be construed as repealing any other means afforded by law for securing testimony or inquiring into the affairs of domestic or foreign nonprofit corporations.

**SECTION 33-31-180.** Religious corporations; Constitutional protections.

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both.

**SECTION 33-31-201.** Incorporators.

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

**SECTION 33-31-202.** Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of Section 33-31-401;

(2) one of the following statements:

- (i) This corporation is a public benefit corporation.
- (ii) This corporation is a mutual benefit corporation.
- (iii) This corporation is a religious corporation;
- (3) the street address of the corporation's initial registered office with zip code and the name of its initial registered agent at that office;
- (4) the name, address, and zip code of each incorporator;
- (5) whether or not the corporation will have members;
- (6) provisions not inconsistent with law regarding the distribution of assets on dissolution; and
- (7) the address, including zip code, of the proposed principal office for the corporation which may be either within or outside South Carolina.

(b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:

- (1) for any breach of the director's duty of loyalty to the corporation or its members;
- (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (3) for any transaction from which a director derived an improper personal benefit; or
- (4) under Sections 33-31-831 through 33-31-833.

This provision shall not eliminate or limit the liability of a director for an act or omission occurring before the date when the provision becomes effective.

(c) The articles of incorporation may set forth:

- (1) the purpose for which the corporation is organized which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
- (2) the names, addresses, and zip codes of the individuals who are to serve as the initial directors;
- (3) provisions not inconsistent with law regarding:
  - (i) managing and regulating the affairs of the corporation;
  - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members,

or any class of members; and

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

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

(d) Each incorporator and director named in the articles must sign the articles.

(e) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

**SECTION 33-31-203.** Incorporation.

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

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

**SECTION 33-31-204.** Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who knew or reasonably should have known that there was no incorporation.

**SECTION 33-31-205.** Organization of corporation.

(a) After incorporation:

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

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

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

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

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this State in accordance with Section 33-31-821.

**SECTION 33-31-206.** Bylaws.

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

**SECTION 33-31-207.** Emergency bylaws and powers.

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

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

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

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

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

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

(e) A corporate director, officer, employee, or agent is not liable for deviation from normal procedures if the conduct was authorized by emergency bylaws adopted as provided in this section.

**SECTION 33-31-301.** Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation is subject to all limitations of the other statute.

**SECTION 33-31-302.** General powers.



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

- (1) to sue and be sued, complain, and defend in its corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation;
- (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interest in or obligations of any entity;
- (7) to make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 33-31-832;
- (9) to be a promoter, partner, trustee, member, associate, or manager of any partnership, joint venture, trust, or other entity. When acting as a trustee of a trust in which it has a beneficial interest, the corporation is not conducting a trust business with regard to that trust for purposes of Section 34-21-10;
- (10) to conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State;
- (11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;
- (14) to accept gifts, devises, and bequests subject to any conditions or limitations, contained in the gift,

devise, or bequest so long as the conditions or limitations are not contrary to this chapter or the purposes for which the corporation is organized;

(15) to impose dues, assessments, and admission and transfer fees upon its members;

(16) to establish conditions for admission of members, admit members, and issue memberships;

(17) to carry on a business;

(18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

**SECTION 33-31-303.** Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

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

(1) binds the corporation; and

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

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

(e) Corporate action taken in good faith under this section to further the affairs of the corporation during an emergency binds the corporation. A corporate director, officer, employee, or agent is not liable for deviation from normal procedures if the conduct was authorized by emergency powers provided in this chapter.

**SECTION 33-31-304.** Ultra vires.

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

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

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

**SECTION 33-31-305.** Powers of corporations created by legislative authority before 1900.

All charitable, social, and religious corporations validly created by legislative authority before 1900, or validly created before 1900 by the act of a city, county government, or other political subdivision, in addition to the powers theretofore granted them, have all the powers enumerated in Section 33-31-302, "Powers of Corporation".

**ARTICLE 4**  
**Names**

**SECTION 33-31-401.** Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 33-31-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Secretary of State from the name appearing upon the records of the Secretary of State of any other nonprofit or business corporation, professional corporation, or limited partnership incorporated in, formed in, or authorized to do business in South Carolina, or a name reserved, registered, or otherwise filed upon the records of the Secretary of State.

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

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

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of

competent jurisdiction establishing the applicant's right to use the name applied for in this State.

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

(1) merged with the other corporation;

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

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

(e) Except for allowing foreign corporations to file for a certificate of authority under a fictitious name as provided in Section 33-31-1506, this chapter does not control the use of fictitious names.

(f) A corporation that converts to a nonprofit corporation pursuant to Section 33-10-110 may continue to use the same name that it used prior to the conversion.

**SECTION 33-31-402.** Reserved name.

(a) A person may reserve the exclusive use of a corporate name including the corporate name of a foreign corporation or its corporate name with any change required by Section 33-31-1506, by delivering an application to the Secretary of State for filing which shall set forth the name and address of the applicant and the name proposed to be reserved. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

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

**SECTION 33-31-403.** Registered name of a foreign corporation.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by Section 33-31-1506, if the name is distinguishable upon the records of the Secretary of State from the name appearing upon the records of the Secretary of State of any other nonprofit or business corporation, professional corporation, or limited partnership incorporated in, formed in, or authorized to do business in this State, or a name reserved or registered upon the records of the Secretary of State.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by Section 33-31-1506, by delivering to the Secretary of State an application:

(1) setting forth its corporate name, or its corporate name with any change required by Section 33-31-1506, the state or country and date of its incorporation, a statement that the foreign corporation is not, and has not done business in South Carolina, and a brief description of the nature of the activities in which it is engaged; and

(2) accompanied by a certificate of existence, or a document of similar import, from the state or country

of incorporation current within sixty days of delivery, duly authenticated by the official having custody of the corporation records in the state or country under whose law it is incorporated.

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

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

(e) A foreign corporation whose registration is effective may qualify thereafter as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

**SECTION 33-31-404.** Name change filing requirement when real property owned.

(a) When either a domestic or foreign nonprofit corporation which owns real property in South Carolina changes its corporate name by amendment of its articles, by merger, or reorganization, the newly named, surviving, acquiring, or reorganized corporation must file a notice of that name change in the office of the register of deeds of the county in this State in which the real property is situate. If there is no such office in that county, a notice of name change must be filed with the clerk of court of the county in which that real property is situate.

(b) The filing must be:

(1) by affidavit executed in accordance with the provisions of Section 33-31-120 and containing the old and new names of the corporation, which affidavit also may describe the real property owned by that corporation; or,

(2) by filing a certified copy of the amended articles or articles of merger; or

(3) by a duly recorded deed of conveyance to the newly named, surviving, acquiring, or reorganized corporation.

(c) the affidavit or filed articles must be duly indexed in the index of deeds.

(d) The purpose of this section is to establish record notice under Chapter 7, Title 30. Failure to make the required filing of a corporate name change will not affect the legality, force, effect, or enforceability as between the parties of any conveyance or other transaction involving the real estate owned by the affected corporation that is made subsequent to the change in name.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

## **ARTICLE 5**

### **Office and Agents**

**SECTION 33-31-501.** Registered office and registered agent.

Each corporation must continuously maintain in this State:

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

**SECTION 33-31-502.** Change of registered office or registered agent.

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

- (1) the name of the corporation;
  - (2) the street address, with zip code, of its current registered office;
  - (3) if the current registered office is to be changed, the street address, including zip code, of the new registered office;
  - (4) the name of its current registered agent;
  - (5) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
  - (6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent which will be identical.
- (b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

**SECTION 33-31-503.** Resignation of registered agent.

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

(b) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office as shown in its articles or most recently filed notice of change of principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**SECTION 33-31-504.** Service on corporation.

Except as otherwise specifically provided in this chapter, service of process on a nonprofit corporation must be in accord with the applicable provisions of Title 15.

**SECTION 33-31-505.** Notice of Change of Principal Office.

If a corporation changes the location of its principal office, the corporation within thirty days shall file a Notice of Change of Principal Office with the Secretary of State. The Notice of Change of Principal Office shall set forth:

(a) The name of the corporation; and

(b) The current street address with zip code of the corporation's principal office and the former principal office address.

**ARTICLE 6**  
**Members and Memberships**  
**Subarticle A**  
**Admission of Members**

**SECTION 33-31-601.** Admission.

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

(b) No person may be admitted as a member without his consent.

**SECTION 33-31-602.** Consideration.

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

**SECTION 33-31-603.** No requirement of members.

A corporation is not required to have members.

**Subarticle B**  
**Types of Memberships - Members' Rights and Obligations**

**SECTION 33-31-610.** Differences in rights and obligations of members.

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

**SECTION 33-31-611.** Transfers.

- (a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.
- (b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.
- (c) Where transfer rights have been provided, no restriction on them is binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

**SECTION 33-31-612.** Member's liability to third parties.

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

**Subarticle C**  
**Resignation and Termination**

**SECTION 33-31-620.** Resignation.

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

**SECTION 33-31-621.** Termination, expulsion, and suspension.

- (a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a



procedure that is fair and reasonable and is carried out in good faith.

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

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

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

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

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

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

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

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

**SECTION 33-31-622.** Purchase of memberships.

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

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

**Subarticle D  
Derivative Suits**

**SECTION 33-31-630.** Derivative suits.

Derivative suits may be maintained on behalf of South Carolina corporations in federal and state court in accordance with the applicable rules of civil procedure.

HISTORY: 1994 Act No. 384, Section 1.

**Subarticle E  
Delegates**

**SECTION 33-31-640.** Delegates.

- (a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.
- (b) The articles or bylaws may set forth provisions relating to:
  - (1) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;
  - (2) calling, noticing, holding, and conducting meetings of delegates; and
  - (3) carrying on corporate activities during and between meetings of delegates.

**ARTICLE 7**

**Members Meetings and Voting**

**Subarticle A**

**Meetings and Action Without Meetings**

**SECTION 33-31-701.** Annual and regular meetings.

- (a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.
- (b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.
- (c) Annual and regular membership meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office.
- (d) At the annual meeting:
  - (1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and
  - (2) Unless this chapter or the articles of incorporation or bylaws require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.
- (e) At regular meetings, the members shall consider and act upon matters as raised consistent with provisions of the articles of incorporation or bylaws and, in addition, with the notice requirements of this chapter.

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

**SECTION 33-31-702.** Special meetings.

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

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

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

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

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to Section 33-31-705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 33-31-705.

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

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by Section 33-31-705 may be conducted at a special meeting of members.

**SECTION 33-31-703.** Court-ordered meeting.

(a) The court of common pleas of the county where a corporation's principal office in this State or, if none in this State, its registered office, is located may summarily order a meeting to be held:

(1) on application of a member or other person entitled to participate in an annual or regular meeting, and in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) on application of a member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within forty days after the date it was required to be held; or

(3) on application of a member who signed a demand for a special meeting valid under Section 33-31-702, a person or persons entitled to call a special meeting and, in the case of a public benefit corporation, the Attorney General, if:

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

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

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

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

**SECTION 33-31-704.** Action by written consent.

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

(b) If not otherwise determined under Section 33-31-703 or 33-31-707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

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

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

**SECTION 33-31-705.** Notice of meeting.

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

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

(c) Notice is fair and reasonable if:

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

(2) notice of an annual or regular meeting includes a description of any matter that must be approved by the members under Section 33-31-831, 33-31-856, 33-31-1003, 33-31-1021, 33-31-1104, 33-31-1202, 33-31-1401, or 33-31-1402; and

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

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 33-31-707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(1) requested in writing to do so by a person entitled to call a special meeting; and

(2) the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-706.** Waiver of notice.

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

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

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

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects to considering the matter when it is presented.

**SECTION 33-31-707.** Record date; determining members entitled to notice and vote.

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a member's meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as a record date. If no record date is fixed, members at the close of business on the business day preceding the day on which notice is given or, if notice is

waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

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

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

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

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

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

**SECTION 33-31-708.** Action by written or electronic ballot.

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

(b) A written or electronic ballot shall:

(1) set forth each proposed action; and

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

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

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

- (1) indicate the number of responses needed to meet the quorum requirements;
  - (2) state the percentage of approvals necessary to approve each matter other than election of directors; and
  - (3) specify the time by which a ballot must be received by the corporation in order to be counted.
- (e) Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.

#### Effect of Amendment

The 2006 amendment added "or electronic" preceding "ballot" throughout.

### **Subarticle B Voting**

#### **SECTION 33-31-720. Members' list for voting.**

- (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting and shall list the members by classification of membership, if any. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.
- (b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or member's attorney is entitled on written demand to inspect and, subject to the limitations of Sections 33-31-1602(c) and 33-31-1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.
- (c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.
- (d) If the corporation refuses to allow a member, a member's agent, or member's attorney to inspect the list of members before or at the meeting, or copy the list as permitted by subsection (b), the court of common pleas of the county where a corporation's principal office in this State or, if none in this State, its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) before the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section.

(g) A member may inspect and copy the membership list only if (i) his demand is made in good faith and for a proper purpose; (ii) he describes with reasonable particularity his purpose; and (iii) the list is directly connected with his purpose.

**SECTION 33-31-721. Voting entitlement generally.**

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

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

(1) if only one votes, the act binds all; and

(2) if more than one votes, the vote must be divided on a pro rata basis.

**SECTION 33-31-722. Quorum requirements.**

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

(b) A bylaw amendment to change the quorum for a member action may be approved by the members and, if required, be approved as provided in Section 33-31-1030.

(c) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum must be adopted under the quorum then in effect or proposed to be adopted, whichever is greater.

**SECTION 33-31-723. Voting requirements.**

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

(b) A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members and, if required, be approved as required in Section 33-31-1030.

(c) An amendment of the articles of incorporation or bylaws adding, changing, or deleting a voting requirement must be adopted by the same vote and classes of members required to take action under the voting requirements then in effect or proposed to be adopted, whichever is greater.



**SECTION 33-31-724. Proxies.**

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

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. However, no proxy is valid for more than three years from its date of execution.

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

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

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

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

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

(f) Subject to Section 33-31-727 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

**SECTION 33-31-725. Cumulative voting for directors.**

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

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

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

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

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of Section 33-31-808 are met unless the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at

which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted and the entire number of directors authorized at the time of the director's most recent election were then being elected.

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

**SECTION 33-31-726.** Other methods of electing directors.

A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(1) on the basis of chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

**SECTION 33-31-727.** Corporation's acceptance of votes.

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

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

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

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

(3) two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders; and

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

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

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect

to the vote, consent, waiver, or proxy appointment.

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

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

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

### **Subarticle C Voting Agreements**

**SECTION 33-31-730.** Voting agreements.

(a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. The agreements may be valid for ten years. For public benefit corporations the agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

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

## **ARTICLE 8 Directors and Officers Subarticle A Board of Directors**

**SECTION 33-31-801.** Requirement for and duties of board.

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

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

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

**SECTION 33-31-802.** Qualifications of directors.

All directors must be natural persons. The articles or bylaws may prescribe other qualifications for

directors.

**SECTION 33-31-803.** Number of directors.

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

**SECTION 33-31-804.** Election, designation, and appointment of directors.

- (a) If the corporation has members entitled to vote for directors, all the directors, except the initial directors, must be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.
- (b) If the corporation does not have members entitled to vote for directors, all the directors, except the initial directors, must be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than the initial directors, must be elected by the board.

**SECTION 33-31-805.** Terms of directors generally.

- (a) The articles or bylaws may specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of a term specified in the articles or bylaws, the term of each director is one year. Directors may be elected for successive terms.
- (b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.
- (c) Except as provided in the articles or bylaws:
  - (1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
  - (2) the term of a director filling another vacancy expires at the end of the unexpired term that such director is filling.
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed, and qualifies, or until there is a decrease in the number of directors.

**SECTION 33-31-806.** Staggered terms for directors.

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

**SECTION 33-31-807.** Resignation of directors.

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

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

**SECTION 33-31-808.** Removal of directors elected by members or directors.

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

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

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

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

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

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

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

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term, the articles or bylaws provide that the director may be removed for reasons set forth in the articles or bylaws, the board may remove the director for such reasons. The director may be removed only if a majority of the directors then in office vote for the removal.

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

(1) limit the application of this section; and

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

(k) For purposes of this section, "members" refers to members entitled to vote for directors.

**SECTION 33-31-809.** Removal of designated or appointed directors.

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

(b) Appointed directors:

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

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

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

**SECTION 33-31-810.** Removal of directors by judicial proceeding.

(a) The circuit court of the county where a corporation's principal office in this State, or, if none in this State, its registered office, is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least five percent of the voting power of any class to elect directors, or the Attorney General in the case of a public benefit corporation, if the court finds that:

(1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in Sections 33-31-830 through 33-31-833; and

(2) removal is in the best interest of the corporation.

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

(c) If members or the Attorney General commence a proceeding under subsection (a), the corporation must be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), they shall give the Attorney General written notice of the proceeding.

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

**SECTION 33-31-811.** Vacancy on board.

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

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

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

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

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

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

(d) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Section 33-31-807(b) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**SECTION 33-31-812.** Compensation of directors.

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

**Subarticle B**  
**Meetings and Action of the Board**

**SECTION 33-31-820.** Regular and special meetings.

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

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

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

**SECTION 33-31-821.** Action without meeting.

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

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

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

**SECTION 33-31-822.** Call and notice of meetings.

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

(b) Unless the articles, bylaws, or this chapter provides otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, a board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, is not valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to Section 33-31-823.

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

**SECTION 33-31-823.** Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles, or bylaws. Except as provided in subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

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

**SECTION 33-31-824.** Quorum and voting.

(a) Except as otherwise provided in this chapter, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in



office or two directors.

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

(c) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(1) the director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting;

(2) the director votes against the action and the vote is entered in the minutes of the meeting;

(3) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(4) the director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action.

**SECTION 33-31-825. Committees.**

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

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

(1) a majority of all the directors in office when the action is taken; or

(2) the number of directors required by the articles or bylaws to take action under Section 33-31-824.

(c) Sections 33-31-820 through 33-31-824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under Section 33-31-801.

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

(1) authorize distributions;

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

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

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

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 33-31-830.

### **Subarticle C**

#### **Standards of Conduct**

**SECTION 33-31-830.** General standards for directors.

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

(1) in good faith;

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

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

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

(1) one or more officers or employees of the corporation who the director reasonably believes is reliable and competent in the matters presented;

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

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

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and who the director believes is reliable and competent in the matters presented.

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

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

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

(f) An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered. This limitations period does not apply if the failure to act in compliance with this section has been fraudulently concealed.

**SECTION 33-31-831.** Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable on the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into or is approved as provided in subsections (b) or (c).

(b) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be:

(1) authorized, approved, or ratified by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) approved before or after it is consummated by obtaining approval of the:

(i) Attorney General; or

(ii) the circuit court for Richland County in an action in which the Attorney General is joined as a party; or

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(e) For purposes of subsections (b) and (c) a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b)(1) or (c)(1) if the transaction is otherwise approved as provided in subsection (b) or (c).

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

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

**SECTION 33-31-832.** Loans or guarantees for directors and officers.

(a) A public benefit or religious corporation may not directly or indirectly lend money to or guarantee the obligation of a director or officer of the corporation.

(b) A mutual benefit corporation may not directly or indirectly lend money to or guarantee the obligation of a director of the corporation unless:

(1) the loan or guarantee is approved by a majority of all classes of members, except the votes of the affected director, if a member, and any votes controlled directly or indirectly by the affected director shall not be counted; or

(2) the corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees or either of them; and

(3) the approving action taken pursuant to (1) or (2) is authorized by the corporation's articles or bylaws.

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

**SECTION 33-31-833.** Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards for conduct described in Section 33-31-830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

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

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 33-31-830; and

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

**SECTION 33-31-834.** Immunity from suit.

(a) All directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.

(b) Subsection (a) applies to the following:

(1) electric cooperatives organized under Chapter 49, Title 33;

(2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).

**Subarticle D**

**Officers**

**SECTION 33-31-840.** Required officers.

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

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

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

**SECTION 33-31-841.** Duties and authority of officers.

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

**SECTION 33-31-842.** Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his duties under that authority:

(1) in good faith;

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

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

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

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

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

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

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

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

(e) An action against an officer asserting the officer's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered. This limitations period does not apply if the failure to act in compliance with this section has been fraudulently concealed.

**SECTION 33-31-843.** Resignation and removal of officers.

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

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

**SECTION 33-31-844.** Contract rights of officers.

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

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

**Subarticle E  
Indemnification**

**SECTION 33-31-850.** Definitions.

In this subarticle:

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

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

(3) "Expenses" include counsel fees.

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

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in Section 33-31-856, the office in a corporation held by the officer or the employment or agency

relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

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

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

**SECTION 33-31-851.** Authority to indemnify.

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

(1) conducted himself in good faith; and

(2) reasonably believed:

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

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

(3) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

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

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

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

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

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

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



**SECTION 33-31-852.** Mandatory indemnification.

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

**SECTION 33-31-853.** Advances for expenses.

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

(1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standards of conduct described in Section 33-31-851;

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

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

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

(c) Determinations and authorizations of payments under this section must be made in the manner specified in Section 33-31-855.

**SECTION 33-31-854.** Court-ordered indemnification.

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

(1) the director is entitled to mandatory indemnification under Section 33-31-852, in which case the court also shall order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 33-31-851(a) or was adjudged liable as described in Section 33-31-851(d), but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

**SECTION 33-31-855.** Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 33-31-851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 33-31-851.

(b) The determination must be made:

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

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

(3) by special legal counsel:

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

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

(4) by the members of a mutual benefit corporation.

Directors who are at the time parties to the proceeding may not vote on the determination.

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

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

**SECTION 33-31-856.** Indemnification of officers, employees, and agents.

Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under Section 33-31-852 and is entitled to apply for court-ordered indemnification under Section 33-31-854 in each case, to the same extent as a director;

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

(3) a corporation also may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation,

bylaws, general or specific action of its board of directors, or contract.

**SECTION 33-31-857.** Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under Section 33-31-851 or 33-31-852.

**SECTION 33-31-858.** Application of article.

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

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

## **ARTICLE 10**

### **Amendment of Articles**

**SECTION 33-31-1001.** Authority to amend articles of incorporation.

(a) A corporation may amend its articles of incorporation to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

(b) A corporation either designated on the records of the Office of the Secretary of State as a public benefit or religious corporation, or which qualifies as such pursuant to Section 33-31-1707, may amend or restate its articles of incorporation so that it becomes designated as a mutual benefit corporation only if notice, including a copy of the proposed amendment or restatement, has been delivered to the Attorney General at least twenty days before consummation of the amendment or restatement.

(c) Except as provided in Section 33-31-611(c), a member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation or bylaws.

**SECTION 33-31-1002.** Amendment of articles by directors.

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

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

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

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

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

(5) to make any other change expressly permitted by this chapter to be made by director action;

(6) with respect to a corporation incorporated before the effective date of this chapter, to include, consistent with its purpose, a statement of whether the corporation is a public benefit, mutual benefit, or religious corporation.

(b) If a corporation has no members, or has no members entitled to vote on the amendment to the articles, its incorporators, until directors are chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to Section 33-31-1030. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with Section 33-31-822(c). The notice also must state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**SECTION 33-31-1003.** Amendment of articles by directors and members.

(a) If the corporation has members entitled to vote on the amendment, unless this chapter, the articles, or bylaws require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

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

(2) except as provided in Section 33-31-1002(a), by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by Section 33-31-1030.

(b) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 33-31-205. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

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

**SECTION 33-31-1004.** Class voting by members on amendments.

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

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

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

(2) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class;

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

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

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

(6) authorize a new class of memberships.

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

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

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

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

**SECTION 33-31-1005.** Articles of amendment.

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

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption;
- (4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) if approval by members was required:
  - (i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
  - (ii) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class;
- (6) if approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to Section 33-31-1030, a statement that the approval was obtained;
- (7) if an amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself must be included in the articles.

**SECTION 33-31-1006.** Restated articles of incorporation.

- (a) A corporation's board of directors may restate its articles of incorporation with or without approval by members or any other person.
- (b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in Section 33-31-1003.
- (c) If the restatement includes an amendment requiring approval by members, the board must submit the

restatement to the members for their approval.

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

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or other change it would make in the articles.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under Section 33-31-1003.

(g) If the restatement includes an amendment requiring approval pursuant to Section 33-31-1030, the board must submit the restatement for such approval.

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

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

(2) if the restatement contains an amendment to the articles requiring approval by the members, the information required by Section 33-31-1005; and

(3) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to Section 33-31-1030, a statement that the approval was obtained.

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

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

(k) If the restatement provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the restatement if not contained in the restatement itself must be included in the restated articles.

(l) Restated articles of incorporation shall include all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to the names and addresses of the incorporators or the initial or present registered office or agent.

**SECTION 33-31-1007.** Amendment pursuant to judicial reorganization.

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

(b) A corporation's articles may be amended in a proceeding brought by the Attorney General in the court of common pleas for Richland County to correct the statement in the articles of incorporation with regard to whether the corporation is a public benefit or mutual benefit corporation or, subject to the provisions of Section 33-31-180, a religious corporation.

(c) Any individual designated by the court shall deliver to the Secretary of State articles of amendment setting forth:

(1) the name of the corporation;

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

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

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

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

(d) Subsection (a) does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**SECTION 33-31-1008.** Effect of amendment and restatement.

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

**SECTION 33-31-1020.** Amendment of bylaws by directors.

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



amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**SECTION 33-31-1021.** Amendment of the bylaws by directors and members.

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) the articles of incorporation or this chapter reserves this power exclusively to the members in whole or part or requires the consent of someone pursuant to Section 33-31-1030; or

(2) the members in adopting, amending, or repealing a particular bylaw provide expressly that the board of directors may not adopt, amend, or repeal that bylaw or any bylaw on that subject.

(b) A corporation's members may amend or repeal the corporation's bylaws even though the bylaws also may be amended or repealed by its board of directors.

(c) A notice of a meeting for members at which bylaws are to be adopted, amended, or repealed shall state that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment, or repeal of bylaws and contain or be accompanied by a copy or summary of the proposal.

(d) Unless otherwise provided in the articles, an amendment to the bylaws which relates solely to the dues required for membership and which establishes or changes an amount for, or method of computation of, dues, must be approved by the members.

**SECTION 33-31-1022.** Class voting on bylaw amendment by members.

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

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

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

(2) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class;

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

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

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

(6) authorize a new class of memberships.

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

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

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

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

**SECTION 33-31-1023.** Bylaw increasing quorum or voting requirement for members.

(a) The members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for the members, or any class of members, than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for members, if required, must be approved as provided in Section 33-31-1030 and must meet the same quorum requirement and be adopted by the same vote and class vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) may not be adopted, amended, or repealed by the board of directors.

**SECTION 33-31-1024.** Bylaw increasing quorum or voting requirement for directors.

(a) Subject to any additional approval required by Section 33-31-1030, a bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(1) if originally adopted by the members, only by the members;

(2) if originally adopted by the board of directors, either by the members or by the board of directors.

(b) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed, subject to any additional approval required by Section 33-31-1030, only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

**SECTION 33-31-1030.** Approval of the articles of incorporation and bylaws by third persons.

The articles of only a religious corporation or public benefit corporation may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. The article provision may be amended only with the approval in writing of such person.

**SECTION 33-31-1031.** Amendment terminating members or redeeming or canceling memberships.

(a) An amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or a class of members or redeem or cancel all memberships or a class of memberships must meet the requirements of this chapter.

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

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

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

(e) The provisions of Section 33-31-621 do not apply to any amendment meeting the requirements of this chapter.

## **ARTICLE 11**

### **Merger**

**SECTION 33-31-1101.** Approval of plan of merger.

(a) Subject to the limitations set forth in Section 33-31-1102, one or more nonprofit corporations may merge with:

(1) a business or nonprofit corporation, and one or more business corporations may merge with a nonprofit corporation to the extent authorized in Section 33-11-101, if the plan of merger is approved as provided in Section 33-31-1103;

(2) a limited liability company, domestic or foreign;

(3) a partnership, domestic or foreign; or

(4) a limited partnership, domestic or foreign.

(b) The plan of merger must include:

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

(2) the terms and conditions of the planned merger;

(3) the manner and basis, if any, of converting the members of each public benefit or religious corporation into members of the surviving entity;

(4) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting membership of each merging entity into membership, obligations, or securities of the surviving entity or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) any amendments to the articles of incorporation or bylaws of the surviving entity to be effected by the planned merger; and

(2) other provisions relating to the planned merger.

**SECTION 33-31-1102.** Limitations on mergers by public benefit or religious corporations.

(a) Without the prior approval of the court of common pleas of Richland County in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:

(1) a public benefit or religious corporation;

(2) a foreign corporation that would qualify under this chapter as a public benefit or religious corporation;

(3) a foreign or domestic business; mutual benefit corporation; or a corporation chartered directly by special act of the General Assembly, a city, county, or other governmental unit other than the Secretary of State, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or,

(4) a foreign or domestic business or mutual benefit corporation, provided that:

(i) on or before the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or religious corporation or the fair market value of the public benefit corporation or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under Section 33-31-1406(a)(5) and (6) had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and

(iii) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(b) At least twenty days before consummation of a merger of a public benefit corporation or a religious corporation pursuant to subsection (a)(4), notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) No member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation.

(d) Where approval or consent is required by this section, it must be given if the transaction is consistent with the purposes of the public benefit or religious corporation or is otherwise in the public interest.

**SECTION 33-31-1103.** Action on plan by board, members, and third persons.

(a) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(1) by the board;

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

(3) in writing by any person whose approval is required by a provision of the articles authorized by Section 33-31-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, or does not have members entitled to vote on the merger, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with Section 33-31-822(c). The notice also must state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 33-31-705. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(d) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to

vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) Approval by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under Section 33-31-1004 or 33-31-1022. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

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

(g) A plan of merger involving either a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet all the requirements of this chapter and specifically this subsection (g):

(i) Before adopting a resolution proposing a plan of merger, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(ii) After adopting a resolution proposing such a plan of merger, the notice to members proposing the merger shall include one statement of up to five hundred words opposing the proposed plan of merger if the statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such to the members for their approval. In public benefit corporations, the production and mailing costs must be paid by the requesting members. In mutual benefit corporations, the production and mailing costs must be paid by the corporation.

(iii) Any such plan of merger must be approved by the members by two-thirds of the votes cast by each class.

(iv) The provisions of Section 33-31-621 do not apply to any amendment meeting the requirements of this chapter.

**SECTION 33-31-1104.** Articles of merger.

After a plan of merger is approved by the board of directors of each merging corporation and if required by Section 33-31-1103 by the members and any other persons, the surviving corporation shall deliver to the Secretary of State articles of merger setting forth:

(1) the plan of merger;

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

(3) if approval by the members of one or more corporations was required:

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

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

(4) If approval of the plan by some person or persons other than the members of the board is required pursuant to Section 33-31-1103(a)(3), a statement that the approval was obtained;

(5) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

**SECTION 33-31-1105.** Effect of merger.

When a merger takes effect:

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

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

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

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

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

(6) the memberships or shares of each nonprofit or business corporation party to the merger that are to be converted into memberships, obligations, shares or other securities of the surviving or any other corporation or into cash or the other property are converted and the former holders of the memberships or shares are entitled only to the rights provided in the articles of merger.

**SECTION 33-31-1106.** Merger with foreign corporation.

(a) Except as provided in Section 33-31-1102, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) the merger is permitted by the law of the state or country under whose law each foreign corporation is

incorporated and each foreign corporation complies with that law in effecting the merger;

(2) the foreign corporation complies with Section 33-31-1104 if it is the surviving corporation of the merger; and

(3) each domestic nonprofit corporation complies with the applicable provisions of Sections 33-31-1101 through 33-31-1103 and, if it is the surviving corporation of the merger, with Section 33-31-1104.

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

**SECTION 33-31-1107.** Bequests, devises, and gifts not affected by merger.

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

## **ARTICLE 12**

### **Sale and Distribution of Assets**

**SECTION 33-31-1201.** Sale of assets in regular course of activities and mortgage of assets.

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

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

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

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

**SECTION 33-31-1202.** Sale of assets other than in regular course of activities.

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

(b) Unless this chapter, the articles, or bylaws, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:



(1) by the board;

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

(3) in writing by any person whose approval is required by a provision of the articles authorized by Section 33-31-1030 for an amendment to the articles or bylaws.

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

(d) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 33-31-705. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

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

(f) A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

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

## **ARTICLE 13**

### **Prohibited Distributions**

**SECTION 33-31-1301.** Prohibited distributions.

Except as authorized by Section 33-31-1302, a corporation may not make any distributions.

**SECTION 33-31-1302.** Authorized distributions.

- (a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:
- (1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and
  - (2) the corporation's total assets would at least equal the sum of its total liabilities.
- (b) Corporations may make distributions upon dissolution in conformity with Sections 33-31-1401 through 33-31-1440 of this chapter.
- (c) The board of directors may base a determination that a distribution is not prohibited under subsection (a) either on financial statements prepared on the basis of accounting practices and principals that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

## **ARTICLE 14**

### **Dissolution**

#### **SECTION 33-31-1401.** Dissolution by incorporators.

- (a) The incorporators of a corporation that has no members and that does not yet have initial directors, upon written consents signed by a majority of the incorporators, or through a vote of a majority of the incorporators at a meeting of the incorporators, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the Secretary of State articles of dissolution.
- (b) The incorporators in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

#### **SECTION 33-31-1402.** Dissolution by directors, members, and third persons.

- (a) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, dissolution is authorized if it is approved:
- (1) by the board;
  - (2) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
  - (3) in writing by any person whose approval is required by a provision of the articles authorized by Section 33-31-1030 for an amendment to the articles or bylaws.
- (b) If the corporation does not have members or has no members entitled to vote on dissolution, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with Section 33-31-822(c). The notice also must state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be

accompanied by a copy or summary of the plan of dissolution.

(c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 33-31-705. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

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

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

(f) Before the Secretary of State may accept for filing articles of dissolution of an existing nonprofit organization executed by a person authorized by this section to take such action either in his own right under appropriate authority or on behalf of the board or other entity or group, the Secretary of State shall require this person to attach an affidavit to the filing when the person under oath subject to a penalty of perjury certifies that he holds the requisite authority to take such action.

**SECTION 33-31-1403.** Notices to the Attorney General.

(a) A nonprofit organization shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution. The nonprofit organization shall submit to the Secretary of State copies of all documents provided to the Attorney General at the time of the filing of the articles of dissolution.

(b) No assets may be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the Attorney General or until the Attorney General has consented in writing to the dissolution, or indicated in writing that he will take no action in respect to the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

**SECTION 33-31-1404.** Articles of dissolution.

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

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) a statement that dissolution was approved by a sufficient vote of the board, or incorporators if dissolution is pursuant to Section 33-31-1401;

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

(5) if approval by members was required:

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

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

(6) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to Section 33-31-1402(a)(3), a statement that the approval was obtained; and

(7) if the corporation is a public benefit or religious corporation, that the notice to the Attorney General required by Section 33-31-1403(a) has been given.

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

**SECTION 33-31-1405. Revocation of dissolution.**

(a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) the name of the corporation;

(2) the effective date of the dissolution that was revoked;

(3) the date that the revocation of dissolution was authorized;

(4) if the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(5) if the corporation's board of directors revoked a dissolution authorized by the members alone or in

conjunction with another person, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) if member or third person action was required to revoke the dissolution, the information required by Section 33-31-1404(a)(5) and (6).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

**SECTION 33-31-1406.** Effect of dissolution.

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

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

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

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

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

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

(6) if the corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(i) to one or more entities described in Section 501(c)(3) of the Internal Revenue Code, to the United States, to a state, or to a political subdivision of the United States or a state, for a public purpose, or pursuant to court order to another organization to be used in such manner as in the judgment of the court will accomplish the general purposes for which the dissolved corporation was organized, for one or more exempt purposes; or

(ii) if the dissolved corporation is not described in Section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations or to one or more of the entities described in (i) above;

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

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

(b) Dissolution of a corporation does not:

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

(2) subject its directors or officers to standards of conduct different from those prescribed in Sections 33-31-801 through 33-31-858;

(3) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) terminate the authority of the registered agent.

**SECTION 33-31-1407.** Known claims against dissolved corporation.

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

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

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) state that the claim will be barred if not received by the deadline.

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

(1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice and the rejection notice stated that a proceeding to enforce the claim must be commenced within ninety days.

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

**SECTION 33-31-1408.** Unknown claims against dissolved corporation.

(a) A dissolved corporation also may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

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

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

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under Section 33-31-1407;

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

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

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

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

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

**SECTION 33-31-1420.** Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under Section 33-31-1421 to administratively dissolve a corporation if the:

(1) corporation does not deliver a report of change of principal office when due;

(2) corporation is without a registered agent or registered office in this State;

(3) corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(4) corporation's period of duration, if any, stated in its articles of incorporation expires; or

(5) corporation has been adjudicated bankrupt pursuant to Chapter 7 of the United States Bankruptcy Code.

**SECTION 33-31-1421.** Procedure for and effect of administrative dissolution.

(a) Upon determining that one or more grounds exist under Section 33-31-1420(a) for dissolving a corporation, the Secretary of State may serve the corporation with written notice of that determination under Section 33-31-504, and in the case of a public benefit corporation shall also notify the Attorney General in writing.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty days after service of the notice is perfected under Section 33-31-504, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 33-31-504, and in the case of a public benefit or religious corporation shall notify the Attorney General in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 33-31-1406 and notify its claimants under Sections 33-31-1407 and 33-31-1408.

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

**SECTION 33-31-1422.** Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under Section 33-31-1421 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

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

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

(3) state that the corporation's name satisfies the requirements of Section 33-31-401.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 33-31-504.



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

**SECTION 33-31-1423.** Appeal from denial of reinstatement.

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the court of common pleas for Richland County within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

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

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

**SECTION 33-31-1430.** Grounds for judicial dissolution.

(a) The court of common pleas may dissolve a corporation:

(1) in a proceeding by the Attorney General if it is established that:

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

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

(iii) the corporation is a public benefit corporation and the assets are being misapplied or wasted;

(iv) the corporation is a public benefit corporation and it is no longer able to carry out its purposes;

(v) the corporation has improperly solicited money or has fraudulently used the money solicited; or

(vi) has carried on, conducted, or transacted its business or affairs in a persistently fraudulent or illegal manner.

The enumeration of these grounds for dissolution, (i) through (vi), shall not exclude actions or special proceedings by the Attorney General or other state official for the dissolution of a corporation for other causes as provided in this chapter or in any other statute of this State;

(2) except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any

person specified in the articles, if it is established that:

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

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent, or unfairly prejudicial either to the corporation or to any member, whether in his capacity as a member, director, or officer of the corporation;

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

(iv) the corporate assets are being misapplied or wasted;

(v) the corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;

(vi) the corporation has abandoned its business and has failed within a reasonable time to dissolve, to liquidate its affairs, or to distribute its remaining property among its members; or

(vii) the corporation's period of duration stated in its articles of incorporation has expired;

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

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

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

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

(b) Before dissolving a corporation the court shall consider whether:

(1) there are reasonable alternatives to dissolution;

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

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

The court may order any other form of relief which it deems proper in the circumstances.

**SECTION 33-31-1431.** Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the county where the

corporation's principal office is located, and if the corporation has failed to maintain a principal office or failed to report any change of the office, in the court of common pleas for Richland County. Venue for a proceeding brought by any other party named in Section 33-31-1430 lies in the county where a corporation's principal office or, if none in this State, its registered office is or was last located.

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

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

(d) A person other than the Attorney General who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

**SECTION 33-31-1432. Receivership or custodianship.**

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

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

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

(1) the receiver may:

(i) dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; however, the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this State;

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

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship

may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

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

**SECTION 33-31-1433.** Decree of dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 33-31-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, or may order any other form of relief which it deems proper in the circumstances, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging a fee.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with Section 33-31-1406 and the notification of its claimants in accordance with Sections 33-31-1407 and 33-31-1408.

**SECTION 33-31-1440.** Deposit with Department of Revenue and Taxation.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, must be reduced to cash subject to known trust restrictions and deposited with the Department of Revenue or other appropriate state official for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. However, in the Department of Revenue or other appropriate officials discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the department or the appropriate state official shall pay him or his representative that amount.

## **ARTICLE 15**

### **Foreign Corporations**

**SECTION 33-31-1501.** Authority to transact business required.

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

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

(1) maintaining, defending, or settling any proceeding;

(2) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) maintaining bank accounts;

- (4) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;
  - (5) selling through independent contractors;
  - (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
  - (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
  - (8) securing or collecting debts or enforcing mortgages and security interests or any other rights in property securing the debts;
  - (9) owning, without more, real or personal property;
  - (10) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
  - (11) transacting business in interstate commerce;
  - (12) soliciting those contributions as are defined in Section 33-55-20(3) or any succeeding statute of like tenor and effect.
- (c) The list of activities in subsection (b) is not exhaustive.

**SECTION 33-31-1502.** Consequences of transacting business without authority.

- (a) A foreign corporation transacting business in this State without a certificate of authority may not maintain a proceeding in a court in this State until it obtains a certificate of authority.
- (b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.
- (c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.
- (d) A foreign corporation is liable for a civil penalty of ten dollars for each day it transacts business in this State without a certificate of authority, but not to exceed a total of one thousand dollars. The Attorney General may collect all penalties due under this subsection.
- (e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

**SECTION 33-31-1503.** Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State. The application must set forth:

- (1) the name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of Section 33-31-1506;
- (2) the name of the state or country under whose law it is incorporated;
- (3) the date of incorporation and period of duration;
- (4) the street address, including zip code, of its principal office;
- (5) the street address, including zip code, of its proposed registered office in this State and the name of its proposed registered agent at that office;
- (6) the names and usual business addresses, including zip codes, of its current directors and officers;
- (7) whether the foreign corporation has members; and
- (8) whether the corporation, if it had been incorporated in this State, would be a public benefit, mutual benefit or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated within sixty days of the date that it is filed in this State.

**SECTION 33-31-1504.** Amended certificate of authority.

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

- (1) its corporate name;
- (2) the period of its duration; or
- (3) the state or country of its incorporation.

(b) The requirements of Section 33-31-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**SECTION 33-31-1505.** Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in

this State subject, however, to the right of the State to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same, but no greater rights, and enjoys the same, but no greater privileges, as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

**SECTION 33-31-1506.** Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 33-31-401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this State, may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the Secretary of State from the name appearing upon the records of the Secretary of State of any other nonprofit corporation, business corporation, professional corporation, or limited partnership incorporated in, formed in, or authorized to do business in this State, or a name reserved, registered, or otherwise filed upon the records of the Secretary of State.

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

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

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

(d) A foreign corporation may use in this State the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation:

(1) has merged with the other corporation;

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

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

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of Section 33-31-401, it may not transact business in this State under the changed name until it adopts a name satisfying the requirements of Section 33-31-401 and obtains an amended certificate of authority under Section 33-31-1504.

**SECTION 33-31-1507.** Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this State must continuously maintain in this State:

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

**SECTION 33-31-1508.** Change of registered office or registered agent of foreign corporation.

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

- (1) the name of the corporation;
- (2) the street address of its current registered office;
- (3) if the current registered office is to be changed, the street address of its new registered office;
- (4) the name of its current registered agent;
- (5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

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



**SECTION 33-31-1509.** Resignation of registered agent of foreign corporation.

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

(b) After filing the statement, the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office as shown in its application for certificate of authority or most recent notice of change of principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**SECTION 33-31-1510.** Service on foreign corporations.

Except as specifically provided in this chapter, service of process on a foreign nonprofit corporation must be in accord with the applicable provisions of Title 15.

**SECTION 33-31-1515.** Notice of change of principal office.

If a foreign corporation changes the location of its principal office, then within thirty days of the date of the change the corporation shall file a notice of change of principal office with the Secretary of State. The notice of change shall set forth:

(1) the name of the corporation; and

(2) the current street address, with zip code, of the corporation's principal office and the address of the former principal office.

**SECTION 33-31-1520.** Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this State;

(4) a mailing address to which the Secretary of State may mail a copy of any process served on him under item (3); and

(5) a commitment to notify the Secretary of State during the six years following the delivery of the certificate of withdrawal of any change in the mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the post office address set forth in its application for withdrawal.

**SECTION 33-31-1530.** Grounds for revoking a foreign corporation's authority to transact business in this State.

(a) The Secretary of State may commence a proceeding under Section 33-31-1531(a) to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

(1) the foreign corporation does not deliver a notice of change of principal office when due;

(2) the foreign corporation is without a registered agent or registered office in this State;

(3) the foreign corporation does not inform the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

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

(5) the Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger; or,

(6) that the corporation has been adjudicated bankrupt pursuant to Chapter 7 of the United States Bankruptcy Code.

(b) The Richland County Court of Common Pleas under Section 33-31-1531(b) may revoke the certificate of authority of a foreign corporation authorized to transact business in this State in a proceeding by the Attorney General if it is established that:

(1) the corporation obtained its articles of incorporation through fraud;

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

(3) the corporation is a public benefit corporation and the assets are being misapplied or wasted;

(4) the corporation is a public benefit corporation and it is no longer able to carry out its purposes;

(5) the corporation has improperly solicited money or has fraudulently used the money solicited; or,

(6) the corporation has carried on, conducted, or transacted its business or affairs in a persistently fraudulent or illegal manner.

The enumeration of the grounds in items (1) through (6) revoking the authority shall not exclude actions or special proceedings by the Attorney General or other state official for revoking the authority of a foreign nonprofit corporation for other causes as provided in this chapter or in any other statute of this State.

**SECTION 33-31-1531.** Procedure and effect of revocation.

(a) Upon determining that one or more grounds exist under Section 33-31-1530(a) to revoke a certificate of authority of a foreign nonprofit corporation, the Secretary of State may serve the foreign corporation with written notice of that determination pursuant to Section 33-31-1510.

If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground for revocation determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under Section 33-31-1510, the Secretary of State shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 33-31-1510 and, in the case of a public benefit corporation, shall notify the Attorney General in writing.

(b) If the court of Common Pleas of Richland County determines that one or more grounds for revoking the foreign nonprofit's authority to transact business as described in Section 33-31-1530(b) exists, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging any fee.

Before revoking the foreign nonprofit corporation's authority to transact business in this State, the court shall consider whether:

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

The court of common pleas of Richland County may order any other form of relief which it deems proper in the circumstances.

(c) The authority of a foreign corporation to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's or Richland County Court of Common Pleas revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for

service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent notice of change of principal office or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**SECTION 33-31-1532.** Appeal from revocation.

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Richland County Court of Common Pleas within thirty days after the service of the certificate of revocation was received. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

**ARTICLE 16**  
**Records and Reports**  
**Subarticle A**  
**Records**

**SECTION 33-31-1601.** Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 33-31-825(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation and all amendments to them currently in effect;

- (2) its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) the minutes of all meetings of members and records of all actions approved by the members for the past three years;
- (5) all written communications to members generally within the past three years, including the financial statements furnished for the past three years under Section 33-31-1620;
- (6) a list of the names and business or home addresses of its current directors and officers; and
- (7) its most recent report of each type required to be filed by it with the Secretary of State under this chapter.

**SECTION 33-31-1602.** Inspection of records by members.

(a) Subject to subsection (e) and Section 33-31-1603(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in Section 33-31-1601(e) if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) excerpts from any records required to be maintained under Section 33-31-1601(a), to the extent not subject to inspection under Section 33-31-1602(a);

(2) accounting records of the corporation; and

(3) subject to Section 33-31-1605, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

(1) the member's demand is made in good faith and for a proper purpose;

(2) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) the records are directly connected with this purpose.

(d) This section does not affect:

(1) the right of a member to inspect records under Section 33-31-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

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

**SECTION 33-31-1603.** Scope of inspection rights.

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under Section 33-31-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

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

(d) The corporation may comply with a member's demand to inspect the record of members under Section 33-31-1602(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

**SECTION 33-31-1604.** Court-ordered inspection.

(a) If a corporation does not allow a member who complies with Section 33-31-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the county where the corporation's principal office in this State, or, if none in this State, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 33-31-1602(b) and (c) may apply to the circuit court in the county where the corporation's principal office in this State, or if none in this State, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it also shall order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

**SECTION 33-31-1605.** Limitations on use of membership list.

Without consent of the board, a membership list or any part of a membership list may not be obtained or used by a person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part of the list may not be:

- (1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) used for any commercial purpose; or
- (3) sold to or purchased by any person.

**Subarticle B  
Reports**

**SECTION 33-31-1620.** Financial statements for members.

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member or the Attorney General shall furnish the demanding party its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements also must be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

**SECTION 33-31-1621.** Report of indemnification to members.

If a corporation indemnifies or advances expenses to a director under Section 33-31-851, 33-31-852, 33-31-853, or 33-31-854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

**ARTICLE 17**

## Miscellaneous

### **SECTION 33-31-1701.** Application to Existing Domestic Corporations.

(a) This chapter applies to all domestic corporations which on this chapter's effective date were governed by Title 33, Chapter 31 of the 1976 Code.

(b) This chapter applies to each domestic corporation in existence on its effective date, organized other than under Title 33, Chapter 31, Code of Laws of South Carolina, 1976, upon such corporation's filing with the Secretary of State an irrevocable election to be governed by the provisions of this chapter. The irrevocable election shall contain all the information required by, and may include any other matter permitted by, Section 33-31-202 (except that information required by subsection (a)(4), relating to the incorporators, is not required). The irrevocable election shall be signed by the presiding officer of its board (or other governing body), its president, by another of its officers, or any other person, regardless of designation, whose functions are those of, or equivalent to such officer.

(c) This chapter applies to all domestic corporations resulting from the merger of any corporation with a corporation organized under this chapter, when the latter is designated as the surviving corporation.

### **SECTION 33-31-1702.** Application to Qualified Foreign Corporations.

A foreign corporation authorized to transact business in this State on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

### **SECTION 33-31-1703.** Saving Provisions.

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

- (1) the operation of the statute or any action taken under it before its repeal;
- (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
- (5) any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

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



**SECTION 33-31-1704.** Severability.

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

**SECTION 33-31-1705.** Effective Date.

As used in this chapter, the term "this chapter's effective date" or any similar variation means the effective date of the act which revised the provisions of Chapter 31 of Title 33 to enact the South Carolina Nonprofit Corporation Act of 1994.

**SECTION 33-31-1706.** Public Benefit, Mutual Benefit, and Religious Corporations.

(a) On the effective date of this chapter, each domestic corporation that is or becomes subject to this chapter shall be designated as a public benefit, mutual benefit, or religious corporation as follows:

(1) any corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by statute;

(2) any corporation that does not come within subsection (1) but is organized primarily or exclusively for religious purposes is a religious corporation;

(3) any corporation that does not come within subsection (1) or (2) but that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor provision, is a public benefit corporation;

(4) any corporation that does not come within subsection (1), (2) or (3), but that is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code or any successor provision, is a public benefit corporation; and

(5) any corporation that does not come within subsection (1), (2), (3), or (4) is a mutual benefit corporation.

(b) In any filing with the Secretary of State, an existing corporation may elect designation as a public benefit, mutual benefit, or religious corporation.

**SECTION 33-31-1707.** Existing domestic and foreign corporations required to file "Notification by Existing Corporation" form.

(a) All domestic corporations in existence on May 10, 1994 which are governed by this chapter, and all foreign nonprofit corporations authorized to transact business in this State on May 10, 1994 which do not then have on file with the Secretary of State either a current registered office or a current registered agent

at that office shall file on or before January 2, 1996, "Notification by Existing Corporation" form. Such form shall designate:

(1) the name of the corporation;

(2) the street address of the registered office in this State with zip code; and,

(3) the name of the registered agent whose office address shall be identical with the registered office.

(b) If any domestic or foreign corporation fails to make the filing required by subsection (a) on or before January 2, 1996, it is considered as of January 2, 1996, to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State. Service of process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause copies to be forwarded by certified mail addressed to the corporation at (1) the headquarters or principal office of the domestic corporation designated upon its declaration and petition for incorporation or application for qualification of a foreign corporation, (2) the last address of the domestic or foreign corporation known to the plaintiff, and (3) with respect to a foreign corporation, any registered office in the jurisdiction of incorporation (which address shall be as provided to the Secretary of State by the plaintiff). All costs of mailing shall be paid by the plaintiff and the Secretary of State may charge a fee of twenty dollars for the service.

(c) All domestic corporations in existence on May 10, 1994 which are governed by this chapter, and all foreign nonprofit corporations authorized to transact business in this State on May 10, 1994 whose headquarters or principal office as listed upon its declaration and petition for incorporation as a domestic nonprofit corporation or application for certificate of authority to transact business as a foreign nonprofit corporation which is no longer the location of the corporation's principal office shall file (1) a Notice of Change of Principal Office as is required by Section 33-31-505 or Section 33-31-1515, or (2) may designate upon the notice filed pursuant to subsection (a) the current street address along with the zip code of the corporation's principal office and the address of the former principal office (which filing shall serve as a Notification of Change of Principal Office). Any such domestic corporation may also elect a designation as a public benefit, mutual benefit, or religious corporation as is provided in Section 33-31-1706(b).

**SECTION 33-31-1708.** Provisions not applicable.

Other sections of this chapter notwithstanding, cooperative nonprofit membership corporations organized under or transacting business pursuant to Chapter 49 of this title, telephone cooperatives organized under or transacting business pursuant to Chapter 45 or any other provision of law in this title, and corporations not-for-profit organized under and operating pursuant to Chapter 36 of this title are not subject to the provisions of this chapter and no provision of this chapter repeals or amends any provision of Chapter 49 of this title, or any provision of Chapter 45 of this title or any other provision of law in this title relating to telephone cooperatives, or any provisions of Chapter 36 of this title.