

CONNECTICUT REVISED NONSTOCK CORPORATION ACT
CHAPTER 602 OF THE CONNECTICUT GENERAL STATUTES
(Revised through the 2018 legislative session)

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PART I

GENERAL PROVISIONS

§ 33-1000. Short title: Connecticut Revised Nonstock Corporation Act.

Sections 33-1000 to 33-1290, inclusive, shall be known and may be cited as the “Connecticut Revised Nonstock Corporation Act”.

§ 33-1001. Construction of statutes.

- (a) Sections 33-1000 to 33-1290, inclusive, shall be so construed as to provide for a general corporate form for the conduct of lawful activities with such variations and modifications from the form so provided as the interested parties may agree upon, subject to the interests of the state and third parties. Whether or not a section of said sections contains the words “unless the certificate of incorporation or bylaws otherwise provide”, or words of similar import, no provision of a certificate of incorporation or bylaw shall be held invalid on the ground that it is inconsistent with such section unless such section expressly prohibits variations therefrom, or prescribes minimum or maximum numerical requirements, or a substantial interest of the state or third parties is adversely affected thereby.
- (b) If the certificate of incorporation, in effect on January 1, 1997, of a corporation without capital stock formed under the laws of this state, whether general law or special act, prior to said date, contains any provision contrary to, inconsistent with or in addition to any provision of sections 33-1000 to 33-1290, inclusive, but which provision was permitted to be contained in such certificate pursuant to the provisions of applicable law as in effect prior to January 1, 1997, the provisions contained in such certificate shall govern such corporation and the provisions of said sections shall not be held or construed to alter or affect any provision of the certificate of incorporation of such corporation inconsistent herewith, except as provided in sections 33-1181, 33-1203, 33-1243 and 33-1244.

§ 33-1002. Definitions. As used in sections 33-1000 to 33-1290, inclusive:

- (1) “Address” means location as described by the full street number, if any, street, city or town, state or country and not a mailing address such as a post office box.
- (2) “Board” or “board of directors” means the group of persons vested with management of the affairs of the corporation irrespective of the name by which such group is designated.

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- (3) “Business corporation” means a corporation with capital stock or shares, incorporated under the laws of this state, whether general law or special act and whether before or after January 1, 1997.
 - (4) “Bylaws” means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
 - (5) “Certificate of incorporation” means the original certificate of incorporation or restated certificate of incorporation, all amendments thereto, and all certificates of merger or consolidation. In the case of a specially chartered corporation, the “certificate of incorporation” means the special charter of the corporation, including any portions of the charters of its predecessor companies which have continuing effect, and any amendments to the charter made by special act or pursuant to general law. In the case of a corporation formed before January 1, 1961, or of a specially chartered corporation, the “certificate of incorporation” includes those portions of any other corporate instruments or resolutions of current application in which are set out provisions of a sort which either
 - (A) are required by sections 33-1000 to 33-1290, inclusive, to be embodied in the certificate of incorporation, or
 - (B) are expressly permitted by said sections to be operative only if included in the certificate of incorporation.
- It also includes what were, prior to January 1, 1961, designated at law as agreements of association, articles of incorporation, charters and other such terms.
- (6) “Class” means all members that under the certificate of incorporation or sections 33-1000 to 33-1290, inclusive, are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the certificate of incorporation or said sections to vote generally on the matter are for that purpose a single class.
 - (7) “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.
 - (8) “Corporation” or “domestic corporation” means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state, whether general law or special act and whether before or after January

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1, 1997, but shall not include towns, cities, boroughs or any municipal corporation or department thereof.

- (9) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice including delivery by hand, mail, commercial delivery and electronic transmission.
- (10) “Distribution” means a direct or indirect transfer of money or other property, or incurrance of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests, or to or for the benefit of its officers or directors, provided the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided by sections 33-1000 to 33-1290, inclusive, shall not be deemed a distribution.
- (11) “Document” includes anything delivered to the office of the Secretary of the State for filing under sections 33-1000 to 33-1290, inclusive.
- (12) “Effective date of notice” is defined in section 33-1003.
- (13) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.
- (14) “Entity” includes a corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust and two or more persons having a joint or common economic interest; and state, United States, or foreign government.
- (15) “Foreign corporation” means any nonprofit corporation with or without capital stock which is not organized under the laws of this state.
- (16) “Governmental subdivision” includes authority, county, district and municipality.
- (17) “Includes” denotes a partial definition.
- (18) “Individual” includes the estate of an incompetent or deceased individual.
- (19) “Means” denotes an exhaustive definition.

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- (20) “Member” means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.
- (21) A corporation is “nonprofit” if no distribution may be made to its members, directors or officers.
- (22) “Notice” is defined in section 33-1003.
- (23) “Person” includes individual and entity.
- (24) “Principal office” of a domestic corporation means the address of the principal office of such corporation in this state, if any, as the same appears in the last annual report, if any, filed by such corporation with the Secretary of the State. If no principal office so appears, the corporation’s “principal office” means the address in this state of the corporation’s registered agent for service as last shown on the records of the Secretary of the State. In the case of a domestic corporation which has not filed such an annual report or appointment of registered agent for service, the “principal office” means the address of the principal place of affairs of such corporation in this state, if any, and if such corporation has no place of affairs in this state, its “principal office” shall be the office of the Secretary of the State.
- (25) “Proceeding” includes civil suit and criminal, administrative and investigatory action.
- (26) “Qualified director” is defined in section 33-1003a.
- (27) “Record date” means the date established under sections 33-1055 to 33-1077, inclusive, on which a corporation determines the identity of its members and their interests for purposes of sections 33-1000 to 33-1290, inclusive. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (28) “Secretary” means the corporate officer to whom under the bylaws or by the board of directors is delegated responsibility under subsection (c) of section 33-1109 for custody of the minutes of the meetings of the board of directors and of the members and for authenticating records of the corporation.
- (29) “Secretary of the State” means the Secretary of the State of Connecticut.
- (30) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature.

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- (31) “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.
- (32) “United States” includes any district, authority, bureau, commission, department and other agency of the United States.

§ 33-1003. Notice.

- (a) Notice under sections 33-1000 to 33-1290, inclusive, shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.
- (b) Notice may be communicated in person, by mail or other method of delivery, or by telephone, voice mail or other electronic means. 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 communication.
- (c) Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective
 - (1) upon deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed to the member's address shown in the corporation's current record of members, or
 - (2) when electronically transmitted to the member in a manner authorized by the member.
- (d) Written notice to a domestic or foreign corporation authorized to conduct affairs in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- (e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:
 - (1) When received;

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- (2) five days after its deposit in the United States mail, if mailed postage prepaid and correctly addressed; or
 - (3) on the date shown on the return receipt, if sent by registered or certified mail or a commercial delivery service, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (f) Oral notice is effective when communicated if communicated in a comprehensible manner.
- (g) If sections 33-1000 to 33-1290, inclusive, prescribe notice requirements for particular circumstances, those requirements govern. If a certificate of incorporation or bylaw prescribes notice requirements, not inconsistent with this section or other provisions of said sections, those requirements govern.
- (h) In computing the period of time of any notice required or permitted to be given by sections 33-1000 to 33-1290, inclusive, or under the provisions of the certificate of incorporation or bylaws of a corporation or of a resolution of members or directors, the day on which the notice is given shall be excluded, and the day on which the matter noticed is to occur shall be included, in the absence of a contrary provision.

§ 33-1003a. Qualified director.

- (a) For purposes of sections 33-1000 to 33-1290, inclusive, a qualified director is a director who, at the time action is to be taken under:
- (1) Section 33-1119 or 33-1121,
 - (A) is not a party to the proceeding,
 - (B) is not a director who sought approval for a director's conflicting interest transaction under section 33-1129 or a disclaimer of the corporation's interest in a business opportunity under section 33-1131, which approval or disclaimer is challenged in the proceeding, and
 - (C) does not have a material relationship with a director described in either subparagraph (A) or (B) of this subdivision;
 - (2) Section 33-1129, is not a director

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- (A) as to whom the transaction is a director's conflicting interest transaction, or
 - (B) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or
 - (3) Section 33-1131, would be a qualified director under subdivision (2) of this subsection if the business opportunity were a director's conflicting interest transaction.
- (b) For purposes of this section:
- (1) “Material relationship” means a familial, financial, professional or employment relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and
 - (2) “Material interest” means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the members or directors generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.
- (c) The presence of one or more of the following circumstances shall not by itself prevent a director from being a qualified director:
- (1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others; or
 - (2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is also a director.

§ 33-1004. Filing requirements.

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

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- (b) Sections 33-1000 to 33-1290, inclusive, shall require or permit filing the document in the office of the Secretary of the State.
- (c) The document shall contain the information required by sections 33-1000 to 33-1290, inclusive. It may contain other information as well.
- (d) The document shall be typewritten or printed or, if electronically transmitted, in a format that can be retrieved or reproduced in typewritten or printed form.
- (e) The document shall be in the English language. 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 shall be executed:
 - (1) By the chairman of the board of directors of a domestic or foreign corporation, by 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 the document shall sign it and state beneath or opposite such person's signature such person's name and the capacity in which such person signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.
- (h) If the Secretary of the State has prescribed a mandatory form for the document under section 33-1005, the document shall be in or on the prescribed form.
- (i) The document shall be delivered to the office of the Secretary of the State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of the State. If the document is filed in typewritten or printed form and not electronically transmitted, the Secretary of the State may require one exact or conformed copy to be delivered with the document, except as provided in sections 33-1052 and 33-1218.
- (j) When the document is delivered to the office of the Secretary of the State for filing, the correct filing fee, and any franchise tax, license fee or penalty required

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to be paid therewith by sections 33-1000 to 33-1290, inclusive, or other law, must be paid or provision for payment made in a manner permitted by the Secretary of the State.

- (k) When any document is required or permitted to be filed or recorded as provided in sections 33-1000 to 33-1290, inclusive, the Secretary of the State may in the Secretary of the State's discretion, for good cause, permit a photostatic or other photographic copy of such document to be filed or recorded in lieu of the original instrument. Such filing or recording shall have the same force and effect as if the original instrument had been so filed or recorded.

§ 33-1005. Forms. Mailing address.

- (a) The Secretary of the 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 conduct affairs in this state;
 - (3) a foreign corporation's application for a certificate of withdrawal; and
 - (4) the annual report.

If the Secretary of the State so requires, use of these forms is mandatory.

- (b) The Secretary of the State may prescribe and furnish on request forms for other documents required or permitted to be filed by sections 33-1000 to 33-1290, inclusive, but their use is not mandatory.
- (c) If a corporation or a foreign corporation so requests in writing, the Secretary of the State shall mail to the address designated in such request, and to no other address of the corporation, all matter required or permitted by this chapter to be mailed to such corporation or foreign corporation by the Secretary of the State.

§ 33-1006. Effective time and date of document.

- (a) Except as provided in subsection (b) of this section and subsection (c) of section 33-1007, a document accepted for filing is effective:

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- (1) At the date and time of filing, as evidenced by such means as the Secretary of the State may use for the purpose of recording the date and time of filing; or
 - (2) at the time specified in the document as its effective time on the date it is filed.
- (b) A document, other than the certificate of incorporation of a domestic corporation or a certificate of authority of a foreign corporation, 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.

§ 33-1007. Correcting filed document.

- (a) A domestic or foreign corporation may correct a document filed by the Secretary of the State if
- (1) the document contains an inaccuracy,
 - (2) the document was defectively made, executed, attested, sealed, verified or acknowledged, or
 - (3) the electronic transmission was defective.
- (b) A document is corrected:
- (1) By preparing a certificate of correction that
 - (A) describes the document, including its filing date, or attaches a copy of it to the certificate,
 - (B) specifies the inaccuracy or defect to be corrected, and
 - (C) corrects the inaccuracy or defect; and
 - (2) by delivering the certificate of correction to the Secretary of the State for filing.
- (c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely

affected by the correction. As to those persons, a certificate of correction is effective when filed.

§ 33-1008. Filing duty of Secretary of the State.

- (a) If a document delivered to the office of the Secretary of the State for filing satisfies the requirements of section 33-1004, the Secretary of the State shall file it.
- (b) The Secretary of the State files a document by stamping or otherwise endorsing “Filed”, together with his name and official title and the date and time of receipt on the original and on the receipt for the filing fee. After filing a document, except as provided in sections 33-1051 and 33-1219, the Secretary of the State shall deliver evidence of filing of such document and of payment of any required fee to the domestic or foreign corporation or its representative.
- (c) If the Secretary of the State refuses to file a document, he 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 for his refusal.
- (d) The Secretary of the 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) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ 33-1009. Appeal from Secretary of the State's refusal to file document.

- (a) If the Secretary of the State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the superior court for the judicial district of Hartford. 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 the State's explanation of his refusal to file.

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- (b) The court may summarily order the Secretary of the 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.

§ 33-1010. Evidentiary effect of copy of filed document. A copy of a document filed by the Secretary of the State, which copy is certified by the Secretary of the State, bearing his signature, which may be a facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the Secretary of the State.

§ 33-1011. Certificate of existence or authorization.

- (a) Any person may apply to the Secretary of the State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.
- (b) The issuance of a certificate of existence or a certificate of authorization shall be conclusive evidence that such corporation's most recent annual report required by section 33-1243 has been delivered to the Secretary of the State and that a certificate of dissolution or a certificate of withdrawal has not been filed with respect to such corporation.

§ 33-1012. Penalty for signing false document. A person who signs or otherwise executes a document he knows is false in any material respect with intent that the document be delivered to the Secretary of the State for filing shall be subject to the penalty for false statement under section 53a-157b.

§ 33-1013. Fees payable to Secretary of the State.

- (a) The Secretary of the State shall charge and collect the following fees for filing documents and issuing certificates and remit them to the Treasurer for the use of the state:
 - (1) Filing application to reserve, register, renew or cancel registration of corporate name, sixty dollars;
 - (2) filing transfer of reserved corporate name, sixty dollars;
 - (3) filing a certificate of incorporation, including appointment of registered agent, twenty dollars;

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- (4) filing change of address of registered agent or change of registered agent, twenty dollars;
 - (5) filing notice of resignation of registered agent in duplicate, twenty dollars;
 - (6) filing certificate of amendment to certificate of incorporation, twenty dollars;
 - (7) filing restated certificate of incorporation, twenty dollars;
 - (8) filing certificate of merger, twenty dollars;
 - (9) filing certificate of correction, twenty dollars;
 - (10) filing certificate of surrender of special charter and adoption of certificate of incorporation, twenty dollars;
 - (11) filing certificate of revocation of dissolution, twenty dollars;
 - (12) filing annual report, fifty dollars;
 - (13) filing application of foreign corporation for certificate of authority to conduct affairs in this state and issuing certificate of authority, forty dollars;
 - (14) filing application of foreign corporation for amended certificate of authority to conduct affairs in this state and issuing amended certificate of authority, forty dollars;
 - (15) filing certificate of reinstatement, including appointment of registered agent, one hundred ten dollars;
 - (16) filing a corrected annual report, fifty dollars; and
 - (17) filing an interim notice of change of director or officer, twenty dollars.
- (b) The Secretary of the State shall charge and collect the following miscellaneous charges and remit them to the Treasurer for the use of the state:
- (1) At the time of any service of process on the Secretary of the State as registered agent of a corporation, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be

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made if such party prevails in the suit or action, the plaintiff in the process so served shall pay fifty dollars;

- (2) for preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation:
 - (A) For each copy of each such document thereof regardless of the number of pages, forty dollars;
 - (B) for affixing the official seal thereto, fifteen dollars;
 - (3) for preparing and furnishing his certificate of existence or authorization, which certificate may reflect any and all changes of corporate name and the date or dates of filing thereof, eighty dollars;
 - (4) for preparing and furnishing his certificate of existence or authorization reflecting certificates affecting fundamental changes to a certificate of incorporation and the date or dates of filing thereof, one hundred twenty dollars; and
 - (5) for other services for which fees are not provided by the general statutes, the Secretary of the State may charge such fees as will, in his judgment, cover the cost of the services provided.
- (c) The tax imposed under chapter 219 shall not be imposed upon any transaction for which a fee is charged under the provisions of this section.

§ 33-1014. Franchise tax. A corporation shall pay and the Secretary of the State shall charge and collect from such corporation a franchise tax of thirty dollars when it files its certificate of incorporation.

§ 33-1015. Powers of Secretary of the State. The Secretary of the State has the power reasonably necessary to perform the duties required of him by sections 33-1000 to 33-1290, inclusive.

§ 33-1016. Regulations regarding electronic filing. The Secretary of the State may adopt regulations in accordance with the provisions of chapter 54 governing the filing with and delivery of documents to the office of the Secretary of the State under sections 33-1000 to 33-1290, inclusive, by electronic means, including facsimile and computer transmission.

§ 33-1017. Interrogatories by Secretary of the State.

- (a) The Secretary of the State may propound to any corporation subject to the provisions of sections 33-1000 to 33-1290, inclusive, domestic or foreign, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with the provisions of said sections applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of the State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories are directed to an individual they shall be answered by him, and, if directed to a corporation, they shall be answered by the president, vice president, secretary or assistant secretary thereof.
- (b) Each corporation, domestic or foreign, and each officer and director of a corporation, domestic or foreign, failing or refusing within the time prescribed by this section to answer truthfully and fully interrogatories duly propounded to it or him by the Secretary of the State as provided in subsection (a) of this section shall be fined not more than five hundred dollars.
- (c) Interrogatories propounded by the Secretary of the State and the answers thereto shall not be opened to public inspection nor shall the Secretary of the State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or if such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

§§ 33-1018 to 33-1024. Reserved for future use.

PART II

INCORPORATION

§ 33-1025. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering a certificate of incorporation to the Secretary of the State for filing.

§ 33-1026. Certificate of incorporation.

- (a) The certificate of incorporation shall set forth:

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- (1) A corporate name for the corporation that satisfies the requirements of section 33-1045;
 - (2) a statement that the corporation is nonprofit and that the corporation shall not have or issue shares of stock or make distributions;
 - (3) whether the corporation is to have members and, if it is to have members, the provisions which under section 33-1055 are required to be set forth in the certificate of incorporation;
 - (4) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;
 - (5) the name and address of each incorporator; and
 - (6) the nature of the activities to be conducted or the purposes to be promoted or carried out, except that it shall be sufficient to state, either alone or with other activities or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be formed under sections 33-1000 to 33-1290, inclusive, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.
- (b) The certificate of incorporation may set forth:
- (1) The names and addresses of the individuals who are to serve as the initial directors;
 - (2) provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation; or
 - (B) defining, limiting and regulating the powers of the corporation, its board of directors and members or any class of members;
 - (3) any provision that under sections 33-1000 to 33-1290, inclusive, is required or permitted to be set forth in the bylaws;
 - (4) a provision limiting the personal liability of a director to the corporation or its members for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for

serving the corporation during the year of the violation if such breach did not

- (A) involve a knowing and culpable violation of law by the director,
 - (B) enable the director or an associate, as defined in section 33-840, to receive an improper personal economic gain,
 - (C) show a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, or
 - (D) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, provided no such provision shall limit or preclude the liability of a director for any act or omission occurring prior to the effective date of such provision; and
- (5) a provision permitting or making obligatory indemnification of a director for liability, as defined in section 33-1116, to any person for any action taken, or any failure to take any action, as a director, except liability that
- (A) involved a knowing and culpable violation of law by the director,
 - (B) enabled the director or an associate, as defined in section 33-840, to receive an improper personal gain,
 - (C) showed a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, or
 - (D) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, provided no such provision shall affect the indemnification of or advance of expenses to a director for any liability stemming from acts or omissions occurring prior to the effective date of such provision.
- (c) The certificate of incorporation need not set forth any of the corporate powers enumerated in sections 33-1000 to 33-1290, inclusive.

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§ 33-1027. Incorporation.

- (a) The corporate existence begins when the certificate of incorporation is filed.
- (b) The Secretary of the State's filing of the certificate 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.

§ 33-1028. Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under sections 33-1000 to 33-1290, inclusive, are jointly and severally liable for all liabilities created while so acting.

§ 33-1029. Organization of corporation.

- (a)
 - (1) If initial directors are named in the certificate 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 certificate, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
 - (A) To elect directors and complete the organization of the corporation;
or
 - (B) to elect a board of directors who shall complete the organization of the corporation.
- (b) Action required or permitted by sections 33-1000 to 33-1290, inclusive, 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.
- (d) If an organizational meeting is held in accordance with this section, before the filing of the certificate of incorporation, action taken thereat shall not be impaired by the fact that corporate existence had not begun.

§ 33-1030. Bylaws

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

§ 33-1031. Emergency bylaws

- (a) Unless the certificate of incorporation provides otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:
 - (1) Procedures for calling a meeting of the board of directors;
 - (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.

§§ 33-1032 to 33-1034. Reserved for future use

PART III

PURPOSES AND POWERS

§ 33-1035. Purposes

- (a) A corporation may be formed under sections 33-1000 to 33-1290, inclusive, for the conduct of any affairs or the promotion of any purpose which may be lawfully carried on by a corporation except that of a bank and trust company, savings bank or savings and loan association, provided where, by any other section or sections of the general statutes, provision is made for the formation of a designated class or classes of corporations, such corporations shall be formed under said section or sections and not under sections 33-1000 to 33-1290, inclusive.
- (b) Except as provided in subsection (f) of this section, no corporation formed under sections 33-1000 to 33-1290, inclusive, shall, or shall have power to, transact in this state the business of an insurance company or a surety or indemnity company, railroad company, gas, electric distribution or water company, or of any company requiring the right to take and condemn lands or to occupy the public highways of this state.
- (c) Nothing in sections 33-1000 to 33-1290, inclusive, shall be construed to authorize a corporation formed under said sections to conduct any affairs except in compliance with any laws of this state regulating or otherwise applying to the same. The provisions of said sections govern all corporations, but notwithstanding the provisions of said sections, where by law special provisions are made in the case of a designated class or classes of corporations governing the corporate procedure thereof in any respect, limiting or extending the powers thereof, conditioning action upon the approval of any agency of the state, or otherwise prescribing the conduct of such corporations, such procedure, powers, action and conduct shall be governed by such special provisions whether or not such corporations are formed under said sections.
- (d) Nothing in this section shall prohibit the formation of a corporation under sections 33-1000 to 33-1290, inclusive, for the conduct of any affairs or for the promotion of any purpose in any other state if not prohibited by the laws thereof.
- (e) Except as otherwise provided in section 38a-153, nothing in sections 33-1000 to 33-1290, inclusive, other than the provisions of section 33-1036, shall be construed to apply to any corporation incorporated under any provision of the special acts, other than a savings bank, which is or may be authorized to transact in this state the business of an insurance company.

- (f) No corporation may be formed pursuant to this chapter for the purpose of transacting the business of an insurance company or a surety or indemnity company unless, at the time of the filing of its certificate of incorporation, there is also filed a certificate issued by the Insurance Commissioner, pursuant to section 38a-41a, authorizing the formation of the corporation. No corporation formed under this chapter shall have the power to transact in this state the business of an insurance company or a surety or indemnity company until it has procured a license from the Insurance Commissioner in accordance with the provisions of section 38a-41.

§ 33-1036. General powers. Unless its certificate of incorporation provides 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 it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its certificate of incorporation or with the laws of this state, for managing and regulating the affairs of the corporation;
- (4) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located, including the power to take property of any description or any interest therein by gift, devise or bequest;
- (5) To sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its 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;

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- (9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
- (10) To conduct its activities, locate offices and exercise the powers granted by sections 33-1000 to 33-1290, inclusive, within or without this state;
- (11) To elect directors and appoint 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 or 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, scientific or educational purposes and for other purposes that further the corporate interest;
- (14) To transact any lawful activity that will aid government policy;
- (15) To impose or levy fines, penalties, dues, assessments, admission and transfer fees upon its members;
- (16) To establish conditions for admission of members, admit members and issue memberships and certificates evidencing membership;
- (17) To carry on one or more businesses;
- (18) To make payments or donations, or do any other act, not inconsistent with law, that furthers the activities and affairs of the corporation; and
- (19) To enter into any arrangement with others for any union of interest with respect to any activities which the corporation has power to conduct by itself, even if such arrangement involves sharing or delegation of control of such activities with or to others.

§ 33-1037. Emergency powers

- (a) In anticipation of or during an emergency defined in subsection (d) of this section, 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

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- (2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.
- (b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:
 - (1) Notice of a meeting of the board of directors need be given only to those directors whom 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 business 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 subsections (a), (b) and (c) of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.
- (e) In time of war or other national or local emergency a corporation shall have power to conduct any lawful affairs in aid thereof, notwithstanding the activities or purposes set forth in its certificate of incorporation, at the request or direction of any apparently authorized governmental authority.

§ 33-1038. Ultra vires

- (a) Except as provided in subsection (b) of this section, 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:
 - (1) In a proceeding by a member or director against the corporation to enjoin the act;

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- (2) in a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation; or
 - (3) in a proceeding by the Attorney General to dissolve the corporation or to enjoin the corporation from the conduct of unauthorized affairs.
- (c) In a member's or director's proceeding under subdivision (1) of subsection (b) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of the enjoining of the unauthorized act.
- (d) The Attorney General may, upon his own information or upon complaint of an interested party, bring an action in the name of the state to restrain any person from purporting to have, or exercising, corporate powers not granted.

§§ 33-1039 to 33-1044. Reserved for future use

PART IV

NAME

§ 33-1045. Corporate name

- (a) The name of each corporation formed after January 1, 1961:
- (1) Shall contain the word “corporation”, “incorporated” or “company”, or the abbreviation “corp.”, “inc.” or “co.”, or words or abbreviations of like import in another language; and
 - (2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 33-1035 and its certificate of incorporation.
- (b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the Secretary of the State from:
- (1) The corporate name of a corporation or business corporation incorporated or authorized to conduct affairs in this state;
 - (2) a corporate name reserved or registered with the Secretary of the State;

- (3) the fictitious name adopted by a foreign corporation authorized to conduct affairs in this state because its real name is unavailable;
 - (4) the corporate name of any foreign corporation or business corporation authorized to transact business or conduct affairs in this state;
 - (5) the name of any domestic or foreign limited partnership organized or authorized to transact business in this state;
 - (6) the name of any domestic or foreign limited liability company organized or authorized to transact business in this state;
 - (7) the name of any domestic or foreign limited liability partnership organized or authorized to transact business in this state; and
 - (8) the name of any other entity whose name is carried upon the records of the Secretary of the State as organized or authorized to transact business or conduct affairs in this state.
- (c) A corporation may apply to the Secretary of the State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b) of this section. The Secretary of the State shall authorize use of the name applied for if:
- (1) The other corporation, limited partnership, limited liability company or other entity, as the case may be, consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of the State to change its name to a name that is distinguishable upon the records of the Secretary of the State from the name of the applying corporation; or
 - (2) the applicant delivers to the Secretary of the State a certified copy of the 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 corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs in this state and the corporation seeking to use the name:
- (1) Has merged with the other corporation;
 - (2) has been formed by reorganization of the other corporation; or

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- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
- (e) Sections 33-1000 to 33-1290, inclusive, do not control the use of fictitious names.

§ 33-1046. Reserved name

- (a) A person may reserve the exclusive use of a corporate name, including a corporate name of a foreign corporation, with such additional distinctive and distinguishing elements that the corporation agrees to use in this state exclusive of any other name as in the judgment of the Secretary of the State will be sufficient to distinguish its name, by delivering an application to the Secretary of the State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of the State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a period of one hundred twenty days.
- (b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of the State a signed notice of the transfer that states the name and address of the transferee.
- (c) Any person for whom a specified corporate name has been reserved pursuant to this section may, during the period for which such name is reserved, terminate such reservation by filing in the office of the Secretary of the State an application for cancellation of reservation of corporate name, together with the applicable fee.

§ 33-1047. Registered name

- (a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 33-1215, if the name is distinguishable upon the records of the Secretary of the State from the names that are not available under subsection (b) of section 33-1045.
- (b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 33-1215, by delivering to the Secretary of the State for filing an application:
 - (1) Setting forth its corporate name, or its corporate name with any addition required by section 33-1215, the state or country and date of its incorporation, and a brief description of the nature of the business 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.
- (c) The name is registered for the applicant's exclusive use upon the effective date of the application until the close of the calendar year in which the application for registration is filed.
- (d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of the State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October first and December thirty-first of the preceding year. The renewal application when filed renews the registration for the following calendar year.

§§ 33-1048, 33-1049. Reserved for future use

PART V

OFFICE AND AGENT

§ 33-1050. Registered office and registered agent

- (a) Each corporation that is required to file an annual report as provided in section 33-1243 shall continuously maintain in this state:
 - (1) A registered office that may be the same as any of its places of business; and
 - (2) a registered agent at such registered office, who may be:
 - (A) A natural person who is a resident of this state;
 - (B) a domestic corporation or business corporation;
 - (C) a foreign corporation or foreign business corporation which has procured a certificate of authority to transact business or conduct its affairs in this state;
 - (D) a domestic limited liability company;
 - (E) a limited liability company not organized under the laws of this state and which has procured a certificate of registration to transact business or conduct its affairs in this state;

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- (F) a domestic registered limited liability partnership;
- (G) a registered limited liability partnership not organized under the laws of this state and which has procured a certificate of authority to transact business or conduct its affairs in this state;
- (H) a domestic statutory trust; or
- (I) a statutory trust not organized under the laws of this state and which has procured a certificate of registration to transact business or conduct its affairs in this state.

The appointment of such registered agent shall be in writing and shall be signed by the registered agent therein appointed. If a natural person is appointed as the registered agent, such appointment shall include the residence address of such person.

- (b) In addition to persons or entities who may act as a registered agent pursuant to subsection (a) of this section, a foreign corporation may appoint the Secretary of the State and his successors in office to act as its registered agent.

§ 33-1051. Change of registered office or registered agent

- (a) A corporation may change its registered office or registered agent by delivering to the Secretary of the State for filing a statement of change that sets forth:
 - (1) The name of the corporation;
 - (2) if the current registered office is to be changed, the street address of its current registered office and the street address of the new registered office; and
 - (3) if the current registered agent is to be changed, the name of its current registered agent and 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.
- (b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of the

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State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

§ 33-1052. Resignation of registered agent

- (a) A registered agent may resign his agency appointment by signing and delivering to the Secretary of the State for filing the signed original and one exact or conformed copy 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 the State shall mail the copy to the corporation at its 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.

§ 33-1053. Service of process on corporation

- (a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation. Service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state.
- (b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by any proper officer or other person lawfully empowered to make service by sending a true and attested copy of the process, notice or demand by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is effective under this subsection at the earliest of:
 - (1) The date the corporation receives the mail;
 - (2) the date shown on the return receipt, if signed on behalf of the corporation; or
 - (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed.
- (c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

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§ 33-1054. Reserved for future use

PART VI

MEMBERS

§ 33-1055. Classes of members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes shall be set forth in the certificate of incorporation and the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the certificate of incorporation or bylaws. If the corporation has no members, or only members not entitled to vote, that fact shall be set forth in the certificate of incorporation and the corporation shall operate under the management of its board of directors. A corporation may issue certificates evidencing membership therein.

(A)

MEMBERSHIP RIGHTS AND LIABILITIES

§ 33-1056. Rules for membership

- (a) Membership shall be governed by such rules of admission, retention, withdrawal and expulsion as the bylaws shall prescribe, provided all such bylaws shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.
- (b) Unless otherwise provided in the certificate of incorporation or the bylaws, another entity, foreign or domestic, may become a member of a corporation.
- (c) Membership may be limited to persons who are members in good standing of another corporation, organization or association, if so provided in the certificate of incorporation. If membership is so limited, the certificate of incorporation may provide that failure on the part of any such member to keep in such good standing in such other corporation, organization or association shall be sufficient cause for expulsion.
- (d) Unless otherwise provided in the certificate of incorporation or bylaws, a member may not voluntarily or involuntarily transfer his membership or any rights arising therefrom.
- (e) Unless otherwise provided in the certificate of incorporation or bylaws, membership shall be terminated by death, voluntary withdrawal or expulsion, and

thereafter all rights and privileges of the member in the corporation and its property shall cease.

§ 33-1057. Corporation may impose fines and penalties and levy dues and assessments

- (a) A corporation may impose fines or penalties on members if provided in bylaws duly adopted by a two-thirds vote of members entitled to vote and, if the fine or penalty applies to members not entitled to vote, by a two-thirds vote as a class of such members not otherwise entitled to vote. Such fine or penalty shall not exceed the higher of the
 - (1) annual dues or assessment or
 - (2) initiation fee, if any.
- (b) A corporation may levy dues or assessments against members if provided in a bylaw provision duly adopted
 - (1) by the affirmative vote of at least two-thirds of the members of each class of members, voting as a class, to which the levy applies, even though any such class of members is not otherwise entitled to vote, or
 - (2) by the directors if the directors are authorized to do so by a bylaw provision adopted by the affirmative vote of at least two-thirds of the members of each class of members, voting as a class, to which a levy may apply, even though any such class of members is not otherwise entitled to vote.
- (c) For purposes of this section, the corporation's initial bylaws adopted by
 - (1) the incorporators or
 - (2) the board of directors shall be deemed to have been adopted by all the members entitled to vote thereon, if any.
- (d) Notwithstanding any limitation on the amount of a fine or penalty set forth in subsection (a) of this section, a corporation organized under sections 33-1000 to 33-1290, inclusive, or any predecessor statutes, that is a trade association or other professional organization exempt from taxation under Section 501(c)(6) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, may impose a fine on a

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member, not to exceed the amount set forth in the bylaws, for the violation of a code of ethics or other code of conduct upon majority vote of its board of directors in accordance with its bylaws, provided the articles of association or bylaws of the corporation contain a written provision whereby members agree to be bound by such code of ethics or code of conduct as a condition of membership.

§ 33-1058. Liability of members

- (a) A member of a corporation shall not be liable to the corporation or its creditors with respect to such membership except for the obligation to pay in full any fines or penalties duly imposed against him and any dues and assessments levied against him to which he has assented, or imposed or levied against him in accordance with the provisions of section 33-1057.
- (b) Any member who receives any distribution of income or assets from a corporation in violation of sections 33-1000 to 33-1290, inclusive, or of the certificate of incorporation, whether by dividend, in liquidation or otherwise, and who accepted or received such distribution knowing it to be improper, shall be liable for the amount so received:
 - (1) To any creditors existing at the time of such distribution who shall obtain a judgment against such corporation on which execution shall be returned unsatisfied; and
 - (2) to the corporation.

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(B)

MEETINGS

§ 33-1061. Annual meeting. Regular meeting

- (a) A corporation that has members entitled to vote for the election of directors shall hold a meeting of such members annually at a time stated in or fixed in accordance with the bylaws.
- (b) Annual 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 in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

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- (c) A corporation that has members entitled to vote may hold regular meetings of such members in or out of this state at the places and times stated in or fixed in accordance with the bylaws.
- (d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ 33-1062. Special meeting

- (a) A corporation that has members entitled to vote shall hold a special meeting of members entitled to vote at the meeting:
 - (1) On call of its board of directors or the person or persons authorized to do so by the certificate of incorporation or the bylaws; or
 - (2) if the members holding at least five per cent, or such other number or proportion as shall be provided in the bylaws, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held. If a call for such a special meeting is not issued within fifteen days after receipt of such members' request, such members may call the meeting.
- (b) If not otherwise fixed under section 33-1063 or 33-1067, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.
- (c) 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 shall be held at the corporation's principal office.
- (d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of section 33-1065 may be conducted at a special meeting of members.

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§ 33-1063. Court-ordered meeting

- (a) The superior court for the judicial district where a corporation's principal office or, if none in this state, its registered office is located may summarily order a meeting to be held:
 - (1) On application of any member entitled to vote at an annual meeting 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 who signed a demand for a special meeting valid under section 33-1062, if:
 - (A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or
 - (B) the special meeting was not held in accordance with the notice.
- (b) The court may fix the time and place of the meeting, determine the members entitled to vote at 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.

§ 33-1064. Action without meeting. Validity of actions at meetings not properly called

- (a) Any action which, under any provision of sections 33-1000 to 33-1290, inclusive, may be taken at a meeting of members may be taken without a meeting by one or more consents in writing, setting forth the action so taken or to be taken, signed by all of the persons who would be entitled to vote upon such action at a meeting, or by their duly authorized attorneys which action for purposes of this subsection shall be referred to as "unanimous written consent". The secretary shall file such consent or consents, or certify the tabulation of such consents and file such certificate, with the minutes of the meetings of the members. A unanimous written consent shall have the same force and effect as a vote of the members at a meeting duly held, and may be stated as such in any certificate or document filed under sections 33-1000 to 33-1290, inclusive.

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- (b) Where directors or officers are to be elected by members or any other action is to be voted upon by members, the certificate of incorporation or bylaws may provide that such elections may be conducted and such actions voted upon by mail in such manner as shall be stated therein. The vote of members, or of the members of any particular class, shall be determined from the total number of members who actually vote by mail, rather than from the total number of members entitled so to vote, unless the certificate of incorporation otherwise provides. A ballot signed under this section shall have the same force and effect as a vote of the member who signed it at a meeting duly held, and may be stated as such in any certificate or document filed under sections 33-1000 to 33-1290, inclusive.
- (c) If not otherwise fixed under section 33-1063 or 33-1067, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent or ballot under subsection (a) or (b) of this section.
- (d) The absence from the minutes of any indication that a member objected to holding the meeting shall prima facie establish that no such objection was made.

§ 33-1065. Notice of meeting

- (a) A corporation shall notify members entitled to vote of the date, time and place of each annual, regular and special meeting no fewer than ten nor more than sixty days before the meeting date. Unless sections 33-1000 to 33-1290, inclusive, or the certificate of incorporation requires otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.
- (b) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose or purposes for which the meeting is called, except that, unless stated in a written notice of the meeting,
 - (1) no bylaw may be brought up for adoption, amendment or repeal, and
 - (2) no matter, other than the election of directors at an annual meeting, may be brought up which expressly requires the vote of members pursuant to said sections.
- (c) Notice of a special meeting of members shall include a description of the purpose or purposes for which the meeting is called.

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- (d) If not otherwise fixed under section 33-1063 or 33-1067, the record date for determining members entitled to notice of and to vote at an annual, regular or special meeting is the day before the first notice is delivered to members.
- (e) 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 33-1067, however, notice of the adjourned meeting must be given under this section to persons who are members entitled to vote as of the new record date.

§ 33-1066. Waiver of notice

- (a) A member may waive any notice required by sections 33-1000 to 33-1290, inclusive, the certificate of incorporation 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 or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

§ 33-1067. Record date

- (a) The bylaws may fix or provide the manner of fixing the record date for one or more classes of members in order to determine the members entitled to notice of a meeting of members, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.
- (b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

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- (c) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.
- (d) 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 continues in effect or it may fix a new record date.

§ 33-1068. Chairperson to preside

- (a) At each meeting of members, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provision, by the board of directors.
- (b) The chairperson, unless the certificate of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.
- (c) Any rules adopted for, and the conduct of, the meeting shall be fair to members.
- (d) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

§ 33-1069. Reserved for future use

(C)

VOTING

§ 33-1070. Members' list for meeting

- (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall be arranged by classes of members, if any, and show the address of and number of votes to which each such member is entitled.

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- (b) The members' list shall be available for inspection by any members entitled to vote at the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member entitled to vote at the meeting or his agent or attorney is entitled on written demand to inspect and, subject to the requirements of subsection (c) of section 33-1236, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.
- (c) The corporation shall make the members' list available at the meeting, and any member entitled to vote at the meeting or his agent or 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 entitled to vote at the meeting or his agent or attorney to inspect the members' list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the superior court for the judicial district where a corporation's principal office 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.
- (e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting.

§ 33-1071. Member voting rights

- (a) Unless the certificate of incorporation provides otherwise, each member, regardless of class, is entitled to one vote on each matter voted on at a meeting of members. Voting rights of members of any class may be increased, limited or denied by the certificate of incorporation.
- (b) Members otherwise entitled to vote, but disqualified from voting for any reason, shall not be considered for the purpose of quorum or of computing the voting power of the corporation or of members of any class.
- (c) A corporate member's vote may be cast by the president of the member corporation or by any other officer of such corporation in the absence of express notice of the designation of some other person by the board of directors or bylaws of the member corporation.

§ 33-1072. Proxies

- (a) Unless the certificate of incorporation or bylaws provide otherwise, a member entitled to vote may vote in person or by proxy.
- (b) A member entitled to vote by proxy or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission of the appointment. an electronic transmission must contain or be accompanied by information from which one can determine that the member, the member's agent or the member's attorney-in-fact authorized the electronic transmission.
- (c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. A photographic or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by such person shall be sufficient to effect such appointment. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment.
- (d) An appointment of a proxy is revocable by the member.
- (e) 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 his authority under the appointment.
- (f) Subject to section 33-1073 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission of the appointment, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

§ 33-1073. Corporation's acceptance or rejection 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 name of a member, the corporation if acting in good faith is

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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, administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of such status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
 - (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
 - (4) Two or more persons are comembers or fiduciaries and the name signed purports to be the name of at least one of such persons and the person signing appears to be acting on behalf of all of such persons.
- (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 or subsection (b) of section 33-1072 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 or subsection (b) of section 33-1072 is valid unless a court of competent jurisdiction determines otherwise.

§ 33-1074. Quorum and voting requirements

- (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.

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- (b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the 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, administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of such status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
 - (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
 - (4) Two or more persons are comembers or fiduciaries and the name signed purports to be the name of at least one of such persons and the person signing appears to be acting on behalf of all of such persons.
- (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 or subsection (b) of section 33-1072 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 or subsection (b) of section 33-1072 is valid unless a court of competent jurisdiction determines otherwise.

§ 33-1075. Action by single and multiple classes of members

- (a) If the certificate of incorporation or sections 33-1000 to 33-1290, inclusive, provide for voting by a single class on a matter, action on that matter is taken when voted upon by that class as provided in section 33-1074.

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- (b) If the certificate of incorporation or sections 33-1000 to 33-1290, inclusive, provide for voting by two or more classes on a matter, action on that matter is taken only when voted upon by each of those classes counted separately as provided in section 33-1074. Action may be taken by one class on a matter even though no action is taken by another class entitled to vote on the matter.

§ 33-1076. Other quorum or voting requirement

- (a) The certificate of incorporation may provide for a greater voting requirement for members, or classes of members, than is provided for sections 33-1000 to 33-1290, inclusive. The certificate of incorporation or the bylaws may provide for a greater quorum requirement for members, or classes of members, than is provided by sections 33-1000 to 33-1290, inclusive.
- (b) The certificate of incorporation may, except where expressly prohibited by sections 33-1000 to 33-1290, inclusive, or where such action is required by said sections to be unanimous, provide for a lesser voting requirement, but unless expressly permitted by a particular section of said sections, not less than a majority of the votes cast by the members, or by the members of a particular class, entitled to vote on the matter.
- (c) An amendment to the certificate of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and classes required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§ 33-1077. Voting for directors. Cumulative voting

- (a) Unless otherwise provided in the certificate of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present, or if voting by mail is permitted pursuant to section 33-1064, in an election in which the total number of members who vote is not less than the number required for a quorum.
- (b) Members do not have a right to cumulate their votes for directors unless the certificate of incorporation so provides.
- (c) A statement included in the certificate of incorporation that “all or a designated class of members are entitled to cumulate their votes for directors”, or words of similar import, means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they

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are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

- (d) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:
 - (1) The meeting notice states conspicuously that cumulative voting is authorized;
 - (2) a member who has the right to cumulate his votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one member gives this notice all other members in the same class participating in the election are entitled to cumulate their votes without giving further notice; or
 - (3) if voting is to be by mail pursuant to section 33-1064,
 - (A) the bylaws specify how election of directors shall be conducted if members vote cumulatively by mail,
 - (B) the notice of the meeting states conspicuously that cumulative voting is authorized and how the election is to be conducted, and
 - (C) the mail ballot provides for cumulative voting.

§ 33-1078. Inspectors

- (a) A corporation may appoint one or more inspectors to act at a meeting of members and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.
- (b) The inspectors shall
 - (1) ascertain the number of members entitled to vote and the voting power of each;
 - (2) determine the members represented at a meeting;
 - (3) determine the validity of proxies and ballots;

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- (4) count all votes; and
 - (5) determine the result.
- (c) An inspector may be an officer or employee of the corporation.

§ 33-1079. Reserved for future use

PART VII

DIRECTORS AND OFFICERS

(A)

BOARD OF DIRECTORS

§ 33-1080. Requirements for and duties of board of directors

- (a) Each corporation shall have a board of directors.
- (b) All corporate powers shall be exercised by or under the authority of, and the activities, property and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the certificate of incorporation.

§ 33-1081. Qualifications of directors

- (a) The certificate of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the certificate of incorporation or bylaws so prescribe.
- (b) The directors and board of directors may be designated by such other names as may be provided in the certificate of incorporation or bylaws.

§ 33-1082. Number and election of directors

- (a) A board of directors shall consist of three or more individuals, with the number specified in or fixed in accordance with the certificate of incorporation or bylaws.
- (b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the certificate of incorporation or bylaws.

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- (c) The initial board of directors shall be designated in the certificate of incorporation or elected at the organizational meeting of the corporation. Thereafter, if the corporation has members entitled to vote for directors, directors shall be elected at the first meeting of the members held for that purpose and at each subsequent annual meeting, except as provided in sections 33-1083, 33-1086 and 33-1091.

§ 33-1083. Special provisions regarding directors

- (a) The certificate of incorporation may provide that the entire membership, or a certain class of members, shall constitute the board of directors.
- (b)
 - (1) The certificate of incorporation or, subject to the provisions of subdivision (2) of this subsection, the bylaws, may provide that persons occupying certain positions within or without the corporation shall be ex-officio directors, but, unless otherwise provided in the certificate of incorporation or bylaws, such ex-officio directors shall not be counted in determining a quorum nor shall they be entitled to a vote. An ex-officio director shall continue to be a director as long as he or she continues to hold the office from which his or her ex-officio status derives, and shall cease to be an ex-officio director immediately and automatically upon ceasing to hold such office, without the need for any action by the corporation, its directors or its members. The provisions of sections 33-1085, 33-1087, 33-1088 and 33-1091 shall not apply to ex-officio directors.
 - (2) If the corporation has members entitled to vote on the adoption, amendment or repeal of its bylaws, any bylaw providing for ex-officio directors shall require the approval of such members, either before, on or after July 1, 2003, by the same vote of such members as would be necessary to amend such bylaws.
- (c) In the cases of
 - (1) corporations without members and
 - (2) corporations without members entitled to vote for directors, the certificate of incorporation may provide for a self-perpetuating board of directors.

§ 33-1084. Election of directors by certain classes of members. If the certificate of incorporation authorizes classes of members, the certificate may also authorize the election of all or a specified number of directors by members in one or more authorized classes of members.

§ 33-1085

§ 33-1085. Terms of directors generally

- (a) The terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, unless their terms are staggered pursuant to section 33-1086.
- (b) The terms of all other directors expire at the next annual meeting of members or directors, as the case may be, following their election unless their terms are staggered under section 33-1086.
- (c) A decrease in the number of directors does not shorten an incumbent director's term.
- (d) The term of a director elected to fill a vacancy expires at the next meeting at which directors are elected.
- (e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

§ 33-1086. Staggered terms for directors

- (a) The certificate of incorporation or, subject to the provisions of subsection (b) of this section, the bylaws, may provide for staggering the terms of directors, other than ex-officio directors, by dividing the total number of directors, other than ex-officio directors, into up to five groups, with each group containing approximately the same percentage of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual meeting of members or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, after their election, the terms of the second group expire at the second such annual meeting of members or directors after their election, the terms of the third group, if any, expire at the third such annual meeting of members or directors after their election, the terms of the fourth group, if any, expire at the fourth such annual meeting of members or directors after their election, and the terms of the fifth group, if any, expire at the fifth such annual meeting of members or directors after their election. At each such annual meeting thereafter, directors shall be chosen for a term of two years, three years, four years or five years, as the case may be, to succeed those whose terms expire.

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- (b) If the corporation has members entitled to vote on the adoption, amendment or repeal of its bylaws, any bylaw providing for staggering the terms of directors shall require the approval of such members, either before, on or after July 1, 2003, by the same vote of such members as would be necessary to amend such bylaws.

§ 33-1087. Resignation of directors

- (a) A director may resign at any time by delivering written notice to the board of directors, the chairman of the board of directors or the corporation.
- (b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

§ 33-1088. Removal of directors by members or directors

- (a) The members entitled to vote for the election of directors or, if there are no such members, the directors, may remove one or more directors with or without cause unless the certificate of incorporation provides that directors may be removed only for cause.
- (b) If a director is elected by a class of members only the members of that class may participate in the vote to remove him.
- (c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.
- (d) A director may be removed by the members entitled to vote for directors or, if there are no such members, the directors, only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

§ 33-1089. Proceedings to determine validity of election

- (a) Upon application of any member, director or person aggrieved, the superior court for the judicial district where the principal office of the corporation is located, or any judge thereof, shall forthwith hear and determine the validity of any election or appointment of any director or officer of a corporation and the right of any person to hold such office, and, if any such office is claimed by more than one person, determine the person entitled thereto, and to that end shall determine the

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voting and other rights of persons claiming the same in respect of such election or appointment, and confirm the election or appointment, order a new election as provided in section 33-1063 or direct other relief as may be just and proper.

- (b) In any such application, service upon the person whose title to office is contested and upon the person, if any, claiming such office may, in addition to any other lawful manner of service, be made upon the registered agent of the corporation. The officer or other proper person directed to make such service shall deposit in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy of the process, notice or demand, together with a statement by such officer or person making service that service is being made pursuant to this section, addressed to such person at the residence address thereof as the same appears on the records of the Secretary of the State, or, if no such address appears, at the address thereof last known to the party desiring to make such service.
- (c) The corporation shall be made a party to any proceeding under this section and the court shall have power to enforce the production of any books, papers and records thereof relating to the issue. The court may make such further or other orders respecting service or notice of such application as it deems proper under the circumstances.

§ 33-1090. Removal of directors by judicial proceeding

- (a) The superior court for the judicial district where a corporation's principal office or, if none in this state, its registered office is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least ten per cent of the voting power of any class 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 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 commence a proceeding under subsection (a) of this section, they shall make the corporation a party defendant.

§ 33-1091. Vacancy on board of directors

- (a) Unless the certificate of incorporation provides otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:
 - (1) The members entitled to vote for directors may fill the vacancy;
 - (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) If the vacant office was held by a director elected by a class of members, only the members of that class are entitled to vote to fill the vacancy if it is filled by members entitled to vote for directors.
- (c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b) of section 33-1087 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.
- (d) If the board of directors ceases to exist and there are no members having the right to vote for the election of directors, members without such vote shall thereupon be entitled to elect a new board of directors.

§ 33-1091a. Judicial appointment of board of directors. If the board of directors of a corporation ceases to exist and there are no members having the right to vote for directors, and no members without the right to vote for directors who under such circumstances would be entitled under subsection (d) of section 33-1091 to elect a new board of directors, any officer of the corporation and, if there are no officers of the corporation, the Attorney General, any officer of any organization holding funds or other assets of the corporation or any other person having dealings with the corporation may petition the superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located for an order appointing a new board of directors. The petition shall set forth the relevant circumstances, shall propose the names of three or more persons willing to serve as directors under the circumstances and shall contain the addresses and a brief statement of the backgrounds of such persons. A copy of such petition submitted by any person other than the Attorney General shall be provided by such person to the Attorney General. The court may require the submission of such additional information concerning the corporation and the persons proposed as directors and may order a hearing and notice to such persons, if any, as the court deems appropriate under the

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circumstances. The notice shall be given in such manner as the court deems appropriate, which may include any form of notice authorized under subsection (b) of section 33-1003. The court may thereafter, in an order issued pursuant to this section, appoint and set the terms of office of a new board of directors, which may include some or all of the persons proposed in the petition or may be composed entirely of other persons deemed appropriate by the court. Upon the issuance of such order, the persons appointed by the order as directors shall be the directors of the corporation for the terms of office set forth in the order with the same force, effect, power, authority, duties and responsibilities, and subject to the same standards of conduct, as if they had been otherwise validly elected and serving under the provisions of the certificate of incorporation, the bylaws and sections 33-1000 to 33-1290, inclusive.

§ 33-1092. Compensation of directors. Unless the certificate of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors, including reasonable allowance for expenses actually incurred in connection with their duties.

§§ 33-1093, 33-1094. Reserved for future use

(B)

MEETINGS AND ACTION OF THE BOARD

§ 33-1095. Meetings

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

§ 33-1096. Court-ordered meeting of directors

- (a) The superior court for the judicial district where a corporation's principal office in this state is located may summarily order a meeting of the board of directors to be held:
 - (1) On application of any director of the corporation if no meeting of the board of directors has been held for a period of twelve months or more; or

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- (2) on application of a director who signed a demand for a special meeting valid under the bylaws if:
 - (A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or
 - (B) the special meeting was not held in accordance with the notice.
- (b) The court may fix the time and place of the meeting, determine the directors entitled to participate in 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.

§ 33-1097. Action without meeting

- (a) Except to the extent that the certificate of incorporation or bylaws specifically require that action by the board of directors be taken only at a meeting, action required or permitted by sections 33-1000 to 33-1290, inclusive, to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action taken or to be taken and delivers it to the corporation.
- (b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.
- (c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

§ 33-1098. Notice of meeting

- (a) Unless the certificate of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting, except that, unless stated in a written notice of the meeting, no bylaw may be brought up for adoption, amendment or repeal.

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- (b) Unless the certificate of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time and place of the meeting. Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or bylaws require otherwise, notice of a special meeting need not include a description of the purpose or purposes for which the meeting is called, except that, unless stated in a written notice of the meeting, no bylaw may be brought up for adoption, amendment or repeal.

§ 33-1099. Waiver of notice

- (a) A director may waive any notice required by sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 33-1100. Quorum and voting

- (a) Unless the certificate of incorporation or bylaws require a greater number or unless otherwise specifically provided in sections 33-1116 to 33-1125, inclusive, a quorum of a board of directors consists of:
 - (1) A majority of the fixed number of directors if the corporation has a fixed board size; or
 - (2) a majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.
- (b) The certificate of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a) of this section, but not less than two.
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless sections 33-1000 to

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33-1290, inclusive, the certificate of incorporation or bylaws require the vote of a greater number of directors.

- (d) 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 deemed to have assented to the action taken unless:
 - (1) He objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting;
 - (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or
 - (3) he delivers written notice of his 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 taken.

§ 33-1101. Committees

- (a) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.
- (b) Unless sections 33-1000 to 33-1290, inclusive, provide otherwise, the creation of a committee and appointment of directors to it shall 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 certificate of incorporation or bylaws to take action under section 33-1100.
- (c) The provisions of sections 33-1095 to 33-1100, inclusive, apply both to committees of the board and their directors.
- (d) To the extent specified by the board of directors or in the certificate of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 33-1080.

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- (e) A committee may not, however:
 - (1) Approve or recommend to members action that sections 33-1000 to 33-1290, inclusive, require to be approved by members;
 - (2) fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees;
 - (3) adopt, amend or repeal bylaws;
 - (4) approve a plan of merger;
 - (5) approve a sale, lease, exchange or other disposition of all, or substantially all, of the property of a corporation, other than
 - (A) in the usual and regular course of affairs of the corporation, or
 - (B) a mortgage, pledge or other encumbrance described in subdivision (2) of section 33-1165; or
 - (6) approve a proposal to dissolve.
- (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 33-1104.
- (g) The board of directors may appoint one or more directors as alternate directors of any committee to replace any absent or disqualified director during the director's absence or disqualification. If authorized by the certificate of incorporation, the bylaws or the resolution creating the committee, in the event of the absence or disqualification of a director of a committee, the director or directors present at any meeting and not disqualified from voting, may, by unanimous vote, appoint another director to act in place of the absent or disqualified director.

§§ 33-1102, 33-1103. Reserved for future use

(C)

STANDARDS OF CONDUCT

§ 33-1104. 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 he reasonably believes to be in the best interests of the corporation.
- (b) In discharging his 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 whom the director reasonably believes to be 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; or
 - (3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.
- (c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.
- (d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

§ 33-1105. Liability for unlawful distribution

- (a) A director who votes for or assents to a distribution made in violation of sections 33-1000 to 33-1290, inclusive, or the certificate of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating said sections or the certificate of incorporation if it is established that he did not perform his duties in compliance

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with section 33-1104 or 33-1178a. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

- (b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to contribution:
 - (1) From every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and
 - (2) from each recipient for the amount the recipient accepted knowing the distribution was made in violation of sections 33-1000 to 33-1290, inclusive, or the certificate of incorporation.
- (c) A proceeding under this section to enforce:
 - (1) The liability of a director under subsection (a) of this section is barred unless it is commenced within three years after the date
 - (A) on which the distribution was made,
 - (B) as of which the violation of sections 33-1000 to 33-1290, inclusive, occurred as a consequence of disregarding a restriction in the certificate of incorporation, or
 - (C) on which the distribution of assets to members under section 33-1178a was made; or
 - (2) contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.
- (d) For purposes of this section, a director shall be deemed to have voted for a distribution if such director was present at the meeting of the board of directors or committee thereof at the time such distribution was authorized and did not vote in dissent therefrom, or if such director consented thereto pursuant to section 33-1097.

§ 33-1106. Liability for loans. Directors who vote for or assent to the making of a loan to an officer or to a director of a corporation, or any officer or officers participating in the making of such loan, which loan is neither made in the usual course of the corporation's affairs nor made primarily for a legitimate purpose of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

§§ 33-1107, 33-1108. Reserved for future use

(D)

OFFICERS

§ 33-1109. **Officers**

- (a) A corporation has the offices described in its bylaws. Officers shall be appointed or elected at such time and in such manner as may be prescribed by the bylaws and, in the absence of applicable bylaws, shall be elected by the directors.
- (b) An officer may appoint one or more officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and members' meetings and for maintaining and authenticating the records of the corporation required to be kept under subsections (a) and (e) of section 33-1235.
- (d) The same individual may simultaneously hold more than one office in a corporation.

§ 33-1110. **Functions of officers.** Each officer has the authority and shall perform the functions set forth in the bylaws, or to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

§ 33-1111. **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 he reasonably believes to be in the best interests of the corporation.

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- (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 whom the officer reasonably believes to be reliable and competent in the matters presented; or
 - (2) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.
- (d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

§ 33-1112. 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 delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board of directors or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.
- (b) An officer may be removed at any time with or without cause by:
 - (1) The board of directors;
 - (2) the officer who appointed such officer, unless the bylaws provide otherwise; or
 - (3) any other officer if authorized by the bylaws or the board of directors.
- (c) In this section, “appointing officer” means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

§ 33-1113. 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.

§§ 33-1114, 33-1115. Reserved for future use

(E)

INDEMNIFICATION

§ 33-1116. Definitions. As used in sections 33-1116 to 33-1125, inclusive:

- (1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger.
- (2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. “Director” or “officer” includes, unless the context requires otherwise, the estate or personal representative of a director or officer.
- (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 incurred with respect to a proceeding.
- (5) “Official capacity” means:
 - (A) When used with respect to a director, the office of director in a corporation; and

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- (B) when used with respect to an officer, as contemplated in section 33-1122, the office in a corporation held by the officer.

“Official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

- (6) “Party” means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.
- (7) “Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative and whether formal or informal.

§ 33-1117. Permissible indemnification

- (a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he is a director against liability incurred in the proceeding if:
- (1) (A) He conducted himself in good faith;
- (B) he reasonably believed
- (i) in the case of conduct in his official capacity, that his conduct was in the best interests of the corporation; and
- (ii) in all other cases, that his conduct was at least not opposed to the best interests of the corporation; and
- (C) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or
- (2) he engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the certificate of incorporation as authorized by subdivision (5) of subsection (b) of section 33-1026.
- (b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (ii) of subdivision (1) of subsection (a) of this section.

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- (c) The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.
- (d) Unless ordered by a court under section 33-1120, a corporation may not indemnify a director under this section:
 - (1) In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or
 - (2) in connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.
- (e) Notwithstanding any provision of this section to the contrary, a corporation which was incorporated under the laws of this state, whether under chapter 600¹ of the general statutes, revised to January 1, 1995, or any other general law or special act, prior to January 1, 1997, shall, except to the extent that the certificate of incorporation expressly provides otherwise, indemnify under sections 33-1116 to 33-1125, inclusive, except subdivision (2) of subsection (a) of this section, a director to the same extent the corporation is permitted to provide the same to a director pursuant to subdivision (1) of subsection (a) and subsections (b), (c) and (d) of this section as limited by the provisions of section 33-1121.
- (f) Notwithstanding any other provision of this section, a corporation which is a “private foundation” as defined in Section 509 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, shall not, during the period it is such a private foundation, indemnify any person if such indemnity or its carrying out will constitute a violation of any provision of section 33-281b or any substantially like provision which may be contained in the certificate of incorporation.

§ 33-1118. Mandatory indemnification. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

§ 33-1119

§ 33-1119. Advance for expenses

- (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:
 - (1) A written affirmation of the director's good faith belief that the relevant standard of conduct described in section 33-1117 has been met by the director or that the proceeding involves conduct for which liability has been limited under a provision of the certificate of incorporation as authorized by subdivision (4) of subsection (b) of section 33-1026; and
 - (2) A written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 33-1118 and it is ultimately determined under section 33-1120 or 33-1121 that the director has not met the relevant standard of conduct described in section 33-1117.
- (b) The undertaking required by subdivision (2) of subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.
- (c) Authorizations under this section shall be made:
 - (1) By the board of directors:
 - (A) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote; or
 - (B) if there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 33-1100, in which authorization directors who are not qualified directors may participate; or
 - (2) By the members, but a member who is also a director who at the time is not a qualified director may not vote on the authorization.

§ 33-1120. Court-ordered indemnification and advance for expenses

- (a) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:
- (1) Order indemnification if it determines that the director is entitled to mandatory indemnification under section 33-1118;
 - (2) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 33-1124; or
 - (3) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable
 - (A) to indemnify the director or
 - (B) to advance expenses to the director, even if he has not met the relevant standard of conduct set forth in subsection (a) of section 33-1117, failed to comply with section 33-1119 or was adjudged liable in a proceeding referred to in subdivision (1) or (2) of subsection (d) of section 33-1117, provided if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.
- (b) If the court determines that the director is entitled to indemnification under subdivision (1) of subsection (a) of this section or to indemnification or advance for expenses under subdivision (2) of subsection (a) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (3) of subsection (a) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

§ 33-1121. Determination and authorization of indemnification

- (a) A corporation may not indemnify a director under section 33-1117 unless authorized for a specific proceeding after a determination has been made that

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indemnification is permissible because the director has met the relevant standard of conduct set forth in said section.

- (b) The determination shall be made:
 - (1) If there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote;
 - (2) By special legal counsel
 - (A) selected in the manner prescribed in subdivision (1) of this subsection, or
 - (B) if there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate; or
 - (3) By the members entitled to vote to elect directors, but any such member who is also a director who at the time is not a qualified director may not vote on the determination.
- (c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subparagraph (B) of subdivision (2) of subsection (b) of this section.

§ 33-1122. Indemnification of and advance for expenses to officers, employees and agents

- (a) A corporation may indemnify and advance expenses under sections 33-1116 to 33-1125, inclusive, to an officer, employee or agent of the corporation who is a party to a proceeding because he is an officer, employee or agent of the corporation
 - (1) to the same extent as a director, and
 - (2) if he is an officer, employee or agent but not a director, to such further extent, consistent with public policy, as may be provided by contract, the

certificate of incorporation, the bylaws or a resolution of the board of directors.

A corporation may delegate to its general counsel or other specified officer or officers the ability under this subsection to determine that indemnification or advance for expenses to such officer, employee or agent is permissible and the ability to authorize payment of such indemnification or advance for expenses. Nothing in this subdivision shall in any way limit either the ability or the obligation of a corporation to indemnify and advance expenses under other applicable law to any officer, employee or agent who is not a director.

- (b) The provisions of subdivision (2) of subsection (a) of this section shall apply to an officer, employee or agent who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer, employee or agent.
- (c) An officer, employee or agent of a corporation who is not a director is entitled to mandatory indemnification under section 33-1118 and may apply to a court under section 33-1120 for indemnification or advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under said sections.
- (d) A corporation which was incorporated under the laws of this state, whether under chapter 600 of the general statutes, revised to January 1, 1995, or any other general law or special act, prior to January 1, 1997, shall, except to the extent that the certificate of incorporation expressly provides otherwise, indemnify under sections 33-1116 to 33-1125, inclusive, except subdivision (2) of subsection (a) of section 33-1117, each officer, employee or agent of the corporation who is not a director to the same extent as the corporation is permitted to provide the same to a director pursuant to subdivision (1) of subsection (a) and subsections (b), (c) and (d) of section 33-1117, as limited by section 33-1121, and for this purpose the determination required by section 33-1121 may in addition be made by the general counsel of the corporation, or such other or additional officer or officers as the board of directors may specify.

§ 33-1123. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is a director, officer, employee or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer,

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employee or agent, whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under sections 33-1116 to 33-1125, inclusive.

§ 33-1124. Variation by corporate action

- (a) A corporation may, by a provision in its certificate of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 33-1117 or advance funds to pay for or reimburse expenses in accordance with section 33-1119. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section 33-1119 and subsection (c) of section 33-1121. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 33-1119 to the fullest extent permitted by law, unless the provision specifically provides otherwise.
- (b) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the certificate of incorporation, the bylaws or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision (3) of section 33-1158.
- (c) A corporation may, by a provision in its certificate of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections 33-1116 to 33-1125, inclusive.
- (d) Sections 33-1116 to 33-1125, inclusive, do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he is not a party.

§ 33-1125. Exclusivity of provisions. A corporation may provide indemnification of or advance expenses to a director, officer, employee or agent only as permitted by sections 33-1116 to 33-1124, inclusive.

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(F)

DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

§ 33-1127. **Definitions.** As used in sections 33-1127 to 33-1130, inclusive:

- (1) “Director's conflicting interest transaction” means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation,
 - (A) to which, at the relevant time, the director is a party,
 - (B) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director, or
 - (C) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.
- (2) “Control”, including the term “controlled by”, means
 - (A) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through membership or the ownership of voting shares or interests, by contract, or otherwise, or
 - (B) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.
- (3) “Relevant time” means
 - (A) the time at which directors' action respecting the transaction is taken in compliance with section 33-1129, or
 - (B) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 33-1129, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.
- (4) “Material financial interest” means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director when participating in action on the authorization of the transaction.

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- (5) “Related person” means:
- (A) The director's spouse, or a parent or sibling thereof;
 - (B) a child, grandchild, parent or sibling of the director, or the spouse of any thereof;
 - (C) an individual
 - (i) living in the same home as the director, or
 - (ii) a trust or estate of which a person specified in subparagraph (A) or (B) of this subdivision or clause (i) of this subparagraph is a substantial beneficiary;
 - (D) an entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in subparagraphs (A) to (C), inclusive, of this subdivision;
 - (E) a domestic or foreign
 - (i) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director,
 - (ii) unincorporated entity of which the director is a general partner or a member of the governing body, or
 - (iii) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or
 - (F) a person that is, or an entity that is controlled by, an employer of the director.
- (6) “Fair to the corporation” means, for purposes of subdivision (3) of subsection (b) of section 33-1128, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was
- (A) fair in terms of the director's dealings with the corporation, and
 - (B) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

- (7) “Required disclosure” means disclosure of
- (A) the existence and nature of the director's conflicting interest, and
 - (B) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

§ 33-1128. Judicial action

- (a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a member or director or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.
- (b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a member or director or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:
 - (1) Directors' action respecting the transaction was taken in compliance with section 33-1129 at any time;
 - (2) members' action respecting the transaction was taken in compliance with section 33-1130 at any time; or
 - (3) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

§ 33-1129. Directors' action

- (a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (1) of subsection (b) of section 33-1128 if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b)

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of this section, provided that where the action has been taken by a committee, all members of the committee were qualified directors, and either

- (1) the committee was composed of all the qualified directors on the board of directors, or
 - (2) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.
- (b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subparagraph (E) or (F) of subdivision (5) of section 33-1127 is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:
- (1) All information required to be disclosed that is not so violative,
 - (2) the existence and nature of the director's conflicting interest, and
 - (3) the nature of the conflicted director's duty not to disclose the confidential information.
- (c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.
- (d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

§ 33-1130. Members' action

- (a) Members' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (2) of subsection (b) of section 33-1128 if a majority of the votes cast by the members entitled to vote are in favor of the transaction after
 - (1) notice to members entitled to vote describing the action to be taken respecting the transaction,
 - (2) provision to the corporation of the information referred to in subsection (b) of this section, and
 - (3) communication to the members entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.
- (b) A director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of any members entitled to vote who, to the knowledge of such director, are
 - (1) a director who has a conflicting interest respecting the transaction, or
 - (2) a related person of any such director, excluding a person described in subparagraph (F) of subdivision (5) of section 33-1127.
- (c) For purposes of this section, the members entitled to vote with respect to a director's conflicting interest transaction are any members entitled to vote, except members entitled to vote who the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are either
 - (1) a director who has a conflicting interest respecting the transaction, or
 - (2) a related person of the director, excluding a person described in subparagraph (F) of subdivision (5) of section 33-1127.
- (d) A majority of the votes entitled to be cast by the members entitled to vote with respect to the transaction constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, members' action that otherwise complies with this section is not affected by the presence, or

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by the voting, of members that are not entitled to vote with respect to the transaction.

- (e) If a members' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the members' vote, as the court considers appropriate in the circumstances.
- (f) Where members' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the members, in which action members that are not entitled to vote on the transaction may participate.

§ 33-1131. Taking advantage of a business opportunity

- (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:
 - (1) Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-1129 as if the decision being made concerned a director's conflicting interest transaction; or
 - (2) members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-1130 as if the decision being made concerned a director's conflicting interest transaction;

except that, rather than making required disclosure, as defined in section 33-1127, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

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- (b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

§§ 33-1132 to 33-1139. Reserved for future use

PART VIII

AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS

(A)

AMENDMENT OF CERTIFICATE OF INCORPORATION

§ 33-1140. Authority to amend

- (a) A corporation may amend its certificate of incorporation at any time to add or change a provision that is required or permitted in the certificate of incorporation or to delete a provision not required in the certificate of incorporation. Whether a provision is required or permitted in the certificate of incorporation is determined as of the effective date of the amendment.
- (b) A member of the corporation does not have a vested property right resulting from any provision in the certificate of incorporation, including provisions relating to management, control, purpose or duration of the corporation.

§ 33-1141. Certain amendments by board of directors

- (a) Unless the certificate of incorporation provides otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's certificate of incorporation without member action:
 - (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;

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- (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 the State;
- (4) to change the corporate name by substituting the word “corporation”, “incorporated” or “company”, or the abbreviation “corp.”, “inc.” or “co.”, 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 sections 33-1000 to 33-1290, inclusive, to be made without member action.

§ 33-1142. Amendment by board of directors and members

- (a) If a corporation has members, an amendment to the certificate of incorporation shall be adopted as provided in this section. A proposed amendment must be adopted by the board of directors.
- (b)
 - (1) Except as provided in sections 33-1141, 33-1145 and 33-1146, after adopting the proposed amendment, the board of directors must submit the amendment to the members entitled to vote on the amendment, if any, for their approval. If any members are entitled to vote on the amendment to the certificate of incorporation, the board of directors must also transmit to such members a recommendation that such members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to such members the basis for such determination.
 - (2) The board of directors may condition its submission of the amendment to the members on any basis.
- (c) If members are entitled to vote on the amendment to the certificate of incorporation, the members must approve the amendment, either before or after the actions required in subsections (a) and (b) of this section, as provided in subsection (e) of this section.
- (d) If the amendment is required to be approved by the members, and the approval is to be given at a meeting, the corporation must notify each member entitled to vote on the amendment, if any, of the meeting of members at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

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- (e) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or the board of directors acting pursuant to subdivision (2) of subsection (b) of this section requires a greater vote or a vote by class of members, the amendment to be adopted must be approved by:
 - (1) If no class of members is entitled to vote separately on the amendment as a class, at least two-thirds of the votes cast by the members entitled to vote thereon; and
 - (2) if any class of members is entitled to vote on the amendment separately as a class, at least two-thirds of the votes cast by the members of each such class.
- (f) If the corporation has no members, or no members entitled to vote, the proposed amendment shall be adopted by vote of at least two-thirds of the directors present at a meeting of the board of directors at which a quorum is present.

§ 33-1143. Amendments by incorporators. If a corporation has no members entitled to vote on the proposed amendment to the certificate of incorporation, the incorporators may, at any time and from time to time, before the corporation has directors amend the certificate of incorporation by resolution adopted by a vote of at least two-thirds of the incorporators.

§ 33-1144. Certificate of amendment. After an amendment to the certificate of incorporation has been adopted and approved in the manner required by sections 33-1140 to 33-1147, inclusive, and by the certificate of incorporation, the corporation shall deliver to the Secretary of the State for filing a certificate of amendment, that shall set forth:

- (1) The name of the corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption; and
- (4) if the amendment
 - (A) was adopted by the incorporators or the board of directors without member approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that member approval was not required, or

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- (B) required approval by the members, a statement that the amendment was duly approved by the members in the manner required by sections 33-1140 to 33-1147, inclusive, and by the certificate of incorporation.

§ 33-1145. Restated certificate of incorporation

- (a) A corporation's board of directors may restate its certificate of incorporation at any time, with or without member approval, to consolidate all amendments into a single document.
- (b) If the restated certificate includes one or more new amendments that require member approval, the new amendments must be adopted and approved as provided in section 33-1142. If the restatement includes a new amendment which does not require member approval, the new amendment must be adopted as provided in section 33-1141 or 33-1143, as the case may be.
- (c) A corporation that restates its certificate of incorporation shall deliver to the Secretary of the State for filing a certificate of restatement setting forth the name of the corporation and the text of the restated certificate of incorporation together with a statement which states that the restated certificate consolidates all amendments into a single document and, if a new amendment is included in the restated certificate, which also includes the statement required under section 33-1144.
- (d) A duly adopted restated certificate of incorporation supersedes the original certificate of incorporation and all amendments to it.
- (e) The Secretary of the State may certify a restated certificate of incorporation, as the certificate of incorporation currently in effect, without including the statement information required by subsection (c) of this section.

§ 33-1146. Amendment pursuant to reorganization

- (a) A corporation's certificate of incorporation may be amended without action by the board of directors or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the certificate of incorporation after amendment contains only provisions required or permitted by section 33-1026.
- (b) The individual or individuals designated by the court shall deliver to the Secretary of the State for filing a certificate 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 certificate 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 law.
- (c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 33-1147. Effect of amendment. An amendment to a certificate 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 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.

§§ 33-1148, 33-1149. Reserved for future use

(B)

AMENDMENT OF BYLAWS

§ 33-1150. Amendment by board of directors or members

- (a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:
- (1) The certificate of incorporation or sections 33-1000 to 33-1290, inclusive, reserve this power exclusively to the members in whole or in part; or
 - (2) the members in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.
- (b) If a corporation has members who have the right under the certificate of incorporation to vote on amendments to the corporation's bylaws, such members

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

§ 33-1151. Bylaw increasing quorum or voting requirement for members

- (a) If authorized by the certificate of incorporation, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members or classes of members than is required by sections 33-1000 to 33-1290, inclusive. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum requirement for members must meet the same quorum requirement and be adopted by the same vote and classes of members 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) of this section may not be adopted, amended or repealed by the board of directors.

§ 33-1152. Bylaw increasing quorum or voting requirement for directors

- (a) 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 only by a specified vote of either the members or the board of directors.
- (c) Action by the board of directors under subdivision (2) of subsection (a) of this section 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.

§§ 33-1153, 33-1154. Reserved for future use

PART IX

MERGER

§ 33-1155. Merger

- (a) One or more corporations may merge with another corporation pursuant to a plan of merger. For the purposes of sections 33-1155 to 33-1159a, inclusive, “survivor” means, in a merger, the corporation into which one or more other corporations are merged. A survivor of a merger may preexist the merger or be created by the merger.
- (b) The plan of merger must include:
 - (1) The name of each corporation that will merge and the name of the corporation that will be the survivor of the merger;
 - (2) the terms and conditions of the merger;
 - (3) if the memberships, if any, of any corporation are to be converted into memberships of the survivor, the manner and basis of doing so;
 - (4) the certificate of incorporation of any corporation to be created by the merger or, if a new corporation is not to be created by the merger, any amendments to the survivor's certificate of incorporation; and
 - (5) any other provisions required by the certificate of incorporation of any party to the merger.
- (c) The plan of merger may include any other provisions relating to the merger that are not inconsistent with sections 33-1000 to 33-1290, inclusive.
- (d) The terms of the plan of merger described in subdivisions (2) and (3) of subsection (b) of this section may be made dependent on facts ascertainable outside the plan of merger, provided such facts are objectively ascertainable. For the purposes of this subsection, “facts” includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.
- (e) The plan of merger may also include a provision that the plan may be amended prior to filing a certificate of merger with the Secretary of the State, provided, if the members of a corporation that is a party to the merger are required or

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permitted to vote on the plan, the plan must provide that, subsequent to approval of the plan by such members, the plan may not be amended to:

- (1) Change the amount or kind of memberships to be received by the members of the corporation upon conversion of their memberships under the plan;
- (2) change the certificate of incorporation of any corporation that will survive or be created as a result of the merger, except for changes permitted by section 33-1141; or
- (3) change any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

§ 33-1156. Action on plan of merger. In the case of a domestic corporation that is a party to a merger:

- (1) The plan of merger must be adopted by the board of directors. After adopting a plan of merger, the board of directors of each corporation party to the merger shall submit the plan of merger, except as provided in subdivision (8) of this section, for approval by those members who are entitled to vote on such plan, if any.
- (2) The board of directors must also transmit to the members entitled to vote, if any, a recommendation that such members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members entitled to vote, if any, the basis for such determination.
- (3) The board of directors may condition its submission of the plan of merger to the members on any basis.
- (4) If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation must notify each member entitled to vote on the plan, if any, of the meeting of the members at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation, the notice shall also include or be accompanied by a copy or summary of the certificate of incorporation of such existing corporation. If the corporation is to be merged into a corporation that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the certificate of incorporation of the new corporation.

- (5) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or the board of directors acting pursuant to subdivision (3) of this section requires a greater vote or a vote by class of members, the plan of merger to be adopted must be approved by:
- (A) If no class of members is entitled to vote separately on the plan as a class, at least two-thirds of the votes cast by the members entitled to vote thereon; and
 - (B) if any class of members is entitled to vote on the plan separately as a class, at least two-thirds of the votes cast by the members of each such class. Approval of the plan of merger by members may precede or follow adoption of the plan of merger by the board of directors and the taking of any necessary actions under subdivision (2) of this section.
- (6) Separate voting by a class of members of a corporation is required on a plan of merger if:
- (A) The plan contains a provision that, if contained in a proposed amendment to the certificate of incorporation of such corporation, would require action by such class, as a separate class, on the proposed amendment under the certificate of incorporation of the corporation;
 - (B) such class is entitled under the certificate of incorporation of the corporation to vote as a separate class to approve a plan of merger; or
 - (C) the memberships of such class are to be converted, pursuant to the provisions of the plan of merger, into memberships of a different class of members of such corporation or into memberships of any class of members of any other corporation.
- (7) If
- (A) in the case of the surviving corporation, a plan of merger contains any provision which, if contained in a proposed amendment to its certificate of incorporation would require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger, or
 - (B) in the case of any terminating corporation, a sale of all or substantially all assets, or dissolution, would under the circumstances require a greater vote than, or additional vote to, that otherwise required to approve the plan of

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merger, approval of the plan of merger by such corporation shall require such greater or additional vote.

- (8) Unless the certificate of incorporation otherwise provides, approval by the corporation's members of a plan of merger is not required if:
 - (A) The corporation will be the survivor of the merger;
 - (B) except for amendments permitted by section 33-1141, the corporation's certificate of incorporation will not be changed; and
 - (C) each member of the corporation immediately before the effective date of the merger will be a member of the survivor with identical designations, qualifications, privileges and rights immediately after the effective date of the merger.
- (9) If any merging corporation has no members, or no members entitled to vote thereon, a plan of merger shall be adopted by the board of directors.

§ 33-1157. Certificate of merger

- (a) After a plan of merger has been adopted and approved as required by sections 33-1000 to 33-1290, inclusive, a certificate of merger shall be executed on behalf of each party to the merger by any officer or other duly authorized representative of such party. The certificate of merger shall set forth:
 - (1) The names of the parties to the merger;
 - (2) the name of the corporation that will be the survivor of the merger;
 - (3) the date on which the merger is to be effective;
 - (4) if the certificate of incorporation of the survivor of the merger is amended, or if a new corporation is created as a result of the merger, the amendments to the survivor's certificate of incorporation or the certificate of incorporation of the new corporation;
 - (5) if the plan of merger required approval by the members of the corporation, a statement that the plan was duly approved by the members and, if voting by any separate class of members was required, by each such separate class of members, in the manner required by sections 33-1000 to 33-1290, inclusive, and the certificate of incorporation; and

- (6) if the plan of merger did not require approval by the members of the corporation, a statement to that effect.
- (b) The certificate of merger shall be delivered to the Secretary of the State for filing by the survivor of the merger and shall take effect on the effective date of the merger.

§ 33-1158. Effect of merger. When a merger becomes effective:

- (1) The corporation that is designated in the certificate of merger as the survivor continues or comes into existence, as the case may be;
- (2) The separate existence of every corporation that is merged into the survivor ceases;
- (3) All liabilities of each corporation that is merged into the survivor are vested in the survivor;
- (4) All property owned by, and every contract right possessed by, each corporation that merges into the survivor is vested in the survivor without reversion or impairment;
- (5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
- (6) The certificate of incorporation of the survivor is amended to the extent provided in the plan of merger;
- (7) The certificate of incorporation of a survivor that is created by the merger becomes effective;
- (8) The memberships, if any, of each corporation which is a party to the merger that are to be converted into memberships of the survivor are converted, and the former members in such membership classes are entitled only to the designation, qualifications, privileges and rights of the class of members to which they are converted, as provided in the certificate of incorporation of the survivor as the same may be amended by the plan of merger; and
- (9) Any devise, bequest, gift or grant, contained in any will or in any other instrument, made before or after the merger, to or for the benefit of any of the merging corporations shall inure to the benefit of the survivor, and so far as is

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necessary for that purpose, the existence of each merging corporation shall be deemed to continue in and through the survivor.

§ 33-1159. Repealed. (2003, P.A. 03-18, § 76, eff. July 1, 2003.)

§ 33-1159a. Merger with foreign corporation

- (a) One or more foreign corporations, as defined in section 33-1002, may merge with one or more domestic corporations, as defined in section 33-1002, 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 33-1157 if it is the surviving corporation of the merger; and
 - (3) Each domestic corporation complies with the applicable provisions of sections 33-1155 and 33-1156 and, if it is the surviving corporation of the merger, with section 33-1157.
- (b) Upon the merger taking effect, the surviving foreign corporation of a merger is deemed to appoint the Secretary of the State and the Secretary of the State's successors in office as its agent for service of process in a proceeding to enforce any obligation or the rights of members of each domestic corporation party to the merger.

§ 33-1159b. Abandoned merger

- (a) Unless otherwise provided in a plan of merger, after the plan has been adopted and approved as required by sections 33-1155 to 33-1158, inclusive, and at any time before the merger has become effective, the merger may be abandoned by any party thereto without action by the party's members in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of the corporation, subject to any contractual rights of other parties to the merger.
- (b) If a merger is abandoned under subsection (a) of this section after a certificate of merger has been filed with the Secretary of the State but before the merger has become effective, a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger by an officer or other duly authorized representative of such party, shall be delivered to the Secretary of

the State for filing prior to the effective date of the merger. Any such statement shall contain the name of each party to the merger, the date the merger was to become effective and the date the merger was abandoned. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

§§ 33-1160 to 33-1164. **Reserved for future use**

PART X

SALE OF ASSETS

§ 33-1165. Sale or other disposition of assets in regular course of affairs.
Mortgage or other encumbrance or transfer of assets. No approval of the members of a corporation is required, unless the certificate of incorporation otherwise provides:

- (1) To sell, lease, exchange or otherwise dispose of any or all of the corporation's assets in the usual and regular course of affairs of the corporation;
- (2) to mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of affairs of the corporation; or
- (3) to transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation or of which the corporation is the sole member, or to a corporation which is the sole member of the corporation.

§ 33-1166. Sale or other disposition of assets leaving no significant continuing activity

- (a) Unless the certificate of incorporation provides otherwise, a sale, lease, exchange or other disposition of assets, other than a disposition described in section 33-1165, requires approval of the corporation's members who are otherwise entitled to vote on the disposition, if any, only if the disposition would leave the corporation without a significant continuing activity. If a corporation retains an activity that represented at least twenty-five per cent of total assets at the end of the most recently completed fiscal year, and twenty-five per cent of either income from continuing operations before taxes or revenues from continuing operations for such fiscal year, for the corporation and each of its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing activity.

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- (b) A disposition that requires approval of the members under subsection (a) of this section shall be initiated by a resolution of the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.
 - (c) The board of directors may condition its submission of a disposition to the members under subsection (b) of this section on any basis.
 - (d) If a disposition is to be approved by the members under subsection (a) of this section, and if the approval is to be given at a meeting, the corporation shall notify each member entitled to vote on the disposition, if any, of the meeting of members at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation therefor.
 - (e) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or the board of directors, acting pursuant to subsection (c) of this section, requires a greater vote or a vote by classes of members, the disposition to be authorized must be approved by:
 - (1) If no class of members is entitled to vote separately on the disposition as a class, at least two-thirds of the votes cast by the members entitled to vote thereon, and
 - (2) if any class of members is entitled to vote on the disposition separately as a class, at least two-thirds of the votes cast by the members of each such class.
- Approval of the disposition by members may precede or follow authorization of the disposition by the board of directors and the taking of any necessary actions under subsection (b) of this section.
- (f) After a disposition has been approved by the members under subsection (b) of this section, and at any time before the disposition has been consummated, the

disposition may be abandoned by the corporation without action by the members, subject to any contractual rights of other parties to the disposition.

- (g) A disposition of assets in the course of dissolution under sections 33-1170 to 33-1193, inclusive, is not governed by this section.
- (h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.
- (i) If the corporation has no members, or no members entitled to vote thereon, a disposition described in this section shall be approved by the board of directors.

§§ 33-1167 to 33-1169. Reserved for future use

PART XI

DISSOLUTION

(A)

VOLUNTARY DISSOLUTION

§ 33-1170. Dissolution by incorporators or initial directors. A majority of the initial directors or, if the initial directors have not been appointed, two-thirds of the incorporators, of a corporation that has no member entitled to vote upon dissolution, and that has not commenced the activities for which it was incorporated, may dissolve the corporation by delivering to the Secretary of the State for filing a certificate of dissolution that sets forth:

- (1) The name of the corporation;
- (2) that the corporation has no member entitled to vote;
- (3) that the corporation has not commenced the activities for which it was incorporated;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed as required by sections 33-1000 to 33-1290, inclusive; and
- (6) that a majority of the initial directors or, if the initial directors have not been appointed, two-thirds of the incorporators, authorize the dissolution.

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§ 33-1171. Dissolution by resolution of board of directors and members

- (a) A corporation's board of directors may propose dissolution for submission to those members who are entitled to vote thereon, if any.
- (b) For a proposal to dissolve to be adopted:
 - (1) The board of directors must approve the dissolution;
 - (2) the board of directors must recommend dissolution to the members entitled to vote on the dissolution, if any, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the dissolution with the submission of the proposal to dissolve; and
 - (3) the members entitled to vote on dissolution must approve the proposal to dissolve, either before or after the actions required in subdivisions (1) and (2) of this subsection as provided in subsection (e) of this section.
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (d) The corporation shall notify each member entitled to vote on dissolution of the proposed members' meeting in accordance with section 33-1065. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
- (e) Unless sections 33-1000 to 33-1290, inclusive, the certificate of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by classes of members, the proposal to dissolve must be approved by:
 - (1) If no class of members is entitled to vote separately as a class on the proposal to dissolve, at least two-thirds of the votes cast by the members entitled to vote thereon, and
 - (2) if any class of members is entitled to vote separately as a class on the proposal to dissolve, at least two-thirds of the votes cast by the members of each such class.

- (f) If the corporation has no members, or no members entitled to vote upon dissolution, dissolution shall be authorized by resolution adopted by the board of directors.

§ 33-1172. Certificate of dissolution

- (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of the State for filing a certificate of dissolution setting forth:
 - (1) The name of the corporation;
 - (2) the date dissolution was authorized;
 - (3) if dissolution was approved by members, a statement that the proposal to dissolve was duly approved by the members in the manner required by sections 33-1000 to 33-1290, inclusive, and by the certificate of incorporation; and
 - (4) if dissolution was authorized by the board of directors without member approval, a statement that the dissolution was duly approved by the board of directors and that member approval was not required.
- (b) A corporation is dissolved upon the effective date of its certificate of dissolution.
- (c) For the purposes of sections 33-1170 to 33-1193, inclusive, “dissolved corporation” means a corporation whose certificate of dissolution has become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to the corporation's liabilities for purposes of liquidation.

§ 33-1173. Revocation of dissolution

- (a) A corporation may revoke its dissolution within one hundred and twenty days of its effective date.
- (b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless, in the case of a corporation with members entitled to vote on the dissolution, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

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- (c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of the State for filing a certificate of revocation of dissolution that
 - (1) sets forth:
 - (A) The name of the corporation;
 - (B) the effective date of the dissolution that was revoked;
 - (C) the date that the revocation of dissolution was authorized;
 - (D) if the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
 - (E) if the corporation's board of directors revoked a dissolution authorized by members, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization; and
 - (F) if member action was required to revoke the dissolution, the information required by subdivision (3) of subsection (a) of section 33-1172; and
 - (2) if the name of the corporation whose dissolution is to be revoked is no longer available, is accompanied by an amendment of the certificate of incorporation which changes the name of the corporation to an available name.
- (d) Revocation of dissolution is effective upon the effective date of the certificate 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.

§ 33-1174. 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 activities and affairs, including:

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- (1) Adopting a plan providing for the distribution of assets under section 33-1175;
 - (2) collecting its assets;
 - (3) consistent with the requirements of section 33-1176 and any restrictions imposed upon the property by law, disposing of the corporation's properties that will not be distributed in kind pursuant to the plan for distribution of assets;
 - (4) discharging or making provision for discharging its liabilities;
 - (5) distributing its assets in accordance with sections 33-1175 and 33-1176;
 - (6) doing every other act necessary to wind up and liquidate its business and affairs.
- (b) Dissolution of a corporation does not:
- (1) Transfer title to the corporation's property;
 - (2) prevent transfer of its transferable membership interests, if any, although the authorization to dissolve may provide for closing the corporation's membership records;
 - (3) subject its directors or officers to standards of conduct different from those prescribed in sections 33-1080 to 33-1130, inclusive;
 - (4) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;
 - (7) terminate the authority of the registered agent of the corporation; or

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- (8) of itself render the members liable for any liability or other obligations of the corporation or vest title to the property of the corporation in the members.

§ 33-1175. Adoption of plan for distribution of assets. A plan providing for the distribution of assets, not inconsistent with the provisions of sections 33-1000 to 33-1290, inclusive, shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which section 33-1176 requires a plan of distribution, in the following manner:

- (1) Where there are members of any class entitled to vote on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote of each class of such members. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each such member in accordance with section 33-1065. Such plan of distribution shall be adopted upon receiving the approval of at least two-thirds of the votes cast by each class of such members voting as a class.
- (2) Where there are no members entitled to vote on dissolution, a plan of distribution shall be adopted by resolution of the board of directors, or, if directors have not yet been appointed, by resolution approved by two-thirds of the incorporators.

§ 33-1176. Liquidating distribution of assets

- (a) The assets of a corporation in the process of dissolution shall be applied and distributed as follows:
 - (1) All liabilities and other obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
 - (2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
 - (3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in section 33-1175;

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- (4) other assets, if any, shall be distributed pro rata among the members of the corporation except to the extent that the certificate of incorporation determines the distributive rights of members, or any class or classes of members, or provides for distribution to others; and
 - (5) any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in section 33-1175.
- (b) No final liquidating distribution of assets shall be made by a dissolved corporation until the corporation has obtained a current statement or statements from the Commissioner of Revenue Services and the administrator of the unemployment compensation law, acting in their respective capacities, showing, to the best of their knowledge and belief, as of the date of such respective statements, either that such corporation has paid all its taxes and contributions or that it was not liable for any taxes or contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to said commissioner and said administrator, for the future payment of any of its unpaid taxes and unpaid contributions as of the date of such respective statements. As used in this subsection, the word “tax” means the whole, or any installment or part, of any tax, excise, fee or license and any interest, penalty and other legal accumulation thereon, payable to the Commissioner of Revenue Services, for which the corporation is liable and the word “contribution” means any and all moneys payable under any provision of the unemployment compensation law, for which the particular corporation is liable.

§ 33-1177. 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 shall:
 - (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 and twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

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- (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) of this section 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.
- (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.
- (e) Nothing in this section shall extend any applicable period of limitation.

§ 33-1178. Unknown claims against dissolved corporation

- (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.
- (b) The notice shall:
 - (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 dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.
- (c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

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- (1) A claimant who was not given written notice under section 33-1177;
 - (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;
 - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim that is not barred by subsection (c) of section 33-1177 or subsection (c) of this section may be enforced:
- (1) Against the dissolved corporation, to the extent of its undistributed assets; or
 - (2) except as provided in subsection (d) of section 33-1178a, if the assets have been distributed in liquidation to the members of the corporation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.
- (e) Nothing in this section shall extend any applicable period of limitation.

§ 33-1178a. Proceeding for determination of security for payment of contingent or unknown claims or claims arising after dissolution

- (a) A dissolved corporation that has published a notice under section 33-1178 may file an application with the superior court for the judicial district where the dissolved corporation's principal office or, if none in this state, its registered office, is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c) of section 33-1178.
- (b) Within ten days after the filing of an application under subsection (a) of this section, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

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

§ 33-1178b. Duties of directors of dissolved corporation

- (a) Directors of a dissolved corporation shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to members after payment of or provision for claims.
- (b) Directors of a dissolved corporation which has disposed of claims under section 33-1177, 33-1178 or 33-1178a shall not be liable for breach of subsection (a) of this section with respect to claims against the dissolved corporation that are barred or satisfied under sections 33-1177, 33-1178 or 33-1178a.

§§ 33-1179, 33-1180. Reserved for future use

(B)

ADMINISTRATIVE DISSOLUTION

§ 33-1181. Administrative dissolution

- (a) The Secretary of the State may effect the administrative dissolution of a corporation as provided in this section.
- (b) Whenever any corporation is more than two years in default of filing its annual report as required by section 33-1243, the Secretary of the State may notify such corporation by registered or certified mail addressed to such corporation at its principal office as last shown on his records that under the provisions of this section the corporation is to be administratively dissolved. Unless the corporation, within three months of the mailing of such notice, files such annual report, the Secretary of the State shall prepare and file in his office a certificate of

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administrative dissolution stating that the delinquent corporation has been administratively dissolved by reason of its default.

- (c) Whenever it comes to the attention of the Secretary of the State that a corporation has failed to maintain a registered agent or that such registered agent cannot, with reasonable diligence, be found at the address shown in the records of his office, the Secretary of the State may notify such corporation by registered or certified mail addressed to such corporation at its principal office as last shown on his records that under the provisions of this section the corporation is to be administratively dissolved. Unless the corporation within three months of the mailing of such notice files an appointment of registered agent, the Secretary of the State shall prepare and file in his office a certificate of administrative dissolution stating that the delinquent corporation has been administratively dissolved by reason of its default.
- (d) Dissolution shall be effective upon the filing by the Secretary of the State in his office of such certificate of administrative dissolution.
- (e) After filing the certificate of administrative dissolution, the Secretary of the State shall:
 - (1) Mail a copy thereof to the delinquent corporation, addressed to such corporation at its principal office as last shown on his records, and
 - (2) cause notice of the filing of such certificate of administrative dissolution to be posted on the office of the Secretary of the State's Internet web site for a period of sixty days following the date on which the Secretary of the State files the certificate of administrative dissolution.

§ 33-1182. Effect of administrative dissolution

- (a) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its activities and affairs under section 33-1174 and notify claimants under sections 33-1177 and 33-1178.
- (b) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

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§ 33-1183. Reinstatement following administrative dissolution

- (a) A corporation administratively dissolved may apply to the Secretary of the State for reinstatement after the effective date of dissolution. The application must:
- (1) Recite the name of the corporation;
 - (2) if the name of the corporation to be reinstated is no longer available, be accompanied simultaneously by an amendment of the certificate of incorporation which identifies an available name; and
 - (3) be accompanied by:
 - (A) Payment of all penalties and forfeitures incurred by the corporation and a reinstatement fee;
 - (B) an annual report for the current year;
 - (C) an up-to-date statement or statements from the Commissioner of Revenue Services and the administrator of the unemployment compensation law acting in their respective capacities, showing, to the best of their knowledge and belief, as of the date of such respective statements, either that such corporation has paid all its taxes and contributions or that it was not liable for any taxes or contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to said commissioner and said administrator, for the future payment of any of its unpaid taxes and unpaid contributions as of the date of such respective statements provided, if said commissioner or administrator, as the case may be, does not issue such statement within five weeks of the request therefor, the filing of such statement shall not be required under this subparagraph; and
 - (D) an appointment of a registered agent.
- (b) If the Secretary of the State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement and file the original of the certificate.

- (c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred.

§ 33-1184. Appeal from refusal of reinstatement

- (a) If the Secretary of the State refuses to file the application for reinstatement, he shall return it to the corporation or its representative within five days after the application was delivered, together with a brief written explanation of the reason for his refusal.
- (b) The corporation may appeal the refusal of the Secretary of the State to file the application for reinstatement to the superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located within thirty days after return of the application. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of the State's certificate of administrative dissolution, the corporation's application for reinstatement and the Secretary of the State's explanation of the reason for his refusal to file the application for reinstatement.
- (c) The court may summarily order the Secretary of the 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.

§§ 33-1185, 33-1186. Reserved for future use

(C)

JUDICIAL DISSOLUTION

§ 33-1187. Grounds for judicial dissolution

- (a) The superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located may dissolve a corporation:
 - (1) In a proceeding by a member or a director if it is established that:
 - (A) 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

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- (B) the corporate assets are being misapplied or wasted;
 - (2) In a proceeding by a creditor if it is established that:
 - (A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or
 - (B) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;
 - (3) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or
 - (4) In a proceeding by the Attorney General in proceedings in the nature of quo warranto.
- (b) The superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located shall dissolve a corporation:
- (1) In a proceeding by a member or members having voting power sufficient under the circumstances to dissolve the corporation pursuant to the certificate of incorporation;
 - (2) in a proceeding by a member or a director when it is established that
 - (A) under the provisions of sections 33-1000 to 33-1290, inclusive, or of the certificate of incorporation or bylaws, the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to break the deadlock, or
 - (B) if there are members entitled to vote for the election of directors, such members are deadlocked in voting power for the election of directors and for that reason have been unable at the next preceding annual meeting to agree upon or vote for directors as successors to directors whose term would normally have expired upon the election of their successors.

§ 33-1188. Procedure for judicial dissolution

- (a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the superior court for the judicial district of Hartford. Venue for a proceeding

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brought by any other party named in section 33-1187 lies in the judicial district 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 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.

§ 33-1189. Receivership or custodianship

- (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the activities and 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 corporation or business corporation authorized to transact business or conduct affairs 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
 - (A) may 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, and
 - (B) may sue and defend in his own name as receiver of the corporation in all courts of this state;

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- (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 accordance with its purposes and in the best interests of its members, if any, 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 from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

§ 33-1190. Decree of dissolution

- (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 33-1187 exist, it may, in the case of the grounds specified in subsection (a) of said section, and shall, in the case of the grounds specified in subsection (b) of said section, 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 the State, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's activities and affairs in accordance with section 33-1174 and the notification of claimants in accordance with sections 33-1177 and 33-1178.

§§ 33-1191, 33-1192. Reserved for future use

(D)

MISCELLANEOUS PROVISIONS

§ 33-1193. Deposit of assets with State Treasurer or other state official. Assets of a dissolved corporation that should be transferred to a creditor, claimant or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited for safekeeping with the State Treasurer or other state official empowered to hold such assets. When the creditor, claimant or member furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or such other state official shall pay him or his representative that amount.

§§ 33-1194 to 33-1199. Reserved for future use

ART XII

SPECIALLY CHARTERED CORPORATIONS

§ 33-1200. Provisions applicable to specially chartered corporations

- (a) Except as otherwise provided in subsection (e) of section 33-1035 and sections 33-1200 to 33-1205, inclusive, all provisions of sections 33-1000 to 33-1290, inclusive, shall govern and apply to specially chartered corporations formed before or after January 1, 1997, without need for acceptance thereby.
- (b) If the certificate of incorporation as in effect on January 1, 1997, of a specially chartered corporation contains any provision contrary to or inconsistent with or in addition to any provision of sections 33-1000 to 33-1290, inclusive, including this section, the provision contained in such certificate of incorporation shall govern such corporation, and the provisions of said sections shall not be held or construed to alter or affect any provision of the certificate of incorporation of a specially chartered corporation inconsistent herewith except as provided in sections 33-1181, 33-1202, 33-1243 and 33-1244.

§ 33-1201. Formation of specially chartered corporation. Formation of a specially chartered corporation shall, following enactment of its special charter act, be completed in all respects in the same manner as formation of a corporation organized under sections 33-1000 to 33-1290, inclusive, except that:

- (1) The incorporators shall be such as are named in such act, if any;
- (2) no certificate of incorporation shall be filed but in lieu thereof a copy of the special act shall be filed as provided in the case of a certificate of incorporation; and
- (3) the thirty-day period referred to in subsection (b) of section 33-1243 as dating from the filing of the certificate of incorporation shall commence with the date of enactment of the special act.

§ 33-1202. Amendment of special charter

- (a) Amendment of a special charter by the General Assembly shall require acceptance by the corporation if and to the extent provided in the act of amendment.

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- (b) The certificate of incorporation of a specially chartered corporation may be amended by its board of directors or members entitled to vote thereon for the purposes and in the manner provided by sections 33-1000 to 33-1290, inclusive, for corporations incorporated under said sections except that its certificate of incorporation as so amended shall not authorize it to conduct any affairs or to conduct its affairs in any area unless either
 - (1) it could be so authorized under section 33-1035 or
 - (2) it was so authorized by its certificate of incorporation prior to such amendment.

A specially chartered corporation the name of which does not contain the words “corporation” or “company” or “incorporated” or an abbreviation of one of such words may amend its certificate of incorporation pursuant to this subsection without changing its name.

- (c) A restated certificate of incorporation adopted by a specially chartered corporation need not, in order to preserve the provisions of special acts of the legislature setting forth its franchises, whether of a public or a private nature, the nature of its affairs, and its special rights, privileges and immunities, recite such provisions.

§ 33-1203. Surrender of charter and reincorporation

- (a) Any specially chartered corporation may surrender its charter and reincorporate under sections 33-1000 to 33-1290, inclusive, in the manner provided in this section, provided its certificate of incorporation upon effecting reincorporation contains only such provisions as might be lawfully contained in a certificate of incorporation under said sections at the time of effecting reincorporation.
- (b) The board of directors and members entitled to vote thereon, if any, shall adopt a resolution to such effect and a certificate of incorporation complying with sections 33-1000 to 33-1290, inclusive, both in the manner provided by section 33-1142 in the case of an amendment of a certificate of incorporation, except that the affirmative vote required shall be at least a majority of the voting power of the members of each class.
- (c) A certificate setting forth such resolution and certificate of incorporation, and citing the act of the legislature by or under which such corporation was created, shall be executed and filed as provided in section 33-1144 in the case of an amendment.

- (d) Reincorporation shall take effect as provided in section 33-1006. Upon the effectiveness of such reincorporation, the corporation shall cease to be a specially chartered corporation, shall continue its corporate existence under sections 33-1000 to 33-1290, inclusive, and shall in all respects be subject to and have the benefits of said sections.

§ 33-1204. Franchise tax. Specially chartered corporations incorporated or reincorporated after January 1, 1961, shall pay franchise tax as provided in section 33-1014.

§ 33-1205. Dissolution of specially chartered beach association. Except as otherwise provided by special act, any specially chartered beach association may be dissolved in the manner provided in sections 33-1170 to 33-1193, inclusive.

§§ 33-1206 to 33-1209. Reserved for future use

PART XIII

FOREIGN CORPORATIONS

(A)

CERTIFICATE OF AUTHORITY

§ 33-1210. Authority to conduct affairs required

- (a) A foreign corporation, other than an insurance, surety or indemnity company, may not conduct affairs in this state until it obtains a certificate of authority from the Secretary of the State. No foreign corporation conducting the affairs of a state bank and trust company, savings bank or building and loan association, railroad company, gas, electric distribution or water company, or of any company requiring the right to take and condemn lands or to occupy the public highways of this state, and no foreign telephone company, shall conduct in this state affairs authorized by its certificate of incorporation or by the laws of the state under which it was organized, unless empowered so to do by some general or special act of this state, except for the purpose of carrying out and renewing contracts existing upon August 1, 1903. No insurance, surety or indemnity company shall conduct affairs in this state until it has procured a license from the Insurance Commissioner in accordance with the provisions of section 38a-41.
- (b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

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- (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) selling through independent contractors;
 - (5) 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;
 - (6) creating or acquiring indebtedness, mortgages and security interests in real or personal property;
 - (7) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (8) owning, without more, real or personal property;
 - (9) 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;
 - (10) conducting affairs in interstate commerce.
- (c) The list of activities in subsection (b) of this section is not exhaustive.

§ 33-1211. Consequences of conducting affairs without authority

- (a) A foreign corporation conducting affairs in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.
- (b) The successor to a foreign corporation that conducted affairs in this state without a certificate of authority and the assignee of a cause of action arising out of those affairs may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor corporation 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

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requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains a certificate of authority.

- (d) A foreign corporation is liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to
 - (1) all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such certificate of authority to conduct affairs in this state, and
 - (2) all interest and penalties imposed by law for failure to pay such fees and taxes.

A foreign corporation is further liable to this state, for each month or part thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to three hundred dollars, except that a foreign corporation which has obtained a certificate of authority not later than ninety days after it has commenced conducting affairs in this state shall not be liable for such monthly penalty. Such fees and penalties may be levied by the Secretary of the State. The Attorney General shall bring such action as he may deem necessary to recover any amounts due the state under the provisions of this subsection including an action to restrain a foreign corporation against which fees and penalties have been imposed pursuant to this subsection from conducting affairs in this state until such time as such fees and penalties have been paid.

- (e) Notwithstanding subsections (a) and (b) of this section, 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.

§ 33-1212. Application for certificate of authority

- (a) A foreign corporation may apply for a certificate of authority to conduct affairs in this state by delivering an application to the Secretary of the State for filing. The application shall 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 33-1215;
 - (2) the name of the state or country under whose law it is incorporated;

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- (3) its date of incorporation and period of duration;
 - (4) the street address of its principal office;
 - (5) the address of its registered office in this state and the name of its registered agent at that office;
 - (6) the electronic mail address, if any, of the corporation; and
 - (7) the names and respective business and residence addresses of the directors and officers of the foreign corporation, except that if good cause is shown, the Secretary of the State may accept business addresses in lieu of business and residence addresses of the directors and officers of the corporation. For purposes of this section, a showing of good cause shall include, but not be limited to, a showing that public disclosure of the residence addresses of the corporation's directors and officers may expose the personal security of such directors and officers to significant risk.
- (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 the state or other official having custody of corporate records in the state or country under whose law it is incorporated.

§ 33-1213. Amended certificate of authority

- (a) A foreign corporation authorized to conduct affairs in this state must obtain an amended certificate of authority from the Secretary of the 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 33-1212 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ 33-1214. Effect of certificate of authority

- (a) A certificate of authority authorizes the foreign corporation to which it is issued to conduct affairs in this state subject, however, to the right of the state to revoke the certificate as provided in sections 33-1000 to 33-1290, inclusive.

- (b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by sections 33-1000 to 33-1290, inclusive, is subject to the same duties, restrictions, penalties and liabilities imposed on, a domestic corporation of like character.
- (c) Sections 33-1000 to 33-1290, inclusive, do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this state.

§ 33-1215. Corporate name of foreign corporation

- (a) The corporate name of a foreign corporation must satisfy the requirements of section 33-1045. If the corporate name of a foreign corporation does not satisfy the requirements of section 33-1045, the foreign corporation in order to satisfy the requirements of said section and obtain or maintain a certificate of authority to conduct affairs in this state:
 - (1) May add the word “corporation”, “incorporated” or “company”, or the abbreviation “corp.”, “inc.” or “co.”, to its corporate name for use in this state; or
 - (2) may use a fictitious name which includes “corporation”, “incorporated” or “company”, or words or abbreviations of like import in another language to conduct affairs in this state if its real name is unavailable and it includes with its application for a certificate of authority 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) of this section, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the Secretary of the State from:
 - (1) The corporate name of a corporation incorporated or authorized to conduct affairs in this state;
 - (2) a corporate name reserved or registered under section 33-1046 or 33-1047;
 - (3) the fictitious name adopted by another foreign corporation authorized to conduct affairs in this state because its real name is unavailable;

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- (4) the corporate name of a domestic or foreign business corporation incorporated or authorized to transact business in this state;
 - (5) the name of any domestic or foreign limited partnership organized or authorized to transact business in this state;
 - (6) the name of any domestic or foreign limited liability company organized or authorized to transact business in this state;
 - (7) the name of any domestic or foreign limited liability partnership organized or authorized to transact business in this state; and
 - (8) the name of any other entity whose name is carried upon the records of the Secretary of the State as organized or authorized to transact business or conduct affairs in this state.
- (c) A foreign corporation may apply to the Secretary of the State for authorization to use in this state, a name that is not distinguishable upon his records from one or more of the names described in subsection (b) of this section. The Secretary of the State shall authorize use of the name applied for if:
- (1) The other corporation, limited partnership, limited liability company, limited liability partnership or other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of the State to change its name to a name that is distinguishable upon the records of the Secretary of the State from the name of the applying corporation; or
 - (2) the applicant delivers to the Secretary of the 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 entity that is used in this state if the other entity is organized or authorized to conduct affairs in this state and the foreign corporation:
- (1) Has merged with the other entity; or
 - (2) has been formed by reorganization of the other entity.
- (e) If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section 33-1045, it may not conduct affairs in this state under the changed name until it adopts a

name satisfying the requirements of said section and obtains an amended certificate of authority under section 33-1213.

§ 33-1216. Registered office and registered agent of foreign corporation

- (a) Each foreign corporation authorized to conduct affairs in this state shall continuously maintain in this state:
- (1) A registered office that may be the same as any of its offices; and
 - (2) a registered agent at such registered office, who may be:
 - (A) A natural person who is a resident of this state;
 - (B) a domestic corporation or business corporation;
 - (C) a foreign corporation or foreign business corporation which has procured a certificate of authority to transact business or conduct its affairs in this state;
 - (D) a domestic limited liability company;
 - (E) a limited liability company not organized under the laws of this state and which has procured a certificate of registration to transact business or conduct its affairs in this state;
 - (F) a domestic registered limited liability partnership;
 - (G) a registered limited liability partnership not organized under the laws of this state and which has procured a certificate of authority to transact business or conduct its affairs in this state;
 - (H) a domestic statutory trust; or
 - (I) a statutory trust not organized under the laws of this state and which has procured a certificate of registration to transact business or conduct its affairs in this state.

The appointment of such registered agent shall be in writing and shall be signed by the registered agent therein appointed. If a natural person is appointed as the registered agent, such appointment shall include the residence address of such person.

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- (b) In addition to persons or entities who may act as a registered agent pursuant to subsection (a) of this section, a foreign corporation may appoint the Secretary of the State and his successors in office to act as its registered agent.

§ 33-1217. Change of registered office or registered agent of foreign corporation

- (a) A foreign corporation authorized to conduct affairs in this state may change its registered office or registered agent by delivering to the Secretary of the State for filing a statement of change that sets forth:
 - (1) Its name;
 - (2) if the current registered office is to be changed, the street address of its current registered office and the street address of its new registered office; and
 - (3) if the current registered agent is to be changed, the name of its current registered agent and 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.
- (b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of the State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

§ 33-1218. Resignation of registered agent of foreign corporation

- (a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Secretary of the State for filing the original and one exact or conformed copy of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (b) After filing the statement, the Secretary of the State shall mail the copy to the foreign corporation at its principal office address shown in its most recent annual report.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 33-1219. Service of process on foreign corporation

- (a) The registered agent of a foreign corporation authorized to conduct affairs in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation. When the registered agent is other than the Secretary of the State and his successors in office, service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state.

- (b) A foreign corporation may be served by any proper officer or other person lawfully empowered to make service by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:
 - (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (2) has withdrawn from conducting affairs in this state under section 33-1222;
or
 - (3) has had its certificate of authority revoked under section 33-1226.

- (c) When the Secretary of the State and his successors in office have been appointed a foreign corporation's registered agent, a foreign corporation may be served by any proper officer or other person lawfully empowered to make service by leaving two true and attested copies thereof together with the required fee at the office of the Secretary of the State or depositing the same in the United States mail, by registered or certified mail, postage prepaid, addressed to said office. The Secretary of the State shall file one copy of such process and keep a record of the date and hour of such receipt. He shall, within two business days after such service, forward by registered or certified mail the copy of such process to the corporation at the address of its principal office as last shown on his records.

- (d) Service is effective under subsection (b) of this section at the earliest of:
 - (1) The date the foreign corporation receives the mail;
 - (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; and

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- (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

In the case of service on the Secretary of the State, service so made shall be effective as of the date and hour received by the Secretary of the State as shown on his records.

- (e) Every foreign corporation which conducts affairs in this state in violation of section 33-1210 shall be subject to suit in this state upon any cause of action arising out of such affairs.
- (f) Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is conducting or has conducted affairs in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:
 - (1) Out of any contract made in this state or to be performed in this state;
 - (2) out of any solicitation in this state by mail or otherwise if the corporation has repeatedly so solicited, whether the orders or offers relating thereto were accepted within or without the state;
 - (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers;
or
 - (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.
- (g) In any action brought under subsection (e) or (f) of this section, or in any foreclosure or other action involving real property located in this state in which a foreign corporation, although not conducting affairs in this state, owns or claims to own an interest, service of process on such corporation may be made as provided in subsection (b) of this section, except that the service shall be addressed to the corporation at its principal office or, if it has no such office or the address of such office is not known, to such corporation's last office as shown in

the official registry of the state or country of its incorporation, which address shall be set forth in the writ or other process.

- (h) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

§§ 33-1220, 33-1221. Reserved for future use

(B)

WITHDRAWAL

§ 33-1222. Withdrawal of foreign corporation

- (a) A foreign corporation authorized to conduct affairs in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of the State.
- (b) A foreign corporation authorized to conduct affairs in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of the State for filing. The application shall set forth:
 - (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
 - (2) that it is not conducting affairs in this state and that it surrenders its authority to conduct affairs in this state;
 - (3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of the State and his successors in office as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state;
 - (4) a mailing address to which the Secretary of the State may mail a copy of any process served on him under subdivision (3) of this subsection; and
 - (5) a commitment to notify the Secretary of the State in the future of any change in its mailing address.

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- (c) After the withdrawal of the corporation is effective, service of process on the Secretary of the State as provided in section 33-1219, is service on the foreign corporation.

§§ 33-1223, 33-1224. Reserved for future use

(C)

REVOCATION OF CERTIFICATE OF AUTHORITY

§ 33-1225. Grounds for revocation. The Secretary of the State may commence a proceeding under section 33-1226, as amended by this act, to revoke the certificate of authority of a foreign corporation authorized to conduct affairs in this state if:

- (1) The foreign corporation has failed to file its annual report with the Secretary of the State;
- (2) the foreign corporation does not pay within sixty days after they are due any license fees, franchise taxes or penalties imposed by sections 33-1000 to 33-1290, inclusive, as amended by this act, or other law;
- (3) the foreign corporation is without a registered agent or registered office in this state for sixty days or more;
- (4) the foreign corporation does not inform the Secretary of the State under section 33-1217 or 33-1218 that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;
- (5) an incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of the State for filing; or
- (6) the Secretary of the State receives a duly authenticated certificate from the Secretary of the 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.

§ 33-1226. Procedure for and effect of revocation

- (a) If the Secretary of the State determines that one or more grounds exist under section 33-1225, as amended by this act, for revocation of a certificate of

authority, he shall notify such foreign corporation by registered or certified mail addressed to such foreign corporation at its principal office as last shown on his records that under the provisions of this section the foreign corporation's certificate of authority is to be revoked.

- (b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of the State that each ground determined by the Secretary of the State does not exist, within ninety days after mailing of the notice, the Secretary of the State may 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 the State shall file the original of the certificate and shall:
 - (1) Mail a copy thereof to the delinquent foreign corporation, addressed to such foreign corporation at its principal office as last shown on his records; and
 - (2) cause notice of the filing to be posted on the office of the Secretary of the State's Internet web site for a period of sixty days following the date on which the Secretary of the State files the certificate of revocation.
- (c) The authority of a foreign corporation to conduct affairs in this state ceases on the date shown on the certificate revoking its certificate of authority.
- (d) The Secretary of the State's revocation of a foreign corporation's certificate of authority appoints the Secretary of the State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to conduct affairs in this state. Service of process on the Secretary of the State as provided in section 33-1219 is service on the foreign corporation.
- (e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ 33-1227. Appeal from revocation

- (a) A foreign corporation may appeal the Secretary of the State's revocation of its certificate of authority to the Superior Court within thirty days after service of the certificate of revocation is effective under section 33-1219. 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 the State's certificate of revocation.

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- (b) The court may summarily order the Secretary of the 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.

§§ 33-1228 to 33-1234. Reserved for future use

PART XIV

RECORDS AND REPORTS

(A)

RECORDS

§ 33-1235. Corporate records

- (a) A corporation shall keep as permanent records minutes of all meetings of its members, if any, and board of directors, a record of all actions taken by the members, if any, or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board or directors on behalf of the corporation.
- (b) A corporation shall maintain appropriate accounting records.
- (c) A corporation or its agent shall maintain a record of its members, if any, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast and the members' class of membership, if any.
- (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 certificate of incorporation or restated certificate of incorporation and all amendments to it currently in effect;
 - (2) its bylaws or restated bylaws and all amendments to them currently in effect;

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- (3) the minutes of all members' meetings, if any, and records of all action taken by members, if any, without a meeting for the past three years;
- (4) the financial statements prepared for the past three years under section 33-1241;
- (5) a list of the names and business addresses of its current directors and officers; and
- (6) its most recent annual report delivered to the Secretary of the State under section 33-1243.

§ 33-1236. Inspection of records by members

- (a) A member is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e) of section 33-1235 if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.
- (b) A member is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if he meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:
 - (1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, if any, and records of action taken by the members, if any, or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;
 - (2) accounting records of the corporation; and
 - (3) the membership list.
- (c) A member may inspect and copy the records described in subsection (b) of this section only if:
 - (1) His demand is made in good faith and for a proper purpose;

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- (2) he describes with reasonable particularity the purpose and the records he desires to inspect; and
- (3) the records are directly connected with this purpose.
- (d) The right of inspection granted by this section may not be abolished or limited by a corporation's certificate of incorporation or bylaws.
- (e) This section does not affect:
 - (1) The right of a member to inspect records under section 33-1070 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 sections 33-1000 to 33-1290, inclusive, to compel the production of corporate records for examination.

§ 33-1237. Scope of inspection right

- (a) A member's agent or attorney has the same inspection and copying rights as the member represented.
- (b) The right to copy records under section 33-1236 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the member.
- (c) The corporation may comply at its expense with a member's demand to inspect the membership list under subdivision (3) of subsection (b) of section 33-1236 by providing the member with a membership list that was compiled no earlier than the date of the member's demand.
- (d) 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, reproduction or transmission of the records.

§ 33-1238. Court-ordered inspection

- (a) If a corporation does not allow a member who complies with subsection (a) of section 33-1236 to inspect and copy any records required by that subsection to be available for inspection, the superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office is located

may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

- (b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c) of section 33-1236 may apply to the superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.
- (c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney's 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.

§ 33-1239. Inspection of records by directors

- (a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.
- (b) The superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.
- (c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

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§ 33-1240. Exception to notice requirement

- (a) Whenever notice is required to be given under any provision of sections 33-1000 to 33-1290, inclusive, to any member, such notice shall not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such member at such member's address as shown on the records of the corporation and have been returned undeliverable.
- (b) If any such member delivers to the corporation written notice setting forth such member's current address, the requirement that notice be given to such member shall be reinstated.

(B)

REPORTS

§ 33-1241. Financial statements

- (a) A corporation shall prepare 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 disbursements and receipts for that year.
- (b) If annual financial statements are reported upon by a public accountant, his report must accompany them.

§ 33-1242. Repealed. (2001, P.A. 01-199, § 47.)

§ 33-1243. Reports

- (a) Each domestic corporation, except banks, trust companies, insurance or surety companies, savings and loan associations, credit unions, public service companies, as defined in section 16-1, cemetery associations and incorporated church or religious corporations, and each foreign corporation authorized to conduct affairs in this state, and except corporations formed before January 1, 1961, which under the law in effect on December 31, 1960, were not required to file an annual report, shall file an annual report with the Secretary of the State as prescribed in this section.
- (b) The first annual report of a domestic corporation shall be filed within thirty days after its organization meeting. Subsequent annual reports of such domestic

corporation and annual reports of each foreign corporation authorized to conduct affairs in this state shall be filed by electronic transmission at such times as may be provided by regulations adopted by the Secretary of the State in accordance with chapter 54, provided the Secretary of the State may require any corporation to file an annual report according to reporting schedules established by the secretary so as to effect staggered filing of all such reports. Upon request of a corporation, the Secretary of the State may grant an exemption from the requirement to file an annual report by electronic transmission if the corporation does not have the capability to file by electronic transmission or make payment in an authorized manner by electronic means or if other good cause is shown.

- (c) Each annual report shall set forth as of a date which complies with subsection (d) of this section and which is specified in such report:
 - (1) The name of the corporation and, in the case of a foreign corporation, the state under the laws of which it is incorporated;
 - (2) the principal office of the corporation or, in the case of a foreign corporation
 - (A) the address of the principal office of the foreign corporation in the state under the laws of which it is incorporated,
 - (B) the address of the executive offices of the foreign corporation, and
 - (C) the address of the principal office of the foreign corporation in this state, if any;
 - (3) the electronic mail address, if any, of the corporation; and
 - (4) the names and respective business and residence addresses of the directors and officers of the corporation, except that if good cause is shown, the Secretary of the State may accept business addresses in lieu of business and residence addresses of the directors and officers of the corporation. For the purposes of this subsection, a showing of good cause shall include, but not be limited to, a showing that public disclosure of the residence addresses of the corporation's directors and officers may expose the personal security of such directors and officers to significant risk.
- (d) The date specified in the annual report pursuant to subsection (c) of this section shall

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- (1) not be later than the date of filing the report, and
 - (2) not be earlier than the latest date preceding the date of filing on which any change of circumstances occurred which would affect the statements of fact required in the report.
- (e) Each annual report shall be accompanied by the required filing fee. The report shall be executed as set forth in section 33-1004. The Secretary of the State shall deliver to each domestic corporation at its principal office or electronic mail address, as shown by his records, and to each foreign corporation authorized to conduct affairs in this state at its executive offices or electronic mail address, as last shown by his records, notice that the annual report is due, but failure to receive such notice shall not relieve a corporation of the requirement of filing the report as provided in this section.

§ 33-1244. Failure to file report. Incorrect report

- (a) Any corporation required to file annual reports as provided in section 33-1243, which fails to file its annual report on or before the due date thereof, shall be in default in respect thereof until the same is filed.
- (b) The Secretary of the State shall not accept for filing a report from a corporation until any default for failure to file any prior report is cured. If the Secretary of the State finds that any annual report received from a corporation does not conform to law, he may return it to the corporation for correction. If the report is returned for correction and is not received by the Secretary of the State in corrected form on or before the due date thereof, the corporation shall be in default for failure to file its report. If the report is returned for failure to file any previous report and is not returned with any such previous report on or before the due date of the current report, the corporation shall be in default for failure to file two reports.

§ 33-1245. Interim notice of change of director or officer

- (a) When the directors or officers of a domestic or foreign corporation that is required to file an annual report pursuant to subsection (a) of section 33-1243 change after the corporation has filed its most current annual report and not later than thirty days preceding the month during which the corporation's next annual report becomes due, the corporation shall file with the Secretary of the State an interim notice of change of director or officer that sets forth:
 - (1) The name of the corporation, and

- (2) the names, titles and respective business and residence addresses of any new director or officer and the names and titles of any director or officer who has ceased to hold office. If good cause is shown, the Secretary of the State may accept business addresses in lieu of business and residence addresses of the directors and officers of the corporation. For purposes of this section, a showing of good cause shall include, but not be limited to, a showing that public disclosure of the residence addresses of the corporation's directors and officers may expose the personal security of such directors and officers to significant risk.
- (b) Any changes to the directors or officers of a domestic or foreign corporation that occur within the thirty-day period preceding the month during which the corporation's annual report becomes due shall be reflected on such corporation's next annual report filed pursuant to section 33-1243.

§§ 33-1246 to 33-1284. **Reserved for future use**

PART XV

MISCELLANEOUS PROVISIONS

§ 33-1285. **Judicial relief**

- (a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members or its directors, or otherwise obtain their consent, in the manner prescribed by its certificate of incorporation, bylaws or sections 33-1000 to 33-1290, inclusive, then upon petition of a director, officer or member, the superior court for the judicial district where a corporation's principal office or, if none in this state, its registered office, is located may order that such a meeting be called or that a written consent or ballot or other form of obtaining the vote of members or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.
- (b) The court shall, in an order issued pursuant to this section, 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 certificate of incorporation, bylaws and sections 33-1000 to 33-1290, inclusive, 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.

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- (c) The order issued pursuant to this section may, upon a finding that it is fair and equitable under the circumstances, dispense with any requirement relating to the holding of or voting at meetings or obtaining of 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 certificate of incorporation, bylaws or sections 33-1000 to 33-1290, inclusive.
- (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 certificate of incorporation or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, 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 or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the certificate of incorporation, bylaws and sections 33-1000 to 33-1290, inclusive.

§ 33-1286. Applicability to domestic corporations in existence on January 1, 1997. Sections 33-1000 to 33-1290, inclusive, apply to all domestic corporations in existence on January 1, 1997, that were incorporated under any general statute of this state providing for incorporation of corporations without capital stock or shares if power to amend or repeal the statute under which the corporation was incorporated was reserved.

§ 33-1287. Applicability to qualified foreign corporations. A foreign corporation authorized to conduct affairs in this state on January 1, 1997, is subject to sections 33-1000 to 33-1290, inclusive, but is not required to obtain a new certificate of authority to conduct affairs under said sections.

§ 33-1288. Savings provisions

- (a) Except as provided in subsection (b) of this section, the repeal of a statute by public act 96-256 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;

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- (3) any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;
 - (4) any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (b) If a penalty or punishment imposed for violation of a statute repealed by public act 96-256 is reduced by sections 33-1000 to 33-1290, inclusive, the penalty or punishment if not already imposed shall be imposed in accordance with said sections.

§ 33-1289. Reservation of power to amend or repeal. The General Assembly has the power to amend or repeal all or part of sections 33-1000 to 33-1290, inclusive, at any time and all domestic and foreign corporations subject to said sections are governed by the amendment or repeal.

§ 33-1290. Severability. If any provision of sections 33-1000 to 33-1290, inclusive, 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 said sections that can be given effect without the invalid provision or application, and to this end the provisions of said sections are severable.

§§ 33-1291 to 33-1330. Reserved for future use