

LC02505

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

Introduced By: Senators McCaffrey, and Walaska

Date Introduced: February 11, 2004

Referred To: Senate Commerce, Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 7-1.1 of the General Laws entitled "Business Corporations" is
2 hereby repealed in its entirety.

~~CHAPTER 7-1.1~~

~~Business Corporations~~

5 ~~**7-1.1-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode Island
6 Business Corporation Act."~~

7 ~~**7-1.1-2. Definitions.** -- As used in this chapter, unless the context otherwise requires, the
8 term:~~

9 ~~(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the
10 provisions of this chapter, except a foreign corporation.~~

11 ~~(2) "Foreign corporation" means a corporation for profit organized under laws other than
12 the laws of this state for a purpose or purposes for which a corporation may be organized under
13 this chapter.~~

14 ~~(3) "Articles of incorporation" means the original or restated articles of incorporation or
15 articles of consolidation and all of their amendments including agreements of merger.~~

16 ~~(4) "Shares" means the units into which the proprietary interests in a corporation are
17 divided.~~

18 ~~(5) "Subscriber" means one who subscribes for shares in a corporation, whether before or
19 after incorporation.~~

1 ~~(6) (i) "Shareholder" means one who is a holder of record of shares in a corporation. If~~
2 ~~the articles of incorporation or the bylaws so provide, the board of directors may adopt by~~
3 ~~resolution a procedure under which a shareholder of the corporation certifies in writing to the~~
4 ~~corporation that all or a portion of the shares registered in the name of the shareholder are held for~~
5 ~~the account of a specified person or persons. The resolution shall set forth:~~

6 ~~(A) The classification of shareholder who may certify;~~

7 ~~(B) The purpose or purposes for which the certification may be made;~~

8 ~~(C) The form of certification and information it is to contain;~~

9 ~~(D) If the certification is with respect to a record date or closing of the stock transfer~~
10 ~~books within which the certification must be received by the corporation; and~~

11 ~~(E) Any other provisions as to the procedure that are deemed necessary or desirable.~~

12 ~~(ii) Upon receipt by the corporation of a certification complying with the procedure, the~~
13 ~~persons specified in the certification are deemed, for the purpose or purposes set forth in the~~
14 ~~certification, to be the holders of record of the number of shares specified in place of the~~
15 ~~shareholder making the certification.~~

16 ~~(7) "Authorized shares" means the shares of all classes which the corporation is~~
17 ~~authorized to issue.~~

18 ~~(8) "Treasury shares" means shares of a corporation which have been issued, have been~~
19 ~~subsequently acquired by and belong to the corporation, and have not, either by reason of the~~
20 ~~acquisition or subsequently, been cancelled or restored to the status of authorized but unissued~~
21 ~~shares. Treasury shares are deemed to be "issued" shares, but not "outstanding" shares.~~

22 ~~(9) "Net assets" means the amount by which the total assets of a corporation exceed the~~
23 ~~total debts of the corporation.~~

24 ~~(10) (i) "Stated capital" means, at any particular time, the sum of:~~

25 ~~(A) The par value of all shares of the corporation having a par value that have been~~
26 ~~issued, or, if the shares have a preference in the assets of the corporation in the event of~~
27 ~~involuntary liquidation which is greater than the par value, then to the extent of the preference;~~

28 ~~(B) The amount of the consideration received by the corporation for all shares of the~~
29 ~~corporation without par value that have been issued, except the part of the consideration for the~~
30 ~~shares that may have been allocated to capital surplus in a manner permitted by law; and~~

31 ~~(C) The amounts not included in subdivisions (10)(i) and (10)(ii) that have been~~
32 ~~transferred to stated capital of the corporation, whether upon the issue of shares as a share~~
33 ~~dividend or otherwise, minus all reductions from the sum that have been effected in a manner~~
34 ~~permitted by law.~~

1 ~~-(ii) Irrespective of the manner of designation of the stated capital by the laws under~~
2 ~~which a foreign corporation is organized, the stated capital of a foreign corporation is determined~~
3 ~~on the same basis and in the same manner as the stated capital of a domestic corporation, for the~~
4 ~~purpose of computing fees, franchise taxes, and other charges imposed by this chapter.~~

5 ~~-(11) "Surplus" means the excess of the net assets of a corporation over its stated capital.~~

6 ~~-(12) "Earned surplus" means the portion of the surplus of a corporation equal to the~~
7 ~~balance of its net profits, income, gains, and losses from the date of incorporation, or from the~~
8 ~~latest date when a deficit was eliminated by an application of its capital surplus or stated capital~~
9 ~~or otherwise, after deducting subsequent distributions to shareholders and transfers to stated~~
10 ~~capital and capital surplus to the extent the distributions and transfers are made out of earned~~
11 ~~surplus. Earned surplus also includes any portion of surplus allocated to earned surplus in~~
12 ~~mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of~~
13 ~~the property and assets of another corporation, domestic or foreign.~~

14 ~~-(13) "Capital surplus" means the entire surplus of a corporation other than its earned~~
15 ~~surplus. Capital surplus, but not earned surplus, may include surplus arising from the revaluation~~
16 ~~of assets, including good will, if made in good faith upon demonstrably adequate bases of~~
17 ~~valuation.~~

18 ~~-(14) "Insolvent" means the inability of a corporation to pay its debts as they become due~~
19 ~~in the usual course of its business.~~

20 ~~-(15) "Employee" includes officers but not directors. A director may accept duties which~~
21 ~~also make him or her an employee.~~

22 ~~**7-1.1-3. Purposes.** --- Corporations may be organized under this chapter for any lawful~~
23 ~~purpose or purposes, except for the purpose of carrying on within this state the business of a~~
24 ~~bank, savings bank, trust company, building and loan association, loan and investment company,~~
25 ~~safe deposit company, railroad, electric railroad or street railway company, telegraph or telephone~~
26 ~~company, gas or electric light, heat or power company, canal, aqueduct, or water company,~~
27 ~~turnpike company, or any corporation which now has or may subsequently have the right to take~~
28 ~~or condemn land or other property within this state under the power of eminent domain, or to~~
29 ~~exercise or acquire franchises in streets or highways of this state; provided, however, that~~
30 ~~corporations organized for any of the purposes specified in chapter 5.1 of this title shall be~~
31 ~~organized under the provisions of that chapter.~~

32 ~~**7-1.1-4. General powers.** -- Each corporation shall have power to:~~

33 ~~-(1) Have perpetual succession by its corporate name unless a limited period of duration~~
34 ~~is stated in its articles of incorporation.~~

- 1 ~~(2) Sue and be sued, complain and defend, in its corporate name.~~
- 2 ~~(3) Have a corporate seal which may be altered at pleasure, and to use the seal by~~
3 ~~causing it, or a facsimile of it, to be impressed or affixed or reproduced in any other manner.~~
- 4 ~~(4) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and~~
5 ~~otherwise deal in and with, real or personal property, or any interest in that property, wherever~~
6 ~~situated.~~
- 7 ~~(5) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of~~
8 ~~all or any part of its property and assets.~~
- 9 ~~(6) Lend money and use its credit to assist its employees.~~
- 10 ~~(7) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,~~
11 ~~employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and~~
12 ~~with, shares or other interests in, or obligations of, other domestic or foreign corporations,~~
13 ~~associations, partnerships or individuals, or direct or indirect obligations of the United States or of~~
14 ~~any other government, state, territory, governmental district or municipality or of any of their~~
15 ~~instrumentalities.~~
- 16 ~~(8) Make contracts and guarantees and incur liabilities, borrow money at the rate of~~
17 ~~interest that the corporation may determine, issue its notes, bonds, and other obligations, and~~
18 ~~secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and~~
19 ~~income.~~
- 20 ~~(9) Lend money for its corporate purposes, invest and reinvest its funds, and take and~~
21 ~~hold real and personal property as security for the payment of the funds loaned or invested.~~
- 22 ~~(10) Conduct its business, carry on its operations, and have offices and exercise the~~
23 ~~powers granted by this chapter, within or without this state.~~
- 24 ~~(11) Elect or appoint officers and agents of the corporation, and define their duties and~~
25 ~~fix their compensation.~~
- 26 ~~(12) Make and alter bylaws, not inconsistent with its articles of incorporation or with the~~
27 ~~laws of this state, for the administration and regulation of the affairs of the corporation.~~
- 28 ~~(13) Make donations for the public welfare or for charitable, scientific, or educational~~
29 ~~purposes.~~
- 30 ~~(14) Transact any lawful business which the board of directors finds will aid~~
31 ~~governmental authority.~~
- 32 ~~(15) Pay pensions and establish pension plans, pension trusts, profit sharing plans, stock~~
33 ~~bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers,~~
34 ~~and employees.~~

1 ~~-(16) Provide insurance for its benefit on the life of any of its directors, officers, or~~
2 ~~employees, or on the life of any stockholder for the purpose of acquiring at his or her death shares~~
3 ~~of its stock owned by the stockholder.~~

4 ~~-(17) Be a promoter, partner, member, associate, or manager of any partnership, joint~~
5 ~~venture, trust, or other enterprise.~~

6 ~~-(18) Have and exercise all powers necessary or convenient to effect its purposes.~~

7 ~~**7-1.1-4.1. Indemnification.**~~ ~~-(a) As used in this section:~~

8 ~~-(1) "Director" means any person who is or was a director of the corporation and any~~
9 ~~person who, while a director of the corporation, is or was serving at the request of the corporation~~
10 ~~as a director, officer, partner, trustee, employee, or agent of another foreign or domestic~~
11 ~~corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.~~

12 ~~-(2) (i) "Corporation" includes (A) any domestic or foreign corporation, profit or~~
13 ~~nonprofit, and (B) any domestic or foreign predecessor entity of the corporation in a merger,~~
14 ~~consolidation, or other transaction in which the predecessor's existence ceased upon~~
15 ~~consummation of the transaction.~~

16 ~~-(ii) "Corporation" also includes any of the classes of quasi-public corporations with~~
17 ~~purposes enumerated as exceptions in section 7-1.1-3 to the extent that the corporations are not~~
18 ~~subject to other provisions of the general laws or special acts authorizing indemnification of their~~
19 ~~directors and officers.~~

20 ~~-(3) "Expenses" include attorneys' fees.~~

21 ~~-(4) "Official capacity" means:~~

22 ~~-(i) When used with respect to a director, the office of director in the corporation; and~~

23 ~~-(ii) When used with respect to a person other than a director, as contemplated in~~
24 ~~subsection (a)(1), the elective or appointive office in the corporation held by the officer or the~~
25 ~~employment or agency relationship undertaken by the employee or agent on behalf of the~~
26 ~~corporation, but in each case does not include service for any other foreign or domestic~~
27 ~~corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.~~

28 ~~-(5) "Party" includes a person who was, is, or is threatened to be made, a named~~
29 ~~defendant or respondent in a proceeding.~~

30 ~~-(6) "Proceeding" means any threatened, pending or completed action, suit, or~~
31 ~~proceeding, whether civil, criminal, administrative, or investigative.~~

32 ~~-(b) (1) A corporation has power to indemnify any person made a party to any proceeding~~
33 ~~by reason of the fact that he or she is or was a director if:~~

34 ~~-(i) He or she conducted him or herself in good faith; and~~

1 ~~(ii) He or she reasonably believed,~~
2 ~~(A) In the case of conduct in his or her official capacity with the corporation, that his or~~
3 ~~her conduct was in its best interests, and~~
4 ~~(B) In all other cases, that his or her conduct was at least not opposed to its best interests;~~
5 ~~and~~
6 ~~(iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe~~
7 ~~his or her conduct was unlawful.~~
8 ~~(2) Indemnification may be made against judgments, penalties, fines, settlements, and~~
9 ~~reasonable expenses actually incurred by the person in connection with the proceeding; except~~
10 ~~that if the proceeding was by or in the right of the corporation, indemnification may be made only~~
11 ~~against the reasonable expenses and shall not be made in respect of any proceeding in which the~~
12 ~~person has been adjudged to be liable to the corporation. The termination of any proceeding by~~
13 ~~judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall~~
14 ~~not, of itself, be determinative that the person did not meet the requisite standard of conduct set~~
15 ~~forth in this subsection.~~
16 ~~(c) A director shall not be indemnified under subsection (b) in respect of any proceeding~~
17 ~~charging improper personal benefit to him or her, whether or not involving action in his or her~~
18 ~~official capacity, in which he or she has been adjudged to be liable on the basis that personal~~
19 ~~benefit was improperly received by the director.~~
20 ~~(d) (1) Unless limited by the articles of incorporation:~~
21 ~~(i) A director who has been wholly successful, on the merits or otherwise, in the defense~~
22 ~~of any proceeding referred to in subsection (b) is indemnified against reasonable expenses~~
23 ~~incurred by him or her in connection with the proceeding; and~~
24 ~~(ii) A court of appropriate jurisdiction, upon application of a director and any notice that~~
25 ~~the court requires, has authority to order indemnification in the following circumstances:~~
26 ~~(A) If it determines a director is entitled to reimbursement under subdivision (d)(1)(A),~~
27 ~~the court shall order indemnification, in which case the director is also entitled to recover the~~
28 ~~expenses of securing the reimbursement; or~~
29 ~~(B) If it determines that the director is fairly and reasonably entitled to indemnification~~
30 ~~in view of all the relevant circumstances, whether or not he or she has met the standard of~~
31 ~~conduct set forth in subsection (b) or has been adjudged liable in the circumstances described in~~
32 ~~subsection (c), the court may order such indemnification as the court shall deem proper, except~~
33 ~~that indemnification with respect to any proceeding by or in the right of the corporation or in~~
34 ~~which liability has been adjudged in the circumstances described in subsection (c) are limited to~~

1 ~~expenses.~~

2 ~~-(2) A court of appropriate jurisdiction may be the same court in which the proceeding~~
3 ~~involving the director's liability took place.~~

4 ~~-(e)(1) No indemnification under subsection (b) shall be made by the corporation unless~~
5 ~~authorized in the specific case after a determination has been made that indemnification of the~~
6 ~~director is permissible in the circumstances because he or she has met the standard of conduct set~~
7 ~~forth in subsection (b). The determination shall be made:~~

8 ~~-(i) By the board of directors by a majority vote of a quorum consisting of directors not at~~
9 ~~the time parties to the proceeding; or~~

10 ~~-(ii) If such a quorum cannot be obtained, then by a majority vote of a committee of the~~
11 ~~board, duly designated to act in the matter by a majority vote of the full board (in which~~
12 ~~designation directors who are parties may participate), consisting solely of two (2) or more~~
13 ~~directors not at the time parties to the proceeding; or~~

14 ~~-(iii) By special legal counsel, selected by the board of directors or a committee of the~~
15 ~~board by vote as set forth in subsection (e)(1)(i) or (e)(1)(ii), or, if the requisite quorum of the full~~
16 ~~board cannot be obtained for the vote and the committee cannot be established, by a majority vote~~
17 ~~of the full board (in which selection directors who are parties may participate); or~~

18 ~~-(iv) By the shareholders.~~

19 ~~-(2) Authorization of indemnification and determination as to reasonableness of expenses~~
20 ~~shall be made in the same manner as the determination that indemnification is permissible, except~~
21 ~~that if the determination that indemnification is permissible is made by special legal counsel,~~
22 ~~authorization of indemnification and determination as to reasonableness of expenses shall be~~
23 ~~made in a manner specified in subsection (e)(1)(iii) for the selection of the counsel. Shares held~~
24 ~~by directors who are parties to the proceeding shall not be voted on the subject matter under this~~
25 ~~subsection.~~

26 ~~-(f) Reasonable expenses incurred by a director who is a party to a proceeding may be~~
27 ~~paid or reimbursed by the corporation in advance of the final disposition of the proceeding upon~~
28 ~~receipt by the corporation of:~~

29 ~~-(1) A written affirmation by the director of his or her good faith belief that he or she has~~
30 ~~met the standard of conduct necessary for indemnification by the corporation as authorized in this~~
31 ~~section, and~~

32 ~~-(2) A written undertaking by or on behalf of the director to repay the amount if it is~~
33 ~~ultimately determined that he or she has not met that standard of conduct, and after a~~
34 ~~determination that the facts then known to those making the determination would not preclude~~

1 ~~indemnification under this section. The undertaking required by this subdivision is an unlimited~~
2 ~~general obligation of the director but need not be secured and may be accepted without reference~~
3 ~~to financial ability to make repayment. Determinations and authorizations of payments under this~~
4 ~~subsection shall be made in the manner specified in subsection (e).~~

5 ~~(g) The indemnification provided by this section is not deemed exclusive of any other~~
6 ~~rights to which those seeking indemnification are entitled under any bylaw, agreement, vote of~~
7 ~~stockholders or disinterested directors or otherwise, both as to action in his or her official capacity~~
8 ~~and as to action in another capacity while holding office, and shall continue as to a person who~~
9 ~~has ceased to be a director, officer, partner, trustee, employee, or agent and shall inure to the~~
10 ~~benefit of the heirs, executors, and administrators of a person. Nothing contained in this section~~
11 ~~limits the corporation's power to pay or reimburse expenses incurred by a director in connection~~
12 ~~with his or her appearance as a witness in a proceeding at a time when he or she has not been~~
13 ~~made a named defendant or respondent in the proceeding.~~

14 ~~(h) For purposes of this section, the corporation is deemed to have requested a director to~~
15 ~~serve an employee benefit plan whenever the performance by a director of his or her duties to the~~
16 ~~corporation also imposes duties on, or otherwise involves services by, him or her to the plan or~~
17 ~~participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an~~
18 ~~employee benefit plan pursuant to applicable law are deemed "fines"; and action taken or omitted~~
19 ~~by him or her with respect to an employee benefit plan in the performance of his or her duties for~~
20 ~~a purpose reasonably believed by him or her to be in the interest of the participants and~~
21 ~~beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests~~
22 ~~of the corporation.~~

23 ~~(i) Unless limited by the articles of incorporation:~~

24 ~~(1) An officer of the corporation is indemnified as and to the same extent provided in~~
25 ~~subsection (d) for a director, and is entitled to the same extent as a director to seek~~
26 ~~indemnification pursuant to the provisions of subsection (d);~~

27 ~~(2) A corporation has the power to indemnify and to advance expenses to an officer,~~
28 ~~employee, or agent of the corporation to the same extent that it may indemnify and advance~~
29 ~~expenses to directors pursuant to this section; and~~

30 ~~(3) A corporation, in addition, has the power to indemnify and to advance expenses to an~~
31 ~~officer, employee, or agent who is not a director to a further extent, consistent with law, that is~~
32 ~~provided by its articles of incorporation, bylaws, general or specific action of its board of~~
33 ~~directors, or contract.~~

34 ~~(j) A corporation has power to purchase and maintain insurance on behalf of any person~~

1 ~~who is or was a director, officer, employee, or agent of the corporation, or who, while a director,~~
2 ~~officer, employee, or agent of the corporation, is or was serving at the request of the corporation~~
3 ~~as a director, officer, partner, trustee, employee, or agent of another foreign or domestic~~
4 ~~corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan, against~~
5 ~~any liability asserted against him or her and incurred by him or her in any corporate capacity or~~
6 ~~arising out of his or her status as a director, officer, employee, or agent of the corporation,~~
7 ~~whether or not the corporation would have the power to indemnify him or her against the liability~~
8 ~~under the provisions of this section.~~

9 ~~(k) Any indemnification of, or advance of expenses to, a director in accordance with this~~
10 ~~section, if arising out of a proceeding by or in the right of the corporation, shall be reported in~~
11 ~~writing to the shareholders with or before the notice of the next shareholders' meeting.~~

12 ~~**7-1.1-4.2. Guarantee authorized by shareholders.** --- Each corporation has the power to~~
13 ~~make guarantees, although not in furtherance of its corporate purposes, when authorized at a~~
14 ~~meeting of shareholders by the affirmative vote of the holders of a majority of the shares of the~~
15 ~~corporation entitled to vote on guarantees, or a greater percentage that is provided in the articles~~
16 ~~of incorporation or bylaws. If authorized by a like vote, a corporation has the power to mortgage,~~
17 ~~pledge, or give a security interest in all or any of its property, franchises, and income to secure a~~
18 ~~guarantee or to secure obligations other than its own.~~

19 ~~**7-1.1-5. Right of corporation to acquire and dispose of its own shares.** --- (a) A~~
20 ~~corporation has the right to purchase, take, receive, or otherwise acquire, hold, own, pledge,~~
21 ~~transfer, or otherwise dispose of its own shares, but purchases of its own shares, whether direct or~~
22 ~~indirect, shall be made only to the extent of its unreserved and unrestricted earned surplus~~
23 ~~available for purchases of its own shares, or, if it has no earned surplus, to the extent of its~~
24 ~~unreserved and unrestricted capital surplus pursuant to the provisions of section 7-1.1-41.~~

25 ~~(b) Until disposition or cancellation of treasury shares, the cost of the shares is treated as~~
26 ~~a deduction from the total of the stated capital and surplus of the corporation; and the earned~~
27 ~~surplus or capital surplus used as the measure of the corporation's right to purchase its own shares~~
28 ~~is restricted so long as the shares are held as treasury shares. Upon the disposition or cancellation~~
29 ~~of any treasury shares, the restriction on earned surplus or capital surplus is removed pro tanto,~~
30 ~~but the earned surplus or capital surplus previously restricted is reduced by the amount of any~~
31 ~~excess of the cost of the shares over the proceeds (if any) received upon their disposition or~~
32 ~~cancellation.~~

33 ~~(c) Notwithstanding the foregoing limitations, a corporation may purchase or otherwise~~
34 ~~acquire its own shares out of its capital surplus, or, if it has no capital surplus, out of its stated~~

1 capital (but in that event at a price not exceeding the stated capital attributable to the shares
2 purchased), for the purpose of:

3 ~~(1) Eliminating fractional shares.~~

4 ~~(2) Collecting or compromising indebtedness to the corporation.~~

5 ~~(3) Satisfying the claim of dissenting shareholders entitled to payment for their shares
6 under the provisions of this chapter.~~

7 ~~(4) Effecting, subject to the other provisions of this chapter, the retirement of its
8 redeemable shares by redemption or by purchase at an amount not to exceed the consideration
9 payable upon redemption.~~

10 ~~(d) The acquisition by a corporation of its own shares pursuant to a conversion or
11 exchange of shares shall not be treated as a purchase of shares subject to the provisions of this
12 section.~~

13 ~~(e) An open end investment company, registered as such under the Federal Investment
14 Company Act of 1940 (15 U.S.C. sections 80a-1—80a-64), as amended, may, if its articles of
15 incorporation so provide, purchase its own shares out of any unrestricted surplus or out of stated
16 capital.~~

17 ~~(f) No purchase of or payment for its own shares shall be made at a time when the
18 corporation is insolvent or when the purchase or payment would make it insolvent.~~

19 **7-1.1-6. Defense of ultra vires.** ~~— No act of a corporation and no conveyance or transfer
20 of real or personal property to or by a corporation is invalid because the corporation was without
21 capacity or power to do the act or to make or receive the conveyance or transfer, but the lack of
22 capacity or power may be asserted:~~

23 ~~(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any
24 act or the transfer of real or personal property by or to the corporation. If the unauthorized act or
25 transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to
26 which the corporation is a party, the court may, if all of the parties to the contract are parties to
27 the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of
28 the contract, and in so doing may allow to the corporation or to the other parties to the contract, as
29 the case may be, compensation for the loss or damage sustained by either of them which may
30 result from the action of the court in setting aside and enjoining the performance of the contract,
31 but anticipated profits to be derived from the performance of the contract shall not be awarded by
32 the court as a loss or damage sustained.~~

33 ~~(2) In a proceeding by the corporation, whether acting directly or through a receiver,
34 trustee, or other legal representative, or through shareholders in a representative suit, against the~~

1 ~~incumbent or former officers or directors of the corporation.~~

2 ~~-(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the~~
3 ~~corporation, or in a proceeding by the attorney general to enjoin the corporation from the~~
4 ~~transaction of unauthorized business.~~

5 **7-1.1-7. Corporate name.** ~~--~~ (a) The corporate name:

6 ~~-(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or~~
7 ~~shall contain an abbreviation of one of the words.~~

8 ~~-(2) Shall not contain any word or phrase which indicates or implies that it is organized~~
9 ~~for any purpose other than one or more of the purposes contained in its articles of incorporation.~~

10 ~~-(3) Shall not be the same as, or deceptively similar to, the name of any domestic~~
11 ~~corporation, whether for profit or not for profit, or limited partnership existing under the laws of~~
12 ~~this state or any foreign corporation, whether for profit or not for profit, or limited partnership~~
13 ~~authorized to transact business in this state, or domestic or foreign limited liability company or a~~
14 ~~name the exclusive right to which is, at the time filed, reserved or registered in the manner~~
15 ~~provided in this chapter, or the name of a corporation or a limited partnership which has in effect~~
16 ~~a registration of its corporate or limited partnership name as provided in this title, subject to the~~
17 ~~following:~~

18 ~~-(i) This provision does not apply if the applicant files with the secretary of state either of~~
19 ~~the following:~~

20 ~~-(A) The written consent of the other corporation, limited partnership, limited liability~~
21 ~~company or holder of a filed, reserved or registered name to use that name or deceptively similar~~
22 ~~name, and one or more words are added to make the name distinguishable from the other name;~~
23 ~~or~~

24 ~~-(B) A certified copy of a final decree of a court of competent jurisdiction establishing the~~
25 ~~prior right of the applicant to the use of the name in this state; and~~

26 ~~-(ii) The name may be the same as, or deceptively similar to, the name of a corporation or~~
27 ~~other association the certificate of incorporation or organization of which has been revoked by the~~
28 ~~secretary of state as permitted by law and the revocation has not been withdrawn within one year~~
29 ~~from the date of the revocation.~~

30 ~~-(b) A corporation with which another corporation, domestic or foreign, is merged, or~~
31 ~~which is formed by the reorganization or consolidation of one or more domestic or foreign~~
32 ~~corporations or upon a sale, lease, or other disposition to, or exchange with, a domestic~~
33 ~~corporation of all or substantially all the assets of another corporation, domestic or foreign,~~
34 ~~including its name, may have the same name as that used in this state by any of the corporations if~~

1 ~~at the time the other corporation was organized under the laws of, or is authorized to transact~~
2 ~~business in, this state.~~

3 ~~**7-1.1-7.1. Fictitious business name.** --- (a) Any corporation organized and existing under~~
4 ~~the laws of any state or territory of the United States may transact business in this state under a~~
5 ~~fictitious name, provided that it files a fictitious business name statement in accordance with this~~
6 ~~section prior to the time it commences to transact the business under the fictitious name.~~

7 ~~(b) The fictitious business name statement shall be filed in duplicate with the secretary of~~
8 ~~state on forms to be furnished by the secretary of state and shall be executed by an officer of the~~
9 ~~corporation and shall state:~~

10 ~~(1) The fictitious business name to be used;~~

11 ~~(2) The name of the applicant corporation and the state or territory under the laws of~~
12 ~~which it is incorporated, the date of its incorporation, and a brief statement of the business in~~
13 ~~which it is engaged; and~~

14 ~~(3) The address of its registered office within the state.~~

15 ~~(c) The fictitious business name statement expires upon the filing of the statement of~~
16 ~~abandonment of use of a fictitious business name registered in accordance with this section or~~
17 ~~upon the dissolution of the applicant corporation.~~

18 ~~(d) The statement of abandonment of use of a fictitious business name under this section~~
19 ~~may be filed in duplicate with the secretary of state on forms furnished by the secretary of state~~
20 ~~and shall be executed by an officer of the corporation and shall state:~~

21 ~~(1) The fictitious business name being abandoned;~~

22 ~~(2) The date on which the original fictitious business name statement being abandoned~~
23 ~~was filed;~~

24 ~~(3) The name of the applicant corporation and the state or territory under the laws of~~
25 ~~which it is incorporated; and~~

26 ~~(4) The address of its registered office within the state.~~

27 ~~(e) No domestic or foreign corporation transacting business under a fictitious business~~
28 ~~name contrary to the provisions of this section, or its assignee, may maintain any action upon or~~
29 ~~on account of any contract made, or transaction had, in the fictitious business name in any court~~
30 ~~of this state until a fictitious business name statement has been filed in accordance with this~~
31 ~~section.~~

32 ~~(f) No corporation may be permitted to transact business under a fictitious business name~~
33 ~~pursuant to this section which is the same as or deceptively similar to the name of any domestic~~
34 ~~corporation, any domestic limited partnership or any domestic limited liability company existing~~

1 ~~under the laws of this state, or the name of any foreign corporation, foreign limited partnership or~~
2 ~~foreign limited liability company authorized to transact business in the state, or any corporate~~
3 ~~name filed, reserved or registered under this title.~~

4 ~~-(g) A filing fee of fifty dollars (\$50.00) is collected by the secretary of state for each~~
5 ~~statement filed.~~

6 **7-1.1-8. Reserved name.** ~~-(a) The exclusive right to the use of a corporate name may be~~
7 ~~reserved by:~~

8 ~~-(1) Any person intending to organize a corporation under this chapter.~~

9 ~~-(2) Any domestic corporation intending to change its name.~~

10 ~~-(3) Any foreign corporation intending to make application for a certificate of authority to~~
11 ~~transact business in this state.~~

12 ~~-(4) Any foreign corporation authorized to transact business in this state and intending to~~
13 ~~change its name.~~

14 ~~-(5) Any person intending to organize a foreign corporation and intending to have the~~
15 ~~corporation make application for a certificate of authority to transact business in this state.~~

16 ~~-(b) The reservation is made by filing with the secretary of state an application to reserve~~
17 ~~a specified corporate name, executed by the applicant. If the secretary of state finds that the name~~
18 ~~is available for corporate use, he or she shall reserve the name for the exclusive use of the~~
19 ~~applicant for a period of one hundred and twenty (120) days.~~

20 ~~-(c) The right to the exclusive use of a specified corporate name so reserved may be~~
21 ~~transferred to any other person or corporation by filing in the office of the secretary of state a~~
22 ~~notice of the transfer, executed by the applicant for whom the name was reserved, and specifying~~
23 ~~the name and address of the transferee.~~

24 **7-1.1-9. Registered name.** ~~-(a) Any corporation organized and existing under the laws~~
25 ~~of any state or territory of the United States may register its corporate name under this chapter,~~
26 ~~provided its corporate name is not the same as or deceptively similar to, the name of any domestic~~
27 ~~corporation, limited partnership or limited liability company existing under the laws of this state,~~
28 ~~or the name of any foreign corporation, limited partnership or limited liability company~~
29 ~~authorized to transact business in this state, or any corporate name reserved, filed or registered~~
30 ~~under this title.~~

31 ~~-(b) The registration is made by:~~

32 ~~-(1) Filing with the secretary of state:~~

33 ~~-(i) An application for registration executed by an officer of the corporation, stating the~~
34 ~~name of the corporation, the state or territory under the laws of which it is incorporated, the date~~

1 of its incorporation, a statement that it is carrying on or doing business, and a brief statement of
2 the business in which it is engaged; and

3 ~~(ii) A certificate stating that the corporation is in good standing under the laws of the~~
4 ~~state or territory wherein it is organized, executed by the secretary of state of the state or territory~~
5 ~~or by any other official that may have custody of the records pertaining to corporations; and~~

6 ~~(2) Paying to the secretary of state a registration fee of fifty dollars (\$50.00).~~

7 ~~(c) The registration is effective for a period of one year.~~

8 ~~**7-1.1-10. Renewal of registered name.** -- A corporation, which has in effect a~~
9 ~~registration of its corporate name, may renew the registration from year to year by annually filing~~
10 ~~an application for renewal stating the facts required to be stated in an original application for~~
11 ~~registration and a certificate of good standing as required for the original registration and by~~
12 ~~paying a fee of fifty dollars (\$50.00). A renewal application shall be filed prior to the expiration~~
13 ~~of the one year period from the filing of an original application for registration or its last renewal~~
14 ~~and extends the registration for the following year.~~

15 ~~**7-1.1-11. Registered office and registered agent -- Designation of registered agent**~~
16 ~~**without authority.** -- (a) Each corporation shall have and continuously maintain in this state:~~

17 ~~(1) A registered office, which may be, but need not be, the same as its place of business.~~

18 ~~(2) A registered agent, who may be either an individual resident in this state whose~~
19 ~~business office is identical with the registered office, or a domestic corporation, or a foreign~~
20 ~~corporation authorized to transact business in this state, having a business office identical with the~~
21 ~~registered office; provided, however, that in the case where the registered agent of a corporation~~
22 ~~is an attorney, the business address of the agent need not be identical with the registered office,~~
23 ~~but may be the usual business address of the attorney.~~

24 ~~(b) Any incorporator, officer, agent, or servant of a corporation, who designates a~~
25 ~~registered agent for that corporation without the registered agent's authority, is guilty of a~~
26 ~~misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand~~
27 ~~dollars (\$1,000) or by imprisonment of not more than one year, or both.~~

28 ~~**7-1.1-12. Change of registered office or registered agent.** -- (a) A corporation may~~
29 ~~change its registered office or change its registered agent, or both, upon filing in the office of the~~
30 ~~secretary of state a statement stating:~~

31 ~~(1) The name of the corporation.~~

32 ~~(2) The address of its then registered office.~~

33 ~~(3) If the address of its registered office has changed, the new address of the registered~~
34 ~~office.~~

1 ~~(4) The name of its then registered agent.~~

2 ~~(5) If its registered agent has changed, the name of its successor registered agent.~~

3 ~~(6) The address of its registered office and the address of the business office of its~~
4 ~~registered agent, as changed.~~

5 ~~(7) That the change was authorized by resolution duly adopted by its board of directors.~~

6 ~~(b) The statement shall be executed by the corporation by its president or a vice~~
7 ~~president, and verified by him or her, and delivered to the secretary of state. If the secretary of~~
8 ~~state finds that the statement conforms to the provisions of this chapter, the secretary shall file the~~
9 ~~statement in his or her office, and upon that filing or upon a later date not more than thirty (30)~~
10 ~~days after the filing, as is set forth in the statement, the change of address of the registered office,~~
11 ~~or the appointment of a new registered agent, or both, as the case may be, shall become effective.~~

12 ~~(c) Any registered agent of a corporation may resign as an agent upon filing a written~~
13 ~~notice of the resignation, executed in duplicate, with the secretary of state, who shall immediately~~
14 ~~mail a copy of the resignation to the corporation at its registered office. The appointment of the~~
15 ~~agent terminates upon the expiration of thirty (30) days after receipt of the notice by the secretary~~
16 ~~of state.~~

17 ~~(d) If a registered agent changes his or her or its business address to another place within~~
18 ~~the state, he or she or it may change the address and the address of the registered office of any~~
19 ~~corporations of which he or she or it is a registered agent by filing a statement as required above,~~
20 ~~except that it need be signed only by the registered agent and need not be responsive to~~
21 ~~subsection (a)(5) or (a)(7) and must recite that a copy of the statement has been mailed to each~~
22 ~~corporation.~~

23 **7-1.1-13. Service of process on corporation.** ~~-- (a) The registered agent appointed by a~~
24 ~~corporation is an agent of the corporation upon whom any process, notice, or demand required or~~
25 ~~permitted by law to be served upon the corporation may be served.~~

26 ~~(b) Whenever a corporation fails to appoint or maintain a registered agent in this state, or~~
27 ~~whenever its registered agent cannot with reasonable diligence be found at the registered office,~~
28 ~~then the secretary of state is an agent of the corporation upon whom any process, notice, or~~
29 ~~demand may be served. Service on the secretary of state of any process, notice, or demand is~~
30 ~~made by delivering to and leaving with him or her or with any clerk having charge of the~~
31 ~~corporation department of his or her office, duplicate copies of the process, notice, or demand. In~~
32 ~~the event any process, notice, or demand is served on the secretary of state, he or she shall~~
33 ~~immediately forward one of the copies by certified mail, addressed to the corporation at its~~
34 ~~registered office. Any service upon the secretary of state is returnable in not less than thirty (30)~~

1 days.

2 ~~-(c) The secretary of state shall keep a record of all processes, notices, and demands~~
3 ~~served upon him or her under this section, and shall record in the record the time of service and~~
4 ~~his or her action with reference to these.~~

5 ~~-(d) Nothing contained in these provisions limits or affects the right to serve any process,~~
6 ~~notice, or demand required or permitted by law to be served upon a corporation in any other~~
7 ~~manner now or subsequently permitted by law.~~

8 ~~**7-1.1-14. Authorized shares.** --- (a) Each corporation has power to create and issue the~~
9 ~~number of shares stated in its articles of incorporation. The shares may be divided into one or~~
10 ~~more classes, any or all of which classes may consist of shares with par value or shares without~~
11 ~~par value, with the designations, preferences, limitations, and relative rights that are stated in the~~
12 ~~articles of incorporation. To the extent not inconsistent with the provisions of this chapter, the~~
13 ~~articles of incorporation may limit or deny the voting rights of any class, or provide special voting~~
14 ~~rights for the shares of any class, including the power to elect one or more directors, or contain~~
15 ~~restrictions on transferability of ownership designed to permit a corporation to qualify as: (1) a~~
16 ~~real estate investment trust under the provisions of the Internal Revenue Code of 1986 [26 U.S.C.~~
17 ~~section 1 et seq.] or regulations adopted pursuant to the Internal Revenue Code; or (2) an~~
18 ~~investment company under the Investment Company Act of 1940 [15 U.S.C. section 80a 1 et~~
19 ~~seq.] or regulations adopted pursuant to the Investment Company Act.~~

20 ~~-(b) Without limiting the authority contained in these provisions, a corporation, when~~
21 ~~provided for in its articles of incorporation, may issue shares of preferred or special classes:~~

22 ~~-(1) Subject to the right of the corporation to redeem any of the shares for the~~
23 ~~consideration fixed by the articles of incorporation for the redemption of the shares.~~

24 ~~-(2) Entitling the holders of the shares to cumulative, noncumulative, or partially~~
25 ~~cumulative dividends.~~

26 ~~-(3) Having preference over any other class or classes of shares as to the payment of~~
27 ~~dividends.~~

28 ~~-(4) Having preference in the assets of the corporation over any other class or classes of~~
29 ~~shares upon the voluntary or involuntary liquidation of the corporation.~~

30 ~~-(5) Convertible into shares of any other class or into shares of any series of the same or~~
31 ~~any other class, except a class having prior or superior rights and preferences as to dividends or~~
32 ~~distribution of assets upon liquidation, but no shares, whether with or without par value, shall be~~
33 ~~converted into shares with par value unless that part of the stated capital of the corporation~~
34 ~~represented by the shares to be converted is, at the time of conversion, at least equal to the~~

1 ~~aggregate par value of the shares into which the shares are to be converted.~~

2 ~~-(c) Notwithstanding the provisions of subsection (a) of this section, the board of~~
3 ~~directors of a corporation that is registered or intends to register as an open end company under~~
4 ~~the Investment Company Act of 1940 [15 U.S.C. section 80a-1 et seq.] after the registration as an~~
5 ~~open end company takes effect, may increase or decrease the aggregate number of shares of stock~~
6 ~~or the number of shares of stock of any class that the corporation has authority to issue unless a~~
7 ~~provision has been included in the charter of the corporation after July 1, 2001, prohibiting that~~
8 ~~action by the board of directors to increase or decrease the aggregate number of shares of stock or~~
9 ~~the number of shares of stock of any class that the corporation has authority to issue.~~

10 ~~**7-1.1-15. Issuance of shares of preferred or special classes in series.** -- (a) If the~~
11 ~~articles of incorporation so provide, the shares of any preferred or special class may be divided~~
12 ~~into and issued in series, with variations in relative rights and preferences, including variations in~~
13 ~~voting rights, if any, and designations, preferences, and relative, participating, optional or other~~
14 ~~special rights and qualifications, limitations, and restrictions on the shares, as may be desired. If~~
15 ~~the articles of incorporation expressly vest authority in the board of directors, then, to the extent~~
16 ~~that the articles of incorporation have not established series and fixed and determined the~~
17 ~~variations in the relative rights and preferences as between the series, the board of directors has~~
18 ~~authority to divide any or all of the classes into series and, within the limitations, if any, stated in~~
19 ~~the articles of incorporation, to fix and determine the relative rights and preferences of the shares~~
20 ~~of any series established.~~

21 ~~-(b) The holders of preferred or special stock of any class or of any series of that stock are~~
22 ~~entitled to receive dividends at the rates, on the conditions and at the times that are stated and~~
23 ~~expressed in the articles of incorporation, or in any amendment of the articles, or in the vote or~~
24 ~~votes providing for the issue of the stock adopted by the board of directors as previously~~
25 ~~provided, payable in preference to, or in relation to, the dividends, payable on any other class or~~
26 ~~classes of stock, or of any other series of stock, and cumulative, non-cumulative or partially~~
27 ~~cumulative as is stated and expressed. When dividends upon the preferred and special stocks, if~~
28 ~~any, to the extent of the preferences to which the stocks are entitled, have been paid or declared~~
29 ~~and set apart for payment, a dividend on the remaining class or classes or series of stock may then~~
30 ~~be paid out of the remaining assets of the corporation available for dividends.~~

31 ~~-(c) Any preferred or special stock of any class or of any series may be made redeemable~~
32 ~~for cash, property, or rights, including securities of any other corporation, at the option of either~~
33 ~~the holder or the corporation or upon the happening of a specified event, at the time or times, at~~
34 ~~the price or prices, or the rate or rates, and with the adjustments stated and expressed or provided~~

1 ~~for in the articles of incorporation or any amendment of the articles or in the vote or votes~~
2 ~~providing for the issuance of the stock adopted by the board of directors as previously provided.~~

3 ~~(d) The holders of the preferred or special stock of any class or of any series of that stock~~
4 ~~are entitled to the rights upon the dissolution of, or upon any distribution of the assets or~~
5 ~~liquidation, voluntary or involuntary, of the corporation as are stated and expressed in the articles~~
6 ~~of incorporation or any amendment of the articles, or in the vote or votes providing for the issue~~
7 ~~of the stock adopted by the board of directors as previously provided.~~

8 ~~(e) Any stock of any class or of any series of the stock may be made convertible into, or~~
9 ~~exchangeable for, shares of any other class or classes or of any other series of the same or any~~
10 ~~other class or classes of stock of the corporation, except a class having prior or superior rights and~~
11 ~~preferences as to dividends or distribution of assets upon liquidation, at the price or prices or at~~
12 ~~the rates of exchange and with the adjustments that are stated and expressed or provided for in the~~
13 ~~articles of incorporation, or in any amendment to the articles, or in the vote or votes providing for~~
14 ~~the issue of the stocks adopted by the board of directors as previously provided, but no shares,~~
15 ~~whether with or without par value, are convertible into shares with par value unless that part of~~
16 ~~the stated capital of the corporation represented by the shares to be converted, is at the time of~~
17 ~~conversion, at least equal to the aggregate par value of the shares into which the shares are to be~~
18 ~~converted.~~

19 ~~(f) If any corporation is authorized to issue more than one class of stock or more than~~
20 ~~one series of any class, the designation, preferences, and relative, participating, optional, or other~~
21 ~~special rights of each class of stock or series of the stock and the qualifications, limitations, or~~
22 ~~restrictions of the preferences and/or rights shall be stated in full or summarized on the face or~~
23 ~~back of the certificate which the corporation issues to represent the class or series of stock;~~
24 ~~provided, however, that except as otherwise provided in section 6A-8-103, in lieu of the~~
25 ~~foregoing requirements, there may be stated on the face or back of the certificate which the~~
26 ~~corporation issues to represent the class or series of stock, a statement that the corporation will~~
27 ~~furnish without charge to each stockholder who requests, the designations, preferences, and~~
28 ~~relative, participating, optional, or other special rights of each class of stock or series of the stock~~
29 ~~and the qualifications, limitations, or restrictions of the preferences and/or rights.~~

30 ~~(g) Before any corporation issues any shares of stock of any class or of any series of any~~
31 ~~class of which the voting powers, designations, preferences, and relative, participating, optional,~~
32 ~~or other rights, if any, or the qualifications, limitations, or restrictions of the stock, if any, have~~
33 ~~not been stated in the articles of incorporation or in any amendment to the articles but are~~
34 ~~provided for in a vote or votes adopted by the board of directors pursuant to authority expressly~~

1 ~~vested in it by the provisions of the articles of incorporation or an amendment to the articles, a~~
2 ~~certificate presenting a copy of the vote or votes and the number of shares of stock of the class or~~
3 ~~series shall be made under the seal of the corporation and signed by the president or a vice~~
4 ~~president and by the secretary or an assistant secretary of the corporation and acknowledged by~~
5 ~~the president or vice president before an officer authorized by the laws of Rhode Island to take~~
6 ~~acknowledgments of deeds, and shall be filed and a copy of the certificate shall be filed in the~~
7 ~~same manner as articles of incorporation are required to be filed. Upon the filing the certificate~~
8 ~~constitutes an amendment to the articles of incorporation. Unless otherwise provided in any vote~~
9 ~~or votes, the number of shares of stock of any class or series as stated in the vote or votes may be~~
10 ~~increased or decreased (but not below the number of shares of stock then outstanding) by a~~
11 ~~certificate likewise made, signed, and filed presenting a statement that a specified increase or~~
12 ~~decrease in the number of shares of stock had been authorized and directed by a vote or votes~~
13 ~~likewise adopted by the board of directors. In case the number of shares shall be decreased, the~~
14 ~~number of shares specified in the certificate resume the status which they had prior to the~~
15 ~~adoption of the first resolution or resolutions.~~

16 ~~**7-1.1-16. Subscription for shares.** (a) A subscription for shares of a corporation to be~~
17 ~~organized is irrevocable for a period of six (6) months, unless otherwise provided by the terms of~~
18 ~~the subscription agreement or unless all of the subscribers consent to the revocation of the~~
19 ~~subscription.~~

20 ~~(b) Unless otherwise provided in the subscription agreement, subscriptions for shares,~~
21 ~~whether made before or after the organization of a corporation, shall be paid in full at a time, or in~~
22 ~~installments and at times, that are determined by the board of directors. Any call made by the~~
23 ~~board of directors for payment on subscriptions shall be uniform as to all shares of the same class~~
24 ~~or as to all shares of the same series, as the case may be. In case of default in the payment of any~~
25 ~~installment or call when the payment is due, the corporation may proceed to collect the amount~~
26 ~~due in the same manner as any debt due the corporation. The bylaws may prescribe other~~
27 ~~penalties for failure to pay installments or calls that may become due, but no penalty working a~~
28 ~~forfeiture of a subscription, or of the amounts paid on the subscription, shall be declared as~~
29 ~~against any subscriber unless the amount due on the subscription remains unpaid for a period of~~
30 ~~twenty (20) days after written demand has been made for the amount. If mailed, the written~~
31 ~~demand shall be deemed to be made when deposited in the United States mail in a sealed~~
32 ~~envelope addressed to the subscriber at his or her last post office address known to the~~
33 ~~corporation, with postage on the envelope prepaid. In the event of the sale of any shares by reason~~
34 ~~of any forfeiture, the excess of proceeds realized over the amount due and unpaid on the shares~~

1 ~~shall be paid to the delinquent subscriber or to his or her legal representative.~~

2 ~~**7-1.1-17. Consideration for shares.** --- (a) Shares having a par value may be issued for~~
3 ~~the consideration expressed in dollars, not less than the par value of the shares, as is fixed from~~
4 ~~time to time by the board of directors.~~

5 ~~(b) Shares without par value may be issued for the consideration expressed in dollars that~~
6 ~~is fixed from time to time by the board of directors unless the articles of incorporation reserve to~~
7 ~~the shareholders the right to fix the consideration. In the event that the right is reserved as to any~~
8 ~~shares, the shareholders shall, prior to the issuance of the shares, fix the consideration to be~~
9 ~~received for the shares, by a vote of the holders of a majority of all shares entitled to vote on the~~
10 ~~consideration.~~

11 ~~(c) Treasury shares may be disposed of by the corporation for the consideration~~
12 ~~expressed in dollars that may be fixed from time to time by the board of directors.~~

13 ~~(d) The part of the surplus of a corporation which is transferred to stated capital upon the~~
14 ~~issuance of shares as a share divided is deemed to be the consideration for the issuance of the~~
15 ~~shares.~~

16 ~~(e) In the event of the issuance of shares upon the conversion or exchange of~~
17 ~~indebtedness or shares, the consideration for the shares issued shall be:~~

18 ~~(1) The principal sum of, and accrued interest on, the indebtedness exchanged or~~
19 ~~converted, or the stated capital then represented by the shares exchanged or converted; and~~

20 ~~(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares~~
21 ~~for the shares exchanged or converted; and~~

22 ~~(3) Any additional consideration paid to the corporation upon the issuance of shares for~~
23 ~~the indebtedness or shares exchanged or converted.~~

24 ~~**7-1.1-18. Payment for shares.** --- (a) The consideration for the issuance of shares may be~~
25 ~~paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or~~
26 ~~services actually performed for the corporation. When payment of the consideration for which~~
27 ~~shares are to be issued has been received by the corporation, the shares are deemed to be fully~~
28 ~~paid and nonassessable.~~

29 ~~(b) Neither promissory notes nor future services constitute payment or part payment, for~~
30 ~~the issuance of shares of a corporation.~~

31 ~~(c) In the absence of fraud in the transaction, the judgment of the board of directors or~~
32 ~~the shareholders, as the case may be, as to the value of the consideration received for shares is~~
33 ~~conclusive.~~

34 ~~**7-1.1-18.1. Stock rights and options.** --- Subject to any provisions in respect to rights and~~

1 ~~options stated in its articles of incorporation, a corporation may create and issue, whether or not~~
2 ~~in connection with the issuance and sale of any of its shares or other securities, rights or options~~
3 ~~entitling the holders to purchase from the corporation shares of any class or classes. Those rights~~
4 ~~or options shall be evidenced in any manner that the board of directors approves and, subject to~~
5 ~~the provisions of the articles of incorporation, shall state the terms upon which, the time or times~~
6 ~~within which and the price or prices at which the shares may be purchased from the corporation~~
7 ~~upon the exercise of any right or option. In the absence of fraud in the transaction, the judgment~~
8 ~~of the board of directors as to the adequacy of the consideration received for the rights or options~~
9 ~~is conclusive. The price or prices to be received for any shares having a par value, other than~~
10 ~~treasury shares, to be issued upon the exercise of the rights or options shall not be less than the~~
11 ~~par value of those shares.~~

12 ~~**7-1.1-19. Determination of amount of stated capital.** --- (a) In the case of the issuance~~
13 ~~by a corporation of shares having a par value, the consideration received for the shares constitutes~~
14 ~~stated capital to the extent of the par value of the shares, or, if the shares have a preference in the~~
15 ~~assets of the corporation in the event of involuntary liquidation which is greater than the par~~
16 ~~value, then to the extent of the preference, and the excess, if any, of the consideration constitutes~~
17 ~~capital surplus.~~

18 ~~-(b) In the case of the issuance by a corporation of shares without par value, the entire~~
19 ~~consideration received for the shares constitutes stated capital unless the corporation determines~~
20 ~~as provided in this section that only a part of the shares is stated capital. Within a period of sixty~~
21 ~~(60) days after the issuance of any shares without par value, the board of directors may allocate to~~
22 ~~capital surplus any portion of the consideration received for the issuance of the shares. No~~
23 ~~allocation shall be made of any portion of the consideration received for shares without par value~~
24 ~~having a preference in the assets of the corporation in the event of involuntary liquidation except~~
25 ~~the amount, if any, of the consideration in excess of the preference.~~

26 ~~-(c) If shares have been or are issued by a corporation in merger or consolidation or in~~
27 ~~acquisition of all or substantially all of the outstanding shares or of the property and assets of~~
28 ~~another corporation, whether domestic or foreign, any amount that would otherwise constitute~~
29 ~~capital surplus under the foregoing provisions of this section may instead be allocated to earned~~
30 ~~surplus by the board of directors of the issuing corporation except that its aggregate earned~~
31 ~~surplus shall not exceed the sum of the earned surpluses as defined in this chapter of the issuing~~
32 ~~corporation and of all other corporations, domestic or foreign, that were merged or consolidated~~
33 ~~or of which the shares or assets were acquired.~~

34 ~~-(d) The stated capital of a corporation may be increased from time to time by resolution~~

1 ~~of the board of directors directing that all or a part of the surplus of the corporation be transferred~~
2 ~~to stated capital. The board of directors may direct that the amount of the surplus transferred is~~
3 ~~deemed to be stated capital in respect of any designated class of shares.~~

4 ~~**7-1.1-20. Expenses of organization, reorganization, and financing.** --- The reasonable~~
5 ~~charges and expenses of organization or reorganization of a corporation, and the reasonable~~
6 ~~expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed~~
7 ~~by the corporation out of the consideration received by it in payment for its shares without~~
8 ~~rendering the shares not fully paid or assessable.~~

9 ~~**7-1.1-21. Certificates representing shares.** --- (a) The shares of a corporation shall be~~
10 ~~represented by certificates provided that the board of directors of the corporation may provide by~~
11 ~~resolution or resolutions that some or all of any or all classes or series of its stock are~~
12 ~~uncertificated shares. This resolution does apply to shares represented by a certificate until the~~
13 ~~certificate is surrendered to the corporation. Notwithstanding the adoption of the resolution by the~~
14 ~~board of directors, every holder of stock represented by certificates and upon request every holder~~
15 ~~of uncertificated shares is entitled to have a certificate signed by the officer or officers designated~~
16 ~~for the purpose by the bylaws of the corporation, and in absence of any designation, by the~~
17 ~~chairperson or the vice chairperson of the board of directors, or the president or a vice president,~~
18 ~~and by the treasurer or the assistant treasurer, or the secretary or an assistant secretary of the~~
19 ~~corporation, representing the number of shares registered in certificate form and may be sealed~~
20 ~~with the seal of the corporation or a facsimile of the seal. Any or all of the signatures on the~~
21 ~~certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or~~
22 ~~whose facsimile signature has been placed upon the certificate has ceased to be the officer,~~
23 ~~transfer agent, or registrar before the certificate is issued, it may be issued by the corporation with~~
24 ~~the same effect as if he or she were the officer, transfer agent, or registrar at the date of its issue.~~

25 ~~-(b) Every certificate representing shares issued by a corporation which is authorized to~~
26 ~~issue shares of more than one class shall state upon the face or back of the certificate, or shall~~
27 ~~state that the corporation will furnish to any shareholder upon request and without charge, a full~~
28 ~~statement of the designations, preferences, limitations, and relative rights of the shares of each~~
29 ~~class authorized to be issued and, if the corporation is authorized to issue any preferred or special~~
30 ~~class in series, the variations in the relative rights and preferences between the shares of each~~
31 ~~series so far as the series have been fixed and determined and the authority of the board of~~
32 ~~directors to fix and determine the relative rights and preferences of subsequent series.~~

33 ~~-(c) Each certificate representing shares shall state upon the face of the certificate:~~

34 ~~-(1) That the corporation is organized under the laws of this state.~~

- 1 ~~(2) The name of the person to whom issued.~~
- 2 ~~(3) The number and class of shares, and the designation of the series, if any, which the~~
3 ~~certificate represents.~~
- 4 ~~(4) If the shares are without par value, a statement of the fact.~~
- 5 ~~(d) No certificate shall be issued for any share until the share is fully paid.~~
- 6 ~~(e) Within a reasonable time after the issuance or transfer of uncertificated shares, the~~
7 ~~corporation shall send to the registered owner of the shares a written notice containing the~~
8 ~~information and statements required to be presented or stated on certificates pursuant to~~
9 ~~subsections (b) and (c) and section 7-1.1-21.1(b). Except as otherwise expressly provided by law,~~
10 ~~the rights and obligations of owners of shares are not affected by whether the shares are~~
11 ~~represented by certificates or are uncertificated.~~
- 12 ~~**7-1.1-21.1. Stock transfer restrictions.** --- (a) The shares of a corporation are personal~~
13 ~~property and are transferable in accordance with the provisions of section 6A-8-204, as amended~~
14 ~~from time to time, except as may otherwise be provided in this chapter.~~
- 15 ~~(b) The articles of incorporation, bylaws, an agreement among all or less than all of the~~
16 ~~shareholders, or an agreement between all or less than all of the shareholders and the corporation~~
17 ~~may impose restrictions on the transfer or registration of transfer of shares of the corporation. A~~
18 ~~restriction does not affect shares issued before the restriction was adopted unless the holders of~~
19 ~~the shares are parties to the restriction agreement or voted in favor of the restriction.~~
- 20 ~~(c) A restriction on the transfer or registration of transfer of shares is valid and~~
21 ~~enforceable against the holder or a transferee of the holder if the restriction is authorized by this~~
22 ~~chapter and its existence is noted conspicuously on the front or back of the certificate or is~~
23 ~~contained in the initial transaction statement required by section 6A-8-204(b). Unless noted, a~~
24 ~~restriction is not enforceable against a person without knowledge of the restriction.~~
- 25 ~~(d) A restriction on the transfer or registration of transfer of shares is authorized:~~
- 26 ~~(1) To maintain the corporation's status when it is dependent on the number or identity of~~
27 ~~its shareholders;~~
- 28 ~~(2) To preserve exemptions under federal or state securities law;~~
- 29 ~~(3) For any other reasonable purpose;~~
- 30 ~~(e) A restriction on the transfer or registration of transfer of shares may:~~
- 31 ~~(1) Obligate the shareholder first to offer the corporation or other persons (separately,~~
32 ~~consecutively, or simultaneously) an opportunity to acquire the restricted shares;~~
- 33 ~~(2) Obligate the corporation or other persons (separately, consecutively, or~~
34 ~~simultaneously) to acquire the restricted shares;~~

1 ~~-(3) Require the corporation, the holders of any class of its shares, or another person to~~
2 ~~approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;~~

3 ~~-(4) Prohibit the transfer of the restricted shares to designated persons or classes of~~
4 ~~persons, if the prohibition is not manifestly unreasonable.~~

5 ~~-(f) For the purposes of this section, "shares" includes a security convertible into or~~
6 ~~carrying a right to subscribe for or acquire shares.~~

7 **7-1.1-22. Fractional shares.** — A corporation may:

8 ~~-(1) Issue fractions of a share,~~

9 ~~-(2) Arrange for the disposition of fractional interests by those entitled to those interests,~~

10 ~~-(3) Pay in cash the fair value of fractions of a share as of the time when those entitled to~~
11 ~~receive the fractions are determined, or~~

12 ~~-(4) Issue scrip in registered or bearer form which entitles the holder to receive a~~
13 ~~certificate for a full share upon the surrender of the scrip aggregating a full share.~~

14 ~~A certificate for a fractional share shall, but scrip shall not, unless it otherwise provides,~~
15 ~~entitle the holder to exercise voting rights, to receive dividends on that share, and to participate in~~
16 ~~any of the assets of the corporation in the event of liquidation. The board of directors may issue~~
17 ~~scrip subject to the condition that it becomes void if not exchanged for certificates representing~~
18 ~~full shares before a specified date, or subject to the condition that the shares for which scrip is~~
19 ~~exchangeable may be sold by the corporation and the proceeds from the sale distributed to the~~
20 ~~holders of scrip, or subject to any other conditions which the board of directors deems advisable.~~

21 **7-1.1-22.1. Bonds -- Facsimile signatures and seals.** --- The seal of the corporation and
22 ~~any or all signatures of the officers or other agents of the corporation upon a bond and any~~
23 ~~coupon attached to the bond may be facsimiles if the bond is countersigned by an officer or other~~
24 ~~agent of a trustee or other certifying or authenticating authority. In case any officer or other agent~~
25 ~~who has signed or whose facsimile signature has been placed upon the bond or coupon has ceased~~
26 ~~to be the officer or agent before the bond is issued, it may be issued by the corporation with the~~
27 ~~same effect as if he or she were the officer or agent at the date of its issue.~~

28 **7-1.1-23. Liability of subscribers and shareholders.** --- (a) A holder of or subscriber to
29 ~~shares of a corporation is under no obligation to the corporation or its creditors with respect to the~~
30 ~~shares other than the obligation to pay to the corporation the unpaid portion of the consideration~~
31 ~~for which the shares were issued or to be issued, which in no event shall be less than the amount~~
32 ~~of the consideration for which the shares could be lawfully issued.~~

33 ~~-(b) Any person becoming an assignee or transferee of shares or of a subscription for~~
34 ~~shares in good faith and without knowledge or notice that the full consideration for the shares has~~

1 ~~not been paid is not personally liable to the corporation or its creditors for any unpaid portion of~~
2 ~~the consideration. An executor, administrator, conservator, guardian, trustee, assignee for the~~
3 ~~benefit of creditors, or receiver is not personally liable to the corporation as a holder of or~~
4 ~~subscriber to shares of a corporation but the estate and funds in his or her hands is so liable.~~

5 ~~(c) No pledgee or other holder of shares as collateral security is personally liable as a~~
6 ~~shareholder.~~

7 ~~**7-1.1-24. Shareholders' preemptive rights.** --- (a) Except to the extent limited or denied~~
8 ~~by this section or by the articles of incorporation, shareholders have a preemptive right to acquire~~
9 ~~unissued or treasury shares or securities convertible into shares or carrying a right to subscribe to~~
10 ~~or acquire shares.~~

11 ~~(b) Unless otherwise provided in the articles of incorporation:~~

12 ~~(1) No preemptive right exists:~~

13 ~~(i) To acquire any shares issued to directors, officers, or employees pursuant to approval~~
14 ~~by the affirmative vote of the holders of a majority of the shares entitled to vote on the acquisition~~
15 ~~or when authorized by and consistent with a plan previously approved by a vote of shareholders;~~
16 ~~or~~

17 ~~(ii) To acquire any shares sold other than for money.~~

18 ~~(2) Holders of shares of any class that is preferred or limited as to dividends or assets are~~
19 ~~not entitled to any preemptive right.~~

20 ~~(3) Holders of shares of common stock are not entitled to any preemptive right to shares~~
21 ~~of any class that is preferred or limited as to dividends or assets or to any obligations, unless~~
22 ~~convertible into shares of common stock or carrying a right to subscribe to or acquire shares of~~
23 ~~common stock.~~

24 ~~(4) Holders of common stock without voting power have no preemptive right to shares~~
25 ~~of common stock with voting power.~~

26 ~~(5) The preemptive right is only an opportunity to acquire shares or other securities~~
27 ~~under terms and conditions that the board of directors may fix for the purpose of providing a fair~~
28 ~~and reasonable opportunity for the exercise of the right.~~

29 ~~**7-1.1-25. Bylaws.** --- The bylaws may contain any provisions for the regulation and~~
30 ~~management of the affairs of the corporation not inconsistent with law or the articles of~~
31 ~~incorporation. The initial bylaws of a corporation shall be adopted by its incorporators or by its~~
32 ~~board of directors at its organization meeting. Subsequently, the bylaws may be amended by the~~
33 ~~shareholders, or, unless otherwise provided in the articles of incorporation or bylaws, by the~~
34 ~~board of directors, but any amendment to the bylaws by the board of directors may be changed by~~

1 ~~the shareholders.~~

2 ~~**7-1.1-25.1. Bylaws and other powers in emergency.**~~ (a) ~~The board of directors of any~~
3 ~~corporation may adopt emergency bylaws, subject to repeal or change by action of the~~
4 ~~shareholders, which are, notwithstanding any different provision elsewhere in this chapter or in~~
5 ~~the articles of incorporation or bylaws, operative during any emergency in the conduct of the~~
6 ~~business of the corporation resulting from an attack on the United States or any nuclear or atomic~~
7 ~~disaster. The emergency bylaws may make any provision that may be practical and necessary for~~
8 ~~the circumstances of the emergency, including provisions that:~~

9 ~~(1) A meeting of the board of directors may be called by any officer or director in any~~
10 ~~manner and under conditions prescribed in the emergency bylaws;~~

11 ~~(2) The director or directors in attendance at the meeting, or any greater number fixed by~~
12 ~~the emergency bylaws, constitutes a quorum; and~~

13 ~~(3) The officers or other persons designated on a list approved by the board of directors~~
14 ~~before the emergency, all in the order of priority and subject to the conditions, and for a period of~~
15 ~~time (not longer than reasonably necessary after the termination of the emergency) that may be~~
16 ~~provided in the emergency bylaws or in the resolution approving the list, are, to the extent~~
17 ~~required to provide a quorum at any meeting of the board of directors, deemed directors for the~~
18 ~~meeting.~~

19 ~~(b) The board of directors, either before or during any emergency, may provide, and~~
20 ~~from time to time modify, lines of succession in the event that during an emergency any or all~~
21 ~~officers or agents of the corporation are for any reason rendered incapable of discharging their~~
22 ~~duties.~~

23 ~~(c) The board of directors, either before or during any emergency, may, effective in the~~
24 ~~emergency, change the head office or designate several alternative head offices or regional~~
25 ~~offices, or authorize the officers so to do.~~

26 ~~(d) To the extent not inconsistent with any adopted emergency bylaws, the bylaws of the~~
27 ~~corporation remain in effect during any emergency, and upon its termination the emergency~~
28 ~~bylaws cease to be operative.~~

29 ~~(e) Unless otherwise provided in emergency bylaws, notice of any meeting of the board~~
30 ~~of directors during any emergency may be given only to those directors that it may be feasible to~~
31 ~~reach at the time and by any means that may be feasible at the time, including publication or~~
32 ~~radio.~~

33 ~~(f) To the extent required to constitute a quorum at any meeting of the board of directors~~
34 ~~during any emergency, the officers of the corporation who are present are, unless otherwise~~

1 ~~provided in emergency bylaws, deemed, in order of rank and within the same rank in order of~~
2 ~~seniority, directors for the meeting.~~

3 ~~(g) No officer, director, or employee acting in accordance with any emergency bylaws is~~
4 ~~liable except for willful misconduct. No officer, director, or employee is liable for any action~~
5 ~~taken by him or her in good faith in an emergency in furtherance of the ordinary business affairs~~
6 ~~of the corporation even though not authorized by the bylaws then in effect.~~

7 ~~**7-1.1-26. Meetings of shareholders.** (a) Meetings of shareholders may be held at any~~
8 ~~place, either within or without this state, that may be stated in or fixed in accordance with the~~
9 ~~bylaws. If no other place is stated or fixed, all meetings shall be held at the registered office of the~~
10 ~~corporation. An annual meeting of shareholders shall be held at any time that may be stated or~~
11 ~~fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time~~
12 ~~does not work a forfeiture or dissolution of the corporation. If the annual meeting is not held~~
13 ~~within any thirteen (13) month period the superior court may, in its discretion, on the application~~
14 ~~of any shareholder, summarily order a meeting to be held.~~

15 ~~(b) Special meetings of the shareholders may be called by the board of directors, or by a~~
16 ~~person or persons that may be authorized by the articles of incorporation or by the bylaws.~~

17 ~~(c) Upon the application of any shareholder, director, or person aggrieved, the superior~~
18 ~~court for the county where the principal office of the corporation is located, shall immediately~~
19 ~~hear and determine the validity of any election or appointment of any director or officer of a~~
20 ~~corporation and the right of any person to hold the office, and, if any office is claimed by more~~
21 ~~than one person, determine the person entitled to the office, and to that end shall determine the~~
22 ~~voting and other rights of persons claiming those rights in respect of the election or appointment,~~
23 ~~and confirm the election or appointment, order a new election, or direct s any other relief that~~
24 ~~may be just and proper.~~

25 ~~**7-1.1-27. Notice of shareholders' meetings.** Written notice stating the place, day, and~~
26 ~~hour of the meeting and, in case of a special meeting, the purpose or purposes for which the~~
27 ~~meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before~~
28 ~~the date of the meeting, either personally or by mail, by or at the direction of the president, the~~
29 ~~secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to~~
30 ~~vote at the meeting. If mailed, the notice is deemed to be delivered when deposited in the United~~
31 ~~States mail addressed to the shareholder at his or her address as it appears on the stock transfer~~
32 ~~books of the corporation, with prepaid postage on the mail. In the case of any corporation which~~
33 ~~has fifty (50) or more shareholders of record, if two (2) successive notices, reports, or other~~
34 ~~communications addressed to a shareholder of the corporation at the address of the shareholder~~

1 appearing on the books of the corporation have been returned to the corporation by the United
2 States postal service marked to indicate that the United States postal service is unable to deliver
3 the notices, reports, or other communications to the shareholder at the address, all future notices,
4 reports, or other communications are deemed to have been given without further mailing if they
5 are available for the shareholder upon written demand of the shareholder at the principal
6 executive office of the corporation for a period of one year from the date of the giving of the
7 notice, report, or other communication to other shareholders.

8 ~~**7-1.1-28. Closing of transfer books and fixing record date.**~~ For the purpose of
9 determining shareholders entitled to notice of or to vote at any meeting of shareholders or any
10 adjournment of a meeting of shareholders, or entitled to receive payment of any dividend, or in
11 order to make a determination of shareholders for any other proper purpose, the board of directors
12 of a corporation may provide that stock transfer books are closed for a stated period, not less than
13 that specified in any applicable bylaw and not more than sixty (60) days. In lieu of closing the
14 stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors,
15 may fix in advance a date as the record date for any determination of shareholders, the date in any
16 case to be not more than sixty (60) days prior to the date on which the particular action, requiring
17 the determination of shareholders, is to be taken. If the stock transfer books are not closed and no
18 record date is fixed for the determination of shareholders entitled to notice of or to vote at a
19 meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on
20 which notice of the meeting is mailed or the date on which the resolution of the board of directors
21 declaring the dividend is adopted, as the case may be, is the record date for the determination of
22 shareholders. When a determination of shareholders entitled to vote at any meeting of
23 shareholders has been made as provided in this section, the determination applies to any
24 adjournment, of the meeting.

25 ~~**7-1.1-29. Voting list.**~~ A list of shareholders as of the record date, certified by the
26 corporate officer responsible for its preparation or by a transfer agent, shall be made available to
27 the inspectors of election, or person presiding at a meeting of stockholders, at any meeting of
28 shareholders upon the request of any shareholder at the meeting or prior to the meeting. The
29 persons who appear from the list to be shareholders entitled to vote at the meeting may vote at the
30 meeting. If the right to vote at any meeting is challenged, the inspectors of election, or the person
31 presiding at the meeting, shall rely on the list to determine the right of the challenged person to
32 vote.

33 ~~**7-1.1-30. Quorum of shareholders required for shareholders' action.**~~ Unless
34 otherwise provided in the articles of incorporation or bylaws, a majority of the shares entitled to

1 ~~vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders, but in~~
2 ~~no event does a quorum consist of less than one third (1/3) of the shares entitled to vote at the~~
3 ~~meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at~~
4 ~~the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the~~
5 ~~vote of a greater number or voting by classes is required by this chapter or the articles of~~
6 ~~incorporation or bylaws. No amendment to the bylaws made by the board of directors pursuant to~~
7 ~~section 7-1.1-25 shall require a greater number or voting by classes.~~

8 ~~**7-1.1-30.1. Greater voting requirements.** -- Whenever, with respect to any action to be~~
9 ~~taken by the shareholders of a corporation, the articles of incorporation require the vote or~~
10 ~~concurrence of the holders of a greater proportion of the shares, or of any class or series of the~~
11 ~~shares, than required by this chapter with respect to the action, the provisions of the articles of~~
12 ~~incorporation control. An amendment of the articles of incorporation which changes or deletes a~~
13 ~~provision is authorized by the same vote as would be required to take action under the provision.~~

14 ~~**7-1.1-30.2. Waiver of notice.** -- Whenever any notice is required to be given any person~~
15 ~~under the provisions of this chapter or under the provisions of the articles of incorporation or~~
16 ~~bylaws of the corporation, a waiver of the notice in writing signed by the person or persons~~
17 ~~entitled to notice, whether before or after the time stated in the writing, is equivalent to the giving~~
18 ~~of notice. Attendance of a person at a meeting constitutes a waiver of notice of the meeting,~~
19 ~~except when the person attends a meeting for the express purpose of objecting to the transactions~~
20 ~~of any business because the meeting is not lawfully called or convened. Neither the business to be~~
21 ~~transacted at, nor the purpose of, any meeting of the shareholders or members of a committee of~~
22 ~~the corporation need be specified in any written waiver of notice unless required by the by laws.~~

23 ~~**7-1.1-30.3. Action by shareholders without a meeting.** -- (a) Any action required or~~
24 ~~permitted to be taken at a meeting of shareholders by this chapter or the certificate of~~
25 ~~incorporation or bylaws of a corporation, may be taken without a meeting if all the shareholders~~
26 ~~entitled to vote on the action consent to the action in writing.~~

27 ~~(b) (1) Except for actions pursuant to section 7-1.1-67, section 7-1.1-70.1, or section 7-~~
28 ~~1.1-72, any action required or permitted to be taken at a meeting of shareholders by this chapter~~
29 ~~or the certificate of incorporation or bylaws of a corporation, may be taken without a meeting~~
30 ~~upon the written consent of less than all the shareholders entitled to vote on the action, if:~~

31 ~~(i) shareholders who consent would be entitled to cast at least the minimum number of~~
32 ~~votes which would be required to take the action at a meeting at which all shareholders entitled to~~
33 ~~vote on the action are present; and~~

34 ~~(ii) Action pursuant to this section is authorized by the articles of incorporation.~~

1 ~~-(2) Prompt notice of the action shall be given to all shareholders who would have been~~
2 ~~entitled to vote upon the action if the meeting were held.~~

3 ~~-(c) Whenever action is taken pursuant to this section, the written consents of the~~
4 ~~shareholders consenting to the action shall be filed with the minutes of proceedings of~~
5 ~~shareholders.~~

6 ~~-(d) Any action taken pursuant to this section has the same effect for all purposes as if the~~
7 ~~action had been taken at a meeting of the shareholders.~~

8 ~~-(e) If any other provision of this chapter requires the filing of a certificate upon the~~
9 ~~taking of an action by shareholders, and action is taken in the manner authorized by this section,~~
10 ~~the certificate shall state that the action was taken without a meeting pursuant to the written~~
11 ~~consents of the shareholders and shall state the number of shares represented by the consents.~~

12 ~~-(f) The record date for determining shareholders entitled to express consent in writing~~
13 ~~without a meeting, when no notice of the meeting is mailed, is the day on which the first written~~
14 ~~consent is expressed.~~

15 **7-1.1-31. Voting of shares.** ~~-(a) Each outstanding share, regardless of class, is entitled~~
16 ~~to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent~~
17 ~~that the voting rights of the shares of any class or classes are limited, enlarged, or denied by the~~
18 ~~articles of incorporation as permitted by this chapter. If the articles of incorporation provide for~~
19 ~~more or less than one vote for any share, on any matter, every reference in this chapter to a~~
20 ~~majority or other proportion of shares shall refer to a majority or other proportion of votes entitled~~
21 ~~to be cast.~~

22 ~~-(b) Neither treasury shares, nor shares held, directly or indirectly, by another corporation~~
23 ~~if a majority of the shares entitled to vote for the election of directors of the other corporation is~~
24 ~~held by the corporation, shall be voted at any meeting or counted in determining the total number~~
25 ~~of outstanding shares at any given time. Nothing contained in these provisions is construed as~~
26 ~~limiting the right of any corporation to vote stock, including, but not limited to, its own stock,~~
27 ~~held in a fiduciary capacity.~~

28 ~~-(c) Every shareholder entitled to vote at a meeting of shareholders or to express consent~~
29 ~~without a meeting may authorize another person or persons to act for him or her by proxy,~~
30 ~~executed, in writing, by the shareholder or by his or her duly authorized attorney in fact. No~~
31 ~~proxy is valid after eleven (11) months from the date of its execution, unless otherwise provided~~
32 ~~in the proxy.~~

33 ~~-(1) Without limiting the manner in which a stockholder may authorize another person or~~
34 ~~persons to act for him or her as proxy pursuant to subsection (c), the following constitutes a valid~~

1 ~~means by which a stockholder may grant that authority:~~

2 ~~(i) A stockholder may execute a writing authorizing another person or persons to act for~~
3 ~~him or her as proxy. Execution may be accomplished by the stockholder or his or her authorized~~
4 ~~officer, director, employee or agent signing the writing or causing his or her signature to be~~
5 ~~affixed to the writing by any reasonable means including, but not limited to, facsimile signature.~~

6 ~~(ii) A stockholder may authorize another person or persons to act for him or her as proxy~~
7 ~~by transmitting or authorizing the transmission of a telegram, cablegram, or other means of~~
8 ~~electronic transmission, including Internet and telephonic transmissions, to the person who will~~
9 ~~be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or an~~
10 ~~agent authorized by the person who will be the holder of the proxy to receive the transmission,~~
11 ~~provided that the telegram, cablegram or other means of electronic transmission must either state~~
12 ~~or be submitted or communicated with information from which it can be determined that the~~
13 ~~telegram, cablegram or other electronic transmission, including Internet and telephonic~~
14 ~~transmissions, was authorized by the stockholder. If it is determined that the telegrams,~~
15 ~~cablegrams or other electronic transmissions, including Internet and telephonic transmissions, are~~
16 ~~valid, the inspectors or, if there are no inspectors, the other persons making that determination~~
17 ~~shall specify the information upon which they relied.~~

18 ~~(2) Any copy, facsimile telecommunication or other reliable reproduction of the writing~~
19 ~~or transmission created pursuant to this section may be substituted or used in lieu of the original~~
20 ~~writing or transmission for any and all purposes for which the original writing or transmission~~
21 ~~could be used, provided that the copy, facsimile telecommunication or other reproduction is a~~
22 ~~complete reproduction of the entire original writing or transmission.~~

23 ~~(d) The articles of incorporation may provide that at each election of directors, or at~~
24 ~~elections held under specified circumstances, every shareholder entitled to vote at the election has~~
25 ~~the right to vote, in person or by proxy, the number of shares owned by him or her for as many~~
26 ~~persons as there are directors to be elected and for whose election he or she has a right to vote, or~~
27 ~~to cumulate his or her votes by giving one candidate as many votes as the number of directors~~
28 ~~multiplied by the number of his or her shares shall equal, or by distributing the votes on the same~~
29 ~~principle among any number of the candidates.~~

30 ~~(e) Shares standing in the name of another corporation, domestic or foreign, may be~~
31 ~~voted by any officer, agent, or proxy that the bylaws of the corporation may prescribe, or, in the~~
32 ~~absence of a provision, as the board of directors of the corporation may determine.~~

33 ~~(f) Shares held by an administrator, executor, guardian, custodian under a gift to minors~~
34 ~~act, or conservator may be voted by him or her, either in person or by proxy, without a transfer of~~

1 ~~the shares into his or her name. Shares standing in the name of a trustee may be voted by him or~~
2 ~~her, either in person or by proxy, but no trustee is entitled to vote shares held by him or her~~
3 ~~without a transfer of the shares into his or her name.~~

4 ~~(g) Shares held by two (2) or more persons as joint tenants or as tenants in common may~~
5 ~~be voted at any meeting of the shareholders by any one of the persons, unless another joint tenant~~
6 ~~or tenant in common seeks to vote any of the shares in person or by proxy. In the latter event, the~~
7 ~~written agreement, if any, which governs the manner in which the shares are voted, controls if~~
8 ~~presented at the meeting. If there is no agreement presented at the meeting, the majority in~~
9 ~~number of the joint tenants or tenants in common present shall control the manner of voting. If~~
10 ~~there is no majority, or if there are two (2) joint tenants or tenants in common, both of whom seek~~
11 ~~to vote the shares, the shares shall, for the purpose of voting, be divided equally among the joint~~
12 ~~tenants or tenants in common present.~~

13 ~~(h) Shares standing in the name of a receiver may be voted by the receiver, and shares~~
14 ~~held by or under the control of a receiver may be voted by the receiver without the transfer of~~
15 ~~those shares into his or her name if authority to do so is contained in an appropriate order of the~~
16 ~~court by which the receiver was appointed.~~

17 ~~(i) A shareholder whose shares are pledged is entitled to vote the shares until the shares~~
18 ~~have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote~~
19 ~~the shares so transferred.~~

20 ~~(j) On and after the date on which written notice of redemption of redeemable shares has~~
21 ~~been mailed to the holders of the shares and a sum sufficient to redeem the shares has been~~
22 ~~deposited with a bank or trust company with irrevocable instruction and authority to pay the~~
23 ~~redemption price to the holders of the shares upon surrender of certificates for the shares, the~~
24 ~~shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding~~
25 ~~shares.~~

26 ~~(k) (1) An executed proxy is irrevocable if it specifies that it is irrevocable and if, and~~
27 ~~only so long as, it is coupled with an interest sufficient in law to support an irrevocable power~~
28 ~~coupled with it.~~

29 ~~(2) Without limiting the generality of subsection (a) and subject to that subsection, a~~
30 ~~proxy is coupled with an interest and irrevocable if it is held by any of the following or a nominee~~
31 ~~of any of the following:~~

32 ~~(i) A pledgee under a valid pledge;~~

33 ~~(ii) A person who has agreed to purchase the shares under an executory contract of sale;~~

34 ~~(iii) A creditor or creditors of the corporation who extend or continue credit to the~~

1 ~~corporation in consideration of the proxy if the proxy states that it was given in consideration of~~
2 ~~the extension or continuation of credit, the amount of the credit, and the name of the person~~
3 ~~extending or continuing credit; and~~

4 ~~(iv) A person who has contracted to perform services for the corporation if a proxy is~~
5 ~~required by the contract of employment, as part of the consideration for the contract of~~
6 ~~employment, if the proxy states that it was given in consideration of the contract of employment,~~
7 ~~the name of the employee, and the period of employment contracted for; provided the proxies~~
8 ~~shall respectively be revocable after the pledge is redeemed, or the executory contract of sale is~~
9 ~~performed, or the debt of the corporation is paid, or the period of employment has terminated.~~

10 ~~(3) A provision contained in a proxy making it irrevocable is not enforceable against a~~
11 ~~purchaser for value of the shares subject to the provision without actual knowledge of the~~
12 ~~existence of the provision, unless notice of the proxy and its irrevocability appears plainly on the~~
13 ~~certificate or certificates representing the shares.~~

14 ~~**7-1.1-32. Voting trusts and agreements among shareholders.** --- (a) Any number of~~
15 ~~shareholders of a corporation may create a voting trust for the purpose of conferring upon a~~
16 ~~trustee or trustees the right to vote or otherwise represent their shares, for a period not to exceed~~
17 ~~ten (10) years, by entering into a written voting trust agreement specifying the terms and~~
18 ~~conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at~~
19 ~~its registered office, and by transferring their shares to the trustee or trustees for the purposes of~~
20 ~~the agreement. The trustee or trustees shall keep a record of the holders of voting trust certificates~~
21 ~~evidencing a beneficial interest in the voting trust, giving the names and addresses of all the~~
22 ~~holders and the number and class of the shares in respect of which the voting trust certificates~~
23 ~~held by each are issued, and shall deposit a copy of the record with the corporation at its~~
24 ~~registered office. The counterpart of the voting trust agreement and the copy of the record~~
25 ~~deposited with the corporation are subject to the same right of examination by a shareholder of~~
26 ~~the corporation, in person or by agent or attorney, as are the books and records of the corporation,~~
27 ~~and the counterpart and the copy of the record is subject to examination by any holder of record~~
28 ~~of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any~~
29 ~~proper purpose. In the trust certificates it shall be stated that they are issued pursuant to the voting~~
30 ~~trust agreement, and that fact shall be stated in the stock ledger of the corporation.~~

31 ~~(b) Agreements among shareholders regarding the voting of their shares are valid and~~
32 ~~enforceable in accordance with their terms for a period of not to exceed ten (10) years. An~~
33 ~~agreement is not subject to the provision of this section regarding voting trusts unless it is stated~~
34 ~~in the agreement that it is a voting trust.~~

1 ~~(c) The provisions of this section are construed as permissive and shall not be interpreted~~
2 ~~to invalidate any voting or other agreement among stockholders, or any irrevocable proxy which~~
3 ~~is otherwise not illegal.~~

4 ~~(d) A voting trust or shareholders agreement may at any time or times be extended for an~~
5 ~~additional period not in excess of ten (10) years, but the extension is binding only with respect to~~
6 ~~those shares owned of record or beneficially by parties to the extension.~~

7 ~~**7-1.1-32.1. Voting and inspection rights of bondholders and debentureholders.**~~

8 ~~The articles of incorporation may, to the extent and in the manner provided in the articles, confer~~
9 ~~on the holders of bonds or other evidences of indebtedness of the corporation rights to vote in the~~
10 ~~election of directors and on any other matters on which shareholders may vote and rights to~~
11 ~~inspect the books and records of the corporation. The articles of incorporation may also, to the~~
12 ~~extent and in the manner provided in the articles, divest the holders of voting shares, in whole or~~
13 ~~in part, of their right to vote on any corporate matter whatsoever, except as set forth in section 7-~~
14 ~~1.1-55.~~

15 ~~**7-1.1-33. Board of directors.**~~ (a) ~~The business and affairs of a corporation are~~
16 ~~managed by a board of directors. Directors need not be residents of this state or shareholders of~~
17 ~~the corporation unless the articles of incorporation or bylaws require it. The articles of~~
18 ~~incorporation or bylaws may prescribe other qualifications for directors. The board of directors~~
19 ~~has authority to fix the compensation of directors unless otherwise provided in the articles of~~
20 ~~incorporation.~~

21 ~~(b) A director shall discharge his or her duties as a director, including his or her duties as~~
22 ~~a member of a committee:~~

23 ~~(1) In good faith;~~

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

26 ~~(3) In a manner he or she reasonably believes to be in the best interests of the~~
27 ~~corporation.~~

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

31 ~~(1) One or more officers or employees of the corporation whom the director reasonably~~
32 ~~believes to be reliable and competent in the matters presented;~~

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

1 ~~-(3) A committee of the board of directors of which he or she is not a member if the~~
2 ~~director reasonably believes the committee merits confidence.~~

3 ~~-(d) A director is not acting in good faith if he or she has knowledge concerning the~~
4 ~~matter in question that makes reliance otherwise permitted by subsection (c) unwarranted.~~

5 ~~-(e) A director is not liable for any action taken as a director, or any failure to take any~~
6 ~~action, if he or she performed the duties of his or her office in compliance with this section.~~

7 ~~-(f) For the purposes of subsections (b) through (e), "corporation" also includes any~~
8 ~~financial institution, insurance company, public utility or other quasi public corporation having~~
9 ~~purposes enumerated as exceptions to this chapter in section 7-1.1-3 and the provisions of~~
10 ~~subsections (b) through (e) of this section are applicable to the directors of that corporation.~~

11 **7-1.1-34. Number and election of directors.** ~~— The board of directors of a corporation~~
12 ~~consists of one or more members. The number of directors are fixed by, or in the manner~~
13 ~~provided in, the articles of incorporation or the bylaws except as to the number constituting the~~
14 ~~initial board of directors, which number is fixed by the articles of incorporation. The number of~~
15 ~~directors may be increased or decreased from time to time by amendment to, or in the manner~~
16 ~~provided in, the articles of incorporation or the bylaws, but no decrease has the effect of~~
17 ~~shortening the term of any incumbent director. If the articles of incorporation provide for the~~
18 ~~election of directors in the manner specified in subsection (d) of section 7-1.1-31, the number of~~
19 ~~directors may not be decreased unless approved by the stockholders with less than the number of~~
20 ~~shares previously entitled to elect one director voting against the decrease. In the absence of a~~
21 ~~bylaw fixing the number of directors, the number is the same as that provided for in the articles of~~
22 ~~incorporation. The names and addresses of the members of the first board of directors shall be~~
23 ~~stated in the articles of incorporation. Those persons hold office until the first annual meeting of~~
24 ~~shareholders, and until their successors have been elected and qualified. At the first annual~~
25 ~~meeting of shareholders and at each subsequent annual meeting, the shareholders shall elect~~
26 ~~directors to hold office until the next succeeding annual meeting, except in the case of the~~
27 ~~classification of directors as permitted by this chapter. Each director holds office for the term for~~
28 ~~which he or she is elected and until his or her successor has been elected and qualified.~~

29 **7-1.1-35. Classification of directors.** ~~— When the board of directors consists of nine (9)~~
30 ~~or more members, in lieu of electing the whole number of directors annually, the articles of~~
31 ~~incorporation may provide that the directors be divided into either two (2) or three (3) classes,~~
32 ~~each class to be as nearly equal in number as possible, the term of office of directors of the first~~
33 ~~class to expire at the first annual meeting of shareholders after their election, that of the second~~
34 ~~class to expire at the second annual meeting after their election, and that of the third class, if any,~~

1 ~~to expire at the third annual meeting after their election. At each annual meeting after the~~
2 ~~classification, the number of directors equal to the number of the class whose term expires at the~~
3 ~~time of the meeting shall be elected to hold office until the second succeeding annual meeting, if~~
4 ~~there are two (2) classes, or until the third succeeding annual meeting, if there are three (3)~~
5 ~~classes. No classification of directors is effective prior to the first annual meeting of shareholders.~~
6 ~~The articles of incorporation may confer upon holders of any class or series of stock the right to~~
7 ~~elect one or more directors who serve for any term and have any voting powers stated in the~~
8 ~~articles of incorporation. The terms of office and voting powers of the directors elected in the~~
9 ~~manner provided in the articles of incorporation may be greater than or less than those of any~~
10 ~~other director or class of directors.~~

11 ~~7-1.1-36. Vacancies. Any vacancy occurring in the board of directors may be filled by~~
12 ~~the affirmative vote of a majority of the remaining directors though less than a quorum of the~~
13 ~~board of directors. A director elected to fill a vacancy is elected for the unexpired term of his or~~
14 ~~her predecessor in office. Any directorship to be filled by reason of an increase in the number of~~
15 ~~directors may be filled by the board of directors for a term of office continuing only until the next~~
16 ~~election of directors by the shareholders.~~

17 ~~7-1.1-36.1. Removal of directors. (a) Any or all of the directors may be removed for~~
18 ~~cause by vote of the shareholders. The certificate of incorporation or the specific provisions of a~~
19 ~~bylaw adopted by the shareholders may provide for the removal by action of the board, except in~~
20 ~~the case of any director elected by cumulative voting, or by the holders of the shares of any class~~
21 ~~or series, or holders of bonds, voting as a class, when entitled by the provisions of the articles of~~
22 ~~incorporation.~~

23 ~~(b) If the articles of incorporation or the bylaws provide, any or all of the directors may~~
24 ~~be removed without cause by vote of the shareholders.~~

25 ~~(c) The removal of directors, with or without cause, as provided in subsections (a) and~~
26 ~~(b) is subject to the following:~~

27 ~~(1) In the case of a corporation having cumulative voting, no director may be removed~~
28 ~~when the votes cast against his or her removal would be sufficient to elect him or her if voted~~
29 ~~cumulatively at an election at which the same total number of votes were cast and the entire~~
30 ~~board, or the entire class of directors of which he or she is a member, were then being elected;~~
31 ~~and~~

32 ~~(2) When by the provisions of the articles of incorporation the holders of the shares of~~
33 ~~any class or series, or holders of bonds, voting as a class, are entitled to elect one or more~~
34 ~~directors, any director so elected may be removed only by the applicable vote of the holders of~~

1 ~~the shares of that class or series or the holders of the bonds, voting as a class.~~

2 ~~(d) An action to procure a judgment removing a director for cause may be brought by the~~
3 ~~attorney general or by the holders of ten percent (10%) of the outstanding shares, whether or not~~
4 ~~entitled to vote. The court having jurisdiction may bar from reelection any directors so removed~~
5 ~~for a period fixed by the court.~~

6 ~~**7-1.1-37. Quorum of directors.** -- A majority of the number of directors fixed by or in~~
7 ~~the manner provided in the bylaws, or by the stockholders or in the absence of a bylaw or~~
8 ~~stockholder action fixing the number of directors, then of the number stated in the articles of~~
9 ~~incorporation, constitutes a quorum for the transaction of business unless a greater number is~~
10 ~~required by the articles of incorporation or the bylaws. The act of the majority of the directors~~
11 ~~present at a meeting at which a quorum is present is the act of the board of directors, unless the~~
12 ~~act of a greater number is required by the articles of incorporation or the bylaws.~~

13 ~~**7-1.1-37.1. Director conflicts of interest.** -- (a) No contract or transaction between a~~
14 ~~corporation and one or more of its directors or officers, or between a corporation and any other~~
15 ~~corporation, partnership, association, or other organization in which one or more of its directors~~
16 ~~or officers are directors or officers or have a financial interest, is void or voidable nor are the~~
17 ~~directors or officers liable with respect to the contract or transaction solely for this reason, or~~
18 ~~solely because the director or officer is present at or participates in the meeting of the board or~~
19 ~~committee of the board which authorizes the contract or transaction, or solely because his or her~~
20 ~~or their votes are counted for that purpose, if:~~

21 ~~(1) The material facts as to his or her or their interest or relationship are disclosed or are~~
22 ~~known to the board of directors or the committee, and the board of directors or committee~~
23 ~~authorizes, approves, or ratifies the contract or transaction by the affirmative votes of a majority~~
24 ~~of the disinterested directors, even though the disinterested directors are less than a quorum; or~~

25 ~~(2) The material facts as to his or her or their interest or relationship are disclosed or are~~
26 ~~known to the shareholders entitled to vote on the contract or transaction, and the contract or~~
27 ~~transaction is specifically authorized, approved, or ratified by vote of the shareholders; or~~

28 ~~(3) The contract or transaction is fair and reasonable as to the corporation.~~

29 ~~(b) Common or interested directors may be counted in determining the presence of a~~
30 ~~quorum at a meeting of the board of directors or of a committee which authorizes the contract or~~
31 ~~transaction.~~

32 ~~**7-1.1-38. Executive and other committees.** -- If the articles of incorporation or the~~
33 ~~bylaws provide, the board of directors, by resolution adopted by a majority of the full board of~~
34 ~~directors, may designate from among its members an executive committee and one or more other~~

1 ~~committees each of which, to the extent provided in the resolution or in the articles of~~
2 ~~incorporation or the bylaws of the corporation, have and may exercise all the authority of the~~
3 ~~board of directors, but no committee has the authority of the board of directors in reference to~~
4 ~~amending the articles of incorporation, adopting a plan of merger or consolidation,~~
5 ~~recommending to the shareholders the sale, lease, exchange, or other disposition of all or~~
6 ~~substantially all the property and assets of the corporation other than in the usual and regular~~
7 ~~course of its business, recommending to the shareholders a voluntary dissolution or revocation of~~
8 ~~the corporation, or amending the bylaws of the corporation. The designation of any committee~~
9 ~~and the delegation to the committee of authority does not operate to relieve the board of directors,~~
10 ~~or any member of the board, of any responsibility imposed by law.~~

11 ~~**7-1.1-39. Place, notice, and form of directors' and committee meetings.**~~ (a)
12 ~~Meetings of the board of directors, or any committee designated by the board, regular or special,~~
13 ~~may be held either within or without this state.~~

14 ~~(b) Regular meetings of the board of directors or any committee designated by the board~~
15 ~~may be held with or without notice as prescribed in the bylaws. Special meetings of the board of~~
16 ~~directors or any committee designated by the board shall be held upon notice that is prescribed in~~
17 ~~the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting,~~
18 ~~except where a director attends a meeting for the express purpose of objecting to the transaction~~
19 ~~of any business because the meeting is not lawfully called or convened. Neither the business to be~~
20 ~~transacted at, nor the purpose of, any regular or special meeting of the board of directors or any~~
21 ~~committee designated by the board of directors need be specified in the notice or waiver of notice~~
22 ~~of the meeting unless required by the bylaws. Except as may be otherwise restricted by the~~
23 ~~articles of incorporation or bylaws, members of the board of directors or any committee~~
24 ~~designated by the board of directors may participate in a meeting of the board or committee by~~
25 ~~means of a conference telephone or similar communications equipment, by means of which all~~
26 ~~persons participating in the meeting can hear each other at the same time and participation by~~
27 ~~those means constitutes presence in person at a meeting.~~

28 ~~**7-1.1-39.1. Action by directors without a meeting.**~~ -- Unless otherwise provided by the
29 ~~articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of~~
30 ~~the directors of a corporation, or any action which may be taken at a meeting of the directors or of~~
31 ~~a committee, may be taken without a meeting if a consent, in writing, stating the action to be~~
32 ~~taken, is signed before or after the action by all of the directors, or all of the members of the~~
33 ~~committee, as the case may be. The consent has the same effect as a unanimous vote for all~~
34 ~~purposes, and that may be stated in any certificate or other document filed with the secretary of~~

1 state.

2 ~~**7-1.1-40. Dividends.** (a) The board of directors of a corporation may, from time to~~
3 ~~time, declare and the corporation may pay dividends on its outstanding shares in cash, property,~~
4 ~~or its own shares, except when the corporation is insolvent or when the payment of dividends~~
5 ~~would render the corporation insolvent or when the declaration or payment of dividends would be~~
6 ~~contrary to any restrictions contained in the articles of incorporation, subject to the following~~
7 ~~provisions:~~

8 ~~(1) No distribution may be made if, after giving it effect, any of the following would~~
9 ~~occur:~~

10 ~~(i) The corporation would not be able to pay its debts as they become due in the usual~~
11 ~~course of business.~~

12 ~~(ii) The corporation's total assets would be less than the sum of its total liabilities plus,~~
13 ~~unless the articles of incorporation permit otherwise, the amount that would be needed, if the~~
14 ~~corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights~~
15 ~~upon dissolution of shareholders whose preferential rights are superior to those receiving the~~
16 ~~distribution.~~

17 ~~(2) If the articles of incorporation of a corporation engaged in the business of exploiting~~
18 ~~natural resources provides, dividends may be declared and paid in cash out of the depletion~~
19 ~~reserves, but each dividend shall be identified as a distribution of the reserves and the amount per~~
20 ~~share paid from the reserves shall be disclosed to the shareholders receiving the dividend~~
21 ~~concurrently with the distribution of the dividend.~~

22 ~~(3) Dividends may be declared and paid by a corporation in its own treasury shares.~~

23 ~~(4) Dividends may be declared and paid in its own authorized but unissued shares upon~~
24 ~~the following conditions:~~

25 ~~(i) If a dividend is payable in its own shares having a par value, the shares shall be issued~~
26 ~~at not less than the par value of the shares and there shall be transferred to stated capital at the~~
27 ~~time the dividend is paid an amount of surplus equal to the aggregate par value of the shares to be~~
28 ~~issued as a dividend.~~

29 ~~(ii) If a dividend is payable in its own shares without par value, the shares shall be issued~~
30 ~~at the stated value that is fixed by the board of directors by resolution adopted at the time the~~
31 ~~dividend is declared, and there shall be transferred to stated capital at the time the dividend is paid~~
32 ~~an amount of surplus equal to the aggregate stated value fixed in respect of the shares; and the~~
33 ~~amount per share transferred to stated capital shall be disclosed to the shareholders receiving the~~
34 ~~dividend concurrently with that payment.~~

1 ~~(5) No dividend payable in shares of any class shall be paid to the holders of shares of~~
2 ~~any other class unless the articles of incorporation provide or the payment is authorized by the~~
3 ~~affirmative vote or the written consent of the holders of at least a majority of the outstanding~~
4 ~~shares of the class in which the payment is to be made.~~

5 ~~(b) A split up or division of the issued shares of any class into a greater number of shares~~
6 ~~of the same class without increasing the stated capital of the corporation is not construed to be a~~
7 ~~share dividend within the meaning of this section.~~

8 ~~**7-1.1-41. Distribution from capital surplus.** (a) Upon the vote of its board of~~
9 ~~directors, a corporation may, from time to time distribute to its shareholders, directly or by the~~
10 ~~purchase of its own shares, a portion of its assets, in cash or property, out of the unreserved and~~
11 ~~unrestricted capital surplus of the corporation, subject to the following provisions:~~

12 ~~(1) No distribution shall be made at a time when the corporation is insolvent or when the~~
13 ~~distribution would render the corporation insolvent.~~

14 ~~(2) No distribution shall be made unless the articles of incorporation provide for one or~~
15 ~~the distribution is authorized by the affirmative vote of the holders of a majority of the~~
16 ~~outstanding shares of each class whether or not entitled to vote on the distribution by the~~
17 ~~provisions of the articles of incorporation of the corporation.~~

18 ~~(3) No distribution shall be made to the holders of any class of shares unless all~~
19 ~~cumulative dividends accrued on all preferred or special classes of shares entitled to preferential~~
20 ~~dividends have been fully paid.~~

21 ~~(4) No distribution shall be made to the holders of any class of shares unless the fair~~
22 ~~value of the net assets of the corporation remaining after the distribution is at least equal to the~~
23 ~~largest of the following:~~

24 ~~(i) The total stated capital of the corporation;~~

25 ~~(ii) The aggregate preferential amount payable in the event of involuntary liquidation to~~
26 ~~the holders of shares having preferential rights to the assets of the corporation in the event of~~
27 ~~liquidation; and~~

28 ~~(iii) Twenty five percent (25%) of the total liabilities of the corporation.~~

29 ~~(5) No distribution shall be made if the corporation has any earned surplus.~~

30 ~~(6) Any distribution shall be identified as a distribution from capital surplus, and, if that~~
31 ~~is the case, specifically from revaluation surplus; and the amount per share shall be disclosed to~~
32 ~~the shareholders receiving the amount concurrently with its distribution.~~

33 ~~(b) Notwithstanding the foregoing limitations, the board of directors of a corporation~~
34 ~~may also, from time to time, distribute to the holders of its outstanding shares having a~~

1 ~~cumulative preferential right to receive dividends, in discharge of their cumulative dividend~~
2 ~~rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the~~
3 ~~corporation has no earned surplus and is not insolvent and would not be rendered insolvent as a~~
4 ~~result. Each distribution, when made, shall be identified as a payment of cumulative dividends out~~
5 ~~of capital surplus.~~

6 ~~**7-1.1-42. Loans to employees and directors.**— A corporation shall not lend money to or~~
7 ~~use its credit to assist its directors without authorization in the particular case by its shareholders,~~
8 ~~but may lend money to, guarantee any obligation of, or otherwise use its credit to assist any~~
9 ~~employee of the corporation or of a subsidiary, including any employee who is a director of the~~
10 ~~corporation or of a subsidiary, if the board of directors decides that the loan, guaranty, or other~~
11 ~~assistance may benefit the corporation. The loan, guaranty, or other assistance may be with or~~
12 ~~without interest, and may be unsecured, or secured in any manner that the board of directors~~
13 ~~approves, including, without limitation, a pledge of shares of stock of the corporation. Nothing~~
14 ~~contained in this section is deemed to deny, limit, or restrict the powers of guaranty or warranty~~
15 ~~of any corporation at common law or under any statute.~~

16 ~~**7-1.1-43. Liability of directors in certain cases.**— (a) In addition to any other liabilities~~
17 ~~imposed by law upon directors of a corporation:~~

18 ~~(1) Directors of a corporation who vote for or assent to the declaration of any dividend or~~
19 ~~other distribution of the assets of a corporation to its shareholders contrary to the provisions of~~
20 ~~this chapter or contrary to any restrictions contained in the articles of incorporation, are jointly~~
21 ~~and severally liable to the corporation for the amount of the dividend which is paid or the value of~~
22 ~~the assets which are distributed in excess of the amount of the dividend or distribution which~~
23 ~~could have been paid or distributed without a violation of the provisions of this chapter or the~~
24 ~~restrictions in the articles of incorporation.~~

25 ~~(2) Directors of a corporation who vote for or assent to the purchase of its own shares~~
26 ~~contrary to the provisions of this chapter are jointly and severally liable to the corporation for the~~
27 ~~amount of consideration paid for the shares which is in excess of the maximum amount which~~
28 ~~could have been paid for the shares without a violation of the provisions of this chapter.~~

29 ~~(3) The directors of a corporation who vote for or assent to any distribution of assets of a~~
30 ~~corporation to its shareholders during the liquidation of the corporation without the payment and~~
31 ~~discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the~~
32 ~~corporation are jointly and severally liable to the corporation for the value of the assets which are~~
33 ~~distributed, to the extent that the debts, obligations, and liabilities of the corporation are not~~
34 ~~subsequently paid and discharged.~~

1 ~~-(b) A director of a corporation who is present at a meeting of its board of directors at~~
2 ~~which action on any corporate matter is taken is presumed to have assented to the action taken~~
3 ~~unless his or her dissent is entered in the minutes of the meeting or unless he or she files his or~~
4 ~~her written dissent to the action with the person acting as the secretary of the meeting before the~~
5 ~~meeting's adjournment or forwards the dissent by registered mail to the secretary of the~~
6 ~~corporation immediately after the adjournment of the meeting. The right to dissent does not apply~~
7 ~~to a director who voted in favor of the action.~~

8 ~~-(c) A director is not liable under this section if under the circumstances he or she acted~~
9 ~~with due care and in good faith, and without limiting the generality of what has just been stated, is~~
10 ~~not liable if he or she relied in good faith upon financial statements of the corporation represented~~
11 ~~to him or her to be correct and to be based upon generally accepted accounting principles by the~~
12 ~~president or the officer of the corporation having charge of its books of account, or stated in a~~
13 ~~written report by an independent public or certified public accountant or firm of accountants~~
14 ~~fairly to reflect the financial condition of the corporation.~~

15 ~~-(d) Any director against whom a claim is asserted under or pursuant to this section for~~
16 ~~the payment of a dividend or other distribution of assets of a corporation and who is held liable on~~
17 ~~the claim, is entitled to contribution from the shareholders who accepted or received any dividend~~
18 ~~or assets, knowing the dividend or distribution to have been made in violation of this chapter, in~~
19 ~~proportion to the amounts received by them respectively.~~

20 ~~**7-1.1-43.1. Actions by shareholders.** --- (a) No action shall be brought in this state by a~~
21 ~~shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of~~
22 ~~record of shares or of voting trust certificates for the shares at the time of the transaction of which~~
23 ~~he or she complains, or his or her shares or voting trust certificates subsequently devolved upon~~
24 ~~him or her by operation of law from a person who was a holder of record at the time.~~

25 ~~-(b) In any action hereafter instituted in the right of any domestic or foreign corporation~~
26 ~~by the holder or holders of record of shares of the corporation or of voting trust certificates for the~~
27 ~~shares, the court having jurisdiction, upon final judgment and a finding that the action was~~
28 ~~brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties~~
29 ~~named as defendant the reasonable expenses, including attorney's fees, incurred by them in the~~
30 ~~defense of the action.~~

31 ~~**7-1.1-44. Officers.** --- (a) The officers of a corporation consist of a chairperson of the~~
32 ~~board of directors, if prescribed by the by-laws, a president, one or more vice presidents, if~~
33 ~~prescribed by the bylaws, a secretary, and a treasurer, each of whom is elected by the board of~~
34 ~~directors or by the stockholders at a time and in a manner as prescribed by the bylaws. Any other~~

1 ~~officers and assistant officers and agents as that are necessary may be elected or appointed by the~~
2 ~~board of directors or by the stockholders or chosen in another manner prescribed by the bylaws.~~
3 ~~Any two (2) or more offices may be held by the same person. A failure to elect officers does not~~
4 ~~dissolve or otherwise affect the corporation.~~

5 ~~(b) All officers and agents of the corporation, as between themselves and the~~
6 ~~corporation, have the authority and perform any duties in the management of the corporation that~~
7 ~~may be provided in the bylaws, or that may be determined by resolution of the board of directors,~~
8 ~~subject to any limitations on the authority contained in the bylaws.~~

9 ~~**7-1.1-45. Removal of officers.** --- Any officer or agent may be removed by the board of~~
10 ~~directors whenever, in its judgment, the best interests of the corporation will be served by the~~
11 ~~removal, but the removal shall be without prejudice to the contract rights, if any, of the person~~
12 ~~removed. Election or appointment of an officer or agent does not of itself create contract rights.~~

13 ~~**7-1.1-46. Books and records.** --- (a) Each corporation shall keep correct and complete~~
14 ~~books and records of account, I keep minutes of the proceedings of its shareholders and of the~~
15 ~~board of directors and committees of the board, and shall also keep at its registered office or~~
16 ~~principal place of business, or at the office of its transfer agent or registrar, a record of its~~
17 ~~shareholders giving the names and addresses of all shareholders and the number and class of the~~
18 ~~shares held by each. Any books, records, and minutes may be in written form or any other form~~
19 ~~capable of being converted into written form within a reasonable time.~~

20 ~~(b) Any person who has been a shareholder of record or of voting trust certificates for~~
21 ~~the shares for at least six (6) months immediately preceding his or her demand or is be the holder~~
22 ~~of record of, or the holder of record of voting trust certificates for, at least five percent (5%) of all~~
23 ~~the outstanding shares of a corporation, upon written demand stating the purpose for the demand,~~
24 ~~shall have the right to examine, in person, or by agent or attorney, at any reasonable time or~~
25 ~~times, for any proper purpose, its relevant books and records of account, minutes, and record of~~
26 ~~shareholders and to make extracts from those books and records of account, minutes, and record~~
27 ~~of shareholders.~~

28 ~~(c) Any officer or agent who, or a corporation which, refuses to allow any shareholder or~~
29 ~~holder of voting trust certificates, or his or her agent or attorney, to examine and make extracts~~
30 ~~from its books and records of account, minutes, and record of shareholders, for any proper~~
31 ~~purpose, is liable to the shareholder or holder of voting trust certificates in a penalty of ten~~
32 ~~percent (10%) of the value of the shares owned by the shareholder, or in respect of which the~~
33 ~~voting trust certificates are issued, in addition to any other damages or remedy afforded him or~~
34 ~~her by law. It is a defense to any action for penalties under this section that the person bringing~~

1 ~~the suit has within two (2) years sold or offered for sale any list of shareholders or of holders of~~
2 ~~voting trust certificates for shares of the corporation or any other corporation or has aided or~~
3 ~~abetted any person in procuring any list of shareholders or of holders of voting trust certificates~~
4 ~~for that purpose, or has improperly used any information secured through any prior examination~~
5 ~~of the books and records of account, or minutes, or record of shareholders, or of holders of voting~~
6 ~~trust certificates for shares of the corporation or any other corporation, or was not acting in good~~
7 ~~faith or for a proper purpose in making his or her demand.~~

8 ~~(d) Nothing contained in these provisions impairs the power of any court of competent~~
9 ~~jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose,~~
10 ~~irrespective of the period of time during which the shareholder or holder of voting trust~~
11 ~~certificates has been a shareholder of record or a holder of record of voting trust certificates and~~
12 ~~irrespective of the number of shares held by him or her, or represented by voting trust certificates~~
13 ~~held by him or her, to compel the production for examination by the shareholder or holder of~~
14 ~~voting trust certificates of the books and records of account, minutes, and record of shareholders~~
15 ~~of a corporation.~~

16 ~~(e) Upon the written request of any shareholder or holder of voting trust certificates for~~
17 ~~shares of a corporation, the corporation shall mail to the shareholder or holder of voting trust~~
18 ~~certificates its most recent financial statements showing in reasonable detail its assets and~~
19 ~~liabilities and the results of its operations.~~

20 ~~**7-1.1-47. Incorporators.** (a) One or more persons may act as incorporator or~~
21 ~~incorporators of a corporation by delivering in duplicate to the secretary of state articles of~~
22 ~~incorporation for the corporation, which shall be signed and acknowledged before a notary~~
23 ~~public.~~

24 ~~(b) Until the corporation issues shares of stock, the incorporator or incorporators has all~~
25 ~~the powers of the shareholders. Until the directors, if any, are elected and have assumed their~~
26 ~~duties, the incorporator or incorporators has all the powers of directors with respect to the~~
27 ~~management of the business and affairs of the corporation, and may do whatever is necessary and~~
28 ~~proper to perfect the organization of the corporation, including, but not limited to, the adoption~~
29 ~~and amendment of bylaws, amendment of the articles of incorporation, election of officers, and~~
30 ~~issuance of shares of stock and the fixing of the consideration for the shares.~~

31 ~~(c) The incorporator or incorporators calling a meeting under this section shall give at~~
32 ~~least three (3) days' notice of the meeting by mail to each incorporator. The notice shall state the~~
33 ~~time and place of the meeting.~~

34 ~~(d) Any action permitted to be taken at the meeting or meetings of incorporators, under~~

1 ~~this section may be taken without a meeting if a consent, in writing, stating the action to be taken,~~
2 ~~is signed by all of the incorporators.~~

3 ~~**7-1.1-48. Articles of incorporation.** — (a) The articles of incorporation shall state:~~

4 ~~(1) The name of the corporation.~~

5 ~~(2) The period of duration, which may be perpetual.~~

6 ~~(3) The specific purpose or purposes for which the corporation is organized and which~~
7 ~~may include the transaction of any or all lawful business for which corporations may be~~
8 ~~incorporated under this chapter.~~

9 ~~(4) (i) If the corporation is to be authorized to issue only one class of stock, the total~~
10 ~~number of shares of stock which the corporation has authority to issue; and:~~

11 ~~(A) The par value of each of the shares; or~~

12 ~~(B) A statement that all the shares are to be without par value; or~~

13 ~~(ii) If the corporation is to be authorized to issue more than one class of stock, the total~~
14 ~~number of shares of all classes of stock which the corporation has authority to issue and:~~

15 ~~(A) The number of the shares of each class of stock that are to have a par value and the~~
16 ~~par value of each share of each class; and/or~~

17 ~~(B) The number of the shares that are to be without par value; and~~

18 ~~(C) A statement of all or any of the designations and the powers, preferences, and rights,~~
19 ~~including voting rights, and the qualifications, limitations, or restrictions of them, which are~~
20 ~~permitted by the provisions of this chapter in respect of any class or classes of stock of the~~
21 ~~corporation and the fixing of which by the articles of association is desired, and an express grant~~
22 ~~of the authority as it may then be desired to grant to the board of directors to fix by vote or votes~~
23 ~~any of them that may be desired but which is not fixed by the articles.~~

24 ~~(5) Any provisions dealing with the preemptive right of shareholders pursuant to the~~
25 ~~provisions of section 7-1.1-24.~~

26 ~~(6) Any provision, not inconsistent with law, which the incorporators elect to set forth in~~
27 ~~the articles of incorporation for the regulation of the internal affairs of the corporation, including,~~
28 ~~but not limited to, a provision eliminating or limiting the personal liability of a director to the~~
29 ~~corporation or to its stockholders for monetary damages for breach of the director's duty as a~~
30 ~~director; provided that the provision does not eliminate or limit the liability of a director for:~~

31 ~~(i) Any breach of the director's duty of loyalty to the corporation or its stockholders;~~

32 ~~(ii) Acts or omissions not in good faith or which involve intentional misconduct or a~~
33 ~~knowing violation of law;~~

34 ~~(iii) Liability imposed pursuant to the provisions of section 7-1.1-43; or~~

1 ~~-(iv) Any transaction from which the director derived an improper personal benefit~~
2 ~~(unless the transaction is permitted by section 7-1.1-37.1); and also including;~~

3 ~~-(v) Any provision which under this chapter is required or permitted to be set forth in the~~
4 ~~bylaws. No provision eliminating or limiting the personal liability of a director will be effective~~
5 ~~with respect to causes of action arising prior to the inclusion of the provision in the articles of~~
6 ~~incorporation of the corporation.~~

7 ~~-(7) The address of its initial registered office, and the name of its initial registered agent~~
8 ~~at the address.~~

9 ~~-(8) The number of directors, if any, constituting the initial board of directors, or, if none,~~
10 ~~the titles of the initial officers of the corporation and the names and addresses of the persons who~~
11 ~~are to serve as directors or officers until the first annual meeting of shareholders or until their~~
12 ~~successors are elected and qualify.~~

13 ~~-(9) The name and address of each incorporator.~~

14 ~~-(10) If, pursuant to section 7-1.1-50, the corporate existence is to begin at a time~~
15 ~~subsequent to the issuance of the certificate of incorporation by the secretary of state, the date~~
16 ~~when corporate existence begins.~~

17 ~~-(b) It is not necessary to set forth in the articles of incorporation any of the corporate~~
18 ~~powers enumerated in this chapter.~~

19 ~~-(c) The provisions permitted by subsection (a)(6) may also be included in the articles of~~
20 ~~incorporation or legislative charter of any existing or future financial institution, insurance~~
21 ~~company, public utility, or other quasi-public corporation having purposes enumerated as~~
22 ~~exceptions to this chapter in section 7-1.1-3.~~

23 **7-1.1-49. Filing of articles of incorporation.** ~~--- (a) Duplicate originals of the articles of~~
24 ~~incorporation shall be delivered to the secretary of state. If the secretary of state finds that the~~
25 ~~articles of incorporation conform to law, he or she shall, when all fees have been paid;~~

26 ~~-(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
27 ~~year of the filing.~~

28 ~~-(2) File one of the duplicate originals in his or her office.~~

29 ~~-(3) Issue a certificate of incorporation to which he or she affixes the other duplicate~~
30 ~~original.~~

31 ~~-(b) The certificate of incorporation, together with the duplicate original of the articles of~~
32 ~~incorporation affixed to it by the secretary of state, shall be returned to the incorporators or their~~
33 ~~representative.~~

34 **7-1.1-50. Effect of issuance of certificate of incorporation.** ~~--- Upon the issuance of the~~

1 ~~certificate of incorporation or upon a later date, not more than thirty (30) days after the filing of~~
2 ~~the articles of incorporation, as is set forth in the articles, the corporate existence begins, and the~~
3 ~~certificate of incorporation is conclusive evidence that all conditions precedent required to be~~
4 ~~performed by the incorporators have been complied with and that the corporation has been~~
5 ~~incorporated under this chapter, except as against this state in a proceeding to cancel or revoke~~
6 ~~the certificate of incorporation or for involuntary dissolution of the corporation.~~

7 ~~**7-1.1-51. Close corporations.** (a) Provisions of the articles of incorporation or bylaws~~
8 ~~of a corporation organized under this chapter, or provisions of an agreement relating to a~~
9 ~~corporation, which would otherwise be invalid because they:~~

10 ~~(1) Restrict, or assign to one or more shareholders or other persons, any or all of the~~
11 ~~powers normally vested in the board of directors or provide that there is no board of directors, or~~

12 ~~(2) Grant the right to one or more stockholders to dissolve the corporation at will or on~~
13 ~~the occurrence of a specified contingency, or~~

14 ~~(3) Impose too great a restraint on the transfer of shares of the corporation,~~

15 ~~are nevertheless valid if the provisions have been approved by all the shareholders of the~~
16 ~~corporation and if the corporation's original or amended articles of incorporation contain a~~
17 ~~heading immediately after the name of the corporation stating that it is a close corporation~~
18 ~~pursuant to this section. This subsection is not deemed to invalidate any provision in articles of~~
19 ~~incorporation, bylaws, or agreements that would otherwise be valid. A provision authorized by~~
20 ~~subsection (a) (1) may include a provision that there shall be no board of directors.~~

21 ~~(b) The provisions of section 7-1.1-32 limiting the duration of a voting trust or~~
22 ~~shareholders' agreement to ten (10) years is not applicable to a close corporation that complies~~
23 ~~with subsection (a). If close corporation status is terminated pursuant to subsection (d), the~~
24 ~~effective term of voting trust or shareholders' agreement shall be ten (10) years from the~~
25 ~~termination or the term provided in the voting trust or shareholders' agreement, whichever is~~
26 ~~shorter.~~

27 ~~(c) The effect of any provision authorized by subsection (a) (1) is to relieve the directors~~
28 ~~and to impose on the person or persons undertaking to exercise responsibility the liability for~~
29 ~~managerial acts or omissions that would otherwise be imposed on directors to the extent that and~~
30 ~~so long as the discretion or powers of the board in its management of corporate affairs is~~
31 ~~controlled by the provision. Action which is valid pursuant to subsection (a) (1) is deemed to be~~
32 ~~action by the board of directors for purposes of compliance with any provision of this chapter~~
33 ~~providing for action by the board of directors.~~

34 ~~(d) (1) The articles of incorporation shall be amended to terminate close corporation~~

1 ~~status pursuant to this section if:~~

2 ~~(A) All of the shareholders, or a lesser number is specified in the articles of~~
3 ~~incorporation, the bylaws, or an agreement relating to the corporation, approve the termination; or~~

4 ~~(B) There are more than thirty (30) shareholders of record and any shareholder, after~~
5 ~~thirty (30) days' notice to the corporation of his or her intention to do so during which time the~~
6 ~~number is not reduced to thirty (30) or less, demands termination; or~~

7 ~~(C) Any person who acquires record shares of the corporation without notice or~~
8 ~~knowledge of its close corporation status demands termination; provided, that notice is~~
9 ~~conclusively presumed if certificates representing the shares so acquired state on their face, under~~
10 ~~the name of the corporation, that it is a close corporation pursuant to this section.~~

11 ~~(2) If the directors and shareholders fail to effect the amendment promptly, the superior~~
12 ~~court has jurisdiction to enter whatever order is necessary to effect the amendment. The~~
13 ~~termination does not affect the validity of any provision relating to the corporation or its~~
14 ~~management which would be valid, notwithstanding the provisions of this section.~~

15 ~~**7-1.1-52. Organization meeting of directors.** --- After the issuance of the certificate of~~
16 ~~incorporation an organization meeting of the board of directors named in the articles of~~
17 ~~incorporation shall be held, either within or without this state, at the call of a majority of the~~
18 ~~directors named in the articles of incorporation, for the purpose of adopting bylaws, electing~~
19 ~~officers, and the transaction of any other business that may come before the meeting. The~~
20 ~~directors calling the meeting shall give at least three (3) days' notice of the meeting by mail to~~
21 ~~each director named, which notice shall state the time and place of the meeting.~~

22 ~~**7-1.1-53. Right to amend articles of incorporation.** --- (a) A corporation may amend its~~
23 ~~articles of incorporation, from time to time, in any and as many respects as is desired, so long as~~
24 ~~its articles of incorporation, as amended, contain only provisions that might be lawfully contained~~
25 ~~in original articles of incorporation at the time of making the amendment, and, if a change in~~
26 ~~shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or~~
27 ~~rights of shareholders is to be made, the provisions that may be necessary to effect the change,~~
28 ~~exchange, reclassification, or cancellation.~~

29 ~~(b) In particular, and without limitation upon the general power of amendment, a~~
30 ~~corporation may amend its articles of incorporation, from time to time, so as to:~~

31 ~~(1) Change its corporate name.~~

32 ~~(2) Change its period of duration.~~

33 ~~(3) Change, enlarge, or diminish its corporate purposes.~~

34 ~~(4) Increase or decrease the aggregate number of shares, or shares of any class, which the~~

1 ~~corporation has authority to issue.~~

2 ~~-(5) Increase or decrease the par value of the authorized shares of any class having a par~~
3 ~~value, whether issued or unissued.~~

4 ~~-(6) Exchange, classify, reclassify, or cancel all or any part of its shares, whether issued~~
5 ~~or unissued.~~

6 ~~-(7) Change the designation of all or any part of its shares, whether issued or unissued,~~
7 ~~and to change the preferences, limitations, and relative rights in respect of all or any part of its~~
8 ~~shares, whether issued or unissued.~~

9 ~~-(8) Change shares having a par value, whether issued or unissued, into the same or a~~
10 ~~different number of shares without par value, and to change shares without par value, whether~~
11 ~~issued or unissued, into the same or a different number of shares having a par value.~~

12 ~~-(9) Change the shares of any class, whether issued or unissued, and whether with or~~
13 ~~without par value, into a different number of shares of the same class or into the same or a~~
14 ~~different number of shares, either with or without par value, of other classes.~~

15 ~~-(10) Create new classes of shares having rights and preferences either prior and superior~~
16 ~~or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.~~

17 ~~-(11) Cancel or otherwise affect the right of the holders of the shares of any class to~~
18 ~~receive dividends which have accrued but have not been declared.~~

19 ~~-(12) Divide any preferred or special class of shares, whether issued or unissued, into~~
20 ~~series and fix and determine the designations of the series and the variation in the relative rights~~
21 ~~and preferences as between the shares of the series.~~

22 ~~-(13) Authorize the board of directors to establish, out of authorized but unissued shares,~~
23 ~~series of any preferred or special class of shares and fix and determine the relative rights and~~
24 ~~preferences of the shares of any series so established.~~

25 ~~-(14) Authorize the board of directors to fix and determine the relative rights and~~
26 ~~preferences of the authorized but unissued shares of series previously established, in respect of~~
27 ~~which either the relative rights and preferences have not been fixed and determined or the relative~~
28 ~~rights and preferences previously fixed and determined are to be changed.~~

29 ~~-(15) Revoke, diminish, or enlarge the authority of the board of directors to establish~~
30 ~~series out of authorized but unissued shares of any preferred or special class and fix and~~
31 ~~determine the relative rights and preferences of the shares of any series so established.~~

32 ~~-(16) Limit, deny, or grant to shareholders of any class the preemptive right to acquire~~
33 ~~additional or treasury shares of the corporation, whether then or subsequently authorized.~~

34 ~~**7-1.1-53.1. Right to amend legislative charters.** --- Any corporation created by special~~

1 ~~act of the general assembly, which is organized under this chapter, whose charter is subject to~~
2 ~~amendment or repeal at the will of the general assembly, may make any amendment to its charter~~
3 ~~that corporations organized under the provisions of this chapter may make to their articles of~~
4 ~~incorporation under section 7-1.1-53; and the proposed amendment shall be effected and~~
5 ~~evidenced in the same manner, by the same vote and upon the same terms and conditions as are~~
6 ~~prescribed in sections 7-1.1-54 and 7-1.1-55.~~

7 ~~**7-1.1-54. Procedure to amend articles of incorporation.**~~ (a) ~~Amendments to the~~
8 ~~articles of incorporation are made in the following manner:~~

9 ~~(1) The board of directors adopts a resolution setting forth the proposed amendment and~~
10 ~~directing that it be submitted to a vote at a meeting of shareholders, which may be either the~~
11 ~~annual or a special meeting. If no shares have been issued, the amendment is adopted by~~
12 ~~resolution of the board of directors and the provisions subsequently stated for adoption by~~
13 ~~shareholders do not apply. The resolution may incorporate the proposed amendment in restated~~
14 ~~articles of incorporation which contain a statement that, except for the designated amendment, the~~
15 ~~restated articles of incorporation correctly state without change the corresponding provisions of~~
16 ~~the articles of incorporation as previously amended, and that the restated articles of incorporation,~~
17 ~~together with the designated amendment, supersede the original articles of incorporation and all~~
18 ~~amendments to those articles.~~

19 ~~(2) Written notice stating the proposed amendment or a summary of the changes to be~~
20 ~~affected by the amendment shall be given to each shareholder of record entitled to vote on the~~
21 ~~amendment within the time and in the manner provided in this chapter for the giving of notice of~~
22 ~~meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the~~
23 ~~summary may be included in the notice of the annual meeting.~~

24 ~~(3) At the meeting a vote of the shareholders entitled to vote on the amendment shall be~~
25 ~~taken on the proposed amendment. The proposed amendment is adopted upon receiving the~~
26 ~~affirmative vote of the holders of a majority of the shares entitled to vote on the amendment~~
27 ~~unless any class of shares is entitled to vote on the amendment as a class, pursuant to either the~~
28 ~~articles of incorporation or the provisions of section 7-1.1-55, in which event approval of the~~
29 ~~proposed amendment also requires the affirmative vote of the holders of a majority of the shares~~
30 ~~of each class of shares entitled to vote as a class on the amendment.~~

31 ~~(b) Any number of amendments may be submitted to the shareholders, and voted upon~~
32 ~~by them, at one meeting.~~

33 ~~(c) The resolution authorizing a proposed amendment to the certificate of incorporation~~
34 ~~may provide that at any time prior to the filing of the amendment with the secretary of state,~~

1 ~~notwithstanding authorization of the proposed amendment by the stockholders of the corporation~~
2 ~~or by the members of a nonstock corporation, the board of directors or governing body may~~
3 ~~abandon the proposed amendment without further action by the stockholders or members.~~

4 ~~**7-1.1-55. Class voting on amendments.**~~ (a) ~~Except as otherwise provided in this~~
5 ~~section, the holders of the outstanding shares of a class are entitled to vote as a class upon a~~
6 ~~proposed amendment, whether or not entitled to vote on the amendment by the provisions of the~~
7 ~~articles of incorporation, if the amendment would:~~

8 ~~(1) Increase or decrease the aggregate number of authorized shares of the class.~~

9 ~~(2) Increase or decrease the par value of the shares of the class.~~

10 ~~(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of the~~
11 ~~class.~~

12 ~~(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of~~
13 ~~another class into the shares of the class.~~

14 ~~(5) Change the designations, preferences, limitations, or relative rights of the shares of~~
15 ~~the class.~~

16 ~~(6) Change the shares of the class, whether with or without par value, into the same or a~~
17 ~~different number of shares, either with or without par value, of the same class or another class or~~
18 ~~classes.~~

19 ~~(7) Create a new class of shares having rights and preferences prior and superior to the~~
20 ~~shares of the class, or increase the rights and preferences or the number of authorized shares of~~
21 ~~any class having rights and preferences prior or superior to the shares of the class.~~

22 ~~(8) In the case of a preferred or special class of shares, divide the shares of the class into~~
23 ~~series and fix and determine the designation of the series and the variations in the relative rights~~
24 ~~and preferences between the shares of the series, or authorize the board of directors to do so.~~

25 ~~(9) Limit or deny any existing preemptive rights of the shares of the class.~~

26 ~~(10) Cancel or otherwise affect dividends on the shares of the class which have accrued~~
27 ~~but have not been declared.~~

28 ~~(b) If the proposed amendment would affect only the shares of one series of a class and~~
29 ~~not the entire class, then only the shares of the series so affected is considered a separate class for~~
30 ~~the purpose of this section. Any class and any series within a class is considered a separate class~~
31 ~~for purposes of this section if the effect of the proposed amendment upon the class or series~~
32 ~~would be different than the effect of the amendment upon the other classes or other series within~~
33 ~~the class. If the proposed amendment would affect two (2) or more classes or series within a class~~
34 ~~in the same way but would not affect the remaining classes or series within the class in the same~~

1 way, the two (2) or more classes or series affected in the same way are together considered a
2 separate class for purposes of this section. Except as otherwise provided in the articles of
3 incorporation or the certificate referred to in section 71.1-15(g), if the proposed amendment
4 would have no effect upon one or more classes or series of a class, the classes or series are not
5 entitled to any vote on the proposed amendment and, for the purposes of this section, are not
6 counted in determining the number of shares constituting the class.

7 **7-1.1-56. Articles of amendment.** --- The articles of amendment shall be executed in
8 duplicate by the corporation by its president or a vice president and by its secretary or an assistant
9 secretary, and verified by one of the officers signing the articles, and shall state:

10 ~~(1) The name of the corporation.~~

11 ~~(2) The amendment so adopted.~~

12 ~~(3) The date of the adoption of the amendment by the shareholders or by the board of~~
13 ~~directors where no shares have been issued.~~

14 ~~(4) The number of shares outstanding, and the number of shares entitled to vote on the~~
15 ~~amendment, and if the shares of any class are entitled to vote on the amendment as a class, the~~
16 ~~designation and number of outstanding shares entitled to vote on the amendment of each class.~~

17 ~~(5) The number of shares voted for and against the amendment, respectively, and, if the~~
18 ~~shares of any class are entitled to vote on the amendment as a class, the number of shares of each~~
19 ~~class voted for and against the amendment, respectively, or if no shares have been issued, a~~
20 ~~statement to that effect.~~

21 ~~(6) If the amendment provides for an exchange, reclassification, or cancellation of issued~~
22 ~~shares, and if the manner in which that shall be effected is not set forth in the amendment, then a~~
23 ~~statement of the manner in which the exchange, reclassification, or cancellation of issued shares~~
24 ~~shall be effected.~~

25 ~~(7) If the amendment effects a change in the amount of stated capital, then a statement of~~
26 ~~the manner in which the change is effected and a statement, expressed in dollars, of the amount of~~
27 ~~stated capital as changed by the amendment.~~

28 ~~(8) If, pursuant to section 71.1-58, the amendment is to become effective at a time~~
29 ~~subsequent to the issuance of the certificate of amendment by the secretary of state, the date when~~
30 ~~the amendment is to become effective.~~

31 **7-1.1-57. Filing of articles of amendment.** --- (a) Duplicate originals of the articles of
32 amendment shall be delivered to the secretary of state. If the secretary of state finds that the
33 articles of amendment conform to law, he or she shall, when all fees and franchise taxes have
34 been paid:

1 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
2 ~~year of the filing.~~

3 ~~(2) File one of the duplicate originals in his or her office.~~

4 ~~(3) Issue a certificate of amendment to which he or she affixes the other duplicate~~
5 ~~original.~~

6 ~~(b) The certificate of amendment, together with the duplicate original of the articles of~~
7 ~~amendment affixed to it by the secretary of state, shall be returned to the corporation or its~~
8 ~~representative.~~

9 **7-1.1-58. Effect of certificate of amendment.** ~~--- (a) Upon the issuance of the certificate~~
10 ~~of amendment by the secretary of state or upon a later date, not more than thirty (30) days after~~
11 ~~the filing of the articles of amendment, as stated in the articles, the amendment becomes effective~~
12 ~~and the articles of incorporation are deemed to be amended accordingly.~~

13 ~~(b) No amendment affects any existing cause of action in favor of or against the~~
14 ~~corporation, or any pending suit to which the corporation is a party, or the existing rights of~~
15 ~~persons other than shareholders; and, in the event the corporate name is changed by amendment,~~
16 ~~no suit brought by or against the corporation under its former name abates for that reason.~~

17 **7-1.1-59. Restated articles of incorporation.** ~~--- (a) A domestic corporation may at any~~
18 ~~time restate its articles of incorporation as previously amended, by a resolution adopted by the~~
19 ~~board of directors.~~

20 ~~(b) Upon the adoption of a resolution, restated articles of incorporation shall be executed~~
21 ~~in duplicate by the corporation by its president or a vice president and by its secretary or assistant~~
22 ~~secretary and verified by one of the officers signing the articles and shall state all of the~~
23 ~~provisions of the articles of incorporation, as previously amended, together with a statement that~~
24 ~~the restated articles of incorporation correctly set forth without change the corresponding~~
25 ~~provisions of the articles of incorporation, as previously amended, and that the restated articles of~~
26 ~~incorporation supersede the original articles of incorporation and all amendments to the articles.~~

27 ~~(c) Duplicate originals of the restated articles of incorporation shall be delivered to the~~
28 ~~secretary of state. If the secretary of state finds that the restated articles of incorporation conform~~
29 ~~to law, he or she shall, when all fees and franchise taxes have been paid:~~

30 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
31 ~~year of the filing.~~

32 ~~(2) File one of the duplicate originals in his or her office.~~

33 ~~(3) Issue a restated certificate of incorporation, to which he or she affixes the other~~
34 ~~duplicate original.~~

1 ~~-(d) The restated certificate of incorporation, together with the duplicate original of the~~
2 ~~restated articles of incorporation affixed to it by the secretary of state, shall be returned to the~~
3 ~~corporation or its representative.~~

4 ~~-(e) Upon the issuance of the restated certificate of incorporation by the secretary of state~~
5 ~~or upon a later date, not more than thirty (30) days after the filing of the restated articles of~~
6 ~~incorporation, as stated in the articles, the restated articles of incorporation become effective and~~
7 ~~supersede the original articles of incorporation and all amendments to those articles.~~

8 **7-1.1-59.1. Amendment of articles of incorporation in reorganization proceedings.**

9 ~~(a) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of~~
10 ~~a court of competent jurisdiction in proceedings for the reorganization of the corporation,~~
11 ~~pursuant to the provisions of any applicable statute of the United States relating to reorganizations~~
12 ~~of corporations, the articles of incorporation of the corporation may be amended, in the manner~~
13 ~~provided in this section, in as many respects as are necessary to carry out the plan and put into~~
14 ~~effect, as long as the articles of incorporation, as amended, contain only provisions that might be~~
15 ~~lawfully contained in original articles of incorporation at the time of making the amendment.~~

16 ~~-(b) In particular and without limitation upon the general power of amendment, the~~
17 ~~articles of incorporation may be amended for that purpose so as to:~~

18 ~~-(1) Change the corporate name, period of duration, or corporate purposes of the~~
19 ~~corporation;~~

20 ~~-(2) Repeal, alter, or amend the bylaws of the corporation;~~

21 ~~-(3) Change the aggregate number of shares, or shares of any class, which the corporation~~
22 ~~has authority to issue;~~

23 ~~-(4) Change the preferences, limitations, and relative rights in respect of all or any part of~~
24 ~~the shares of the corporation, and classify, reclassify, or cancel all or any part of the shares,~~
25 ~~whether issued or unissued;~~

26 ~~-(5) Authorize the issuance of bonds, debentures, or other obligations of the corporation,~~
27 ~~whether or not convertible into shares of any class or bearing warrants or other evidences of~~
28 ~~optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions~~
29 ~~of them; and~~

30 ~~-(6) Constitute or reconstitute and classify or reclassify the board of directors of the~~
31 ~~corporation, and appoint directors and officers in place of or in addition to all or any of the~~
32 ~~directors or officers then in office.~~

33 ~~-(c) Amendments to the articles of incorporation pursuant to this section shall be made in~~
34 ~~the following manner:~~

1 ~~(1) Articles of amendment approved by decree or order of the court shall be executed~~
2 ~~and verified in duplicate by the person or persons that the court designates or appoints for the~~
3 ~~purpose, and shall state the name of the corporation, the amendments of the articles of~~
4 ~~incorporation approved by the court, the date of the decree or order approving the articles of~~
5 ~~amendment, the title of the proceedings in which the decree or order was entered, and a statement~~
6 ~~that the decree or order was entered by a court having jurisdiction of the proceedings for the~~
7 ~~reorganization of the corporation pursuant to the provisions of an applicable statute of the United~~
8 ~~States.~~

9 ~~(2) Duplicate originals of the articles of amendment shall be delivered to the secretary of~~
10 ~~state. If the secretary of state finds that the articles of amendment conform to law, he or she shall,~~
11 ~~when all fees and franchise taxes have been paid:~~

12 ~~(i) Endorse on each of the duplicate originals the word "Filed", and the month, day, and~~
13 ~~year of the filing.~~

14 ~~(ii) File one of the duplicate originals in his or her office.~~

15 ~~(iii) Issue a certificate of amendment to which he or she affixes the other duplicate~~
16 ~~original.~~

17 ~~(d) The certificate of amendment, together with the duplicate original of the articles of~~
18 ~~amendment affixed to it by the secretary of state, shall be returned to the corporation or its~~
19 ~~representative.~~

20 ~~(e) The amendment becomes effective upon the issuance of the certificate of amendment~~
21 ~~by the secretary of state, or upon a later date, not more than thirty (30) days subsequent to the~~
22 ~~filing of the amendments with the secretary of state, as is provided for in the articles of~~
23 ~~amendment without any action on the amendment by the directors or shareholders of the~~
24 ~~corporation and with the same effect as if the amendments had been adopted by unanimous action~~
25 ~~of the directors and shareholders of the corporation.~~

26 ~~**7-1.1-60. Restriction on redemption or purchase of redeemable shares.** -- No~~
27 ~~redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent~~
28 ~~or when the redemption or purchase would render it insolvent, or which would reduce the net~~
29 ~~assets below the aggregate amount payable to the holders of shares having prior or equal rights to~~
30 ~~the assets of the corporation upon involuntary dissolution.~~

31 ~~**7-1.1-61. Cancellation of redeemable shares by redemption or purchase.** -- (a) When~~
32 ~~redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption~~
33 ~~or purchase effects a cancellation of the shares, and a statement of cancellation shall be filed as~~
34 ~~provided in this section. Thereupon the shares are restored to the status of authorized but unissued~~

1 ~~shares, unless the articles of incorporation provide that the shares, when redeemed or purchased,~~
2 ~~are not to be reissued, in which case the filing of the statement of cancellation constitutes an~~
3 ~~amendment to the articles of incorporation and reduces the number of shares of the class~~
4 ~~cancelled which the corporation is authorized to issue by the number of shares cancelled.~~

5 ~~(b) The statement of cancellation shall be executed in duplicate by the corporation by its~~
6 ~~president or a vice president and by its secretary or an assistant secretary, and verified by one of~~
7 ~~the officers signing the statement, and shall state:~~

8 ~~(1) The name of the corporation.~~

9 ~~(2) The number of redeemable shares cancelled through redemption or purchase,~~
10 ~~itemized by classes and series.~~

11 ~~(3) The aggregate number of issued shares, itemized by classes and series, after giving~~
12 ~~effect to the cancellation.~~

13 ~~(4) If the articles of incorporation provide that the cancelled shares are not to be reissued,~~
14 ~~then the number of shares which the corporation has authority to issue, itemized by classes and~~
15 ~~series, after giving effect to the cancellation.~~

16 ~~(c) Duplicate originals of the statement shall be delivered to the secretary of state. If the~~
17 ~~secretary of state finds that the statement conforms to law, the secretary of state shall, when all~~
18 ~~fees and franchise taxes have been paid:~~

19 ~~(1) Endorse on each of the duplicate originals the word "Filed", and the month, day, and~~
20 ~~year of the filing.~~

21 ~~(2) File one of the duplicate originals in his or her office.~~

22 ~~(3) Return the other duplicate original to the corporation or its representative.~~

23 ~~(d) Upon the filing of the statement of cancellation, the stated capital of the corporation~~
24 ~~is deemed to be reduced by that part of the stated capital which was, at the time of the~~
25 ~~cancellation, represented by the shares cancelled.~~

26 ~~(e) Nothing contained in this section is construed to forbid a cancellation of shares or a~~
27 ~~reduction of stated capital in any other manner permitted by this chapter.~~

28 ~~**7-1.1-62. Cancellation of other reacquired shares.** -- (a) A corporation may at any~~
29 ~~time, by resolution of its board of directors, cancel all or any part of the shares of the corporation~~
30 ~~of any class reacquired by it, other than redeemable shares redeemed or purchased, and in that~~
31 ~~event a statement of cancellation shall be filed as provided in this section.~~

32 ~~(b) The statement of cancellation shall be executed in duplicate by the corporation by its~~
33 ~~president or a vice president and by its secretary or an assistant secretary, and verified by one of~~
34 ~~the officers signing the statement, and shall state~~

1 ~~(1) The name of the corporation.~~

2 ~~(2) The number of reacquired shares cancelled by resolution duly adopted by the board~~
3 ~~of directors, itemized by classes and series, and the date of its adoption.~~

4 ~~(3) The aggregate number of issued shares, itemized by classes and series, after giving~~
5 ~~effect to the cancellation.~~

6 ~~(c) Duplicate originals of the statement shall be delivered to the secretary of state. If the~~
7 ~~secretary of state finds that the statement conforms to law, the secretary of state shall, when all~~
8 ~~fees and franchise taxes have been paid:~~

9 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
10 ~~year of the filing.~~

11 ~~(2) File one of the duplicate originals in his or her office.~~

12 ~~(3) Return the other duplicate original to the corporation or its representative.~~

13 ~~(d) Upon the filing of the statement of cancellation, the stated capital of the corporation~~
14 ~~is deemed to be reduced by that part of the stated capital which was, at the time of the~~
15 ~~cancellation, represented by the cancelled shares, and the cancelled shares are restored to the~~
16 ~~status of authorized but unissued shares.~~

17 ~~(e) Nothing contained in this section is construed to forbid a cancellation of shares or a~~
18 ~~reduction of stated capital in any other manner permitted by this chapter.~~

19 ~~**7-1.1-63. Reduction of stated capital in certain cases.** -- (a) A reduction in the stated~~
20 ~~capital of a corporation which does not involve either an amendment of the articles of~~
21 ~~incorporation or a cancellation of shares may be made in the following manner:~~

22 ~~(1) The board of directors adopts a resolution stating the amount of the proposed~~
23 ~~reduction and the manner in which the reduction is to be effected, and directing that the question~~
24 ~~of the reduction be submitted to a vote at a meeting of shareholders, which may be either an~~
25 ~~annual or a special meeting.~~

26 ~~(2) Written notice, stating that the purpose or one of the purposes of the meeting is to~~
27 ~~consider the question of reducing the stated capital of the corporation in the amount and manner~~
28 ~~proposed by the board of directors, shall be given to each shareholder of record entitled to vote on~~
29 ~~the reduction of stated capital within the time and in the manner provided in this chapter for the~~
30 ~~giving of notice of meetings of shareholders.~~

31 ~~(3) At the meeting a vote of the shareholders entitled to vote on the reduction of stated~~
32 ~~capital shall be taken on the question of approving the proposed reduction of stated capital, which~~
33 ~~requires for its adoption the affirmative vote of the holders of a majority of the shares entitled to~~
34 ~~vote on the question.~~

1 ~~-(b) No reduction of stated capital shall be made under the provisions of this section~~
2 ~~which would reduce the amount of the aggregate stated capital of the corporation to an amount~~
3 ~~equal to or less than the aggregate preferential amounts payable upon all issued shares having a~~
4 ~~preferential right in the assets of the corporation in the event of involuntary liquidation, plus the~~
5 ~~aggregate par value of all issued shares having a par value but no preferential right in the assets of~~
6 ~~the corporation in the event of involuntary liquidation.~~

7 ~~**7-1.1-64. Creation and application of surplus and reserves.** -- (a) The surplus created~~
8 ~~by or arising out of a reduction of the stated capital of a corporation is capital surplus.~~

9 ~~-(b) The capital surplus of a corporation may be increased from time to time by resolution~~
10 ~~of the board of directors directing that all or a part of the earned surplus of the corporation is~~
11 ~~transferred to capital surplus.~~

12 ~~-(c) A corporation may, by resolution of its board of directors, apply any part or all of its~~
13 ~~capital surplus to the reduction or elimination of any deficit arising from losses, however~~
14 ~~incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying~~
15 ~~the losses against earned surplus and only to the extent that the losses exceed the earned surplus,~~
16 ~~if any. Each application of capital surplus shall, to the extent of the application, effect a reduction~~
17 ~~of capital surplus.~~

18 ~~-(d) A corporation may, by resolution of its board of directors, create a reserve or reserves~~
19 ~~out of its earned surplus for any proper purpose or purposes, and may abolish any reserve in the~~
20 ~~same manner. Earned surplus of the corporation, to the extent so reserved, is not available for the~~
21 ~~payment of dividends or other distributions by the corporation except as expressly permitted by~~
22 ~~this chapter.~~

23 ~~**7-1.1-65. Procedure for merger.** -- (a) Any two (2) or more domestic corporations may~~
24 ~~merge into one of the corporations pursuant to a plan of merger approved in the manner provided~~
25 ~~in this chapter.~~

26 ~~-(b) The board of directors of each corporation shall, by resolution adopted by each~~
27 ~~board, approve a plan of merger stating:~~

28 ~~-(1) The names of the corporations proposing to merge, and the name of the corporation~~
29 ~~into which they propose to merge, which is hereinafter designated as the surviving corporation.~~

30 ~~-(2) The terms and conditions of the proposed merger.~~

31 ~~-(3) The manner and basis of converting the shares of each merging corporation (other~~
32 ~~than those held by the surviving corporation) into shares or obligations or other securities of the~~
33 ~~surviving corporation or, in whole or in part, into cash, property, or shares, obligations, or other~~
34 ~~securities of any other corporation.~~

1 ~~(4) A statement of any changes in the articles of incorporation of the surviving~~
2 ~~corporation to be effected by the merger, or if no changes are desired, a statement that the articles~~
3 ~~of incorporation of one of the corporations are the articles of incorporation of the surviving~~
4 ~~corporation.~~

5 ~~(5) Any other provisions with respect to the proposed merger that are deemed necessary~~
6 ~~or desirable.~~

7 **7-1.1-66. Procedure for consolidation.** ~~--- (a) Any two (2) or more domestic corporations~~
8 ~~may consolidate into a new corporation pursuant to a plan of consolidation approved in the~~
9 ~~manner provided in this chapter.~~

10 ~~(b) The board of directors of each corporation shall, by a resolution adopted by each~~
11 ~~board, approve a plan of consolidation stating:~~

12 ~~(1) The names of the corporations proposing to consolidate, and the name of the new~~
13 ~~corporation into which they propose to consolidate, which is subsequently designated as the new~~
14 ~~corporation.~~

15 ~~(2) The terms and conditions of the proposed consolidation.~~

16 ~~(3) The manner and basis of converting the shares of each corporation into shares or~~
17 ~~obligations or other securities of the new corporation or, in whole or in part, into cash, property,~~
18 ~~or shares, obligations, or other securities of any other corporation.~~

19 ~~(4) With respect to the new corporation, all of the statements required to be stated in~~
20 ~~articles of incorporation for corporations organized under this chapter.~~

21 ~~(5) Any other provisions with respect to the proposed consolidation that are deemed~~
22 ~~necessary or desirable.~~

23 **7-1.1-67. Approval by shareholders of merger or consolidation.** ~~--- (a) The board of~~
24 ~~directors of each corporation, upon approving the plan of merger or plan of consolidation, shall,~~
25 ~~by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may~~
26 ~~be either an annual or a special meeting. Written notice shall be given to each shareholder of~~
27 ~~record, whether or not entitled to vote at the meeting, not less than twenty (20) days before the~~
28 ~~meeting, in the manner provided in this chapter for the giving of notice of meetings of~~
29 ~~shareholders, and, whether the meeting is an annual or a special meeting, shall state that the~~
30 ~~purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A~~
31 ~~copy or a summary of the plan of merger or the agreement of consolidation, as the case may be,~~
32 ~~together with a statement of the stockholder's right to dissent and a copy or a summary of section~~
33 ~~7-1.1-74, shall be included in or enclosed with the notice except where no such right is available.~~

34 ~~(b) At each meeting, a vote of the shareholders shall be taken on the proposed plan of~~

1 ~~merger or consolidation. The plan of merger or consolidation is to be approved upon receiving the~~
2 ~~affirmative vote of the holders of a majority of the shares entitled to vote on the plan of merger or~~
3 ~~consolidation of each corporation, unless any class of shares of any corporation is entitled to vote~~
4 ~~as a class on it, in which event, as to the corporation, approval of the plan of merger or~~
5 ~~consolidation also requires the affirmative vote of the holders of a majority of the shares of each~~
6 ~~class of shares entitled to vote as a class on it. Any class of shares of the surviving corporation~~
7 ~~and the merged corporation in a merger is entitled to vote as a class, whether or not the class is~~
8 ~~otherwise entitled to vote, if the plan of merger contains any provision which, if contained in a~~
9 ~~proposed amendment to articles of incorporation, would entitle the class of shares to a class vote.~~

10 ~~(c) (1) Notwithstanding the foregoing provisions of this section, except as may be~~
11 ~~required by the articles of incorporation, no approval of a plan of merger by the stockholders of~~
12 ~~the surviving corporation in a merger, and no notice to any of the stockholders of the corporation,~~
13 ~~are required if:~~

14 ~~(i) The plan of merger does not amend the articles of incorporation of the corporation;~~
15 ~~and~~

16 ~~(ii) The plan of merger does not involve the issuance or transfer by the corporation~~
17 ~~(either directly or through the medium of options or warrants for, or shares or debt instruments~~
18 ~~convertible within one year into, the shares) of shares possessing more than one third (1/3) of the~~
19 ~~total combined voting power of all classes of stock then entitled to vote for the election of~~
20 ~~directors which will be outstanding immediately after the merger.~~

21 ~~(2) If a plan of merger is adopted by the surviving corporation in a merger without any~~
22 ~~approval by its shareholders, pursuant to the provisions of this subsection, that fact shall be~~
23 ~~certified in the articles of merger.~~

24 ~~(d) After approval as already stated by each corporation, and at any time prior to the~~
25 ~~filing of the articles of merger or consolidation, the merger or consolidation may be abandoned~~
26 ~~pursuant to provisions for abandonment, if any, set forth in the plan of merger or consolidation.~~

27 ~~(e) Except as otherwise expressly provided in this chapter, the provisions and~~
28 ~~requirements of this section and section 7-1.1-73(a)(1) do not apply to any transaction unless~~
29 ~~articles of merger or consolidation have been filed in connection with the transaction under~~
30 ~~section 7-1.1-68.~~

31 **7-1.1-68. Articles of merger or consolidation.** ~~(a) Upon approval, articles of merger~~
32 ~~or articles of consolidation shall be executed in duplicate by each corporation by its president or a~~
33 ~~vice president and by its secretary or an assistant secretary, and verified by one of the officers of~~
34 ~~each corporation signing the articles, and shall state:~~

- 1 ~~(1) The plan of merger or the plan of consolidation.~~
- 2 ~~(2) As to each corporation (except one whose shareholders are not required to approve~~
3 ~~the agreement under section 7-1.1-67, in which event that fact shall be stated), the total number of~~
4 ~~shares outstanding entitled to vote on the plan, respectively, and, if the shares of any class are~~
5 ~~entitled to vote on the plan as a class, the designation and number of outstanding shares of each~~
6 ~~class, and the number of shares of each class voted for and against the plan, respectively.~~
- 7 ~~(3) If, pursuant to section 7-1.1-69, the merger or consolidation is to become effective at~~
8 ~~a time subsequent to the issuance of the certificate of merger or the certificate of consolidation by~~
9 ~~the secretary of state, the date when the merger or consolidation is to become effective.~~
- 10 ~~(b) Duplicate originals of the articles of merger or articles of consolidation shall be~~
11 ~~delivered to the secretary of state. If the secretary of state finds that the articles conform to law,~~
12 ~~he or she shall, when all fees and franchise taxes have been paid:~~
- 13 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
14 ~~year of the filing.~~
- 15 ~~(2) File one of the duplicate originals in his or her office.~~
- 16 ~~(3) Issue a certificate of merger or a certificate of consolidation to which he or she~~
17 ~~affixes the other duplicate original.~~
- 18 ~~(c) The certificate of merger or certificate of consolidation, together with the duplicate~~
19 ~~original of the articles of merger or articles of consolidation affixed to it by the secretary of state,~~
20 ~~shall be returned to the surviving or new corporation, as the case may be, or its representative.~~
- 21 **7-1.1-68.1. Merger of subsidiary corporation.** ~~---(a) Any corporation owning at least~~
22 ~~ninety percent (90%) of the outstanding shares of each class of another corporation may merge~~
23 ~~the other corporation into itself without approval by a vote of the shareholders of either~~
24 ~~corporation. Its board of directors shall, by resolution, approve a plan of merger stating:~~
- 25 ~~(1) The name of the subsidiary corporation and the name of the corporation owning at~~
26 ~~least ninety percent (90%) of its shares, which is subsequently in these provisions designated as~~
27 ~~the surviving corporation.~~
- 28 ~~(2) The manner and basis of converting the shares of the subsidiary corporation (other~~
29 ~~than those held by the surviving corporation) into shares or other securities or obligations of the~~
30 ~~surviving corporation or of any other corporation, or in whole or in part, into cash or other~~
31 ~~consideration to be paid upon the surrender of each share of the subsidiary corporation.~~
- 32 ~~(b) A copy of the plan of merger shall be mailed to each shareholder of record of the~~
33 ~~subsidiary corporation.~~
- 34 ~~(c) Articles of merger shall be executed in duplicate by the surviving corporation by its~~

1 ~~president or a vice president and by its secretary or an assistant secretary, and verified by one of~~
2 ~~its officers signing the articles, and shall state:~~

3 ~~(1) The plan of merger;~~

4 ~~(2) The number of outstanding shares of each class of the subsidiary corporation and the~~
5 ~~number of the shares of each class owned by the surviving corporation; and~~

6 ~~(3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the~~
7 ~~plan of merger.~~

8 ~~(4) If, pursuant to section 7-1.1-69, the merger is to become effective at a time~~
9 ~~subsequent to the issuance of the certificate of merger by the secretary of state, the date when the~~
10 ~~merger is to become effective.~~

11 ~~(d) On and after the thirtieth day after the mailing of a copy of the agreement of merger~~
12 ~~to shareholders of the subsidiary corporation or upon the waiver of the mailing by the holders of~~
13 ~~all outstanding shares, duplicate originals of the articles of merger shall be delivered to the~~
14 ~~secretary of state. If the secretary of state finds that the articles conform to law, the secretary of~~
15 ~~state shall, when all fees and franchise taxes have been paid:~~

16 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
17 ~~year of the filing;~~

18 ~~(2) File one of the duplicate originals in his or her office, and~~

19 ~~(3) Issue a certificate of merger to which he or she affixes the other duplicate original.~~

20 ~~(e) The certificate of merger, together with the duplicate original of the articles of merger~~
21 ~~affixed to it by the secretary of state, shall be returned to the surviving corporation or its~~
22 ~~representative.~~

23 **7-1.1-69. Effect of merger or consolidation.** ~~--- (a) A merger or consolidation becomes~~
24 ~~effective upon the issuance of a certificate of merger or the certificate of consolidation by the~~
25 ~~secretary of state or on a later date, not more than thirty (30) days after the filing of the articles of~~
26 ~~merger or the articles of consolidation, as is stated in the plan.~~

27 ~~(b) When a merger or consolidation becomes effective:~~

28 ~~(1) The several corporations, parties to the plan of merger or consolidation, are a single~~
29 ~~corporation, which, in the case of a merger, is that corporation designated in the plan of merger as~~
30 ~~the surviving corporation, and, in the case of a consolidation, is the new corporation provided for~~
31 ~~in the plan of consolidation.~~

32 ~~(2) The separate existence of all corporations, parties to the plan of merger or~~
33 ~~consolidation, except the surviving or new corporation, ceases.~~

34 ~~(3) The surviving or new corporation has all the rights, privileges, immunities, and~~

1 ~~powers and is subject to all the duties and liabilities of a corporation organized under this chapter.~~

2 ~~-(4) The surviving or new corporation at that time and subsequently possesses all the~~
3 ~~rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of~~
4 ~~the merging or consolidating corporations; and all property, real, personal, and mixed, all debts~~
5 ~~due on whatever account, including subscriptions to shares, all other choses in action, and all and~~
6 ~~every other interest of or belonging to or due to each of the corporations merged or consolidated,~~
7 ~~is taken and deemed to be transferred to and vested in the single corporation without further act or~~
8 ~~deed; and the title to any real estate, or any interest in real estate, vested in any of the corporations~~
9 ~~does not revert or is in any way impaired because of the merger or consolidation.~~

10 ~~-(5) The surviving or new corporation is subsequently responsible and liable for all the~~
11 ~~liabilities and obligations of each of the corporations merged or consolidated; and any claim~~
12 ~~existing or action or proceeding pending by or against any of the corporations may be prosecuted~~
13 ~~as if the merger or consolidation had not taken place, or the surviving or new corporation may be~~
14 ~~substituted in its place. Neither the rights of creditors nor any liens upon the property of any~~
15 ~~corporation is impaired by the merger or consolidation.~~

16 ~~-(6) In the case of a merger, the articles of incorporation of the surviving corporation are~~
17 ~~deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated~~
18 ~~in the plan of merger; and, in the case of consolidation, the statements in the articles of~~
19 ~~consolidation and which are required or permitted to be stated in the articles of incorporation of~~
20 ~~corporations organized under this chapter are deemed to be the original articles of incorporation~~
21 ~~of the new corporation.~~

22 ~~-(7) The shares of the corporation or corporations party to the plan that are, under the~~
23 ~~terms of the plan, to be converted or exchanged, cease to exist, and the holders of the shares are~~
24 ~~entitled only to the shares, obligations, other securities, cash, or other property into which they~~
25 ~~have been converted or for which they have been exchanged in accordance with the plan, subject~~
26 ~~to any rights under section 7-1.1-73.~~

27 ~~**7-1.1-70. Merger or consolidation of domestic and foreign corporations.** -- (a) One or~~
28 ~~more foreign corporations and one or more domestic corporations may be merged or consolidated~~
29 ~~in the following manner, if the merger or consolidation is permitted by the laws of the state under~~
30 ~~which each foreign corporation is organized:~~

31 ~~-(1) Each domestic corporation shall comply with the provisions of this chapter with~~
32 ~~respect to the merger or consolidation, as the case may be, of domestic corporations, and each~~
33 ~~foreign corporation shall comply with the applicable provisions of the laws of the state under~~
34 ~~which it is organized.~~

1 ~~-(2) If the surviving or new corporation, as the case may be, is to be governed by the laws~~
2 ~~of any state other than this state, it shall comply with the provisions of this chapter with respect to~~
3 ~~foreign corporations if it is to transact business in this state, and in every case it shall file with the~~
4 ~~secretary of state of this state:~~

5 ~~-(i) An agreement that it may be served with process in this state in any proceeding for~~
6 ~~the enforcement of any obligation of any domestic corporation which is a party to the merger or~~
7 ~~consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder~~
8 ~~of any domestic corporation against the surviving or new corporation;~~

9 ~~-(ii) An irrevocable appointment of the secretary of state of this state as its agent to accept~~
10 ~~service of process in any proceeding; and~~

11 ~~-(iii) An agreement that it will promptly pay to the dissenting shareholders of any~~
12 ~~domestic corporation the amount, if any, to which they are entitled under the provisions of this~~
13 ~~chapter regarding the rights of dissenting shareholders.~~

14 ~~-(b) The effect of the merger or consolidation is the same as in the case of the merger or~~
15 ~~consolidation of domestic corporations, if the surviving or new corporation is to be governed by~~
16 ~~the laws of this state. If the surviving or new corporation is to be governed by the laws of any~~
17 ~~state other than this state, the effect of the merger or consolidation is the same as in the case of~~
18 ~~the merger or consolidation of domestic corporations except insofar as the laws of the other state~~
19 ~~provide otherwise.~~

20 ~~-(c) At any time prior to the filing of the articles of merger or consolidation, the merger or~~
21 ~~consolidation may be abandoned pursuant to provisions for abandonment, if any, stated in the~~
22 ~~plan of merger or consolidation.~~

23 ~~**7-1.1-70.1. Shareholder approval of certain acquisitions.** -- Before any domestic~~
24 ~~corporation acquires, directly or through a subsidiary, either:~~

25 ~~-(1) All or substantially all of the assets of one or more corporations, with or without~~
26 ~~good will or the assumption of liabilities, or~~

27 ~~-(2) Shares of one or more corporations possessing two thirds ($\frac{2}{3}$) or more of the total~~
28 ~~combined voting power of all classes of stock of the acquired corporation or corporations entitled~~
29 ~~at that time to vote for the election of directors, for a consideration which includes (either directly~~
30 ~~or through the medium of options or warrants for, or shares or debt instruments convertible within~~
31 ~~one year into, those shares) shares of the acquiring corporation possessing more than one third ($\frac{1}{3}$)~~
32 ~~of the total combined voting power of all classes of stock of the acquiring corporation~~
33 ~~entitled at that time to vote for the election of directors which will be outstanding immediately~~
34 ~~after the acquisition, the acquisition shall be approved by the shareholders of the acquiring~~

1 corporation pursuant to the terms and conditions of section ~~7-1.1-67~~ applicable to the surviving
2 corporation in a merger.

3 ~~**7-1.1-71. Sale of assets in regular course of business and mortgage or pledge of**~~
4 ~~**assets.**~~ --- The sale, lease, exchange, or other disposition of all, or substantially all, the property
5 and assets of a corporation in the usual and regular course of its business, and the mortgage or
6 pledge of any or all property and assets of a corporation, whether or not in the usual and regular
7 course of business, may be made upon terms and conditions and for any consideration, which
8 may consist in whole or in part of money or property, real or personal, including shares of any
9 other corporation, domestic or foreign, as is authorized by its board of directors; and in any case
10 no authorization or consent of the shareholders is required.

11 ~~**7-1.1-72. Sale of assets other than in regular course of business.**~~ --- A sale, lease,
12 exchange, or other disposition of all, or substantially all, the property and assets, with or without
13 the good will, of a corporation, if not in the usual and regular course of its business, may be made
14 upon terms and conditions and for any consideration, which may consist in whole or in part of
15 money or property, real or personal, including shares of any other corporation, domestic or
16 foreign, as is authorized in the following manner:

17 ~~(1) The board of directors adoption of a resolution recommending the sale, lease,~~
18 ~~exchange, or other disposition, and directing the submission of the resolution to a vote at a~~
19 ~~meeting of shareholders, which may be either an annual or a special meeting.~~

20 ~~(2) Written notice shall be given to each shareholder of record, whether or not entitled to~~
21 ~~vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in~~
22 ~~this chapter for the giving of notice of meeting of shareholders, and, whether the meeting is an~~
23 ~~annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the~~
24 ~~proposed sale, lease, exchange, or other disposition. A statement of the stockholder's right to~~
25 ~~dissent and a copy or summary of section 7-1.1-74 shall be included in or enclosed with the~~
26 ~~notice.~~

27 ~~(3) At the meeting the shareholders may authorize the sale, lease, exchange, or other~~
28 ~~disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and~~
29 ~~conditions of it and the consideration to be received by the corporation for it. The authorization~~
30 ~~requires the affirmative vote of the holders of a majority of the shares of the corporation entitled~~
31 ~~to vote on the authorization, unless any class of shares is entitled to vote on it as a class, pursuant~~
32 ~~to the articles of incorporation, in which event approval of the resolution also requires the~~
33 ~~affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote~~
34 ~~as a class on the resolution.~~

1 ~~(4) After the authorization by a vote of shareholders, the board of directors nevertheless,~~
2 ~~in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to~~
3 ~~the rights of third parties under any related contracts, without any further action or approval by~~
4 ~~shareholders.~~

5 ~~(5) A transfer of all or substantially all of the property and assets of a corporation to (i)~~
6 ~~one or more subsidiary corporations in which the transferor corporation owns shares possessing at~~
7 ~~least two thirds (2/3) of the total combined voting power of all classes of stock entitled to vote at~~
8 ~~that time for election of directors, or (ii) for cash, with or without an assumption of liabilities of~~
9 ~~the transferor corporation, after the filing of a statement of intent to dissolve pursuant to section~~
10 ~~7-1.1-78, is governed by the provisions of section 7-1.1-71 and not by this section. The sale,~~
11 ~~lease, exchange, or other disposition of all, or substantially all, the property and assets, with or~~
12 ~~without the good will, of one or more subsidiaries in which the parent corporation owns shares~~
13 ~~possessing two thirds (2/3) or more of the total combined voting power of all classes of stock~~
14 ~~entitled at that time to vote for the election of directors shall be treated as a disposition of all, or~~
15 ~~substantially all, the property and assets of the parent corporation within the meaning of this~~
16 ~~section if the shares of the subsidiary or subsidiaries constitute all or substantially all the property~~
17 ~~and assets of the parent corporation.~~

18 ~~**7-1.1-73. Right of shareholders to dissent.**~~ (a) Any shareholder of a corporation has
19 the right to dissent from any of the following corporate actions:

20 ~~(1) Any plan of merger or consolidation to which the corporation is a party, unless the~~
21 ~~corporation is the surviving corporation in a merger and the approval of its stockholders was not~~
22 ~~required by virtue of the provisions of either section 7-1.1-67 or section 7-1.1-68.1; or~~

23 ~~(2) Any acquisition which requires the approval of the shareholders under section 7-1.1-~~
24 ~~70.1;~~

25 ~~(3) Any sale or exchange of all or substantially all of the property and assets of a~~
26 ~~corporation which requires the approval of the shareholders under section 7-1.1-72.~~

27 ~~(b) A shareholder may not dissent as to less than all of the shares registered in his or her~~
28 ~~name which are owned beneficially by him or her. A nominee or fiduciary may not dissent on~~
29 ~~behalf of any beneficial owner as to less than all of the shares of the owner registered in the name~~
30 ~~of the nominee or fiduciary.~~

31 ~~(c) Unless otherwise provided in the articles of incorporation of the issuing corporation,~~
32 ~~there is no right to dissent for the holders of the shares of any class or series of stock which, on~~
33 ~~the date fixed to determine the stockholders entitled to receive notice of the proposed transaction~~
34 ~~(or a copy of the agreement of merger under section 7-1.1-68.1), were:~~

1 ~~(1) Registered on a national securities exchange or included as national market securities~~
2 ~~in the national association of securities dealers automated quotations system or any successor~~
3 ~~national market system; or~~

4 ~~(2) Held of record by not less than two thousand (2,000) stockholders.~~

5 **7-1.1-74. Rights of dissenting shareholders.** ~~--- (a) Any shareholder electing to exercise~~
6 ~~the right of dissent shall file with the corporation, prior to or at the meeting of shareholders at~~
7 ~~which the proposed corporate action is submitted to a vote, a written objection to the proposed~~
8 ~~corporate action. If the proposed corporate action is approved by the required vote and the~~
9 ~~shareholder has not voted in favor of it, the shareholder may, within ten (10) days after the date~~
10 ~~on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders~~
11 ~~into another corporation, any of its shareholders may, within fifteen (15) days after the plan of the~~
12 ~~merger has been mailed to the shareholders, make written demand on the corporation, or, in the~~
13 ~~case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for~~
14 ~~payment of the fair value of the shareholder's shares. If the proposed corporate action is effected,~~
15 ~~the corporation shall pay to the shareholder, upon surrender of the certificate or certificates~~
16 ~~representing the shares, the fair value of the shares as of the day prior to the date on which the~~
17 ~~vote was taken approving the proposed corporate action, excluding any appreciation or~~
18 ~~depreciation in anticipation of the corporate action. Any shareholder failing to make demand~~
19 ~~within the ten (10) day period or the fifteen (15) day period, as the case may be, is bound by the~~
20 ~~terms of the proposed corporate action. Any shareholder making the demand is thereafter only~~
21 ~~entitled to payment as provided in this section and is not entitled to vote or to exercise any other~~
22 ~~rights of a shareholder.~~

23 ~~(b) No demand may be withdrawn unless the corporation consents to it. If, however, the~~
24 ~~demand is withdrawn upon consent, or if the proposed corporate action is abandoned or rescinded~~
25 ~~or the shareholders revoke the authority to effect the action, or if, in the case of a merger, on the~~
26 ~~date of the filing of the articles of merger the surviving corporation is the owner of all the~~
27 ~~outstanding shares of the other corporations, domestic and foreign, that are parties to the merger,~~
28 ~~or if no demand or petition for the determination of fair value by a court has been made or filed~~
29 ~~within the time provided in this section, or if a court of competent jurisdiction determines that the~~
30 ~~shareholder is not entitled to the relief provided by this section, then the right of the shareholder~~
31 ~~to be paid the fair value of his or her shares ceases and his or her status as a shareholder is~~
32 ~~restored, without prejudice to any corporate proceedings taken during the interim.~~

33 ~~(c) Within ten (10) days after the corporate action is effected, the corporation, or, in the~~
34 ~~case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall~~

1 ~~give written notice of the action to each dissenting shareholder who has made demand as~~
2 ~~provided in these provisions, and shall make a written offer to each shareholder to pay for the~~
3 ~~shares at a specified price deemed by the corporation to be the fair value of the shares. The notice~~
4 ~~and offer shall be accompanied by a balance sheet of the corporation the shares of which the~~
5 ~~dissenting shareholder holds, as of the latest available date and not more than twelve (12) months~~
6 ~~prior to the making of the offer, and a profit and loss statement of the corporation for the twelve~~
7 ~~(12) month period ended on the date of the balance sheet.~~

8 ~~(d) If within thirty (30) days after the date on which the corporate action was effected the~~
9 ~~fair value of the shares is agreed upon between any dissenting shareholder and the corporation,~~
10 ~~payment for the shares shall be made within ninety (90) days after the date on which the~~
11 ~~corporate action was effected, upon surrender of the certificate or certificates representing the~~
12 ~~shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest~~
13 ~~in the shares.~~

14 ~~(e) If within the period of thirty (30) days a dissenting shareholder and the corporation~~
15 ~~do not agree on the matter, then the corporation, within thirty (30) days after receipt of written~~
16 ~~request for the filing from any dissenting shareholder given within sixty (60) days after the date~~
17 ~~on which the corporate action was effected, shall, or at its election at any time within the period~~
18 ~~of sixty (60) days may, file a petition in any court of competent jurisdiction in the county in this~~
19 ~~state where the registered office of the corporation is located praying that the fair value of the~~
20 ~~shares is found and determined. If, in the case of a merger or consolidation, the surviving or new~~
21 ~~corporation is a foreign corporation without a registered office in this state, the petition shall be~~
22 ~~filed in the county where the registered office of the domestic corporation was last located. If the~~
23 ~~corporation fails to institute the proceeding as provided, any dissenting shareholder may do so in~~
24 ~~the name of the corporation. All dissenting shareholders, wherever they reside, shall be made~~
25 ~~parties to the proceeding as an action against their shares quasi in rem. A copy of the petition~~
26 ~~shall be served on each dissenting shareholder who is a resident of this state and shall be served~~
27 ~~by registered or certified mail on each dissenting shareholder who is a nonresident. Service on~~
28 ~~nonresidents shall also be made by publication as provided by law. The jurisdiction of the court is~~
29 ~~plenary and exclusive. All shareholders who are parties to the proceeding are entitled to judgment~~
30 ~~against the corporation for the amount of the fair value of their shares. The court may, if it so~~
31 ~~elects, appoint one or more persons as appraisers to receive evidence and recommend a decision~~
32 ~~on the question of fair value. The appraisers have the power and authority that is specified in the~~
33 ~~order of their appointment or an amendment of the order. The judgment is payable only upon and~~
34 ~~concurrently with the surrender to the corporation of the certificate or certificates representing the~~

1 ~~shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in~~
2 ~~the shares.~~

3 ~~-(f) The judgment shall include an allowance for interest at the rate of interest on~~
4 ~~judgments in civil actions from the date on which the vote was taken on the proposed corporate~~
5 ~~action to the date of payment.~~

6 ~~-(g) The costs and expenses of any proceeding shall be determined by the court and~~
7 ~~assessed against the corporation, but all or any part of the costs and expenses may be apportioned~~
8 ~~and assessed as the court deems equitable against any or all of the dissenting shareholders who~~
9 ~~are parties to the proceeding to whom the corporation has made an offer to pay for the shares if~~
10 ~~the court finds that the action of the shareholders in failing to accept the offer was arbitrary or~~
11 ~~vexatious or not in good faith. The expenses include reasonable compensation for and reasonable~~
12 ~~expenses of the appraisers, but exclude the fees and expenses of counsel for and experts~~
13 ~~employed by any party; but if the fair value of the shares as determined materially exceeds the~~
14 ~~amount which the corporation offered to pay for the shares, or if no offer was made, the court in~~
15 ~~its discretion may award to any shareholder who is a party to the proceeding a sum that the court~~
16 ~~determines to be reasonable compensation to any expert or experts employed by the shareholder~~
17 ~~in the proceeding.~~

18 ~~-(h) Within twenty (20) days after demanding payment for his or her shares, each~~
19 ~~shareholder demanding payment shall submit the certificate or certificates representing his or her~~
20 ~~shares to the corporation for notation on the certificate that the demand has been made. His or her~~
21 ~~failure to do so shall, at the option of the corporation, terminate his or her rights under this section~~
22 ~~unless a court of competent jurisdiction, for good and sufficient cause shown, directs otherwise. If~~
23 ~~shares represented by a certificate on which notation has been made are transferred, each new~~
24 ~~certificate issued for the shares shall bear similar notation, together with the name of the original~~
25 ~~dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in~~
26 ~~the corporation other than those which the original dissenting shareholder had after making~~
27 ~~demand for payment of the fair value of the shares.~~

28 ~~-(i) Shares acquired by a corporation pursuant to payment of the agreed value for the~~
29 ~~shares or to payment of the judgment entered for the shares, as provided in this section, may be~~
30 ~~held and disposed of by the corporation as in the case of other treasury shares. However, in the~~
31 ~~case of a merger or consolidation, they may be held and disposed of as the plan of merger or~~
32 ~~consolidation otherwise provides.~~

33 ~~**7-1.1-75. Voluntary dissolution by incorporators.** -- (a) A corporation which has not~~
34 ~~commenced business and which has not issued any shares, may be voluntarily dissolved by its~~

1 ~~incorporators at any time in the following manner:~~

2 ~~-(1) Articles of dissolution are executed in duplicate by a majority of the incorporators,~~
3 ~~and verified by them, and state:~~

4 ~~-(i) The name of the corporation.~~

5 ~~-(ii) The date of issuance of its certificate of incorporation.~~

6 ~~-(iii) That none of its shares has been issued.~~

7 ~~-(iv) That the corporation has not commenced business.~~

8 ~~-(v) That the amount, if any, actually paid in on subscriptions for its shares, less any part~~
9 ~~of the amount disbursed for necessary expenses, has been returned to those entitled to it.~~

10 ~~-(vi) That no debts of the corporation remain unpaid.~~

11 ~~-(vii) That a majority of the incorporators elect that the corporation be dissolved.~~

12 ~~-(2) Duplicate originals of the articles of dissolution are delivered to the secretary of state.~~

13 ~~If the secretary of state finds that the articles of dissolution conform to law, he or she shall, when~~
14 ~~all fees and franchise taxes have been paid:~~

15 ~~-(i) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
16 ~~year of the filing.~~

17 ~~-(ii) File one of the duplicate originals in his or her office.~~

18 ~~-(iii) Issue a certificate of dissolution to which he or she affixes the other duplicate~~
19 ~~original.~~

20 ~~-(b) The certificate of dissolution, together with the duplicate original of the articles of~~
21 ~~dissolution affixed to it by the secretary of state, is returned to the incorporators or their~~
22 ~~representative. Upon the issuance of the certificate of dissolution by the secretary of state, the~~
23 ~~existence of the corporation ceases.~~

24 ~~**7-1.1-76. Voluntary dissolution by consent of shareholders.** -- (a) A corporation may~~
25 ~~be voluntarily dissolved by the written consent of all of its shareholders.~~

26 ~~-(b) Upon the execution of the written consent, a statement of intent to dissolve is~~
27 ~~executed in duplicate by the corporation by its president or a vice president and by its secretary or~~
28 ~~an assistant secretary, and verified by one of the officers signing the statement. The statement~~
29 ~~proclaims:~~

30 ~~-(1) The name of the corporation.~~

31 ~~-(2) The names and respective addresses of its officers.~~

32 ~~-(3) The names and respective addresses of its directors.~~

33 ~~-(4) A copy of the written consent signed by all shareholders of the corporation.~~

34 ~~-(5) A statement that the written consent has been signed by all shareholders of the~~

1 corporation or signed in their names by their duly authorized attorneys.

2 ~~**7-1.1-77. Voluntary dissolution by act of corporation.**~~ --- A corporation may be
3 dissolved by the act of the corporation, when authorized in the following manner:

4 ~~(1) The board of directors adopts a resolution recommending that the corporation be~~
5 ~~dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of~~
6 ~~the shareholders, which may be either an annual or a special meeting.~~

7 ~~(2) Written notice is given to each shareholder of record entitled to vote at the meeting~~
8 ~~within the time and in the manner provided in this chapter for the giving of notice of meetings of~~
9 ~~shareholders, and, whether the meeting is an annual or special meeting, states that the purpose, or~~
10 ~~one of the purposes, of the meeting is to consider the advisability of dissolving the corporation.~~

11 ~~(3) At the meeting a vote of shareholders entitled to vote at the meeting is taken on a~~
12 ~~resolution to dissolve the corporation. The resolution is adopted upon receiving the affirmative~~
13 ~~vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution,~~
14 ~~unless any class of shares is entitled to vote on the resolution as a class, in which event approval~~
15 ~~of the resolution also requires the affirmative vote of the holders of a majority of the shares of~~
16 ~~each class of shares entitled to vote as a class and of the total shares entitled to vote on the~~
17 ~~resolution.~~

18 ~~(4) Upon the adoption of the resolution, a statement of intent to dissolve is executed in~~
19 ~~duplicate by the corporation by its president or a vice president and by its secretary or an assistant~~
20 ~~secretary, and verified by one of the officers signing the statement, which statement proclaims:~~

21 ~~(i) The name of the corporation.~~

22 ~~(ii) The names and respective addresses of its officers.~~

23 ~~(iii) The names and respective addresses of its directors.~~

24 ~~(iv) A copy of the resolution adopted by the shareholders authorizing the dissolution of~~
25 ~~the corporation.~~

26 ~~(v) The number of shares outstanding, and, if the shares of any class are entitled to vote~~
27 ~~as a class, the designation and number of outstanding shares of each class.~~

28 ~~(vi) The number of shares voted for and against the resolution, respectively, and, if the~~
29 ~~shares of any class are entitled to vote as a class, the number of shares of each class voted for and~~
30 ~~against the resolution, respectively.~~

31 ~~(vii) If, pursuant to section 7-1.1-79, the date when the corporation is to cease to carry on~~
32 ~~its business is to be subsequent to the date of the filing, the date when the corporation is to cease~~
33 ~~to carry on its business.~~

34 ~~**7-1.1-78. Filing of statement of intent to dissolve.**~~ --- Duplicate originals of the

1 ~~statement of intent to dissolve, whether by consent of shareholders or by act of the corporation,~~
2 ~~shall be delivered to the secretary of state. If the secretary of state finds that the statement~~
3 ~~conforms to law, he or she shall, when all fees and franchise taxes have been paid:~~

4 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
5 ~~year of the filing.~~

6 ~~(2) File one of the duplicate originals in his or her office.~~

7 ~~(3) Return the other duplicate original to the corporation or its representative.~~

8 ~~**7-1.1-79. Effect of statement of intent to dissolve.** --- Upon the filing by the secretary of~~
9 ~~state of a statement of intent to dissolve, whether by consent of shareholders or by act of the~~
10 ~~corporation or upon the later date, not more than thirty (30) days after the filing, as is proclaimed~~
11 ~~in the statement, the corporation ceases to carry on its business, except insofar as may be~~
12 ~~necessary for the winding up, but its corporate existence continues until a certificate of~~
13 ~~dissolution has been issued by the secretary of state or until a decree dissolving the corporation~~
14 ~~has been entered by a court of competent jurisdiction as provided in this chapter.~~

15 ~~**7-1.1-80. Procedure after filing of statement of intent to dissolve.** --- After the filing by~~
16 ~~the secretary of state of a statement of intent to dissolve:~~

17 ~~(1) The corporation immediately mails notice of the filing to each known creditor of the~~
18 ~~corporation.~~

19 ~~(2) The corporation shall process to collect its assets, sell or otherwise dispose of those~~
20 ~~of its properties that are not to be distributed in kind to its shareholders, pay, satisfy, and~~
21 ~~discharge its liabilities and obligations and do all other acts required to liquidate its business and~~
22 ~~affairs. After paying or adequately providing for the payment of all its obligations, the~~
23 ~~corporation distributes the remainder of its assets, either in cash or in kind, among its~~
24 ~~shareholders according to their respective rights and interests.~~

25 ~~(3) The corporation, at any time during the liquidation of its business and affairs, may~~
26 ~~apply to a court of competent jurisdiction within the state and county in which the registered~~
27 ~~office or principal place of business of the corporation is situated, to have the liquidation~~
28 ~~continued under the supervision of the court as provided in this chapter.~~

29 ~~**7-1.1-81. Revocation of voluntary dissolution proceedings by consent of**~~
30 ~~**shareholders.** --- (a) By the written consent of all of its shareholders, a corporation may, at any~~
31 ~~time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary~~
32 ~~dissolution proceedings previously taken, in the following manner:~~

33 ~~(b) Upon the execution of the written consent, a statement of revocation of voluntary~~
34 ~~dissolution proceedings is executed in duplicate by the corporation by its president or a vice~~

1 ~~president and by its secretary or an assistant secretary, and verified by one of the officers signing~~
2 ~~the statement. The statement proclaims:~~

3 ~~(1) The name of the corporation.~~

4 ~~(2) The names and respective addresses of its officers.~~

5 ~~(3) The names and respective addresses of its directors.~~

6 ~~(4) A copy of the written consent signed by all shareholders of the corporation revoking~~
7 ~~the voluntary dissolution proceedings.~~

8 ~~(5) That the written consent has been signed by all shareholders of the corporation or~~
9 ~~signed in their names by their authorized attorneys.~~

10 ~~**7-1.1-82. Revocation of voluntary dissolution proceedings by act of corporation.**~~

11 ~~By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate~~
12 ~~of dissolution by the secretary of state, revoke voluntary dissolution proceedings previously~~
13 ~~taken, in the following manner:~~

14 ~~(1) The board of directors adopts a resolution recommending that the voluntary~~
15 ~~dissolution proceedings be revoked, and directing that the question of the revocation be submitted~~
16 ~~to a vote at a special meeting of shareholders.~~

17 ~~(2) Written notice, stating that the purpose, or one of the purposes, of the meeting is to~~
18 ~~consider the advisability of revoking the voluntary dissolution proceedings, is given to each~~
19 ~~shareholder of record entitled to vote at the meeting within the time and in the manner provided~~
20 ~~in this chapter for the giving of notice of special meetings of shareholders.~~

21 ~~(3) At the meeting, a vote of the shareholders entitled to vote at the meeting is taken on a~~
22 ~~resolution to revoke the voluntary dissolution proceedings, which requires for its adoption the~~
23 ~~affirmative vote of the holders of a majority of the shares entitled to vote on the resolution.~~

24 ~~(4) Upon the adoption of the resolution, a statement of revocation of voluntary~~
25 ~~dissolution proceedings is executed in duplicate by the corporation by its president or a vice~~
26 ~~president and by its secretary or an assistant secretary, and verified by one of the officers signing~~
27 ~~the statement. The statement proclaims:~~

28 ~~(i) The name of the corporation.~~

29 ~~(ii) The names and respective addresses of its officers.~~

30 ~~(iii) The names and respective addresses of its directors.~~

31 ~~(iv) A copy of the resolution adopted by the shareholders revoking the voluntary~~
32 ~~dissolution proceedings.~~

33 ~~(v) The number of shares outstanding.~~

34 ~~(vi) The number of shares voted for and against the resolution, respectively.~~

1 ~~**7-1.1-83. Filing of statement of revocation of voluntary dissolution proceedings.**~~

2 Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether
3 by consent of shareholders or by act of the corporation, are delivered to the secretary of state. If
4 the secretary of state finds that the statement conforms to law, he or she shall, when all fees and
5 franchise taxes have been paid:

6 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
7 ~~year of the filing.~~

8 ~~(2) File one of the duplicate originals in his or her office.~~

9 ~~(3) Return the other duplicate original to the corporation or its representative.~~

10 ~~**7-1.1-84. Effect of statement of revocation of voluntary dissolution proceedings.**~~

11 Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution
12 proceedings, whether by consent of shareholders or by act of the corporation, the revocation of
13 the voluntary dissolution proceedings becomes effective and the corporation may again carry on
14 its business.

15 ~~**7-1.1-85. Articles of dissolution.**~~ If voluntary dissolution proceedings have not been

16 revoked, then when all debts, liabilities, and obligations of the corporation have been paid and
17 discharged, or adequate provision has been made for them, and all of the remaining property and
18 assets of the corporation have been distributed to its shareholders, articles of dissolution shall be
19 executed in duplicate by the corporation by its president or a vice president and by its secretary or
20 an assistant secretary, and verified by one of the officers signing the statement. The statement
21 proclaims:

22 ~~(1) The name of the corporation.~~

23 ~~(2) That the secretary of state has previously filed a statement of intent to dissolve the~~
24 ~~corporation, and the date on which the statement was filed.~~

25 ~~(3) That all debts, obligations, and liabilities of the corporation have been paid and~~
26 ~~discharged or that adequate provision has been made for the payment.~~

27 ~~(4) That all the remaining property and assets of the corporation have been distributed~~
28 ~~among its shareholders in accordance with their respective rights and interests.~~

29 ~~(5) That there are not suits pending against the corporation in any court, or that adequate~~
30 ~~provision has been made for the satisfaction of any judgment, order, or decree which may be~~
31 ~~entered against it in any pending suit.~~

32 ~~**7-1.1-86. Filing of articles of dissolution.**~~ (a) Duplicate originals of the articles of

33 dissolution are delivered to the secretary of state. If the secretary of state finds that the articles of
34 dissolution conform to law, he or she shall, when all fees and franchise taxes have been paid:

1 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
2 ~~year of the filing.~~

3 ~~(2) File one of the duplicate originals in his or her office.~~

4 ~~(3) Issue a certificate of dissolution to which he or she shall affixes the other duplicate~~
5 ~~original.~~

6 ~~(b) The certificate of dissolution, together with the duplicate original of the articles of~~
7 ~~dissolution affixed to it by the secretary of state, are returned to the representative of the~~
8 ~~dissolved corporation. Upon the issuance of the certificate of dissolution the existence of the~~
9 ~~corporation ceases, except for the purpose of suits, other proceedings, and appropriate corporate~~
10 ~~action by shareholders, directors, and officers as provided in this chapter.~~

11 ~~**7-1.1-87. Revocation of certificate of incorporation.**~~ (a) ~~The certificate of~~
12 ~~incorporation of a corporation may be revoked by the secretary of state upon the conditions~~
13 ~~prescribed in this section when it is established that:~~

14 ~~(1) The corporation procured its articles of incorporation through fraud; or~~

15 ~~(2) The corporation has continued to exceed or abuse the authority conferred upon it by~~
16 ~~law; or~~

17 ~~(3) The corporation has failed to file its annual report within the time required by this~~
18 ~~chapter, or has failed to pay any fees, when they have become due and payable; or~~

19 ~~(4) The corporation has failed for thirty (30) days to appoint and maintain a registered~~
20 ~~agent in this state as required by this chapter; or~~

21 ~~(5) The corporation has failed, after change of its registered office or registered agent, to~~
22 ~~file in the office of the secretary of state a statement of the change as required by this chapter; or~~

23 ~~(6) The corporation has failed to file in the office of the secretary of state any~~
24 ~~amendment to its articles of incorporation or any articles of merger within the time prescribed by~~
25 ~~this chapter; or~~

26 ~~(7) A misrepresentation has been made of any material matter in any application, report,~~
27 ~~affidavit, or other document submitted by the corporation pursuant to this chapter.~~

28 ~~(b) No certificate of incorporation of a corporation shall be revoked by the secretary of~~
29 ~~state unless:~~

30 ~~(1) The secretary of state shall have given the corporation not less than sixty (60) days~~
31 ~~notice thereof by regular mail addressed to the registered office of the corporation in this state on~~
32 ~~file with the secretary of state's office; provided, however, that if a prior mailing addressed to the~~
33 ~~registered office of the corporation in this state currently on file with the secretary of state's office~~
34 ~~has been returned to the secretary of state as undeliverable by the United States Postal Service for~~

1 ~~any reason, or if the revocation notice is returned as undeliverable to the secretary of state's office~~
2 ~~by the United States Postal Service for any reason, the secretary of state shall give notice as~~
3 ~~follows:~~

4 ~~(i) To the corporation at its principal office of record as shown in its most recent annual~~
5 ~~report, and no further notice shall be required; or~~

6 ~~(ii) In the case of a domestic corporation which has not yet filed an annual report, then to~~
7 ~~any one of the incorporators listed on the articles of incorporation, and no further notice shall be~~
8 ~~required; and~~

9 ~~(2) The corporation fails prior to revocation to file the annual report or pay the fees, or~~
10 ~~file the required statement of change of registered agent or registered office, or file the articles of~~
11 ~~amendment or articles of merger, or correct the misrepresentation.~~

12 ~~**7-1.1-88. Issuance of certificates of revocation.**~~ (a) ~~Upon revoking any certificate of~~
13 ~~incorporation, the secretary of state shall:~~

14 ~~(1) Issue a certificate of revocation in duplicate;~~

15 ~~(2) File one certificate in his or her office; and~~

16 ~~(3) Send to the corporation by regular mail a certificate of revocation, addressed to the~~
17 ~~registered office of the corporation in this state on file with the secretary of state's office;~~
18 ~~provided, however, that if a prior mailing addressed to the registered office of the corporation in~~
19 ~~this state currently on file with the secretary of state's office has been returned to the secretary of~~
20 ~~state as undeliverable by the United States Postal Service for any reason, or if the revocation~~
21 ~~certificate is returned as undeliverable to the secretary of state's office by the United States Postal~~
22 ~~Service for any reason, the secretary of state shall give notice as follows:~~

23 ~~(i) To the corporation at its principal office of record as shown in its most recent annual~~
24 ~~report, and no further notice shall be required; or~~

25 ~~(ii) In the case of a domestic corporation which has not yet filed an annual report, then to~~
26 ~~any one of the incorporators listed on the articles of incorporation, and no further notice shall be~~
27 ~~required.~~

28 ~~(b) Upon the issuance of the certificate of revocation, the authority of the corporation to~~
29 ~~transact business in this state ceases.~~

30 ~~**7-1.1-88.1. Withdrawal of certificate of revocation.**~~ (a) ~~Within ten (10) years after~~
31 ~~issuing a certificate of revocation as provided in section 7-1.1-88, the secretary of state may~~
32 ~~withdraw the certificate of revocation and retroactively reinstate the corporation in good standing~~
33 ~~as if its certificate of incorporation had not been revoked, except as subsequently provided:~~

34 ~~(1) Upon the filing by the corporation of the documents it had previously failed to file as~~

1 ~~set forth in subdivisions (3) through (6) inclusive, of section 7-1.1-87(a);~~

2 ~~-(2) Upon the payment by the corporation of a penalty in the amount of fifty dollars~~
3 ~~(\$50.00) for each year or part of a year that has elapsed since the issuance of the certificate of~~
4 ~~revocation; and~~

5 ~~-(3) Upon the filing by the corporation of a certificate of good standing from the Rhode~~
6 ~~Island division of taxation.~~

7 ~~-(b) If, as permitted by the provisions of this title, another corporation, whether business~~
8 ~~or nonprofit limited partnership or limited liability company, or domestic or foreign, qualified to~~
9 ~~transact business in this state, bears or has filed a fictitious business name statement with respect~~
10 ~~to or reserved or registered a name which is the same as, or deceptively similar to, the name of a~~
11 ~~corporation with respect to which the certificate of revocation is proposed to be withdrawn, then~~
12 ~~the secretary of state shall condition the withdrawal of the certificate of revocation upon the~~
13 ~~reinstated corporation's amending its articles of incorporation or otherwise complying with the~~
14 ~~provisions of this chapter with respect to the use of a name available to it under the laws of this~~
15 ~~state so as to designate a name which is not the same as, or deceptively similar to, its former~~
16 ~~name.~~

17 ~~-(c) Upon the withdrawal of the certificate of revocation and reinstatement of the~~
18 ~~corporation in good standing as provided in subsection (a), title to any real estate, or any interest~~
19 ~~in real estate, held by the corporation at the time of the issuance of the certificate of revocation~~
20 ~~and not conveyed subsequent to the revocation of its certificate of incorporation shall be deemed~~
21 ~~to be revested in the corporation without further act or deed.~~

22 ~~**7-1.1-89. Appeal from revocation of articles of incorporation.** -- Any corporation~~
23 ~~aggrieved by the action of the secretary of state in revoking its articles of incorporation may~~
24 ~~appeal the action in the manner provided in section 7-1.1-133.~~

25 ~~**7-1.1-90. Jurisdiction of court to liquidate assets and business of corporation.** -- (a)~~
26 ~~The superior court has full power to liquidate the assets and business of a corporation:~~

27 ~~-(1) In an action by a shareholder when it is established that, whether or not the corporate~~
28 ~~business has been or could be operated at a profit, dissolution would be beneficial to the~~
29 ~~shareholders because:~~

30 ~~-(i) The directors or those other persons that may be responsible for management pursuant~~
31 ~~to section 7-1.1-51(a) are deadlocked in the management of the corporate affairs and the~~
32 ~~shareholders are unable to break the deadlock; or~~

33 ~~-(ii) The acts of the directors or those in control of the corporation are illegal, oppressive,~~
34 ~~or fraudulent; or~~

1 ~~-(iii) The shareholders are deadlocked in voting power, and have failed, for a period~~
2 ~~which includes at least two (2) consecutive annual meeting dates, to elect successors to directors~~
3 ~~whose terms have expired or would have expired upon the election of their successors; or~~

4 ~~-(iv) The corporate assets are being misapplied or are in danger of being wasted or lost; or~~

5 ~~-(v) Two (2) or more factions of shareholders are divided and there is such internal~~
6 ~~dissension that serious harm to the business and affairs of the corporation is threatened; or~~

7 ~~-(vi) The holders of one half (1/2) or more of all the outstanding capital stock of the~~
8 ~~corporation have voted to dissolve the corporation;~~

9 ~~-(2) (i) In an action by a creditor:~~

10 ~~-(A) When it is established that the corporation is insolvent; or~~

11 ~~-(B) When it is established that the corporate assets are being misapplied or are in danger~~
12 ~~of being wasted or lost.~~

13 ~~-(ii) If it is established that the claim of a creditor has been reduced to judgment and an~~
14 ~~execution on the judgment returned unsatisfied or that a corporation has admitted, in writing, that~~
15 ~~the claim of a creditor is due and owing, the establishment of the facts are prima facie evidence of~~
16 ~~insolvency.~~

17 ~~-(iii) Every petition filed by a creditor for the liquidation of the assets and business of a~~
18 ~~corporation shall contain a statement as to whether the creditor is or is not an officer, director, or~~
19 ~~shareholder of the corporation. Every petition for the liquidation of the assets and business of a~~
20 ~~corporation filed by an officer, director, or shareholder of a corporation or by a creditor who is an~~
21 ~~officer, director or shareholder, shall contain, to the best of petitioner's knowledge, information,~~
22 ~~and belief, the names and addresses of all known creditors of any class of the corporation.~~

23 ~~-(3) Upon application by a corporation which has filed a statement of intent to dissolve,~~
24 ~~as provided in this chapter, to have its liquidation continued under the supervision of the court.~~
25 ~~The application shall contain, to the best of petitioner's knowledge, information, and belief, the~~
26 ~~names and addresses of all known creditors of any class of the corporation.~~

27 ~~-(4) When an action has been filed by the attorney general to dissolve a corporation and it~~
28 ~~is established that liquidation of its business and affairs should precede the entry of a decree of~~
29 ~~dissolution.~~

30 ~~-(b) Proceedings under subsections (a)(1), (a)(2), or (a)(3) shall be brought in the county~~
31 ~~in which the registered or principal office of the corporation is situated.~~

32 ~~-(e) It is not necessary to make shareholders parties to any action or proceeding unless~~
33 ~~relief is sought against them personally.~~

34 ~~**7-1.1-90.1. Avoidance of dissolution by stock buyout.** --- Whenever a petition for~~

1 ~~dissolution of a corporation is filed by one or more shareholders (subsequently in this section~~
2 ~~referred to as the "petitioner") pursuant to either section 7-1.1-90 or a right to compel dissolution~~
3 ~~which is authorized under section 7-1.1-51 or is otherwise valid, one or more of its other~~
4 ~~shareholders may avoid the dissolution by filing with the court prior to the commencement of the~~
5 ~~hearing, or, in the discretion of the court, at any time prior to a sale or other disposition of the~~
6 ~~assets of the corporation, an election to purchase the shares owned by the petitioner at a price~~
7 ~~equal to their fair value. If the shares are to be purchased by other shareholders, notice shall be~~
8 ~~sent to all shareholders of the corporation other than the petitioner, giving them an opportunity to~~
9 ~~join in the election to purchase the shares. If the parties are unable to reach an agreement as to the~~
10 ~~fair value of the shares, the court shall, upon the giving of a bond or other security sufficient to~~
11 ~~assure to the petitioner payment of the value of the shares, stay the proceeding and determine the~~
12 ~~value of the shares, in accordance with the procedure set forth in section 7-1.1-74, as of the close~~
13 ~~of business on the day on which the petition for dissolution was filed. Upon determining the fair~~
14 ~~value of the stock, the court shall state in its order directing that the stock be purchased, the~~
15 ~~purchase price and the time within which the payment is to be made, and may decree any other~~
16 ~~terms and conditions of sale that it determines to be appropriate, including payment of the~~
17 ~~purchase price in installments extending over a period of time, and, if the shares are to be~~
18 ~~purchased by shareholders, the allocation of shares among shareholders electing to purchase~~
19 ~~them, which, so far as practicable, are to be proportional to the number of shares previously~~
20 ~~owned. The petitioner is entitled to interest, at the rate on judgments in civil actions, on the~~
21 ~~purchase price of the shares from the date of the filing of the election to purchase the shares, and~~
22 ~~all other rights of the petitioner as owner of the shares terminate on that date. The costs of the~~
23 ~~proceeding, which include reasonable compensation and expenses of appraisers but not fees and~~
24 ~~expenses of counsel or of experts retained by a party, shall be allocated between or among the~~
25 ~~parties as the court determines. Upon full payment of the purchase price, under the terms and~~
26 ~~conditions specified by the court, or at any other time that is ordered by the court, the petitioner~~
27 ~~shall transfer the shares to the purchaser.~~

28 **7-1.1-91. Procedure in liquidation of corporation by court.** — (a) In proceedings to
29 liquidate the assets and business of a corporation the court has general equity jurisdiction and
30 power to issue any orders, injunctions, and decrees that justice and equity require, to appoint a
31 receiver or receivers pendente lite, with any powers and duties that the court, from time to time,
32 directs, and to take any other proceedings that are requisite to preserve the corporate assets
33 wherever situated, and carry on the business of the corporation until a full hearing can be had.

34 (b) After a hearing had upon any notice that the court directs to be given to all parties to

1 ~~the proceedings and to any other parties in interest designated by the court, the court may appoint~~
2 ~~a liquidating receiver or receivers with authority to take charge of any of the corporation's estate~~
3 ~~and effects of which he or she has been appointed receiver and to collect the assets of the~~
4 ~~corporation, including all amounts owing to the corporation whether by shareholders on account~~
5 ~~of any unpaid portion of the consideration for the issuance of shares or otherwise.~~

6 ~~(c) The hearing date for the appointment of a permanent receiver is not to be more than~~
7 ~~twenty one (21) days after commencement of the action, unless the hearing date is extended by~~
8 ~~the court for good cause shown.~~

9 ~~(d) The liquidating receiver or receivers has authority subject to court order, to sue and~~
10 ~~defend in all courts in his or her own name as receiver of the corporation, or in its name, to~~
11 ~~intervene in any action or proceeding relating to its assets or business, to compromise any dispute~~
12 ~~or controversy, to preserve the assets of the corporation, to carry on its business, to sell, convey,~~
13 ~~and dispose of all or any part of the assets of the corporation wherever situated, either at public or~~
14 ~~private sale, to redeem any mortgages, security interests, pledges, or liens of or upon any of its~~
15 ~~assets, and generally to do all other acts which might be done by the corporation or that is~~
16 ~~necessary for the administration of his or her trust according to the course of equity. The assets of~~
17 ~~the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the~~
18 ~~assets shall be applied to the expenses of the liquidation and to the payment of the liabilities and~~
19 ~~obligations of the corporation, and any remaining assets or proceeds shall be distributed under the~~
20 ~~direction of the court among its shareholders according to their respective rights and interests.~~
21 ~~The order appointing the receiver or receivers shall state their powers and duties. The powers and~~
22 ~~duties may be increased or diminished at any time during the proceeding.~~

23 ~~(e) The court has power to allow from time to time as expenses of the liquidation~~
24 ~~compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the~~
25 ~~payment of the compensation out of the assets of the corporation or the proceeds of any sale or~~
26 ~~disposition of the assets.~~

27 ~~(f) The court appointing the receiver has exclusive jurisdiction of the corporation and its~~
28 ~~property, wherever situated, and of all questions arising in the proceedings concerning the~~
29 ~~property.~~

30 ~~**7-1.1-92. Bond of receivers.** -- A receiver shall in all cases give any bond that the court~~
31 ~~directs with any sureties that the court requires.~~

32 ~~**7-1.1-93. Filing of claims in liquidation proceedings.** -- In proceedings to liquidate the~~
33 ~~assets and business of a corporation, the court may require all creditors of the corporation to file~~
34 ~~with the receiver, in any form that the court prescribes, proofs under oath of their respective~~

1 claims. If the court requires the filing of claims it shall fix a date, which is not to be less than four
2 (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe
3 the notice that is to be given to creditors and claimants of the fixed date. Prior to the fixed date,
4 the court may extend the time for the filing of claims. Creditors and claimants failing to file
5 proofs of claim on or before the fixed date may be barred, by court order, from participating in
6 the distribution of the assets of the corporation.

7 **7-1.1-94. Discontinuance of liquidation proceedings.** -- The liquidation of the assets
8 and business of a corporation may be discontinued at any time during the liquidation proceedings
9 when it is established that cause for liquidation no longer exists. In that event the court shall
10 dismiss the proceedings, direct the receiver to redeliver to the corporation all its remaining
11 property and assets, and order any notice to creditors that the court deems proper under the
12 circumstances.

13 **7-1.1-95. Decree of involuntary dissolution.** -- In proceedings to liquidate the assets and
14 business of a corporation, when the costs and expenses of the proceedings and all debts,
15 obligations, and liabilities of the corporation have been paid and discharged and all of its
16 remaining property and assets distributed to its shareholders, or in case its property and assets are
17 not sufficient to satisfy and discharge the costs, expenses, debts, and obligations, all the property
18 and assets have been applied as far as they will go to their payment, the court shall enter a decree
19 dissolving the corporation, at which time the existence of the corporation ceases.

20 **7-1.1-96. Filing of decree of dissolution.** -- In case the court enters a decree dissolving a
21 corporation, it is the duty of the clerk of the court to file a certified copy of the decree with the
22 secretary of state. No fee shall be charged by the secretary of state for that filing.

23 **7-1.1-97. Deposit with state treasury of amount due certain shareholders.** -- Upon the
24 voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a
25 creditor or shareholder who is unknown or cannot be found, or who is under disability and there
26 is no person legally competent to receive the distributive portion, shall be reduced to cash and
27 deposited with the general treasury and paid over to the creditor or shareholder or to his or her
28 legal representative upon satisfactory proof to the general treasury of his or her right to the
29 payment.

30 **7-1.1-97.1. Jurisdiction of court to appoint a receiver.** -- Upon the establishment of
31 any of the grounds for liquidation of the assets and business of (1) a domestic corporation or (2) a
32 foreign corporation, to the extent the foreign corporation has assets within the state, stated in
33 section 7-1.1-90, and upon the establishment that the liquidation would not be appropriate, the
34 superior court has full power to appoint a receiver, with any powers and duties that the court,

1 ~~from time to time, directs, and to take any other proceedings that the court deems advisable under~~
2 ~~the circumstances. The provisions of sections 7-1.1-90—7-1.1-97, insofar as they are consistent~~
3 ~~with the nature of the proceeding, apply to the proceeding, and in the proceeding the court has the~~
4 ~~full powers of a court of equity to make or enter any orders, injunctions, and decrees and grant~~
5 ~~any other relief in the proceeding that justice and equity require.~~

6 ~~**7-1.1-98. Survival of remedy after dissolution.**— The dissolution of a corporation~~
7 ~~either:~~

8 ~~(1) by the issuance of a certificate of dissolution by the secretary of state; or~~

9 ~~(2) by a decree of court when the court has not liquidated the assets and business of the~~
10 ~~corporation as provided in this chapter; or~~

11 ~~(3) by expiration of its period of duration, shall not take away or impair any remedy~~
12 ~~available to or against the corporation, its directors, officers, or shareholders, for any right or~~
13 ~~claim existing, or any liability incurred, prior to the dissolution if action or other proceeding on~~
14 ~~the right, claim, or liability is commenced within two (2) years after the date of the dissolution.~~

15 ~~Any action or proceeding by or against the corporation may be prosecuted or defended by the~~
16 ~~corporation in its corporate name. The shareholders, directors, and officers have power to take~~
17 ~~any corporate or other action that is appropriate to protect the remedy, right, or claim. If the~~
18 ~~corporation was dissolved by the expiration of its period of duration, the corporation may amend~~
19 ~~its articles of incorporation at any time during the period of two (2) years so as to extend its~~
20 ~~period of duration.~~

21 ~~**7-1.1-98.1. Continuation of certain corporate powers.**— Any corporation dissolved in~~
22 ~~any manner under this chapter or any corporation whose existence is terminated under section 44-~~
23 ~~12-8 or any corporation whose certificate of incorporation is revoked by the secretary of state~~
24 ~~under section 7-1.1-87 nevertheless continues for five (5) years after the date of the dissolution,~~
25 ~~termination, or revocation for the purpose of enabling it to settle and close its affairs, to dispose~~
26 ~~of and convey its property, to discharge its liabilities, and to distribute its assets, but not for the~~
27 ~~purpose of continuing the business for which it was organized. The shareholders, directors, and~~
28 ~~officers have power to take any corporate or other action that is appropriate to carry out the~~
29 ~~purposes of this section.~~

30 ~~**7-1.1-99. Admission of foreign corporation.**— (a) No foreign corporation has the right~~
31 ~~to transact business in this state until it has procured a certificate of authority to do so from the~~
32 ~~secretary of state. No foreign corporation is entitled to procure a certificate of authority under this~~
33 ~~chapter to transact any business in this state which a corporation organized under this chapter is~~
34 ~~not permitted to transact. A foreign corporation shall not be denied a certificate of authority~~

1 ~~because the laws of the state or country under which the corporation is organized governing its~~
2 ~~organization and internal affairs differ from the laws of this state, and nothing contained in this~~
3 ~~chapter shall be construed to authorize this state to regulate the organization or the internal affairs~~
4 ~~of the corporation.~~

5 ~~-(b) Without excluding other activities which may not constitute transacting business in~~
6 ~~this state, a foreign corporation is not considered to be transacting business in this state, for the~~
7 ~~purposes of this chapter, because of carrying on in this state any one or more of the following~~
8 ~~activities:~~

9 ~~-(1) Maintaining or defending any action or suit or any administrative or arbitration~~
10 ~~proceeding, or effecting the settlement of the suit or the settlement of claims or disputes.~~

11 ~~-(2) Holding meetings of its directors or shareholders or carrying on other activities~~
12 ~~concerning its internal affairs.~~

13 ~~-(3) Maintaining bank accounts.~~

14 ~~-(4) Maintaining offices or agencies for the transfer, exchange, and registration of its~~
15 ~~securities, or appointing and maintaining trustees or depositaries with relation to its securities.~~

16 ~~-(5) Effecting sales through independent contractors.~~

17 ~~-(6) Soliciting or procuring orders, whether by mail or through employees or agents or~~
18 ~~otherwise, where the orders require acceptance outside of this state before becoming binding~~
19 ~~contracts.~~

20 ~~-(7) Creating as borrower or lender, or acquiring indebtedness or mortgages or other~~
21 ~~security interests in real or personal property.~~

22 ~~-(8) Securing or collecting debts or enforcing any rights in property securing the debts.~~

23 ~~-(9) Transacting any business in interstate commerce.~~

24 ~~-(10) Conducting an isolated transaction completed within a period of thirty (30) days and~~
25 ~~not in the course of a number of repeated transactions of like nature.~~

26 ~~-(11) Acting as a general partner of a limited partnership which has filed a certificate of~~
27 ~~limited partnership as provided in section 7-13-8 or has registered with the secretary of state as~~
28 ~~provided in section 7-13-49.~~

29 ~~**7-1.1-99.1. Admission of foreign business trusts.** -- Any Massachusetts trust or business~~
30 ~~trust established by law of any other state, desiring to do business in this state, is deemed to be a~~
31 ~~foreign corporation and is required to register under, and comply with the provisions of, this~~
32 ~~chapter.~~

33 ~~**7-1.1-100. Powers of foreign corporation.** -- A foreign corporation which has received a~~
34 ~~certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal~~

1 ~~has been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges~~
2 ~~as a domestic corporation organized for the purposes stated in the application pursuant to which~~
3 ~~the certificate of authority is issued; and, except as otherwise provided in this chapter, is subject~~
4 ~~to the same duties, restrictions, penalties, and liabilities now or subsequently imposed upon a~~
5 ~~domestic corporation of like character.~~

6 ~~**7-1.1-101. Corporate name of foreign corporation.** --- No certificate of authority shall~~
7 ~~be issued to a foreign corporation unless the corporate name of the corporation:~~

8 ~~(1) Contains the word "corporation," "company," "incorporated," or "limited," or~~
9 ~~contains an abbreviation of one of the words, or the corporation, for use in this state, adds at the~~
10 ~~end of its name one of the words or an abbreviation of the word.~~

11 ~~(2) Does not contain any word or phrase which indicates or implies that it is organized~~
12 ~~for any purpose other than one or more of the purposes contained in its articles of incorporation~~
13 ~~or that it is authorized or empowered to conduct the business of any types prohibited by section 7-~~
14 ~~1.1-3.~~

15 ~~(3) Is not the same as, or deceptively similar to, the name of any domestic corporation,~~
16 ~~limited partnership or limited liability company existing under the laws of this state or any~~
17 ~~foreign corporation, limited partnership or limited liability company authorized to transact~~
18 ~~business in this state, or a name the exclusive right to which is, at the time, filed, reserved or~~
19 ~~registered in the manner provided in this title, subject to the following:~~

20 ~~(i) This provision does not apply if the foreign corporation applying for a certificate of~~
21 ~~authority files with the secretary of state any one of the following:~~

22 ~~(A) A fictitious business name statement pursuant to section 7-1.1-7.1; or~~

23 ~~(B) The written consent of the other corporation or holder of a filed, reserved or~~
24 ~~registered name to use that name or a deceptively similar name and one or more words are added~~
25 ~~to make the name distinguishable from the other name; or~~

26 ~~(C) A certified copy of a final decree of a court of competent jurisdiction establishing the~~
27 ~~prior right of the foreign corporation to the use of the name in this state; and~~

28 ~~(ii) The name may be the same as, or deceptively similar to, the name of a corporation or~~
29 ~~other association, the certificate of incorporation or organization of which has been revoked by~~
30 ~~the secretary of state as permitted by law.~~

31 ~~**7-1.1-102. Change of name by foreign corporation.** --- Whenever a foreign corporation~~
32 ~~which is authorized to transact business in this state changes its name to one under which a~~
33 ~~certificate of authority would not be granted to it on application, the certificate of authority of the~~
34 ~~corporation is suspended and it shall not subsequently transact any business in this state until it~~

1 ~~has changed its name to a name which is available to it under the laws of this state or has~~
2 ~~otherwise complied with the provisions of this chapter.~~

3 ~~**7-1.1-103. Application for certificate of authority.** --- (a) A foreign corporation, in order~~
4 ~~to procure a certificate of authority to transact business in this state, shall make application for the~~
5 ~~certificate of authority to the secretary of state, which application shall state:~~

6 ~~(1) The name of the corporation and the state or country under the laws of which it is~~
7 ~~incorporated.~~

8 ~~(2) If the name of the corporation does not contain the word "corporation," "company,"~~
9 ~~"incorporated," or "limited," or does not contain an abbreviation of one of those words, then the~~
10 ~~name of the corporation with the word or abbreviation which it elects to add for use in this state.~~

11 ~~(3) The date of incorporation and the period of duration of the corporation.~~

12 ~~(4) The address of the principal office of the corporation in the state or country under the~~
13 ~~laws of which it is incorporated.~~

14 ~~(5) The address of the proposed registered office of the corporation in this state, and the~~
15 ~~name of its proposed registered agent in this state at the address.~~

16 ~~(6) The purpose or purposes of the corporation which it proposes to pursue in the~~
17 ~~transaction of business in this state.~~

18 ~~(7) The names and respective addresses of the directors and officers of the corporation.~~

19 ~~(8) A statement of the aggregate number of shares which the corporation has authority to~~
20 ~~issue, itemized by classes, par value of shares, shares without par value, and series, if any, within~~
21 ~~a class.~~

22 ~~(9) A statement of the aggregate number of issued shares itemized by classes, par value~~
23 ~~of shares, shares without par value, and series, if any, within a class.~~

24 ~~(10) An estimate, expressed as a percentage, of the proportion that the estimated value of~~
25 ~~the property of the corporation to be located within this state during the following year bears to~~
26 ~~the value of all property of the corporation to be owned during the following year, wherever~~
27 ~~located, and an estimate, expressed as a percentage, of the proportion that the gross amount of~~
28 ~~business to be transacted by the corporation at or from places of business in this state during the~~
29 ~~year bears to the gross amount which will be transacted by the corporation during the year.~~

30 ~~(11) Any additional information that is necessary or appropriate in order to enable the~~
31 ~~secretary of state to determine whether the corporation is entitled to a certificate of authority to~~
32 ~~transact business in this state and to determine and assess the fees payable as prescribed in this~~
33 ~~chapter.~~

34 ~~(b) The application shall be made on forms prescribed and furnished by the secretary of~~

1 ~~state and executed in duplicate by the corporation by its president or a vice president and by its~~
2 ~~secretary or an assistant secretary, and verified by one of the officers signing the application.~~

3 ~~**7-1.1-104. Filing of application for certificate of authority.** --- (a) Duplicate originals of~~
4 ~~the application of the corporation for a certificate of authority shall be delivered to the secretary~~
5 ~~of state, together with a copy of its articles of incorporation and all amendments to the articles,~~
6 ~~duly authenticated by the proper officer of the state or country under the laws of which it is~~
7 ~~incorporated.~~

8 ~~(b) If the secretary of state finds that the application conforms to law, he or she shall,~~
9 ~~when all fees have been paid:~~

10 ~~(1) Endorse on each of the documents the word "Filed," and the month, day, and year of~~
11 ~~the filing.~~

12 ~~(2) File in his or her office one of the duplicate originals of the application and the copy~~
13 ~~of the articles of incorporation and amendments to the articles.~~

14 ~~(3) Issue a certificate of authority to transact business in this state to which he or she~~
15 ~~affixes the other duplicate original application.~~

16 ~~(c) The certificate of authority, together with the duplicate original of the application~~
17 ~~affixed to it by the secretary of state, shall be returned to the corporation or its representatives.~~

18 ~~**7-1.1-105. Effect of certificate of authority.** --- Upon the issuance of a certificate of~~
19 ~~authority by the secretary of state, the corporation is authorized to transact business in this state~~
20 ~~for the purposes stated in its application, subject, however, to the right of this state to suspend or~~
21 ~~to revoke the authority as provided in this chapter.~~

22 ~~**7-1.1-106. Registered office and registered agent of foreign corporation.** --- (a) Each~~
23 ~~foreign corporation authorized to transact business in this state shall have and continuously~~
24 ~~maintain in this state:~~

25 ~~(1) A registered office which may be, but need not be, the same as its place of business~~
26 ~~in this state.~~

27 ~~(2) A registered agent, who may be either an individual resident in this state whose~~
28 ~~business is identical with the registered office, or a domestic corporation, or a foreign corporation~~
29 ~~authorized to transact business in this state, having a business office identical with the registered~~
30 ~~office; provided, however, that in the case where the registered agent of a corporation is an~~
31 ~~attorney the business address of the agent need not be identical with the registered office, but may~~
32 ~~be at the usual business address of the attorney.~~

33 ~~(b) Foreign corporations who are the holders of mortgages on real estate located within~~
34 ~~this state which do not maintain the loan documentation and records within the state shall~~

1 authorize the registered agent to accept mortgage discharge payment and to issue a discharge of
2 the mortgages upon the payment.

3 ~~**7-1.1-107. Change of registered office or registered agent of foreign corporation. ---**~~

4 ~~(a) A foreign corporation authorized to transact business in this state may change its registered
5 office or change its registered agent, or both, upon filing in the office of the secretary of state a
6 statement stating:~~

7 ~~(1) The name of the corporation.~~

8 ~~(2) The address of its then registered office.~~

9 ~~(3) If the address of its registered office is changed, the address to which the registered
10 office is to be changed.~~

11 ~~(4) The name of its then registered agent.~~

12 ~~(5) If its registered agent is changed, the name of its successor registered agent.~~

13 ~~(6) The address of its registered office and the address of the business office of its
14 registered agent, as changed.~~

15 ~~(7) That the change was authorized by a resolution adopted by its board of directors.~~

16 ~~(b) The statement shall be executed by the corporation by its president or a vice
17 president, and verified by him or her, and delivered to the secretary of state. If the secretary of
18 state finds that the statement conforms to the provisions of this chapter, he or she shall file the
19 statement in this office, and upon the filing, the change of address of the registered office, or the
20 appointment of a new registered agent, or both, becomes effective.~~

21 ~~(c) Any registered agent of a foreign corporation may resign as the agent upon filing a
22 written notice of resignation, executed in duplicate, with the secretary of state, who shall
23 immediately mail a copy of the notice to the corporation at its principal office in the state or
24 country under the laws of which it is incorporated. The appointment of the agent terminates upon
25 the expiration of thirty (30) days after receipt of the notice by the secretary of state.~~

26 ~~(d) If a registered agent changes his or her or its business address to another place within
27 the state, he or she or it may change the address and the address of the registered office of any
28 corporations of which he or she or it is registered agent by filing a statement as required above
29 except that it must be signed only by the registered agent, need not be responsive to subsection (a)
30 (5) or (a) (7), and must recite that a copy of the statement has been mailed to each corporation.~~

31 ~~**7-1.1-108. Service of process on foreign corporation. ---**~~ (a) The registered agent

32 appointed by a foreign corporation authorized to transact business in this state shall be an agent of
33 the corporation upon whom any process, notice, or demand required or permitted by law to be
34 served upon the corporation may be served.

1 ~~-(b) Whenever a foreign corporation authorized to transact business in this state fails to~~
2 ~~appoint or maintain a registered agent in this state, or whenever any registered agent cannot with~~
3 ~~reasonable diligence be found at the registered office, or whenever the certificate of authority of a~~
4 ~~foreign corporation is suspended or revoked, the secretary of state is an agent of the corporation~~
5 ~~upon whom any process, notice, or demand may be served. Service on the secretary of state of~~
6 ~~any process, notice, or demand shall be made by delivering to and leaving with him or her, or~~
7 ~~with any clerk having charge of the corporation department of his or her office, duplicate copies~~
8 ~~of the process, notice, or demand. In the event any process, notice, or demand is served on the~~
9 ~~secretary of state, he or she shall immediately forward one of the copies by registered mail,~~
10 ~~addressed to the corporation at its principal office if known to him or her, in the state or country~~
11 ~~under the laws of which it is incorporated. Any service had in this manner on the secretary of~~
12 ~~state is returnable in not less than thirty (30) days.~~

13 ~~-(c) Every foreign corporation as a condition precedent to carrying on business in this~~
14 ~~state shall, and by so carrying on business in this state does, consent that any process, including~~
15 ~~the process of garnishment, may be served upon the secretary of state in the manner provided by~~
16 ~~this section, except that notice of the service shall be given by the plaintiff or his or her attorney~~
17 ~~in the manner as the court in which the action is commenced or pending orders as affording the~~
18 ~~corporation reasonable opportunity to defend the action or to learn of the garnishment.~~
19 ~~Notwithstanding the preceding requirements, however, once service has been made on the~~
20 ~~secretary of state as provided, the court has the authority in the event of failure to comply with the~~
21 ~~requirement of notice to the foreign corporation to order notice that is sufficient to apprise it of~~
22 ~~the pendency of the action against it, and additionally, may extend the time for answering by the~~
23 ~~foreign corporation.~~

24 ~~-(d) The secretary of state shall keep a record of all processes, notices, and demands~~
25 ~~served upon him or her under this section, and record in the record the time of the service and his~~
26 ~~or her action on it.~~

27 ~~-(e) Nothing contained in these provisions limits or affects the right to serve any process,~~
28 ~~notice, or demand, required or permitted by law to be served upon a corporation in any manner~~
29 ~~now or subsequently permitted by law.~~

30 ~~**7-1.1-109. Amendment to articles of incorporation of foreign corporation.**~~
31 ~~Whenever the articles of incorporation of a foreign corporation authorized to transact business in~~
32 ~~this state are amended, the foreign corporation shall, within thirty (30) days after the amendment~~
33 ~~becomes effective, file in the office of the secretary of state a copy of the amendment duly~~
34 ~~authenticated by the proper officer of the state or country under the laws of which it is~~

1 ~~incorporated; but the filing of the copy does not of itself enlarge or alter the purpose or purposes~~
2 ~~which the corporation is authorized to pursue in the transaction of business in this state, nor~~
3 ~~authorize the corporation to transact business in this state under any other name than the name~~
4 ~~stated in its certificate of authority.~~

5 ~~**7-1.1-110. Merger of foreign corporation authorized to transact business in this**~~
6 ~~**state.** --- Whenever a foreign corporation authorized to transact business in this state is a party to a~~
7 ~~statutory merger permitted by the laws of the state or country under the laws of which it is~~
8 ~~incorporated, and the corporation is the surviving corporation, it shall, within thirty (30) days~~
9 ~~after the merger becomes effective, file with the secretary of state a copy of the articles of merger~~
10 ~~duly authenticated by the proper officer of the state or country under the laws of which the~~
11 ~~statutory merger was effected; and it is not necessary for the corporation to procure either a new~~
12 ~~or amended certificate of authority to transact business in this state unless the name of the~~
13 ~~corporation is changed by the merger or unless the corporation desires to pursue in this state other~~
14 ~~or additional purposes than those which it is then authorized to transact in this state. Whenever a~~
15 ~~foreign corporation authorized to transact business in this state ceases to exist because of a~~
16 ~~statutory merger or consolidation, it shall comply with section 7-1.1-112.~~

17 ~~**7-1.1-111. Amended certificate of authority.** --- (a) A foreign corporation authorized to~~
18 ~~transact business in this state shall procure an amended certificate of authority if it changes its~~
19 ~~corporate name, increases its number of authorized shares, or desires to pursue in this state other~~
20 ~~or additional purposes than those stated in its prior application for a certificate of authority, by~~
21 ~~making application for those additional purposes to the secretary of state.~~

22 ~~(b) The requirements in respect to the form and contents of the application, the manner~~
23 ~~of its execution, the filing of duplicate originals of the application with the secretary of state, the~~
24 ~~issuance of an amended certificate of authority, and the effect of it, is the same as in the case of~~
25 ~~an original application for a certificate of authority.~~

26 ~~**7-1.1-112. Withdrawal of foreign corporation.** --- (a) A foreign corporation authorized~~
27 ~~to transact business in this state may withdraw from this state upon procuring from the secretary~~
28 ~~of state a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign~~
29 ~~corporation shall deliver to the secretary of state an application for withdrawal, stating:~~

30 ~~(1) The name of the corporation and the state or country under the laws of which it is~~
31 ~~incorporated.~~

32 ~~(2) That the corporation is not transacting business in this state.~~

33 ~~(3) That the corporation surrenders its authority to transact business in this state.~~

34 ~~(4) That the corporation revokes the authority of its registered agent in this state to~~

1 ~~accept service of process and consents that service of process in any action, suit, or proceeding~~
2 ~~based upon any cause of action arising in this state during the time the corporation was authorized~~
3 ~~to transact business in this state may subsequently be made on the corporation by service on the~~
4 ~~secretary of state.~~

5 ~~(5) The post office address to which the secretary of state may mail a copy of any~~
6 ~~process against the corporation that is served on him or her.~~

7 ~~(6) A statement of the aggregate number of shares which the corporation has authority to~~
8 ~~issue, itemized by classes, par value of shares, shares without par value, and series, if any, within~~
9 ~~a class, as of the date of the application.~~

10 ~~(7) A statement of the aggregate number of issued shares, itemized by classes, par value~~
11 ~~of shares, shares without par value, and series, if any, within a class, as of the date of the~~
12 ~~application.~~

13 ~~(8) A statement, expressed in dollars, of the amount of stated capital of the corporation,~~
14 ~~as of the date of the application.~~

15 ~~(9) Any additional information that may be necessary or appropriate in order to enable~~
16 ~~the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.~~

17 ~~(b) The application for withdrawal shall be made on forms prescribed and furnished by~~
18 ~~the secretary of state and executed by the corporation by its president or a vice president and by~~
19 ~~its secretary or an assistant secretary, and verified by one of the officers signing the application,~~
20 ~~or, if the corporation is in the hands of a receiver or trustee, executed on behalf of the corporation~~
21 ~~by the receiver or trustee and verified by him or her.~~

22 ~~**7-1.1-113. Filing of application for withdrawal.**~~ (a) ~~Duplicate originals of the~~
23 ~~application for withdrawal shall be delivered to the secretary of state. If the secretary of state~~
24 ~~finds that the application conforms to the provisions of this chapter, he or she shall, when all fees~~
25 ~~and taxes have been paid:~~

26 ~~(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and~~
27 ~~year of the filing.~~

28 ~~(2) File one of the duplicate originals in his or her office.~~

29 ~~(3) Issue a certificate of withdrawal to which he or she affixes the other duplicate~~
30 ~~original.~~

31 ~~(b) The certificate of withdrawal, together with the duplicate original of the application~~
32 ~~for withdrawal affixed to it by the secretary of state, shall be returned to the corporation or its~~
33 ~~representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation~~
34 ~~to transact business in this state ceases.~~

1 **7-1.1-114. Revocation of certificate of authority.** ~~---(a) The certificate of authority of a~~
2 ~~foreign corporation to transact business in this state may be revoked by the secretary of state~~
3 ~~under the conditions prescribed in this section when:~~

4 ~~-(1) The corporation fails to file its annual report within the time required by this chapter,~~
5 ~~or fails to pay any fees, when they become due and payable; or~~

6 ~~-(2) The corporation fails to appoint and maintain a registered agent in this state as~~
7 ~~required by this chapter; or~~

8 ~~-(3) The corporation fails, after changing its registered office or registered agent, to file in~~
9 ~~the office of the secretary of state a statement of the change as required by this chapter; or~~

10 ~~-(4) The corporation fails to file in the office of the secretary of state any amendment to~~
11 ~~its articles of incorporation or any articles of merger within the time prescribed by this chapter; or~~

12 ~~-(5) A misrepresentation has been made of any material matter in any application, report,~~
13 ~~affidavit, or other document submitted by the corporation pursuant to this chapter.~~

14 ~~-(b) No certificate of authority of a foreign corporation shall be revoked by the secretary~~
15 ~~of state unless:~~

16 ~~-(1) The secretary of state shall have given the corporation not less than sixty (60) days~~
17 ~~notice thereof by regular mail addressed to the registered office of the corporation in this state on~~
18 ~~file with the secretary of state's office; provided, however, that if a prior mailing addressed to the~~
19 ~~registered office of the corporation in this state currently on file with the secretary of state's office~~
20 ~~has been returned to the secretary of state as undeliverable by the United States Postal Service for~~
21 ~~any reason, or if the revocation notice is returned as undeliverable to the secretary of state's office~~
22 ~~by the United States Postal Service for any reason, the secretary of state shall give notice as~~
23 ~~follows:~~

24 ~~-(i) To the corporation at its principal office of record as shown in its most recent annual~~
25 ~~report, and no further notice shall be required; or~~

26 ~~-(ii) In the case of a foreign corporation which has not yet filed an annual report, then to~~
27 ~~the corporation at its principal office shown in its application for certificate of authority, and no~~
28 ~~further notice shall be required; and~~

29 ~~-(2) The corporation fails prior to revocation to file the annual report, or pay the fees, or~~
30 ~~file the required statement of change of registered agent or registered office, or file the articles of~~
31 ~~amendment or articles of merger, or correct the misrepresentation.~~

32 **7-1.1-115. Issuance of certificate of revocation.** ~~---(a) Upon revoking any certificate of~~
33 ~~authority, the secretary of state shall:~~

34 ~~(1) Issue a certificate of revocation in duplicate.~~

1 ~~(2) File one of the certificates in his or her office.~~

2 ~~(3) Send to the corporation by regular mail a certificate of revocation, addressed to the~~
3 ~~registered office of the corporation in this state on file with the secretary of state's office;~~
4 ~~provided, however, that if a prior mailing addressed to the registered office of the corporation in~~
5 ~~this state currently on file with the secretary of state's office has been returned to the secretary of~~
6 ~~state as undeliverable by the United States Postal Service for any reason, or if the revocation~~
7 ~~certificate is returned as undeliverable to the secretary of state's office by the United States Postal~~
8 ~~Service for any reason, the secretary of state shall give notice as follows:~~

9 ~~(i) To the corporation at its principal office of record as shown in its most recent annual~~
10 ~~report, and no further notice shall be required; or~~

11 ~~(ii) In the case of a foreign corporation that has not yet filed an annual report then to the~~
12 ~~corporation at its principal office shown in its application for certificate of authority, and no~~
13 ~~further notice shall be required.~~

14 ~~(b) Upon the issuance of the certificate of revocation, the authority of the corporation to~~
15 ~~transact business in this state ceases.~~

16 ~~**7-1.1-115.1. Withdrawal of certificate of revocation.** (a) Within ten (10) years after~~
17 ~~issuing a certificate of revocation as provided in section 7-1.1-115, the secretary of state may~~
18 ~~withdraw the certificate of revocation retroactively and retroactively reinstate the corporation in~~
19 ~~good standing as though its certificate of authority had not been revoked, except as subsequently~~
20 ~~provided;~~

21 ~~(1) Upon the filing by the corporation of the documents it had previously failed to file as~~
22 ~~stated in subdivisions (1) — (3) of section 7-1.1-115(a);~~

23 ~~(2) Upon the payment by the corporation of a penalty in the amount of fifty dollars~~
24 ~~(\$50.00) for each year or part of a year that has elapsed since the issuance of the certificate of~~
25 ~~revocation; and~~

26 ~~(3) Upon the filing by the corporation of a certificate of good standing from the Rhode~~
27 ~~Island division of taxation.~~

28 ~~(b) If, as permitted by the provisions of this title, another corporation, whether business~~
29 ~~or nonprofit, limited partnership or limited liability company, domestic or foreign, qualified to~~
30 ~~transact business in this state, bears or has filed a fictitious business name statement with respect~~
31 ~~to or reserved or registered a name which is the same as, or deceptively similar to, the name of a~~
32 ~~corporation with respect to which the certificate of revocation is proposed to be withdrawn, then~~
33 ~~the secretary of state shall condition the withdrawal of the certificate of revocation on the~~
34 ~~reinstated corporation's amending its application for a certificate of authority or otherwise~~

1 ~~complying with the provisions of this chapter with respect to the use of the name available to it~~
2 ~~under the laws of this state.~~

3 ~~**7-1.1-116. Application to corporations previously authorized to transact business in**~~
4 ~~**this state.** --- Foreign corporations which are authorized to transact business in this state as of~~
5 ~~May 14, 1969, for a purpose or purposes for which a corporation might secure authority under~~
6 ~~this chapter, are, subject to the limitations stated in their certificates of authority, entitled to all the~~
7 ~~rights and privileges applicable to foreign corporations procuring certificates of authority to~~
8 ~~transact business in this state under this chapter, and as of May 14, 1969 the corporations are~~
9 ~~subject to all the limitations, restrictions, liabilities, and duties prescribed in these provisions for~~
10 ~~foreign corporations procuring certificates of authority to transact business in this state under this~~
11 ~~chapter.~~

12 ~~**7-1.1-117. Transacting business without certificate of authority.** --- (a) No foreign~~
13 ~~corporation transacting business in this state without a certificate of authority is permitted to~~
14 ~~maintain any action, suit, or proceeding in any court of this state, until the corporation has~~
15 ~~obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any~~
16 ~~court of this state by any successor or assignee of the corporation on any right, claim, or demand~~
17 ~~arising out of the transaction of business by the corporation in this state, until a certificate of~~
18 ~~authority has been obtained by the corporation or by a corporation which has acquired all or~~
19 ~~substantially all of its assets.~~

20 ~~-(b) The failure of a foreign corporation to obtain a certificate of authority to transact~~
21 ~~business in this state does not impair the validity of any contract or act of the corporation, and~~
22 ~~does not prevent the corporation from defending any action, suit, or proceeding in any court of~~
23 ~~this state.~~

24 ~~-(c) A foreign corporation which transacts business in this state without a certificate of~~
25 ~~authority is liable to this state, for the years or parts of years during which it transacted business~~
26 ~~in this state without a certificate of authority, in an amount equal to all fees and franchise taxes~~
27 ~~which would have been imposed upon the corporation had it duly applied for and received a~~
28 ~~certificate of authority to transact business in this state as required by this chapter and~~
29 ~~subsequently filed all reports required by this chapter, plus all penalties imposed by this chapter~~
30 ~~for failure to pay the fees and franchise taxes. The attorney general shall bring proceedings to~~
31 ~~recover all amounts due this state under the provisions of this section.~~

32 ~~-(d) The Superior Court has jurisdiction to enjoin any foreign corporation, or any agent of~~
33 ~~a foreign corporation, from transacting any business in this state if the corporation fails to comply~~
34 ~~with any section of this subchapter applicable to it or if the corporation secured a certificate of the~~

1 ~~secretary of state under section 7-1.1-103 on the basis of false or misleading representations. The~~
2 ~~attorney general shall, upon his or her own motion or upon the relation of proper parties, proceed~~
3 ~~for this purpose by complaint in any county in which the corporation is doing business.~~

4 ~~**7-1.1-118. Annual report of domestic and foreign corporations.** -- (a) Each domestic~~
5 ~~corporation, and each foreign corporation authorized to transact business in this state, shall file,~~
6 ~~within the time prescribed by this chapter, an annual report stating:~~

7 ~~(1) The name of the corporation and the state or country under the laws of which it is~~
8 ~~incorporated.~~

9 ~~(2) A brief statement of the character of the business in which the corporation is actually~~
10 ~~engaged in this state.~~

11 ~~(3) The names and respective addresses of the directors and officers of the corporation.~~

12 ~~(4) A statement of the aggregate number of shares which the corporation has authority to~~
13 ~~issue, itemized by classes, par value of shares, shares without par value, and series, if any, within~~
14 ~~a class.~~

15 ~~(5) A statement of the aggregate number of issued shares, itemized by classes, par value~~
16 ~~of shares, shares without par value, and series, if any, within a class.~~

17 ~~(6) Any additional information that is by the secretary of state.~~

18 ~~(b) The annual report shall be made on forms prescribed and furnished by the secretary~~
19 ~~of state, and the information contained therein shall be given as of the date of the execution of the~~
20 ~~report. It shall be executed by the corporation by its president, a vice president, secretary, an~~
21 ~~assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it~~
22 ~~shall be executed on behalf of the corporation by the receiver or trustee.~~

23 ~~**7-1.1-119. Filing of annual report of domestic and foreign corporations.** -- The~~
24 ~~annual report of a domestic or foreign corporation shall be delivered to the secretary of state~~
25 ~~between January 1 and the March 1 of each year, except that the first annual report of a domestic~~
26 ~~or foreign corporation shall be filed between January 1 and March 1 of the year following the~~
27 ~~calendar year in which its certificate of incorporation or its certificate of authority was issued by~~
28 ~~the secretary of state. Proof to the satisfaction of the secretary of state that prior to March 1 the~~
29 ~~report was deposited in the United States mail in a sealed envelope, properly addressed, with~~
30 ~~postage prepaid, is deemed to be a compliance with this requirement. If the secretary of state~~
31 ~~finds that the report conforms to the requirements of this chapter, he or she shall file the report. If~~
32 ~~he or she finds that it does not conform, he or she shall promptly return the report to the~~
33 ~~corporation for any necessary corrections, in which event the penalties subsequently prescribed~~
34 ~~for failure to file the report within the time previously provided do not apply, if the report is~~

1 ~~corrected to conform to the requirements of this chapter and returned to the secretary of state~~
2 ~~within thirty (30) days from the date on which it was mailed to the corporation by the secretary of~~
3 ~~state.~~

4 ~~**7-1.1-120. Fees and charges collected by secretary of state.**~~ (a) The secretary of state
5 shall charge and collect in accordance with the provisions of this chapter:

6 ~~(1) Fees for filing documents and issuing certificates.~~

7 ~~(2) Miscellaneous charges.~~

8 ~~(3) License fees.~~

9 ~~(b) The secretary of state shall, between the first and fifteenth day of each month, make~~
10 ~~an itemized return, in writing, to the state controller of the amount of all fees and charges~~
11 ~~collected by him or her, and pay to the general treasurer all of the state moneys in his or her~~
12 ~~hands.~~

13 ~~**7-1.1-121. Fees for filing documents and issuing certificates.**~~ The secretary of state
14 shall charge and collect for filing:

15 ~~(1) Articles of incorporation and issuing a certificate of incorporation, seventy dollars~~
16 ~~(\$70.00).~~

17 ~~(2) Articles of amendment and issuing a certificate of amendment, fifty dollars (\$50.00).~~

18 ~~(3) Restated articles of incorporation, seventy dollars (\$70.00).~~

19 ~~(4) Articles of merger or consolidation and issuing a certificate of merger or~~
20 ~~consolidation, one hundred dollars (\$100).~~

21 ~~(5) An application to reserve a corporate name, fifty dollars (\$50.00).~~

22 ~~(6) A notice of transfer of a reserved corporate name, fifty dollars (\$50.00).~~

23 ~~(7) (i) Filing a statement of change of registered agent and registered office or filing a~~
24 ~~statement of change of registered agent, twenty dollars (\$20.00).~~

25 ~~(ii) Filing a statement of change of registered office only, without fee.~~

26 ~~(8) A statement of the establishment of a series of shares, ten dollars (\$10.00).~~

27 ~~(9) A statement of cancellation of shares, ten dollars (\$10.00).~~

28 ~~(10) A statement of reduction of stated capital, ten dollars (\$10.00).~~

29 ~~(11) A statement of intent to dissolve, without fee.~~

30 ~~(12) A statement of revocation of voluntary dissolution proceedings, ten dollars~~
31 ~~(\$10.00).~~

32 ~~(13) Articles of dissolution, fifty dollars (\$50.00).~~

33 ~~(14) An application of a foreign corporation for a certificate of authority to transact~~
34 ~~business in this state and issuing a certificate of authority, one hundred fifty dollars (\$150).~~

1 ~~-(15) An application of a foreign corporation for an amended certificate of authority to~~
2 ~~transact business in this state and issuing an amended certificate of authority, seventy five dollars~~
3 ~~(\$75.00).~~

4 ~~-(16) A copy of an amendment to the articles of incorporation of a foreign corporation~~
5 ~~holding a certificate of authority to transact business in this state, fifty dollars (\$50.00).~~

6 ~~-(17) A copy of articles of merger of a foreign corporation holding a certificate of~~
7 ~~authority to transact business in this state, one hundred fifty dollars (\$150).~~

8 ~~-(18) An application for withdrawal of a foreign corporation and issuing a certificate of~~
9 ~~withdrawal, fifty dollars (\$50.00).~~

10 ~~-(19) An annual report, fifty dollars (\$50.00).~~

11 ~~-(20) Any other statement or report, except an annual report, of a domestic or foreign~~
12 ~~corporation, ten dollars (\$10.00).~~

13 ~~**7-1.1-122. Miscellaneous charges.** --- The secretary of state shall charge and collect:~~

14 ~~-(1) For furnishing a certified copy of any document, instrument, or paper relating to a~~
15 ~~corporation, fifty cents (50/c) per page and five dollars (\$5.00) for the certificate and affixing the~~
16 ~~seal to it.~~

17 ~~-(2) At the time of any service of process on him or her as resident agent of a corporation,~~
18 ~~fifteen dollars (\$15.00), which amount may be recovered as taxable costs by the party to the suit~~
19 ~~or action making the service if the party prevails in the suit or action.~~

20 ~~**7-1.1-123. License fees payable by domestic corporations.** --- (a) The secretary of state~~
21 ~~shall charge and collect from each domestic corporation license fees, based on the number of~~
22 ~~shares which it has authority to issue or the increase in the number of shares which it has~~
23 ~~authority to issue, at the time of:~~

24 ~~-(1) Filing articles of incorporation;~~

25 ~~-(2) Filing articles of amendment increasing the number of authorized shares; and~~

26 ~~-(3) Filing articles of merger or consolidation increasing the number of authorized shares~~
27 ~~which the surviving or new corporation, if a domestic corporation, has the authority to issue~~
28 ~~above the aggregate number of shares which the constituent domestic corporations and~~
29 ~~constituent foreign corporations authorized to transact business in this state had authority to issue.~~

30 ~~-(b) The license fees are at the rate of (i) one fifth cent (1/5/c) per share for each~~
31 ~~authorized share if the total number of new shares being authorized is seventy five million~~
32 ~~(75,000,000) shares or greater, or (ii) one hundred and sixty dollars (\$160) if the total number of~~
33 ~~new shares being authorized is less than seventy five million (75,000,000) shares.~~

34 ~~-(c) The license fees payable on an increase in the number of authorized shares is~~

1 ~~imposed only on the increased number of shares, and the number of previously authorized shares~~
2 ~~is to be taken into account in determining the rate applicable to the increased number of~~
3 ~~authorized shares.~~

4 ~~**7-1.1-124. License fees payable by foreign corporations.** --- (a) The secretary of state~~
5 ~~shall charge and collect from each foreign corporation license fees, based on the proportion~~
6 ~~represented in this state of the number of shares which it has authority to issue or the increase in~~
7 ~~the number of shares which it has authority to issue, at the time of:~~

8 ~~(1) Filing an application for a certificate of authority to transact business in this state;~~

9 ~~(2) Filing articles of amendment which increased the number of authorized shares; and~~

10 ~~(3) Filing articles of merger or consolidation which increased the number of authorized~~
11 ~~shares which the surviving or new corporation, if a foreign corporation, has authority to issue~~
12 ~~above the aggregate number of shares which the constituent domestic corporations and~~
13 ~~constituent foreign corporations authorized to transact business in this state had authority to issue.~~

14 ~~(b) The license fees are at the rate of (i) one fifth cent (1/5¢) per share if the total~~
15 ~~number of new shares being authorized is seventy five million (75,000,000) shares or greater, or~~
16 ~~(ii) one hundred and sixty dollars (\$160) if the total number of new shares being authorized is less~~
17 ~~than seventy five million (75,000,000) shares.~~

18 ~~(c) The license fees payable on an increase in the number of authorized shares is~~
19 ~~imposed only on the increased number of the shares represented in this state, and the number of~~
20 ~~previously authorized shares represented in this state is to be taken into account in determining~~
21 ~~the rate applicable to the increased number of authorized shares.~~

22 ~~(d) The number of authorized shares represented in this state is that proportion of its total~~
23 ~~authorized shares which the sum of the value of its property located in this state and the gross~~
24 ~~amount of business transacted by it at or from places of business in this state bears to the sum of~~
25 ~~the value of all of its property, wherever located, and the gross amount of its business, wherever~~
26 ~~transacted. The proportion is determined from information contained in the application for a~~
27 ~~certificate of authority to transact business in this state or in the application for an amended~~
28 ~~certificate of authority to transact business in this state.~~

29 ~~**7-1.1-125. --- 7-1.1-127. [Reserved.] ---**~~

30 ~~**7-1.1-128. Penalties imposed upon corporations.** --- (a) Each corporation, domestic or~~
31 ~~foreign, that fails or refuses to file its annual report for any year within the time prescribed by this~~
32 ~~chapter is subject to a penalty of ten percent (10%) of the amount of the franchise tax assessed~~
33 ~~against it for the period beginning July 1 of the year in which the report should have been filed.~~
34 ~~The penalty shall be assessed by the tax administrator at the time of the assessment of the~~

1 ~~franchise tax. If the amount of the franchise tax as originally assessed against the corporation is~~
2 ~~subsequently adjusted, the amount of the penalty shall likewise be adjusted to ten percent (10%)~~
3 ~~of the amount of the adjusted franchise tax. The amount of the franchise tax and the amount of~~
4 ~~the penalty shall be separately stated in any related notice to the corporation.~~

5 ~~(b) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and~~
6 ~~fully within the time prescribed by this chapter interrogatories propounded by the secretary of~~
7 ~~state in accordance with the provisions of this chapter, is guilty of a misdemeanor and upon~~
8 ~~conviction of it may be fined in any amount not exceeding five hundred dollars (\$500).~~

9 ~~**7-1.1-129. Penalties imposed upon officers and directors.** -- Each officer and director~~
10 ~~of a domestic or foreign corporation who fails or refuses within the time prescribed by this~~
11 ~~chapter to answer truthfully and fully interrogatories propounded to him or her by the secretary of~~
12 ~~state in accordance with the provisions of this chapter, or who signs any articles, statement,~~
13 ~~report, application, or other document filed with the secretary of state which is known to the~~
14 ~~officer or director to be false in any material respect, is guilty of a misdemeanor, and upon~~
15 ~~conviction of it may be fined in any amount not exceeding five hundred dollars (\$500).~~

16 ~~**7-1.1-130. Interrogatories by secretary of state.** -- The secretary of state may propound~~
17 ~~to any domestic or foreign corporation subject to the provisions of this chapter, and to any of its~~
18 ~~officers or directors, any interrogatories that may be reasonably necessary and proper to enable~~
19 ~~the secretary of state to ascertain whether the corporation has complied with all the applicable~~
20 ~~provisions of this chapter. The interrogatories shall be answered within thirty (30) days after their~~
21 ~~mailing, or within any additional time that is fixed by the secretary of state, and the answers to the~~
22 ~~interrogatories shall be full and complete and shall be made in writing and under oath. If the~~
23 ~~interrogatories are directed to an individual they shall be answered by him or her, and if directed~~
24 ~~to a corporation they shall be answered by the president, vice president, secretary, or assistant~~
25 ~~secretary of the corporation. The secretary of state need not file any document to which the~~
26 ~~interrogatories relate until the interrogatories are answered as provided in these provisions, and~~
27 ~~not then if the interrogatory answers disclose that the document is not in conformity with the~~
28 ~~provisions of this chapter. The secretary of state shall certify to the attorney general, for any~~
29 ~~action that the attorney general deems appropriate, all interrogatories and their answers which~~
30 ~~disclose a violation of any of the provisions of this chapter.~~

31 ~~**7-1.1-131. Information disclosed by interrogatories.** -- Interrogatories propounded by~~
32 ~~the secretary of state and the answers to the interrogatories are not open to public inspection nor~~
33 ~~shall the secretary of state disclose any facts or information obtained from them except insofar as~~
34 ~~the secretary's official duty requires the facts or information to be made public or in the event the~~

1 ~~interrogatories or their answers are required for evidence in any criminal proceedings or in any~~
2 ~~other action by this state.~~

3 ~~**7-1.1-132. Power of secretary of state.** --- The secretary of state has the reasonably~~
4 ~~necessary power and authority to enable him or her to administer this chapter efficiently and to~~
5 ~~perform the duties imposed upon the secretary by this chapter.~~

6 ~~**7-1.1-133. Appeal from secretary of state.** --- (a) If the secretary of state fails to approve~~
7 ~~any articles of incorporation, amendment, merger, consolidation or dissolution, or any other~~
8 ~~document required by this chapter to be approved by the secretary of state before the document is~~
9 ~~filed in his or her office, the secretary shall, within ten (10) days after the delivery of the~~
10 ~~document to him or her, give written notice of his or her disapproval to the person or corporation,~~
11 ~~domestic or foreign, delivering the document, specifying the reasons for the disapproval. From~~
12 ~~the disapproval the person or corporation may appeal to the superior court of the county in which~~
13 ~~the registered office of the corporation is, or is proposed to be, situated by filing with the clerk of~~
14 ~~the court a petition setting forth a copy of the articles or other document sought to be filed and a~~
15 ~~copy of the written disapproval of the document by the secretary of state; at which time the matter~~
16 ~~shall be tried de novo by the court, and the court shall either sustain the action of the secretary of~~
17 ~~state or direct the secretary to take any action that the court deems proper.~~

18 ~~(b) If the secretary of state revokes the certificate of authority to transact business in this~~
19 ~~state of any foreign corporation pursuant to the provisions of sections 7-1.1-114 and 7-1.1-115, in~~
20 ~~addition to the remedy provided in section 7-1.1-115.1, the foreign corporation may likewise~~
21 ~~appeal to the superior court of the county where the registered office of the corporation in this~~
22 ~~state is situated, by filing with the clerk of the court a petition setting forth a copy of its certificate~~
23 ~~of authority to transact business in this state and a copy of the notice of revocation given by the~~
24 ~~secretary of state; at that time the matter shall be tried de novo by the court, and the court shall~~
25 ~~either sustain the action of the secretary of state or direct the secretary to take any action that the~~
26 ~~court deems proper.~~

27 ~~(c) Appeals from all final orders and judgments entered by the superior court under this~~
28 ~~section in review of any ruling or decision of the secretary of state may be taken as in other civil~~
29 ~~actions.~~

30 ~~**7-1.1-134. Certificates and certified copies to be received in evidence.** --- All~~
31 ~~certificates issued by the secretary of state in accordance with the provisions of this chapter, and~~
32 ~~all copies of documents filed in his or her office in accordance with the provisions of this chapter~~
33 ~~when certified by the secretary, shall be taken and received in all courts, public offices, and~~
34 ~~official bodies as prima facie evidence of the facts stated in them. A certificate by the secretary of~~

1 ~~state under the great seal of this state, as to the existence or nonexistence of the facts relating to~~
2 ~~corporations shall be taken and received in all courts, public offices, and official bodies as prima~~
3 ~~facie evidence of the existence or nonexistence of the facts stated in them.~~

4 ~~**7-1.1-135. Forms to be furnished by secretary of state.** --- All reports required by this~~
5 ~~chapter to be filed in the office of the secretary of state shall be made on forms which shall be~~
6 ~~prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the~~
7 ~~office of the secretary of state may be furnished by the secretary of state on request for the forms,~~
8 ~~but the use of the forms, unless otherwise specifically prescribed in this chapter, is not mandatory.~~

9 ~~**7-1.1-136. Unauthorized assumption of corporate powers.** --- All persons who assume~~
10 ~~to act as a corporation without authority so to do are jointly and severally liable for all debts and~~
11 ~~liabilities incurred or arising as a result of that action.~~

12 ~~**7-1.1-137. Application to existing corporations organized under general acts.** --- The~~
13 ~~provisions of this chapter apply to all existing corporations organized under any general act of~~
14 ~~this state providing for the organization of corporations for a purpose or purposes for which a~~
15 ~~corporation might be organized under this chapter, where the power has been reserved to amend,~~
16 ~~repeal, or modify the act under which the corporation was organized and where the act is repealed~~
17 ~~by this chapter.~~

18 ~~**7-1.1-138. Application to foreign and interstate commerce.** --- The provisions of this~~
19 ~~chapter apply to commerce with foreign nations and among the several states only insofar as the~~
20 ~~provisions are permitted under the constitution of the United States.~~

21 ~~**7-1.1-138.1. Applicability to corporations created by special acts.** --- The provisions of~~
22 ~~this chapter apply to all existing corporations previously or subsequently created by any special~~
23 ~~act of the general assembly of a kind that could be organized under this chapter, except insofar as~~
24 ~~the provisions are inconsistent with the provisions of any applicable special act passed after May~~
25 ~~5, 1920 or with the provisions of any applicable special act passed that are not subject to~~
26 ~~amendment or repeal at the will of the general assembly. A corporation created by special act of~~
27 ~~the kind that could be organized under this chapter but whose charter is not subject to~~
28 ~~amendment, repeal, or modification by the general assembly, may at a called meeting for the~~
29 ~~purpose, by a unanimous vote of its stockholders or members, adopt the provisions of this chapter~~
30 ~~upon the filing in the office of the secretary of state of a certified copy of the vote, attested by its~~
31 ~~president or vice president and its secretary or assistant secretary under its corporate seal, and the~~
32 ~~payment to the secretary of state of the fee prescribed by section 7-1.1-123. The corporation shall~~
33 ~~subsequently be governed in all respects by the provisions of this chapter and its charter shall~~
34 ~~subsequently be subject to amendment or repeal at the will of the general assembly.~~

1 ~~**7-1.1-139. Reservation of power.** -- The general assembly at all times has power to~~
2 ~~prescribe any regulations, provisions, and limitations that it deems advisable, which regulations,~~
3 ~~provisions, and limitations are binding on any corporation subject to the provisions of this~~
4 ~~chapter. The general assembly has power to amend, repeal, or modify this chapter at pleasure.~~

5 ~~**7-1.1-140. Effect of repeal of prior acts.** -- The repeal of a prior act by this chapter does~~
6 ~~not affect any right accrued or established, or any liability or penalty incurred, under the~~
7 ~~provisions of the act, prior to the repeal.~~

8 ~~**7-1.1-141. Effect of invalidity of part of this chapter.** -- If a court of competent~~
9 ~~jurisdiction adjudges to be invalid or unconstitutional any clause, sentence, paragraph, section, or~~
10 ~~part of this chapter, the judgment or decree does not affect, impair, invalidate, or nullify the~~
11 ~~remainder of this chapter, but the effect is confined to the clause, sentence, paragraph, section, or~~
12 ~~part of this chapter adjudged to be invalid or unconstitutional.~~

13 SECTION 2. Title 7 of the General Laws entitled "Corporations, Associations, and
14 Partnerships" is hereby amended by adding thereto the following chapter:

15 CHAPTER 1.2

16 RHODE ISLAND BUSINESS CORPORATION ACT

17 Part I. General Provisions.

18 **7-1.2-101. Short title.** -- This chapter shall be known and may be cited as the "Rhode
19 Island Business Corporation Act."

20 **7-1.2-102. Reservation of power.** -- The general assembly at all times has power to
21 prescribe any regulations, provisions, and limitations that it deems advisable, which regulations,
22 provisions, and limitations are binding on any corporation subject to the provisions of this
23 chapter. The general assembly has power to amend, repeal, or modify this chapter at its pleasure.

24 **7-1.2-103. Effect of repeal of prior acts.** -- The repeal of a prior act by this chapter does
25 not impair, diminish or affect any right, privilege or immunity accrued or established, any suit
26 pending, any right of action conferred, or any duty, restriction, liability or penalty imposed or
27 required, under the provisions of the act, prior to the repeal.

28 **7-1.2-104. Severability.** -- If any provision of this chapter or its application to any person
29 or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect
30 other provisions or applications of the chapter that can be given effect without the invalid
31 provision or application, and to this end the provisions of the chapter are severable.

32 **7-1.2-105. Execution -- Filing and recording of instruments.** -- (a) Whenever any
33 instrument is to be filed with the secretary of state or in accordance with this section or chapter,
34 such instrument shall be executed as follows:

1 (1) The articles of incorporation, and any other instrument to be filed before the election
2 of the initial board of directors if the initial directors were not named in the articles of
3 incorporation, shall be signed by the incorporator or incorporators (or, in the case of any such
4 other instrument, such incorporator's or incorporators' successors and assigns).

5 (2) All other instruments shall be signed:

6 (i) By any authorized officer of the corporation; or

7 (ii) If it shall appear from the instrument that there are no such officers, then by a
8 majority of the directors or by such director or directors as may be designated by the board; or

9 (iii) If it shall appear from the instrument that there are no such officers or directors, then
10 by the holders of record, or such of them as may be designated by the holders of record, of a
11 majority of all outstanding shares of stock; or

12 (iv) By the holders of record of all outstanding shares of stock.

13 (b) Whenever this chapter requires any instrument to be acknowledged, such requirement
14 is satisfied by either:

15 (1) The formal acknowledgment by the person or one of the persons signing the
16 instrument that it is such person's act and deed or the act and deed of the corporation, and that the
17 facts stated therein are true. Such acknowledgment shall be made before a person who is
18 authorized by the law of the place of execution to take acknowledgment; or

19 (2) The signature, without more, of the person or persons signing the instrument, in
20 which case such signature or signatures shall constitute the affirmation or acknowledgment of the
21 signatory, under penalties of perjury, that the instrument is such person's act and deed or the act
22 and deed of the corporation, and that the facts stated therein are true.

23 (c) Whenever any instrument is to be filed with the secretary of state or in accordance
24 with this section or chapter, such requirement means that:

25 (1) The signed instrument shall be delivered to the office of the secretary of state;

26 (2) All taxes and fees authorized by law to be collected by the secretary of state in
27 connection with the filing of the instrument shall be tendered to the secretary of state; and

28 (3) Upon delivery of the instrument, the secretary of state shall record the date and time
29 of its delivery. Upon such delivery and tender of the required taxes and fees, the secretary of state
30 shall certify that the instrument has been filed in the secretary of state's office by endorsing upon
31 the signed instrument the word "Filed", and the date and time of its filing. This endorsement is
32 the "filing date" of the instrument, and is conclusive of the date and time of its filing in the
33 absence of actual fraud.

34 (d) Any instrument filed in accordance with subsection (c) of this section shall be

1 effective upon its filing date. Any instrument may provide that it is not to become effective until a
2 specified time subsequent to the time it is filed, but such time shall not be later than a time on the
3 90th day after the date of its filing.

4 (e) If another section of this chapter specifically prescribes a manner of executing,
5 acknowledging or filing a specified instrument or a time when such instrument shall become
6 effective which differs from the corresponding provisions of this section, then such other section
7 shall govern.

8 (f) Whenever any instrument authorized to be filed with the secretary of state under any
9 provision of this title, has been so filed and is an inaccurate record of the corporate action therein
10 referred to, or was defectively or erroneously executed, sealed or acknowledged, the instrument
11 may be corrected by filing with the secretary of state a certificate of correction of the instrument
12 which shall be executed, acknowledged and filed in accordance with this section. The certificate
13 of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion
14 of the instrument in corrected form. In lieu of filing a certificate of correction the instrument may
15 be corrected by filing with the secretary of state a corrected instrument which shall be executed,
16 acknowledged and filed in accordance with this section. The corrected instrument shall be
17 specifically designated as such in its heading, shall specify the inaccuracy or defect to be
18 corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in
19 accordance with this section shall be effective as of the date the original instrument was filed,
20 except as to those persons who are substantially and adversely affected by the correction and as to
21 those persons the instrument as corrected shall be effective from the filing date.

22 (g) Notwithstanding that any instrument authorized to be filed with the secretary of state
23 under this chapter is when filed inaccurately, defectively or erroneously executed, sealed or
24 acknowledged, or otherwise defective in any respect, the secretary of state shall have no liability
25 to any person for the preclearance for filing, the acceptance for filing or the filing and indexing of
26 such instrument by the secretary of state.

27 (h) Any signature on any instrument authorized to be filed with the secretary of state
28 under this chapter may be a facsimile or an electronically transmitted signature.

29 **7-1.2-106. Definitions.** -- As used in this chapter, unless the context otherwise required,
30 the term:

31 (1) “Articles of incorporation” means the original or restated articles of incorporation or
32 articles of merger and all of their amendments including agreements of merger.

33 (2) “Authorized shares” means the shares of all classes which the corporation is
34 authorized to issue.

1 (3) “Corporation” or “domestic corporation” means a corporation for profit subject to the
2 provisions of this chapter, except a foreign corporation.

3 (4) “Electronic transmission” means any form of communication, not directly involving
4 the physical transmission of paper, that creates a record that may be retained, retrieved, and
5 reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a
6 recipient through an automated process.

7 (5) “Employee” includes officers but not directors. A director may accept duties which
8 also make him or her an employee.

9 (6) “Foreign corporation” means a corporation for profit organized under laws other than
10 the laws of this state for a purpose or purposes for which a corporation may be organized under
11 this chapter.

12 (7) “Insolvent” means the inability of a corporation to pay its debts as they become due in
13 the usual course of its business.

14 (8) “Net assets” means the amount by which the total assets of a corporation exceed the
15 total debts of the corporation.

16 (9) “Shares” means the units into which the proprietary interests in a corporation are
17 divided.

18 (10) “Subscriber” means one who subscribes for shares in a corporation, whether before
19 or after incorporation.

20 (11) “Shareholder” means one who is a holder of record of shares in a corporation.

21 **Part II. Incorporation.**

22 **7-1.2-201. Incorporators and organization of the corporation. --** (a) One or more
23 persons may act as incorporator or incorporators of a corporation by filing articles of
24 incorporation for the corporation with the secretary of state.

25 (b) After incorporation:

26 (1) If initial directors are named in the articles of incorporation, the initial directors shall
27 hold an organizational meeting, at the call of a majority of the directors, to complete the
28 organization of the corporation by appointing officers, adopting bylaws, and transacting on any
29 other business to come before the meeting.

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

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

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

34 (c) The incorporator or incorporators calling a meeting under this section shall give at

1 least three (3) days' notice of the meeting by mail to each incorporator. The notice shall state the
2 time and place of the meeting.

3 (d) The act or decision done or made by a majority of the incorporators shall be the act of
4 the incorporators, provided that an action permitted to be taken at the meeting or meetings of
5 incorporators under this section may be taken without a meeting if a consent, in writing, stating
6 the action to be taken, is signed by all of the incorporators.

7 **7-1.2-202. Articles of incorporation.** -- (a) The articles of incorporation shall state:

8 (1) A corporate name that satisfies the requirements of section 7-1.2-401.

9 (2) The total number of shares of stock which the corporation has authority to issue, and
10 if the corporation is to be authorized to issue more than one class of stock.

11 (i) the total number of shares of stock of each class; and

12 (ii) A statement of all or any of the designations and the powers, preferences, and rights,
13 including voting rights, and the qualifications, limitations, or restrictions of them, which are
14 permitted by the provisions of this chapter in respect of any class or classes of stock of the
15 corporation and the fixing of which by the articles of association is desired, and an express grant
16 of the authority as it may then be desired to grant to the board of directors to fix by vote or votes
17 any of them that may be desired but which is not fixed by the articles.

18 (3) The address of its initial registered office, and the name of its initial registered agent
19 at the address.

20 (4) The name and address of each incorporator.

21 (b) The articles of incorporation may state:

22 (1) A par value of each of authorized shares of classes of stock.

23 (B) The number of the shares that are to be without par value; and

24 (2) Any provisions dealing with the preemptive right of shareholders pursuant to the
25 provisions of Section 7-1.2-613.

26 (3) Any provision, not inconsistent with law, which the incorporators elect to set forth in
27 the articles of incorporation for the regulation of the internal affairs of the corporation, including,
28 but not limited to, a provision eliminating or limiting the personal liability of a director to the
29 corporation or to its stockholders for monetary damages for breach of the director's duty as a
30 director; provided that the provision does not eliminate or limit the liability of a director for:

31 (i) Any breach of the director's duty of loyalty to the corporation or its stockholders;

32 (ii) Acts or omissions not in good faith or which involve intentional misconduct or a
33 knowing violation of law;

34 (iii) Liability imposed pursuant to the provisions of Section 7-1.2-811; or

1 (iv) Any transaction from which the director derived an improper personal benefit (unless
2 the transaction is permitted by Section 7-1.2-807); and also including;

3 (v) Any provision which under this chapter is required or permitted to be set forth in the
4 bylaws.

5 No provision eliminating or limiting the personal liability of a director will be effective
6 with respect to causes of action arising prior to the inclusion of the provision in the articles of
7 incorporation of the corporation.

8 (3) If, pursuant to Section 7-1.2-105(d), the corporate existence is to begin at a time
9 subsequent to the issuance of the certificate of incorporation by the secretary of state, the date
10 when corporate existence begins.

11 (c) The provisions permitted by subsection (b)(3) may also be included in the articles of
12 incorporation or legislative charter of any existing or future financial institution, insurance
13 company, public utility, or other quasi public corporation having purposes enumerated as
14 exceptions to this chapter in Section 7-1.2-301.

15 (d) The period of duration of a corporation shall be perpetual unless otherwise stated in
16 the articles of incorporation.

17 (e) It is not necessary to set forth in the articles of incorporation any of the corporate
18 powers enumerated in this chapter.

19 **7-1.2-203. Bylaws.** -- The bylaws may contain any provisions for the regulation and
20 management of the affairs of the corporation not inconsistent with law or the articles of
21 incorporation. The initial bylaws of a corporation shall be adopted by its incorporators or by its
22 board of directors at its organization meeting. Subsequently, the bylaws may be amended by the
23 shareholders, or, unless otherwise provided in the articles of incorporation or bylaws, by the
24 board of directors, but any amendment to the bylaws by the board of directors may be changed by
25 the shareholders.

26 **Part III. Purposes and Powers.**

27 **7-1.2-301. Purposes.** -- Corporations may be organized under this chapter for any lawful
28 purpose or purposes, except for the purpose of carrying on within this state the business of a
29 bank, savings bank, trust company, building and loan association, loan and investment company,
30 safe deposit company, railroad, electric railroad or street railway company, telegraph or telephone
31 company, gas or electric light, heat or power company, canal, aqueduct, or water company,
32 turnpike company, or any corporation which now has or may subsequently have the right to take
33 or condemn land or other property within this state under the power of eminent domain, or to
34 exercise or acquire franchises in streets or highways of this state; provided, however, that

1 corporations organized for any of the purposes specified in chapter 5.1 of this title shall be
2 organized under the provisions of that chapter.

3 **7-1.2-302. Powers.** -- (a) In addition to the powers enumerated below, every corporation,
4 its officers, directors and shareholders shall possess and may exercise all the powers and
5 privileges granted by this chapter or by any other law or by its articles of incorporation, together
6 with any powers incidental thereto, so far as such powers and privileges are necessary or
7 convenient to the conduct, promotion or attainment of the business or purposes set forth in its
8 articles of incorporation.

9 (b) Each corporation shall have power to:

10 (1) Have perpetual succession by its corporate name unless a limited period of duration is
11 stated in its articles of incorporation.

12 (2) Sue and be sued, complain and defend, in its corporate name.

13 (3) Have a corporate seal which may be altered at pleasure, and to use the seal by causing
14 it, or a facsimile of it, to be impressed or affixed or reproduced in any other manner.

15 (4) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and
16 otherwise deal in and with, real or personal property, or any interest in that property, wherever
17 situated.

18 (5) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all
19 or any part of its property and assets.

20 (6) Lend money and use its credit to assist its employees.

21 (7) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,
22 employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and
23 with, shares or other interests in, or obligations of, other domestic or foreign corporations,
24 associations, partnerships or individuals, or direct or indirect obligations of the United States or of
25 any other government, state, territory, governmental district or municipality or of any of their
26 instrumentalities.

27 (8) Make contracts and guarantees and incur liabilities, borrow money at the rate of
28 interest that the corporation may determine, issue its notes, bonds, and other obligations, and
29 secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and
30 income.

31 (9) Lend money for its corporate purposes, invest and reinvest its funds, and take and
32 hold real and personal property as security for the payment of the funds loaned or invested.

33 (10) Conduct its business, carry on its operations, and have offices and exercise the
34 powers granted by this chapter, within or without this state.

1 (11) Elect or appoint officers and agents of the corporation, and define their duties, and
2 fix their compensation.

3 (12) Make and alter bylaws, not inconsistent with its articles of incorporation or with the
4 laws of this state, for the administration and regulation of the affairs of the corporation.

5 (13) Make donations for the public welfare or for charitable, scientific, or educational
6 purposes.

7 (14) Transact any lawful business which the board of directors finds will aid
8 governmental authority.

9 (15) Pay pensions and establish pension plans, pension trusts, profit sharing plans, stock
10 bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers,
11 and employees.

12 (16) Provide insurance for its benefit on the life of any of its directors, officers, or
13 employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares
14 of its stock owned by the shareholder.

15 (17) Be a promoter, partner, member, associate, or manager of any partnership, joint
16 venture, trust, or other enterprise.

17 (18) Make payments or donations, or do any other act, not inconsistent with law, that
18 further the business and affairs of the corporation.

19 (19) Indemnify any person pursuant to Section 7-1.2-814.

20 (20) Make guarantees, although not in furtherance of its corporate purposes, when
21 authorized at a meeting of shareholders by the affirmative vote of the holders of a majority of the
22 shares of the corporation entitled to vote on guarantees, or a greater percentage that is provided in
23 the articles of incorporation or bylaws.

24 (21) If authorized by a like vote, to mortgage, pledge, or give a security interest in all or
25 any of its property, franchises, and income to secure a guarantee or to secure obligations other
26 than its own.

27 (c) Every corporation shall be governed by the provisions and be subject to the
28 restrictions and liabilities contained in this chapter.

29 **7-1.2-303. Defense of Ultra Vires.** -- No act of a corporation and no conveyance or
30 transfer of real or personal property to or by a corporation is invalid because the corporation was
31 without capacity or power to do the act or to make or receive the conveyance or transfer, but the
32 lack of capacity or power may be asserted:

33 (1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act
34 or the transfer of real or personal property by or to the corporation. If the unauthorized act or

1 transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to
2 which the corporation is a party, the court may, if all of the parties to the contract are parties to
3 the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of
4 the contract, and in so doing may allow to the corporation or to the other parties to the contract, as
5 the case may be, compensation for the loss or damage sustained by either of them which may
6 result from the action of the court in setting aside and enjoining the performance of the contract,
7 but anticipated profits to be derived from the performance of the contract shall not be awarded by
8 the court as a loss or damage sustained.

9 (2) In a proceeding by the corporation, whether acting directly or through a receiver,
10 trustee, or other legal representative, or through shareholders in a representative suit, against the
11 incumbent or former officers or directors of the corporation.

12 (3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the
13 corporation, or in a proceeding by the attorney general to enjoin the corporation from the
14 transaction of unauthorized business.

15 **Part IV. Name.**

16 **7-1.2-401. Corporate name.** -- (a) The corporate name:

17 (1) Shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or
18 shall contain an abbreviation of one of the words.

19 (2) Shall not contain any word or phrase which indicates or implies that it is organized for
20 any purpose other than one or more of the purposes contained in its articles of incorporation.

21 (3) Shall be distinguishable upon the records of the secretary of state from the name of
22 any domestic corporation, whether for profit or not for profit, or limited partnership existing
23 under the laws of this state or any foreign corporation, whether for profit or not for profit, or
24 limited partnership authorized to transact business in this state, or domestic or foreign limited
25 liability company or a name the exclusive right to which is, at the time filed, reserved or
26 registered in the manner provided in this chapter, or the name of a corporation or a limited
27 partnership which has in effect a registration of its corporate or limited partnership name as
28 provided in this title, subject to the following:

29 (i) This provision does not apply if the applicant files with the secretary of state either of
30 the following:

31 (A) The written consent of the other corporation, limited partnership, limited liability
32 company or holder of a filed, reserved or registered name to use that name or deceptively similar
33 name, and an undertaking by the other corporation, limited partnership, limited liability company
34 or holder of a filed, reserved or registered name in form satisfactory to the secretary of state to

1 change its name to a name that is distinguishable upon the records of the secretary of state from
2 the name of the applying corporation; or

3 (B) A certified copy of a final decree of a court of competent jurisdiction establishing the
4 prior right of the applicant to the use of the name in this state; and

5 (ii) The name may be the same as, or deceptively similar to, the name of a corporation or
6 other association the certificate of incorporation or organization of which has been revoked by the
7 secretary of state as permitted by law and the revocation has not been withdrawn within one year
8 from the date of the revocation.

9 (b) A corporation with which another corporation, domestic or foreign, is merged, or
10 which is formed by the reorganization of one or more domestic or foreign corporations or upon a
11 sale, lease, or other disposition to, or exchange with, a domestic corporation of all or substantially
12 all the assets of another corporation, domestic or foreign, including its name, may have the same
13 name as that used in this state by any of the corporations if at the time the other corporation was
14 organized under the laws of, or is authorized to transact business in, this state.

15 **7-1.2-402. Fictitious business name.** -- (a) Any corporation organized and existing
16 under the laws of this state or authorized to transact business in this state may transact business in
17 this state under a fictitious name, provided that it files a fictitious business name statement in
18 accordance with this section prior to the time it commences to transact the business under the
19 fictitious name.

20 (b) The fictitious business name statement shall be filed with the secretary of state on
21 forms to be furnished by the secretary of state and shall be executed by an authorized officer of
22 the corporation and shall state:

23 (1) The fictitious business name to be used;

24 (2) The name of the applicant corporation and the state or territory under the laws of
25 which it is incorporated, the date of its incorporation, and a brief statement of the business in
26 which it is engaged; and

27 (3) The address of its registered office within the state.

28 (c) The fictitious business name statement expires upon the filing of the statement of
29 abandonment of use of a fictitious business name registered in accordance with this section or
30 upon the dissolution of the applicant corporation.

31 (d) The statement of abandonment of use of a fictitious business name under this section
32 may be filed with the secretary of state on forms furnished by the secretary of state and shall be
33 executed by an authorized officer of the corporation and shall state:

34 (1) The fictitious business name being abandoned;

1 (2) The date on which the original fictitious business name statement being abandoned
2 was filed;

3 (3) The name of the applicant corporation and the state or territory under the laws of
4 which it is incorporated; and

5 (4) The address of its registered office within the state.

6 (e) No domestic or foreign corporation transacting business under a fictitious business
7 name contrary to the provisions of this section, or its assignee, may maintain any action upon or
8 on account of any contract made, or transaction had, in the fictitious business name in any court
9 of this state until a fictitious business name statement has been filed in accordance with this
10 section.

11 (f) No corporation may be permitted to transact business under a fictitious business name
12 pursuant to this section which is not distinguishable upon the records of the secretary of state
13 from the name of any domestic corporation, any domestic limited partnership or any domestic
14 limited liability company existing under the laws of this state, or the name of any foreign
15 corporation, foreign limited partnership or foreign limited liability company authorized to transact
16 business in the state, or any corporate name filed, reserved or registered under this title.

17 (g) A filing fee of fifty dollars (\$50.00) is collected by the secretary of state for each
18 statement filed.

19 **7-1.2-403. Reserved name.** -- (a) The exclusive right to the use of a corporate name
20 maybe reserved by:

21 (1) Any person intending to organize a corporation under this chapter.

22 (2) Any domestic corporation intending to change its name.

23 (3) Any foreign corporation intending to make application for a certificate of authority to
24 transact business in this state.

25 (4) Any foreign corporation authorized to transact business in this state and intending to
26 change its name.

27 (5) Any person intending to organize a foreign corporation and intending to have the
28 corporation make application for a certificate of authority to transact business in this state.

29 (b) The reservation is made by filing with the secretary of state an application to reserve a
30 specified corporate name, executed by the applicant. If the secretary of state finds that the name
31 is available for corporate use, he or she shall reserve the name for the exclusive use of the
32 applicant for a non-renewable period of one hundred twenty (120) days.

33 (c) The right to the exclusive use of a specified corporate name so reserved may be
34 transferred to any other person or corporation by filing in the office of the secretary of state a

1 notice of the transfer, executed by the applicant for whom the name was reserved, and specifying
2 the name and address of the transferee.

3 **7-1.2-404. Registered name.** -- (a) Any corporation organized and existing under the
4 laws of any state or territory of the United States may register its corporate name under this
5 chapter, provided its corporate name is distinguishable on the records of the secretary of state
6 from, the name of any domestic corporation, limited partnership or limited liability company
7 existing under the laws of this state, or the name of any foreign corporation, limited partnership or
8 limited liability company authorized to transact business in this state, or any corporate name
9 reserved, filed or registered under this title.

10 (b) The registration is made by:

11 (1) Filing with the secretary of state:

12 (i) An application for registration executed by an authorized officer of the corporation,
13 stating the name of the corporation, the state or territory under the laws of which it is
14 incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and
15 a brief statement of the business in which it is engaged; and

16 (ii) A certificate stating that the corporation is in good standing under the laws of the state
17 or territory wherein it is organized, executed by the secretary of state of the state or territory or by
18 any other official that may have custody of the records pertaining to corporations; and

19 (2) Paying to the secretary of state a registration fee of fifty dollars (\$50.00).

20 (c) The registration is effective for a period of one (1) year from the effective date of the
21 application.

22 (d) A corporation, which has in effect a registration of its corporate name, may renew the
23 registration from year to year by annually filing an application for renewal stating the facts
24 required to be stated in an original application for registration and a certificate of good standing
25 as required for the original registration and by paying a fee of fifty dollars (\$50.00). A renewal
26 application shall be filed prior to the expiration of the one-year period from the filing of an
27 original application for registration or its last renewal and extends the registration for the
28 following year.

29 **Part V. Office and Agent.**

30 **7-1.2-501. Registered office and registered agent.** -- Designation of registered agent
31 without authority. - (a) Each corporation shall have and continuously maintain in this state:

32 (1) A registered office, which may be, but need not be, the same as its place of business.

33 (2) A registered agent, who may be either: (i) the corporation itself, (ii) an individual
34 resident in this state, (iii) a domestic corporation (other than the corporation itself), a domestic

1 limited partnership, a domestic limited liability company or (iv) a foreign corporation, a foreign
2 limited partnership or a foreign limited liability company authorized to transact business in this
3 state, in each case, having a business office identical with the office of such registered agent
4 which generally is open during normal business hours to accept service of process and otherwise
5 perform the functions of a registered agent; provided, however, that in the case where the
6 registered agent of a corporation is an attorney, the business address of the agent need not be
7 identical with the registered office, but may be the usual business address of the attorney.

8 (b) Any incorporator, officer, agent, or servant of a corporation, who designates a
9 registered agent for that corporation without the registered agent's authority, is guilty of a
10 misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand
11 dollars (\$1,000) or by imprisonment of not more than one (1) year, or both.

12 **7-1.2-502. Change of registered office or registered agent.** -- (a) A corporation may
13 change its registered office or change its registered agent, or both, upon filing in the office of the
14 secretary of state a statement stating:

15 (1) The name of the corporation.

16 (2) The address of its then registered office.

17 (3) If the address of its registered office has changed, the new address of the registered
18 office.

19 (4) The name of its then registered agent.

20 (5) If its registered agent has changed, the name of its successor registered agent.

21 (6) The address of its registered office and the address of the business office of its
22 registered agent, as changed.

23 (b) The statement shall be executed by the corporation by its authorized representative,
24 and delivered to the secretary of state. If the secretary of state finds that the statement conforms
25 to the provisions of this chapter, the secretary shall file the statement in his or her office, and
26 upon that filing or upon a later date not more than thirty (30) days after the filing, as is set forth in
27 the statement, the change of address of the registered office, or the appointment of a new
28 registered agent, or both, as the case may be, shall become effective.

29 (c) Any registered agent of a corporation may resign as an agent upon filing a written
30 notice of the resignation with the secretary of state, who shall immediately notify the corporation
31 of the resignation at its registered office. The appointment of the agent terminates upon the
32 expiration of thirty (30) days after receipt of the notice by the secretary of state.

33 (d) If a registered agent changes his or her or its business address to another place within
34 the state, he or she or it may change the address and the address of the registered office of any

1 corporations of which he or she or it is a registered agent by filing a statement as required above,
2 except that it need be signed only by the registered agent and need not be responsive to
3 subsection (a)(5) or (7) and must recite that a copy of the statement has been mailed to each
4 corporation.

5 **7-1.2-503. Service of process on corporation.** -- (a) The registered agent appointed by a
6 corporation is an agent of the corporation upon whom any process, notice, or demand required or
7 permitted by law to be served upon the corporation may be served.

8 (b) Whenever a corporation fails to appoint or maintain a registered agent in this state, or
9 whenever its registered agent cannot with reasonable diligence be found at the registered office,
10 then the secretary of state is an agent of the corporation upon whom any process, notice, or
11 demand may be served. Service on the secretary of state of any process, notice, or demand is
12 made by delivering to and leaving with him or her or with any clerk having charge of the
13 corporation department of his or her office, duplicate copies of the process, notice, or demand. In
14 the event any process, notice, or demand is served on the secretary of state, he or she shall
15 immediately forward one of the copies by certified mail, addressed to the corporation at its
16 registered office. Any service upon the secretary of state is returnable in not less than thirty (30)
17 days.

18 (c) The secretary of state shall maintain an alphabetical record of any such service setting
19 forth the name of the plaintiff and defendant, the title, docket number and nature of the
20 proceeding in which process has been served upon the Secretary of State, the fact that service has
21 been effected pursuant to this subsection, the return date thereof, and the day and hour when the
22 service was made. The secretary of state shall not be required to retain such information for a
23 period longer than five (5) years from receipt of the service of process.

24 (d) Nothing contained in these provisions limits or affects the right to serve any process,
25 notice, or demand required or permitted by law to be served upon a corporation in any other
26 manner now or subsequently permitted by law.

27 **Part VI. Shares Issuance and Distributions.**

28 **7-1.2-601. Right of corporation to acquire and, dispose of and cancel its own shares.**
29 -- (a) Unless a corporation's articles of incorporation provide otherwise, subject to subsection (f),
30 a corporation may at any time, by resolution of its board of directors, redeem purchase, take,
31 receive, or otherwise acquire, hold, own, pledge, transfer, or dispose of its own shares.

32 (b) In this Section 7-1.2-601, "redeemable shares" shall mean shares issued pursuant to
33 Section 7-1.2-602(c)(1). When redeemable shares have been called for redemption, such shares
34 shall not be deemed to be outstanding shares for the purpose of voting or determining the total

1 number of shares entitled to vote on any matter on and after the date on which written notice of
2 redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been
3 irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon
4 surrender of certificates therefor.

5 (c) When redeemable shares are redeemed or purchased by the corporation, the
6 redemption or purchase effects a cancellation of the shares and a statement of cancellation shall
7 be filed pursuant to subsection (e).

8 (d) When shares of a corporation other than redeemable shares are purchased, a
9 corporation may, at any time, by resolution of its board of directors, cancel all or any part of the
10 shares of the corporation of any class or series reacquired by it by filing a statement of
11 cancellation as provided in subsection (e).

12 (e) A statement of cancellation adopted by the board of directors shall be delivered to the
13 secretary of state for filing as follows:

14 (1) The statement of cancellation shall be executed by an authorized officer of the
15 corporation, and shall state:

16 (i) The name of the corporation.

17 (ii) The number of shares canceled through redemption or purchase, itemized by classes
18 and series.

19 (iii) The aggregate number of issued shares, itemized by classes and series, after giving
20 effect to the cancellation.

21 (iv) If the articles of incorporation provide that the canceled shares are not to be reissued,
22 then the number of shares which the corporation has authority to issue, itemized by classes and
23 series, after giving effect to the cancellation.

24 (2) An original and a copy of the statement of cancellation shall be delivered to the
25 secretary of state. If the secretary of state finds that the statement of cancellation conforms to
26 law, the secretary of state shall, when all fees and franchise taxes have been paid:

27 (i) Endorse on the original and copy the word "Filed", and the month, day, and year of
28 the filing.

29 (ii) File the original in his or her office.

30 (iii) Issue certificate of cancellation of shares.

31 (3) Upon filing of the statement of cancellation, the shares are restored to the status of
32 authorized but unissued shares unless the articles of incorporation provide that the shares, when
33 redeemed or purchased, are not to be reissued, in which case the filing of the statement of
34 cancellation constitutes an amendment to the articles of incorporation and reduces the number of

1 shares of the class canceled which the corporation is authorized to issue by the number of shares
2 canceled.

3 (f) No redemption or purchase of shares shall be made by a corporation if, after giving it
4 effect:

5 (1) The corporation would not be able to pay its debts as they become due in the usual
6 course of business; or

7 (2) The corporation's total assets would be less than the sum of its total liabilities plus
8 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the
9 corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights
10 upon dissolution of shareholders whose preferential rights are superior to those receiving the
11 distribution (unless such preferential rights are waived by a majority of the shareholders entitled
12 to such preferential rights, voting by class).

13 (g) Nothing contained in this section is construed to forbid the cancellation of shares in
14 any other manner permitted by this chapter.

15 **7-1.2-602. Authorized shares; shares in classes or series; issuance of shares. -- (a)**
16 Every corporation has the power to create and issue the number of shares stated in its articles of
17 incorporation or any amendment thereto.

18 (b) Classes and Series. As shall be stated and expressed in the articles of incorporation or
19 in any amendment thereto, or in the resolution or resolutions providing for the issue of such
20 shares adopted by the board of directors pursuant to authority expressly vested in it by the
21 provisions of its articles of incorporation, a corporation may issue one or more classes of shares,
22 including one or more classes of common shares, or one or more series of shares within any class
23 thereof, any or all of which classes or series of shares may be certificated or uncertificated, with
24 par value or without par value, and which classes or series may have such voting powers, full or
25 limited, or no voting powers, and such designations, preferences and relative, participating,
26 optional or other special rights, and qualifications, limitations or restrictions thereof as shall be
27 stated and expressed in the articles of incorporation or any amendment thereto, or in the
28 resolution or resolutions providing for the issue of such shares adopted by the board of directors
29 pursuant to the authority expressly vested in it by the provisions of its articles of incorporation.

30 (c) Without limiting the authority contained in these provisions, a corporation, when
31 provided for in its articles of incorporation, may issue shares of preferred or special classes or
32 series:

33 (1) Redeemable for cash, property, promissory notes or rights, including securities of any
34 other corporation, at the option of either the holder or the corporation or upon the happening of a

1 specified event, at the time or times, at the price or prices, or the rate or rates, and with the
2 adjustments stated and expressed or provided for in the articles of incorporation or any
3 amendment thereto, or in the vote or votes providing for the issuance of the shares adopted by the
4 board of directors as previously provided; provided, however, that immediately following any
5 such redemption the corporation shall have outstanding one or more shares of one or more classes
6 or series, which share, or shares together, shall have unlimited voting rights.

7 (2) Entitling the holders of the shares to cumulative, noncumulative, or partially
8 cumulative dividends.

9 (3) Having preference over any other class or classes or series of shares as to the payment
10 of dividends.

11 (4) Having preference in the assets of the corporation over any other class or classes or
12 series of shares upon the voluntary or involuntary liquidation of the corporation.

13 (5) To the extent not inconsistent with this chapter, having limited or no voting rights, or
14 having special voting rights including the power to elect one or more directors.

15 (6) Convertible into, or exchangeable for, at the option of either the holder or the
16 corporation or upon the happening of a specified event, shares of any other class or classes or any
17 other series of shares of the corporation, at such price or prices or at such rate or rates of
18 exchange and with such adjustments as shall be stated in the articles of incorporation or in the
19 resolution or resolutions providing for the issuance of such shares adopted by the board of
20 directors.

21 (d) If the articles of incorporation expressly vest authority in the board of directors, then,
22 to the extent that the articles of incorporation have not established series and fixed and
23 determined the variations in the relative rights and preferences as between the series, the board of
24 directors has authority to divide any or all of the classes into series and, within the limitations, if
25 any, stated in the articles of incorporation, to fix and determine the relative rights and preferences
26 of the shares of any series established.

27 (e)(1) Open-End Investment Company. Notwithstanding the provisions of subsections
28 (a) and (b) of this section, the board of directors of a corporation that is registered or intends to
29 register as an open-end investment company under the Investment Company Act of 1940, as
30 heretofore or hereafter amended, after the registration as an open-end company takes effect, may
31 increase or decrease the aggregate number of shares or the number of shares of any class or series
32 that the corporation has authority to issue unless a provision has been included in the charter of
33 the corporation after July 1, 2001 prohibiting such an action by the board of directors to increase
34 or decrease the aggregate number of shares or the number of shares of any class or series that the

1 corporation has authority to issue.

2 (2) Conditional License of Franchise. Any shares of a corporation which holds (directly
3 or indirectly) a license or franchise from a governmental agency to conduct its business or is a
4 member of a national securities exchange, which license, franchise or membership is conditioned
5 upon some or all of the holders of its shares possessing prescribed qualifications may be made
6 subject to redemption by the corporation to the extent necessary to prevent the loss of such
7 license, franchise or membership or to reinstate it.

8 (f) Dividends. The holders of preferred or special shares of any class or of any series of
9 shares are entitled to receive dividends at the rates, on the conditions and at the times that are
10 stated and expressed in the articles of incorporation, or in any amendment thereto, or in the vote
11 or votes providing for the issue of the shares adopted by the board of directors as previously
12 provided, payable in preference to, or in relation to, the dividends, payable on any other class or
13 classes of shares, or of any other series of shares, and cumulative, non-cumulative or partially
14 cumulative as is stated and expressed. When dividends upon the preferred and special shares, if
15 any, to the extent of the preferences to which the shares are entitled, have been paid or declared
16 and set apart for payment, a dividend on the remaining class or classes or series of shares may
17 then be paid out of the remaining assets of the corporation available for dividends.

18 (g) Rights Upon Liquidation. The holders of the preferred or special shares of any class
19 or of any series of shares are entitled to the rights upon the dissolution of, or upon any
20 distribution of the assets or liquidation, voluntary or involuntary, of the corporation as are stated
21 and expressed in the articles of incorporation or any amendment thereto, or in the vote or votes
22 providing for the issue of the shares adopted by the board of directors as previously provided.

23 (h) Facts Ascertainable Outside the Articles of Incorporation. Any of the voting powers,
24 designations, preferences, rights and qualifications, limitations or restrictions of any class or
25 series of shares may be made dependent upon facts ascertainable outside the articles of
26 incorporation or of any amendment thereto, or outside the resolution or resolutions providing for
27 the issue of such shares adopted by the board of directors pursuant to authority expressly vested
28 in it by its articles of incorporation, provided that the manner in which such facts shall operate
29 upon the voting powers, designations, preferences, rights and qualifications, limitations or
30 restrictions of such class or series of shares is clearly and expressly set forth in the articles of
31 incorporation or in the resolution or resolutions providing for the issue of such shares adopted by
32 the board of directors. The term "facts," as used in this subsection, includes, but is not limited to,
33 the occurrence of any event, including a determination or action by any person or body, including
34 the corporation.

1 (h) Amendment of Rights and Restrictions by Board of Directors. Subject to subsection
2 (i), unless otherwise provided in the articles of incorporation, if no shares have been issued of a
3 class or series established by resolution of the board of directors, the voting powers, designations,
4 preferences, and relative, participating optional or other rights, if any or the qualifications,
5 limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the
6 board of directors.

7 (i)(1) Issuance. Before any corporation issues any shares of stock of any class or of any
8 series of any class of which the voting powers, designations, preferences, and relative,
9 participating, optional, or other rights, if any, or the qualifications, limitations, or restrictions of
10 the stock, if any, have not been stated in the articles of incorporation or in any amendment to the
11 articles but are provided for in a vote or votes adopted by the board of directors pursuant to
12 authority expressly vested in it by the provisions of the articles of incorporation or an amendment
13 to the articles, a certificate presenting a copy of the vote or votes and the number of shares of the
14 class or series shall be made under the seal of the corporation and signed by an authorized officer
15 of the corporation and acknowledged by the signing officer before an officer authorized by the
16 laws of this state to take acknowledgment of deeds, and a copy of the certificate shall be filed in
17 the same manner as articles of incorporation are required to be filed. Upon the filing the
18 certificate constitutes an amendment to the articles of incorporation.

19 (2) Increase or Decrease of Shares. Unless otherwise provided in any vote or votes, the
20 number of shares of any class or series as stated in the vote or votes may be increased or
21 decreased (but not below the number of shares then outstanding) by a certificate likewise made,
22 signed, and filed presenting a statement that a specified increase or decrease in the number of
23 shares had been authorized and directed by a vote or votes likewise adopted by the board of
24 directors. In case the number of shares shall be decreased, the number of shares specified in the
25 certificate resume the status which they had prior to the adoption of the first resolution or
26 resolutions.

27 **7-1.2-603. Subscription for shares.** -- (a) A subscription for shares entered into before
28 incorporation is irrevocable for a period of six (6) months unless the subscription agreement
29 provides a longer or shorter period or all the subscribers agree to revocation. A subscription for
30 shares shall not be enforceable against a subscriber unless in writing and signed by the subscriber
31 or by an agent of the subscriber.

32 (b) The board of directors may determine the payment terms of subscriptions for shares
33 that were entered into before incorporation, unless the subscription agreement specifies them. A
34 call for payment by the board of directors must be uniform so far as practicable as to all shares of

1 the same class or series, unless the subscription agreement specifies otherwise.

2 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully
3 paid and nonassessable when the corporation receives the consideration specified in the
4 subscription agreement.

5 (d) If a subscriber defaults in payment of money or property under a subscription
6 agreement entered into before incorporation, the corporation may collect the amount owed as any
7 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation
8 may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days
9 after the corporation sends written demand for payment to the subscriber.

10 (e) A subscription agreement entered into on or after incorporation is a contract between
11 the subscriber and the corporation subject to Section 7-1.2-604.

12 **7-1.2-604. Issuance of and consideration for shares.** -- (a) Shares of stock with par
13 value may be issued for such consideration having a value not less than the par value shares
14 thereof, as determined from time to time by the board of directors, or by the shareholders if the
15 articles of incorporation so provides.

16 (b) Shares of stock without par value may be issued for such consideration as is
17 determined from time to time by the board of directors, or by the shareholders if the articles of
18 incorporation so provides.

19 (c) The board of directors may authorize shares to be issued for consideration consisting
20 of any tangible or intangible property or benefit to the corporation, including cash, promissory
21 notes, services performed, contracts for services to be performed, or other securities of the
22 corporation.

23 (e) Before the corporation issues shares, the board of directors must determine that the
24 consideration received or to be received for shares to be issued is adequate. The determination by
25 the board is conclusive insofar as the adequacy of consideration for the issuance of the shares
26 relates to whether the shares are validly issued, fully paid and nonassessable.

27 (f) When the corporation receives the consideration for which the board of directors
28 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

29 (g) The corporation may place in escrow shares issued for a contract for future services or
30 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares,
31 and may credit distributions in respect of the shares against their purchase price, until the services
32 are performed, the note is paid, or the benefits received. If the services are not performed, the
33 note is not paid, or the benefits are not received, the shares escrowed or restricted and the
34 distributions credited may be cancelled in whole or part.

1 **7-1.2-605. Par value per share.** -- Solely for the purpose of any statute or regulation
2 imposing any tax or fee based upon the capitalization of a corporation, unless otherwise stated in
3 the articles of incorporation, all authorized shares of a corporation organized under this chapter
4 shall be deemed to have a nominal or par value of one cent (\$0.01) per share. If any federal or
5 other statute or regulation applicable to a particular corporation requires that the shares of such
6 corporation have a par value, such shares shall have the par value determined by the board in
7 order to satisfy the requirements of such statute or regulation.

8 **7-1.2-606. Stock rights and options.** -- Subject to any provisions in respect to rights and
9 options stated in its articles of incorporation, a corporation may create and issue, whether or not
10 in connection with the issuance and sale of any of its shares or other securities, rights or options
11 entitling the holders to purchase from the corporation shares of any class or classes. Those rights
12 or options shall be evidenced, and the recipients thereof designated, in any manner that the board
13 of directors approves and, subject to the provisions of the articles of incorporation, shall state the
14 terms upon which, the time or times within which and the price or prices at which the shares may
15 be purchased from the corporation upon the exercise of any right or option. In the absence of
16 fraud in the transaction, the judgment of the board of directors as to the adequacy of the
17 consideration received for the rights or options is conclusive.

18 **7-1.2-607. Expenses of organization, reorganization and financing.** -- The reasonable
19 charges and expenses of organization or reorganization of a corporation, and the reasonable
20 expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed
21 by the corporation out of the consideration received by it in payment for its shares without
22 rendering the shares not fully paid or assessable.

23 **7-1.2-608. Form and content of certificates.** -- (a) The shares of a corporation may but
24 need not be represented by certificates as determined by the board of directors. Every holder of
25 shares represented by certificates and upon request every holder of uncertificated shares is
26 entitled to have a certificate signed by the officer or officers designated for the purpose by the
27 bylaws of the corporation, and in absence of any designation, by the chairperson or the vice
28 chairperson of the board of directors, or the president or a vice president, and by the treasurer or
29 the assistant treasurer, or the secretary or an assistant secretary of the corporation, representing
30 the number of shares registered in certificate form and may be sealed with the seal of the
31 corporation or a facsimile of the seal. Any or all of the signatures on the certificate may be a
32 facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile
33 signature has been placed upon the certificate has ceased to be the officer, transfer agent, or
34 registrar before the certificate is issued, it may be issued by the corporation with the same effect

1 as if he or she were the officer, transfer agent, or registrar at the date of its issue.

2 (b) Every certificate representing shares issued by a corporation which is authorized to
3 issue shares of more than one class shall state upon the face or back of the certificate, or shall
4 state that the corporation will furnish to any shareholder upon request and without charge, a full
5 statement of the designations, preferences, limitations, and relative rights of the shares of each
6 class authorized to be issued and, if the corporation is authorized to issue any preferred or special
7 class in series, the variations in the relative rights and preferences between the shares of each
8 series so far as the series have been fixed and determined and the authority of the board of
9 directors to fix and determine the relative rights and preferences of subsequent series.

10 (c) Each certificate representing shares shall state upon the face of the certificate:

11 (1) That the corporation is organized under the laws of this state.

12 (2) The name of the person to whom issued.

13 (3) The number and class of shares, and the designation of the series, if any, which the
14 certificate represents.

15 (d) No certificate shall be issued for any share until the share is fully paid.

16 (e) Within a reasonable time after the issuance or transfer of uncertificated shares, the
17 corporation shall send to the registered owner of the shares a written notice containing the
18 information and statements required to be presented or stated on certificates pursuant to
19 subsections (b) and (c) and section 7-1.2-609(b).

20 (f) Except as otherwise expressly provided by law, the rights and obligations of the
21 holders of uncertificated shares and the rights and obligations of the holders of certificates
22 representing shares of the same class and series shall be identical.

23 **7-1.2-609. Stock transfer and ownership restrictions.** -- (a) The shares of a corporation
24 are personal property and are transferable in accordance with the provisions of Section 6A-8-204,
25 as amended from time to time, except as may otherwise be provided in this chapter.

26 (b) The articles of incorporation, bylaws, an agreement among all or less than all of the
27 shareholders, or an agreement between all or less than all of the shareholders and the corporation
28 may impose restrictions on the transfer or registration of transfer of shares of the corporation. A
29 restriction does not affect shares issued before the restriction was adopted unless the holders of
30 the shares are parties to the restriction agreement or voted in favor of the restriction.

31 (c) A restriction on the transfer or registration of transfer of shares is valid and
32 enforceable against the holder or a transferee of the holder if the restriction is authorized by this
33 chapter and its existence is noted conspicuously on the front or back of the certificate or is
34 contained in the initial transaction statement required by Section 6A-8-204(2). Unless noted, a

1 restriction is not enforceable against a person without knowledge of the restriction.

2 (d) A restriction on the transfer, ownership or registration of transfer of shares is
3 authorized:

4 (1) To maintain the corporation's status when it is dependent on the number or identity of
5 its shareholders;

6 (2) To preserve exemptions under federal or state securities law;

7 (3) To permit a corporation to qualify as: (i) a real estate investment trust under the
8 provisions of the Internal Revenue Code of 1986, as heretofore or hereafter amended, or
9 regulations adopted thereunder; or (ii) an investment company under the Investment Company
10 Act of 1940, as heretofore or hereafter amended, or regulations adopted thereunder; and

11 (4) For any other reasonable purpose.

12 (e) A restriction on the transfer or registration of transfer of shares may:

13 (1) Obligate the shareholder first to offer the corporation or other persons (separately,
14 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

15 (2) Obligate the corporation or other persons (separately, consecutively, or
16 simultaneously) to acquire the restricted shares;

17 (3) Require the corporation, the holders of any class of its shares, or another person to
18 approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

19 (4) Prohibit the transfer of the restricted shares to designated persons or classes of
20 persons, if the prohibition is not manifestly unreasonable.

21 (f) For the purposes of this section, "shares" includes a security convertible into or
22 carrying a right to subscribe for or acquire shares.

23 **7-1.2-610. Fractional shares. -- (a) A corporation may:**

24 (1) Issue fractions of a share,

25 (2) Arrange for the disposition of fractional interests by those entitled to those interests,

26 (3) Pay in cash the fair value of fractions of a share as of the time when those entitled to
27 receive the fractions are determined, or

28 (4) Issue scrip in registered or bearer form which entitles the holder to receive a
29 certificate for a full share upon the surrender of the scrip aggregating a full share.

30 (b) A certificate for a fractional share shall, but scrip shall not, unless it otherwise
31 provides, entitle the holder to exercise voting rights, to receive dividends on that share, and to
32 participate in any of the assets of the corporation in the event of liquidation. The board of
33 directors may issue scrip subject to the condition that it becomes void if not exchanged for
34 certificates representing full shares before a specified date, or subject to the condition that the

1 shares for which scrip is exchangeable may be sold by the corporation and the proceeds from the
2 sale distributed to the holders of scrip, or subject to any other conditions which the board of
3 directors deems advisable.

4 **7-1.2-611. Bonds; Facsimile signatures and seals.** -- The seal of the corporation and
5 any or all signatures of the officers or other agents of the corporation upon a bond and any
6 coupon attached to the bond may be facsimiles if the bond is countersigned by an officer or other
7 agent of a trustee or other certifying or authenticating authority. In case any officer or other agent
8 who has signed or whose facsimile signature has been placed upon the bond or coupon has ceased
9 to be the officer or agent before the bond is issued, it may be issued by the corporation with the
10 same effect as if he or she were the officer or agent at the date of its issue.

11 **7-1.2-612. Liability of subscribers and shareholders.** -- (a) A holder of or subscriber to
12 shares of a corporation is under no obligation to the corporation or its creditors with respect to the
13 shares other than the obligation to pay to the corporation the unpaid portion of the consideration
14 for which the shares were issued or to be issued, which in no event shall be less than the amount
15 of the consideration for which the shares could be lawfully issued.

16 (b) Any person becoming an assignee or transferee of shares or of a subscription for
17 shares in good faith and without knowledge or notice that the full consideration for the shares has
18 not been paid is not personally liable to the corporation or its creditors for any unpaid portion of
19 the consideration. An executor, administrator, conservator, guardian, trustee, assignee for the
20 benefit of creditors, or receiver is not personally liable to the corporation as a holder of or
21 subscriber to shares of a corporation but the estate and funds in his or her hands is so liable.

22 (c) No pledgee or other holder of shares as collateral security is personally liable as a
23 shareholder.

24 **7-1.2-613. Shareholder's preemptive rights.** -- (a) Except to the extent limited or
25 denied by this section or by the articles of incorporation, shareholders of a corporation
26 incorporated prior to January 1, 2005 have a preemptive right to acquire unissued shares or
27 securities convertible into shares or carrying a right to subscribe to or acquire shares. Unless
28 otherwise provided in the articles of incorporation:

29 (1) No preemptive right exists:

30 (i) To acquire any shares issued to directors, officers, or employees pursuant to approval
31 by the affirmative vote of the holders of a majority of the shares entitled to vote on the acquisition
32 or when authorized by and consistent with a plan previously approved by a vote of shareholders;
33 or

34 (ii) To acquire any shares sold other than for money.

1 (2) Holders of shares of any class that is preferred or limited as to dividends or assets are
2 not entitled to any preemptive right.

3 (3) Holders of shares of common stock are not entitled to any preemptive right to shares
4 of any class that is preferred or limited as to dividends or assets or to any obligations, unless
5 convertible into shares of common stock or carrying a right to subscribe to or acquire shares of
6 common stock.

7 (4) Holders of common stock without voting power have no preemptive right to shares of
8 common stock with voting power.

9 (5) The preemptive right is only an opportunity to acquire shares or other securities under
10 terms and conditions that the board of directors may fix for the purpose of providing a fair and
11 reasonable opportunity for the exercise of the right.

12 (b) The shareholders of a corporation incorporated on or after January 1, 2005_ do not
13 have a preemptive right to acquire a corporation's unissued or shares or securities convertible into
14 shares or carrying a right to subscribe for or acquire shares except to the extent the articles of
15 incorporation so provide. A statement included in the articles of incorporation that "the
16 corporation elects to have preemptive rights" (or words of similar import) means that the
17 following principles apply except to the extent the articles of incorporation expressly provide
18 otherwise:

19 (1) The shareholders of the corporation have a preemptive right, granted on uniform
20 terms and conditions prescribed by the board of directors, to provide a fair and reasonable
21 opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued
22 shares upon the decision of the board of directors to issue them.

23 (2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is
24 irrevocable even though it is not supported by consideration.

25 (3) There is no preemptive right with respect to:

26 (i) shares issued as compensation to directors, officers, agents, or employees of the
27 corporation, its subsidiaries or affiliates;

28 (ii) shares issued to satisfy conversion or option rights created to provide compensation to
29 directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

30 (iii) shares authorized in articles of incorporation that are issued within six months from
31 the effective date of incorporation; or

32 (iv) shares sold otherwise than for money.

33 (4) Holders of shares of any class without general voting rights but with preferential
34 rights to distributions or assets have no preemptive rights with respect to shares of any class.

1 (5) Holders of shares of any class with general voting rights but without preferential
2 rights to distributions or assets have no preemptive rights with respect to shares of any class with
3 preferential rights to distributions or assets unless the shares with preferential rights are
4 convertible into or carry a right to subscribe for or acquire shares without preferential rights.

5 (6) Shares subject to preemptive rights that are not acquired by shareholders may be
6 issued to any person for a period of one year after being offered to shareholders at a consideration
7 set by the board of directors that is not lower than the consideration set for the exercise of
8 preemptive rights. An offer at a lower consideration or after the expiration of one year is subject
9 to the shareholders' preemptive rights.

10 (c) For purposes of this section, "shares" includes a security convertible into or carrying a
11 right to subscribe for or acquire shares.

12 **7-1.2-614. Distributions to shareholders. -- (a) Distributions of other than shares.**

13 (i) A board of directors may authorize and the corporation may make distributions to its
14 shareholders subject to restriction the articles of incorporation and the limitation in subsection
15 (iii).

16 (ii) If the board of directors does not fix the record date for determining shareholders
17 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of
18 the corporation's shares), it is the date the board authorizes the distribution.

19 (iii) No distribution may be made if, after giving it effect:

20 (A) the corporation would be insolvent; or

21 (B) the corporation's total assets would be less than the sum of its total liabilities plus
22 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the
23 corporation to be dissolved at the time of the distribution, to satisfy the preferential rights upon
24 dissolution of shareholders whose preferential rights are superior to those receiving the
25 distribution (unless such preferential rights are waived by a majority of the shareholders entitled
26 to such preferential rights, voting by class).

27 (iv) The board of directors may base a determination that a distribution is not prohibited
28 under subsection (iii) either on financial statements prepared on the basis of accounting practices
29 and principles that are reasonable in the circumstances or on a fair valuation or other method that
30 is reasonable in the circumstances.

31 (v) Except as provided in subsection (vii), the effect of a distribution under subsection
32 (iii) is measured:

33 (A) in the case of distribution by purchase, redemption, or other acquisition of the
34 corporation's shares, as of the earlier of (1) the date money or other property is transferred or debt

1 incurred by the corporation or (2) the date the shareholder ceases to be a shareholder with respect
2 to the acquired shares;

3 (B) in the case of any other distribution of indebtedness, as of the date the indebtedness is
4 distributed; and

5 (C) in all other cases, as of (1) the date the distribution is authorized if the payment
6 occurs within one hundred twenty (120) days after the date of authorization or (2) the date the
7 payment is made if it occurs more than one hundred twenty (120) days after the date of
8 authorization.

9 (vi) A corporation's indebtedness to a shareholder incurred by reason of a distribution
10 made in accordance with this section is at parity with the corporation's indebtedness to its
11 general, unsecured creditors except to the extent subordinated by agreement.

12 (vii) Indebtedness of a corporation, including indebtedness issued as a distribution, is not
13 considered a liability for purposes of determinations under subsection (iii) if its terms provide that
14 payment of principal and interest are made only if and to the extent that payment of a distribution
15 to shareholders could then be made under this section. If the indebtedness is issued as a
16 distribution, each payment of principal or interest is treated as a distribution, the effect of which is
17 measured on the date the payment is actually made.

18 (b) Distributions of Shares.

19 (i) Unless the articles of incorporation provide otherwise, shares may be issued pro rata
20 and without consideration to the corporation's shareholders or to the shareholders of one or more
21 classes or series. An issuance of shares under this subsection is a share distribution.

22 (ii) Shares of one class or series may not be issued as a share distribution in respect to
23 shares of another class or series unless (A) the articles of incorporation so authorize, (B) a
24 majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (C)
25 there are not outstanding shares of the class or series to be issued.

26 (iii) If the board of directors does not fix the record date for determining shareholders
27 entitled to share distribution, it is the date the board of directors authorizes the share distribution.

28 **Part VII. Shareholders.**

29 **7-1.2-701. Meetings of shareholders. --** (a) Meetings of shareholders may be held at any
30 place, either within or without this state, that may be stated in or fixed in accordance with the
31 bylaws. If no other place is stated or fixed, all meetings shall be held at the registered office of
32 the corporation. An annual meeting of shareholders shall be held at any time that may be stated
33 or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time
34 does not work a forfeiture or dissolution of the corporation. If the annual meeting is not held

1 within any thirteen (13) month period the superior court may, in its discretion, on the application
2 of any shareholder, summarily order a meeting to be held.

3 (b) Special meetings of the shareholders may be called by the board of directors, or by a
4 person or persons that may be authorized by the articles of incorporation or by the bylaws.

5 (c) Notice of any meeting of shareholders shall be delivered not less than ten (10) nor
6 more than sixty (60) days before the date of the meeting to each shareholder of record entitled to
7 vote at the meeting in the manner prescribed by Section 7-1.2-702.

8 (d) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is
9 adjourned to a different date, time, or place, notice need not be given of the new date, time, or
10 place if the new date, time, or place is announced at the meeting before adjournment. If a new
11 record date for the adjourned meeting is or must be fixed pursuant to the articles of incorporation,
12 the bylaws or otherwise, however, notice of the adjourned meeting must be given under this
13 section to persons who are shareholders as of the new record date.

14 (e) A shareholder's attendance at a meeting:

15 (i) waives objection to lack of notice or defective notice of the meeting, unless the
16 shareholder at the beginning of the meeting objects to holding the meeting or transacting business
17 at the meeting; and

18 (ii) waives objection to consideration of a particular matter at the meeting that is not
19 within the purpose or purposes described in the meeting notice, unless the shareholder objects to
20 considering the matter when it is presented.

21 (f) Upon the application of any shareholder, director, or person aggrieved, the superior
22 court shall immediately hear and determine the petition of the aggrieved with respect to the
23 following: (i) the validity of any election or appointment of any director or officer of a
24 corporation and the right of any person to hold the office; (ii) if any office is claimed by more
25 than one person, the person entitled to the office; (iii) the voting and other rights of persons
26 claiming rights in respect of the contested election or appointment; or (iv) failure of the
27 corporation to hold an annual meeting within any thirteen month period. The superior court may
28 confirm the election or appointment, order a new election, or direct any other relief that may be
29 just and proper.

30 (g) If authorized by the board of directors in its sole discretion, and subject to such
31 guidelines and procedures as the board of directors may adopt, shareholders and proxy holders
32 not physically present at a meeting of shareholders may, by means of remote communication:

33 (i) participate in a meeting of shareholders; and

34 (ii) be deemed present in person and vote at a meeting of shareholders whether such

1 meeting is to be held at a designated place or solely by means of remote communication,
2 provided that (A) the corporation shall implement reasonable measures to verify that each person
3 deemed present and permitted to vote at the meeting by means of remote communication is a
4 shareholder or proxy holder, (B) the corporation shall implement reasonable measures to provide
5 such shareholders and proxy holders a reasonable opportunity to participate in the meeting and to
6 vote on matters submitted to the shareholders, including an opportunity to read or hear the
7 proceedings of the meeting substantially concurrently with such proceedings, and (C) if any
8 shareholder or proxy holder votes or takes other action at the meeting by means of remote
9 communication, a record of such vote or other action shall be maintained by the corporation.

10 **7-1.2-702. Notice to shareholders.** -- (a) Any notice to shareholders given by the
11 corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall
12 be effective if given in writing, or by facsimile or a form of electronic transmission consented to
13 by the shareholder to whom the notice is given. Any such consent shall be revocable by the
14 shareholder by written notice to the corporation. Any such consent shall be deemed revoked if:

15 (1) the corporation is unable to deliver by facsimile or electronic transmission two (2)
16 consecutive notices given by the corporation in accordance with such consent and (2) such
17 inability becomes known to the secretary or an assistant secretary of the corporation or to the
18 transfer agent, or other person responsible for the giving of notice; provided, however, the
19 inadvertent failure to treat such inability as a revocation shall not invalidate the action.

20 (b) If mailed, the notice is deemed to be delivered when deposited in the United States
21 mail addressed to the shareholder at his or her address as it appears on the stock transfer books of
22 the corporation, with prepaid postage on the mail.

23 (c) In the case of any corporation which has fifty (50) or more shareholders of record, if
24 two (2) successive notices, reports, or other communications addressed to a shareholder of the
25 corporation at the address of the shareholder appearing on the books of the corporation have been
26 returned to the corporation by the United States postal service marked to indicate that the United
27 States postal service is unable to deliver the notices, reports, or other communications to the
28 shareholder at the address, all future notices, reports, or other communications are deemed to
29 have been given without further mailing if they are available for the shareholder upon written
30 demand of the shareholder at the principal executive office of the corporation for a period of one
31 year from the date of the giving of the notice, report, or other communication to other
32 shareholders.

33 (d) A shareholder may waive any notice required by this section, the articles of
34 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must

1 be in writing, be signed by the shareholder entitled to the notice, and be delivered to the
2 corporation for inclusion in the minutes or filing with the corporate records.

3 **7-1.2-703. Closing of transfer books and fixing record date.** -- (a) For the purpose of
4 determining shareholders entitled to notice of or to vote at any meeting of shareholders or any
5 adjournment of a meeting of shareholders, or entitled to receive payment of any dividend, or in
6 order to make a determination of shareholders for any other proper purpose, the board of directors
7 of a corporation may provide that stock transfer books are closed for a stated period, not less than
8 that specified in any applicable bylaw and not more than sixty (60) days. In lieu of closing the
9 stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors,
10 may fix in advance a date as the record date for any determination of shareholders, the date in any
11 case to be not more than sixty (60) days prior to the date on which the particular action, requiring
12 the determination of shareholders, is to be taken. If the stock transfer books are not closed and no
13 record date is fixed for the determination of shareholders entitled to notice of or to vote at a
14 meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on
15 which notice of the meeting is mailed or the date on which the resolution of the board of directors
16 declaring the dividend is adopted, as the case may be, is the record date for the determination of
17 shareholders. When a determination of shareholders entitled to vote at any meeting of
18 shareholders has been made as provided in this section, the determination applies to any
19 adjournment, of the meeting.

20 (b) In order that the corporation may determine the shareholders entitled to consent to
21 corporate action in writing without a meeting, the board of directors may fix a record date, which
22 record date shall not precede the date upon which the resolution fixing the record date is adopted
23 by the board of directors. If no record date has been fixed by the board of directors, the record
24 date for determining shareholders entitled to consent to corporate action in writing without a
25 meeting, when no prior action by the board of directors is required by this chapter, shall be the
26 first date on which a signed written consent setting forth the action taken or proposed to be taken
27 is delivered to the corporation by delivery to its registered office in this state, its principal place of
28 business, or an officer or agent of the corporation having custody of the book in which
29 proceedings of meetings of shareholders are recorded. Delivery made to a corporation's
30 registered office shall be by hand or by certified or registered mail, return receipt requested. If no
31 record date has been fixed by the board of directors and prior action by the board of directors is
32 required by this chapter, the record date for determining shareholders entitled to consent to
33 corporate action in writing without a meeting shall be at the close of business on the day on which
34 the board of directors adopts the resolution taking such prior action.

1 (c) A determination of shareholders entitled to notice of or to vote at a shareholders'
2 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new
3 record date.

4 **7-1.2-704. Voting list. --** (a) After fixing a record date for a meeting, a corporation shall
5 prepare a list of the names of all its shareholders who are entitled to notice of a shareholders'
6 meeting.

7 (b) The shareholders' list must be available for inspection by any shareholder, at least ten
8 (10) days before the meeting is given for which the list was prepared and continuing through the
9 meeting, at the corporation's registered office or principal place of business. A shareholder, his
10 agent, or attorney is entitled on written demand to inspect the list during regular business hours
11 during the period it is available for inspection.

12 (c) The corporation shall make the shareholders' list available at the meeting, and any
13 shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or
14 any adjournment.

15 (d) The persons who appear from the list to be shareholders entitled to vote at the meeting
16 may vote at the meeting.

17 (e) If the right to vote at any meeting is challenged, the person presiding at the meeting,
18 shall rely on the list to determine the right of the challenged person to vote.

19 (f) If the meeting is to be held at a place, then the list shall be produced and kept at the
20 time and place of the meeting during the whole time thereof, and may be inspected by any
21 shareholder who is present. If the meeting is to be held solely by means of remote
22 communication, then the list shall also be open to the examination of any shareholder during the
23 whole time of the meeting on a reasonably accessible electronic network, and the information
24 required to access such list shall be provided with the notice of the meeting.

25 **7-1.2-705. Quorum of shareholders required for shareholders' action. --** Unless
26 otherwise provided in the articles of incorporation or bylaws, a majority of the shares entitled to
27 vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders, but in
28 no event does a quorum consist of less than one-third (1/3) of the shares entitled to vote at the
29 meeting. If a quorum is present, unless the vote of a greater number or voting by classes is
30 required by this chapter or the articles of incorporation or bylaws, in all matters other than the
31 election of directors, the affirmative vote of the majority of shares present in person or
32 represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of
33 the shareholders.

34 Directors shall be elected by a plurality of the votes of the shares present in person or

1 represented by proxy at the meeting and entitled to vote on the election of directors. No
2 amendment to the bylaws made by the board of directors pursuant to Section 7-1.2-203 shall
3 require a greater number or voting by classes.

4 **7-1.2-706. Greater voting requirements.** -- Whenever, with respect to any action to be
5 taken by the shareholders of a corporation, the articles of incorporation require the vote or
6 concurrence of the holders of a greater proportion of the shares, or of any class or series of the
7 shares, than required by this chapter with respect to the action, the provisions of the articles of
8 incorporation control. An amendment of the articles of incorporation which changes or deletes a
9 provision is authorized by the same vote as would be required to take action under the provision.

10 **7-1.2-707. Action by shareholders without a meeting.** -- (a) Any action required or
11 permitted to be taken at a meeting of shareholders by this chapter or the articles of incorporation
12 or bylaws of a corporation, may be taken without a meeting if all the shareholders entitled to vote
13 on the action consent to the action in writing.

14 (b) Except for actions pursuant to Section 7-1.2-1002 or Section 7-1.2-1102, any action
15 required or permitted to be taken at a meeting of shareholders by this chapter or the certificate of
16 incorporation or bylaws of a corporation, may be taken without a meeting upon the written
17 consent of less than all the shareholders entitled to vote on the action, if:

18 (i) shareholders who consent would be entitled to cast at least the minimum number of
19 votes that would be required to take the action at a meeting at which all shareholders entitled to
20 vote on the action are present and voting in person or by proxy; and

21 (ii) Action pursuant to this section is authorized by the articles of incorporation.

22 (2) Prompt notice of the action shall be given to all shareholders who would have been
23 entitled to vote upon the action if the meeting were held.

24 (c) Whenever action is taken pursuant to this section, the written consents of the
25 shareholders consenting to the action shall be filed with the minutes of proceedings of
26 shareholders.

27 (d) Any action taken pursuant to this section has the same effect for all purposes as if the
28 action had been taken at a meeting of the shareholders.

29 (e) If any other provision of this chapter requires the filing of a certificate upon the taking
30 of an action by shareholders, and action is taken in the manner authorized by this section, the
31 certificate shall state that the action was taken without a meeting pursuant to the written consents
32 of the shareholders and shall state the number of shares represented by the consents.

33 (f) The record date for determining shareholders entitled to express consent in writing
34 without a meeting, shall be determined in accordance with Section 7-1.2-703 and if no record

1 date is fixed for the determination of shareholders entitled to vote by written consent, the date on
2 which such request for written consent is mailed to shareholders is the record date for the
3 determination of shareholders entitled to express such written consent.

4 **7-1.2-708. Voting of shares.** - (a) Each outstanding share, regardless of series or class, is
5 entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the
6 extent that the voting rights of the shares of any class or classes are limited, enlarged, or denied
7 by the articles of incorporation as permitted by this chapter. If the articles of incorporation
8 provide for more or less than one vote for any share, on any matter, every reference in this
9 chapter to a majority or other proportion of shares shall refer to a majority or other proportion of
10 votes entitled to be cast.

11 (b) Shares held, directly or indirectly, by another corporation if a majority of the shares
12 entitled to vote for the election of directors of the other corporation is held by the corporation,
13 shall not be voted at any meeting or counted in determining the total number of outstanding
14 shares at any given time. Nothing contained in these provisions is construed as limiting the right
15 of any corporation to vote stock, including, but not limited to, its own stock, held in a fiduciary
16 capacity.

17 (c) Every shareholder entitled to vote at a meeting of shareholders or to express consent
18 without a meeting may authorize another person or persons to act for him or her by proxy,
19 executed, in writing, by the shareholder or by his or her duly authorized attorney in fact. No
20 proxy is valid after three (3) years from the date of its execution, unless otherwise provided in the
21 proxy.

22 (1) Without limiting the manner in which a shareholder may authorize another person or
23 persons to act for him or her as proxy pursuant to subsection (c), the following constitutes a valid
24 means by which a shareholder may grant that authority:

25 (i) A shareholder may execute a writing authorizing another person or persons to act for
26 him or her as proxy. Execution may be accomplished by the shareholder or his or her authorized
27 officer, director, employee or agent signing the writing or causing his or her signature to be
28 affixed to the writing by any reasonable means including, but not limited to, facsimile signature.

29 (ii) A shareholder may authorize another person or persons to act for him or her as proxy
30 by transmitting or authorizing the transmission of a telegram, cablegram, or other means of
31 electronic transmission, including Internet and telephonic transmissions, to the person who will
32 be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or an
33 agent authorized by the person who will be the holder of the proxy to receive the transmission,
34 provided that the telegram, cablegram or other means of electronic transmission must either state

1 or be submitted or communicated with information from which it can be determined that the
2 telegram, cablegram or other electronic transmission, including Internet and telephonic
3 transmissions, was authorized by the shareholder. If it is determined that the telegrams,
4 cablegrams or other electronic transmissions, including Internet and telephonic transmissions, are
5 valid, the inspectors or, if there are no inspectors, the other persons making that determination
6 shall specify the information upon which they relied.

7 (2) Any copy, facsimile telecommunication or other reliable reproduction of the writing
8 or transmission created pursuant to this section may be substituted or used in lieu of the original
9 writing or transmission for any and all purposes for which the original writing or transmission
10 could be used, provided that the copy, facsimile telecommunication or other reproduction is a
11 complete reproduction of the entire original writing or transmission.

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

16 (d) The articles of incorporation may provide that at each election of directors, or at
17 elections held under specified circumstances, every shareholder entitled to vote at the election has
18 the right to vote, in person or by proxy, the number of shares owned by him or her for as many
19 persons as there are directors to be elected and for whose election he or she has a right to vote, or
20 to cumulate his or her votes by giving one candidate as many votes as the number of directors
21 multiplied by the number of his or her shares shall equal, or by distributing the votes on the same
22 principle among any number of the candidates.

23 (e) Shares standing in the name of another corporation, domestic or foreign, may be voted
24 by any officer, agent, or proxy that the bylaws of the corporation may prescribe, or, in the
25 absence of a provision, as the board of directors of the corporation may determine.

26 (f) Shares held by an administrator, executor, guardian, custodian under a gift to minors
27 act, conservator or trustee may be voted by him or her, either in person or by proxy, without a
28 transfer of the shares into his or her name.

29 (g) Shares held by two (2) or more persons as joint tenants or as tenants in common may
30 be voted at any meeting of the shareholders by any one of the persons, unless another joint tenant
31 or tenant in common seeks to vote any of the shares in person or by proxy. In the latter event, the
32 written agreement, if any, which governs the manner in which the shares are voted, controls if
33 presented at the meeting. If there is no agreement presented at the meeting, the majority in
34 number of the joint tenants or tenants in common present shall control the manner of voting. If

1 there is no majority, or if there are two (2) joint tenants or tenants in common, both of whom seek
2 to vote the shares, the shares shall, for the purpose of voting, be divided equally among the joint
3 tenants or tenants in common present.

4 (h) Shares standing in the name of a receiver may be voted by the receiver, and shares
5 held by or under the control of a receiver may be voted by the receiver without the transfer of
6 those shares into his or her name if authority to do so is contained in an appropriate order of the
7 court by which the receiver was appointed.

8 (i) A shareholder whose shares are pledged is entitled to vote the shares until the shares
9 have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote
10 the shares so transferred.

11 (j) On and after the date on which written notice of redemption of redeemable shares has
12 been mailed to the holders of the shares and a sum sufficient to redeem the shares has been
13 deposited with a bank or trust company with irrevocable instruction and authority to pay the
14 redemption price to the holders of the shares upon surrender of certificates for the shares, the
15 shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding
16 shares.

17 (k)(1) An executed proxy is irrevocable if it specifies that it is irrevocable and if, and
18 only so long as, it is coupled with an interest sufficient in law to support an irrevocable power
19 coupled with it. A proxy may be made irrevocable regardless of whether the interest with which
20 it is coupled is an interest in the stock itself or an interest in the corporation generally.

21 (2) Without limiting the generality of subsection (a) and subject to that subsection, a
22 proxy is coupled with an interest and irrevocable if it is held by any of the following or a nominee
23 of any of the following:

24 (i) A pledgee under a valid pledge;

25 (ii) A person who has agreed to purchase the shares under an executory contract of sale;

26 (iii) A creditor or creditors of the corporation who extend or continue credit to the
27 corporation in consideration of the proxy if the proxy states that it was given in consideration of
28 the extension or continuation of credit, the amount of the credit, and the name of the person
29 extending or continuing credit; and

30 (iv) A person who has contracted to perform services for the corporation if a proxy is
31 required by the contract of employment, as part of the consideration for the contract of
32 employment, if the proxy states that it was given in consideration of the contract of employment,
33 the name of the employee, and the period of employment contracted for; provided the proxies
34 shall respectively be revocable after the pledge is redeemed, or the executory contract of sale is

1 performed, or the debt of the corporation is paid, or the period of employment has terminated.

2 (3) A provision contained in a proxy making it irrevocable is not enforceable against a
3 purchaser for value of the shares subject to the provision without actual knowledge of the
4 existence of the provision, unless notice of the proxy and its irrevocability appears plainly on the
5 certificate or certificates representing the shares; provided that if such shares are uncertificated, a
6 provision contained in a proxy making it irrevocable shall be enforceable against a purchaser for
7 value of the shares subject to the provision without actual knowledge of the existence of the
8 provision if and only if notice of the proxy and its irrevocability was provided in writing to such
9 purchaser prior to the consummation of the purchase of such shares.

10 **7-1.2-709. Voting trusts and agreements among shareholders.** -- (a) Any number of
11 shareholders of a corporation may create a voting trust for the purpose of conferring upon a
12 trustee or trustees the right to vote or otherwise represent their shares, for a period not to exceed
13 ten (10) years, by entering into a written voting trust agreement specifying the terms and
14 conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at
15 its registered office, and by transferring their shares to the trustee or trustees for the purposes of
16 the agreement. The trustee or trustees shall keep a record of the holders of voting trust
17 certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of
18 all the holders and the number and class of the shares in respect of which the voting trust
19 certificates held by each are issued, and shall deposit a copy of the record with the corporation at
20 its registered office. The counterpart of the voting trust agreement and the copy of the record
21 deposited with the corporation are subject to the same right of examination by a shareholder of
22 the corporation, in person or by agent or attorney, as are the books and records of the corporation,
23 and the counterpart and the copy of the record is subject to examination by any holder of record
24 of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any
25 proper purpose. In the trust certificates it shall be stated that they are issued pursuant to the
26 voting trust agreement, and that fact shall be stated in the stock ledger of the corporation.

27 (b) Agreements among shareholders regarding the voting of their shares are valid and
28 enforceable in accordance with their terms for a period of not to exceed ten (10) years. An
29 agreement is not subject to the provision of this section regarding voting trusts unless it is stated
30 in the agreement that it is a voting trust.

31 (c) The provisions of this section are construed as permissive and shall not be interpreted
32 to invalidate any voting or other agreement among shareholders, or any irrevocable proxy which
33 is otherwise not illegal.

34 (d) A voting trust or shareholders agreement may at any time or times be extended for an

1 additional period not in excess of ten (10) years, but the extension is binding only with respect to
2 those shares owned of record or beneficially by parties to the extension.

3 **7-1.2-710. Voting and inspection rights of bondholders and debenture holders. --**

4 The articles of incorporation may, to the extent and in the manner provided in the articles, confer
5 on the holders of bonds or other evidences of indebtedness of the corporation rights to vote in the
6 election of directors and on any other matters on which shareholders may vote and rights to
7 inspect the books and records of the corporation.

8 **7-1.2-711. Actions by shareholders. -- (a) Definitions. In this section:**

9 (i) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to
10 the extent provided in subsection (h) of this Section 7-1.2-711, in the right of a foreign
11 corporation.

12 (ii) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or
13 held by a nominee on the beneficial owner's behalf.

14 (b) Standing. A shareholder may not commence or maintain a derivative proceeding
15 unless the shareholder: (i) was a shareholder of the corporation at the time of the act or omission
16 complained of or became a shareholder through transfer by operation of law from one who was a
17 shareholder at that time; and (ii) fairly and adequately represents the interests of the corporation
18 in enforcing the right of the corporation.

19 (c) Demand. No shareholder may commence a derivative proceeding until:

20 (i) a written demand had been made upon the corporation to take suitable action; and

21 (ii) ninety (90) days have expired from the date the demand was made unless the
22 shareholder has earlier been notified that the demand has been rejected by the corporation or
23 unless irreparable injury to the corporation would result by waiting for the expiration of the
24 ninety (90) day period.

25 (d) Stay of proceedings. If the corporation commences an inquiry into the allegations
26 made in the demand or complaint, the court may stay any derivative proceeding for such period
27 as the court deems appropriate.

28 (e) Dismissal.

29 (i) A derivative proceeding shall be dismissed by the court on motion by the corporation
30 if one of the groups specified in subsections (ii) or (vi) has determined in good faith after
31 conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the
32 derivate proceedings is not in the best interests of the corporation.

33 (ii) Unless a panel is appointed pursuant to subsection (vi), the determination in
34 subsection (i) shall be made by:

1 (A) a majority vote of independent directors present at a meeting of the board of directors
2 if the independent directors constitute a quorum; or

3 (B) a majority vote of a committee consisting of two or more independent directors
4 appointed by majority vote of independent directors present at a meeting of the board of directors,
5 whether or not such independent directors constituted a quorum.

6 (iii) None of the following shall by itself cause a director to be considered not
7 independent for purposes of this section:

8 (A) the nomination or election of the directors or persons who are defendants in the
9 derivative proceedings or against whom action is demanded;

10 (B) the naming of the director as a defendant in the derivative proceeding or as a person
11 against whom action is demanded; or

12 (C) the approval by the director of the act being challenged in the derivative proceeding
13 or demand if the act resulted in no personal benefit to the director.

14 (iv) If a derivative proceeding is commenced after a determination has been made
15 rejecting a demand by a shareholder, the complaint shall allege with particularity facts
16 establishing either (A) that a majority of the board of directors did not consist of independent
17 directors at the time the determination was made or (B) that the requirements of subsection (a)
18 have not been met.

19 (v) If a majority of the board of directors does not consist of independent directors at the
20 time the determination is made, the corporation shall have the burden of proving that the
21 requirements of subsection (i) have been met. If a majority of the board of directors consists of
22 independent directors at the time the determination is made, the plaintiff shall have the burden of
23 proving that the requirements of subsection (i) have not been met.

24 (vi) The court may appoint a panel of one or more independent persons upon motion by
25 the corporation to make a determination whether the maintenance of the derivative proceeding is
26 in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving
27 that the requirements of subsection (i) have not been met.

28 (f) Discontinuance or settlement. A derivative proceeding may not be discontinued or
29 settled without the court's approval. If the court determines that a proposed discontinuance or
30 settlement will substantially affect the interests of the corporation's shareholders or a class of
31 shareholders, the court shall direct that notice be given to the shareholders affected.

32 (g) Payment of expenses. On termination of the derivative proceeding the court may:

33 (i) order the corporation to pay the plaintiff's reasonable expenses (including counsel
34 fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit

1 to the corporation;

2 (ii) order the plaintiff to pay any defendant's reasonable expenses (including counsel
3 fees) incurred in defending the proceeding if it finds that the proceeding was commenced or
4 maintained without reasonable cause or for an improper purpose; or

5 (iii) order a party to pay an opposing party's reasonable expenses (including counsel fees)
6 incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading,
7 motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by
8 existing law or a good faith argument for the extension, modification or reversal of existing law
9 and was interposed for an improper purpose, such as to harass or cause unnecessary delay or
10 needless increase in the cost of litigation.

11 (h) Applicability to foreign corporations. In any derivative proceeding in the right of a
12 foreign corporation, the matters covered by this section shall be governed by the laws of the
13 jurisdiction of incorporation of the foreign corporation except for subsections (d), (f), and (g) of
14 this Section 7-1.2-711.

15 **Part VIII. Directors and Officers**

16 **7-1.2-801. Board of directors.** -- (a) Except as may be otherwise provided in this chapter
17 or in the articles of incorporation, the business and affairs of a corporation are managed by a
18 board of directors. Directors need not be residents of this state or shareholders of the corporation
19 unless the articles of incorporation or bylaws require it. The articles of incorporation or bylaws
20 may prescribe other qualifications for directors. The board of directors has authority to fix the
21 compensation of directors unless otherwise provided in the articles of incorporation.

22 (b) A director shall discharge his or her duties as a director, including his or her duties as
23 a member of a committee:

24 (1) In good faith;

25 (2) With the care that a person in a like position would reasonably believe appropriate
26 under similar circumstances; and

27 (3) In a manner he or she reasonably believes to be in the best interests of the corporation.

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

31 (1) One or more officers or employees of the corporation whom the director reasonably
32 believes to be reliable and competent in the matters presented;

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

1 (3) A committee of the board of directors of which he or she is not a member if the
2 director reasonably believes the committee merits confidence.

3 (d) A director is not acting in good faith if he or she has knowledge concerning the matter
4 in question that makes reliance otherwise permitted by subsection (c) unwarranted.

5 (e) A director is not liable for any action taken as a director, or any failure to take any
6 action, if he or she performed the duties of his or her office in compliance with this section.

7 (f) For the purposes of subsections (b) through (e), "corporation" also includes any
8 financial institution, insurance company, public utility or other quasi-public corporation having
9 purposes enumerated as exceptions to this chapter in Section 7-1.2-301 and the provisions of
10 subsections (b) through (e) of this section are applicable to the directors of that corporation.

11 **7-1.2-802. Number and election of directors.** -- The board of directors of a corporation
12 shall consist of one or more members. The number of directors is fixed by, or in the manner
13 provided in, the articles of incorporation or the bylaws except as to the number constituting the
14 initial board of directors, which number is fixed by the articles of incorporation. The number of
15 directors may be increased or decreased from time to time by amendment to, or in the manner
16 provided in, the articles of incorporation or the bylaws, but no decrease has the effect of
17 shortening the term of any incumbent director. If the articles of incorporation provide for the
18 election of directors in the manner specified in subsection (d) of Section 7-1.2-708, the number of
19 directors may not be decreased unless approved by the shareholders with less than the number of
20 shares previously entitled to elect one director voting against the decrease. In the absence of a
21 bylaw fixing the number of directors, the number is the same as that provided for in the articles of
22 incorporation. The names and addresses of the members of the first board of directors shall be
23 stated in the articles of incorporation. Those persons hold office until the first annual meeting of
24 shareholders, and until their successors have been elected and qualified. At the first annual
25 meeting of shareholders and at each subsequent annual meeting, the shareholders shall elect
26 directors to hold office until the next succeeding annual meeting, except in the case of the
27 classification of directors as permitted by this chapter. Each director holds office for the term for
28 which he or she is elected and until his or her successor has been elected and qualified. Any
29 director may resign at any time upon notice given in writing to the corporation.

30 **7-1.2-803. Classification of directors.** -- When the board of directors consists of nine (9)
31 or more members, in lieu of electing the whole number of directors annually, the articles of
32 incorporation may provide that the directors be divided into either two (2) or three (3) classes,
33 each class to be as nearly equal in number as possible, the term of office of directors of the first
34 class to expire at the first annual meeting of shareholders after their election, that of the second

1 class to expire at the second annual meeting after their election, and that of the third class, if any,
2 to expire at the third annual meeting after their election. At each annual meeting after the
3 classification, the number of directors equal to the number of the class whose term expires at the
4 time of the meeting shall be elected to hold office until the second succeeding annual meeting, if
5 there are two (2) classes, or until the third succeeding annual meeting, if there are three (3)
6 classes. No classification of directors is effective prior to the first annual meeting of
7 shareholders. The articles of incorporation may confer upon holders of any class or series of
8 stock the right to elect one or more directors who serve for any term and have any voting powers
9 stated in the articles of incorporation. The terms of office and voting powers of the directors
10 elected in the manner provided in the articles of incorporation may be greater than or less than
11 those of any other director or class of directors.

12 **7-1.2-804. Vacancies.** -- Any vacancy occurring in the board of directors may be filled
13 by the affirmative vote of a majority of the remaining directors though less than a quorum of the
14 board of directors. A director elected to fill a vacancy is elected for the unexpired term of his or
15 her predecessor in office. Any directorship to be filled by reason of an increase in the number of
16 directors may be filled by the board of directors for a term of office continuing only until the next
17 election of directors by the shareholders. If at any time, by reason of death, resignation or other
18 cause, a corporation should have no directors in office, then any officer or any shareholder or an
19 executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like
20 responsibility for the person or estate of a shareholder, may call a special meeting of shareholders
21 in accordance with the provisions of the articles of incorporation or the bylaws, or may apply to
22 the superior court for a decree summarily ordering a meeting for the purposes of conducting an
23 election.

24 **7-1.2-805. Removal of directors.** -- (a) Any or all of the directors may be removed for
25 cause by vote of the shareholders. The articles of incorporation or the specific provisions of a
26 bylaw adopted by the shareholders may provide for the removal by action of the board, except in
27 the case of any director elected by cumulative voting, or by the holders of the shares of any class
28 or series, or holders of bonds, voting as a class, when entitled by the provisions of the articles of
29 incorporation.

30 (b) Unless the articles of incorporation provide that directors may be removed only for
31 cause, any or all of the directors may be removed without cause by vote of the shareholders.

32 (c) The removal of directors, with or without cause, as provided in subsections (a) and (b)
33 is subject to the following:

34 (1) In the case of a corporation having cumulative voting, no director may be removed

1 when the votes cast against his or her removal would be sufficient to elect him or her if voted
2 cumulatively at an election at which the same total number of votes were cast and the entire
3 board, or the entire class of directors of which he or she is a member, were then being elected;
4 and

5 (2) When by the provisions of the articles of incorporation the holders of the shares of
6 any class or series, or holders of bonds, voting as a class, are entitled to elect one or more
7 directors, any director so elected may be removed only by the applicable vote of the holders of
8 the shares of that class or series or the holders of the bonds, voting as a class.

9 (d) An action to procure a judgment removing a director for cause may be brought by the
10 attorney general or by the holders of ten percent (10%) of the outstanding shares, whether or not
11 entitled to vote. The court having jurisdiction may bar from reelection any directors so removed
12 for a period fixed by the court.

13 **7-1.2-806. Quorum of directors.** -- A majority of the number of directors fixed by or in
14 the manner provided in articles of incorporation of the bylaws, or by the shareholders or in the
15 absence of a bylaw or shareholder action fixing the number of directors, then of the number stated
16 in the articles of incorporation, constitutes a quorum for the transaction of business unless a
17 greater number is required by the articles of incorporation or the bylaws. The act of the majority
18 of the directors present at a meeting at which a quorum is present is the act of the board of
19 directors, unless the act of a greater number is required by the articles of incorporation or the
20 bylaws.

21 **7-1.2-807. Director and officer and affiliate --Conflicts of interest.** -- (a) No contract
22 or transaction between a corporation and one or more of its directors or officers, or between a
23 corporation and any other corporation, partnership, association, or other organization in which
24 one or more of its directors or officers are directors or officers or have a financial interest, is void
25 or voidable nor are the directors or officers liable with respect to the contract or transaction solely
26 for this reason, or solely because the director or officer is present at or participates in the meeting
27 of the board or committee of the board which authorizes the contract or transaction, or solely
28 because his or her or their votes are counted for that purpose, if:

29 (1) The material facts as to his or her or their interest or relationship are disclosed or are
30 known to the board of directors or the committee, and the board of directors or committee
31 authorizes, approves, or ratifies the contract or transaction by the affirmative votes of a majority
32 of the disinterested directors, even though the disinterested directors are less than a quorum; or

33 (2) The material facts as to his or her or their interest or relationship are disclosed or are
34 known to the shareholders entitled to vote on the contract or transaction, and the contract or

1 transaction is specifically authorized, approved, or ratified by vote of the shareholders; or

2 (3) The contract or transaction is fair and reasonable as to the corporation.

3 (b) Common or interested directors may be counted in determining the presence of a
4 quorum at a meeting of the board of directors or of a committee which authorizes the contract or
5 transaction.

6 **7-1.2-808. Executive and other committees.** -- Unless otherwise provided by the articles
7 of incorporation or the bylaws, the board of directors, by resolution adopted by a majority of the
8 full board of directors, may designate from among its members an executive committee and one
9 or more other committees each of which, to the extent provided in the resolution or in the articles
10 of incorporation or the bylaws of the corporation, have and may exercise all the authority of the
11 board of directors, but no committee has the authority of the board of directors in reference to
12 amending the articles of incorporation, adopting a plan of merger, recommending to the
13 shareholders the sale, lease, exchange, or other disposition of all or substantially all the property
14 and assets of the corporation other than in the usual and regular course of its business,
15 recommending to the shareholders a voluntary dissolution or revocation of the corporation, or
16 amending the bylaws of the corporation. The designation of any committee and the delegation to
17 the committee of authority does not operate to relieve the board of directors, or any member of
18 the board, of any responsibility imposed by law.

19 **7-1.2-809. Place, notice, and form of directors' and committee meetings.** -- (a)
20 Meetings of the board of directors, or any committee designated by the board, regular or special,
21 may be held either within or without this state.

22 (b) Regular meetings of the board of directors or any committee designated by the board
23 may be held with or without notice as prescribed in the bylaws. Unless the articles of
24 incorporation or the bylaws provide for a longer or shorter period, special meetings of the board
25 of directors or any committee designated by the board must be preceded by at least two (2) days'
26 notice of the date, time, and place of the meeting. Attendance of a director at a meeting
27 constitutes a waiver of notice of the meeting, except where a director attends a meeting for the
28 express purpose of objecting to the transaction of any business because the meeting is not
29 lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any
30 regular or special meeting of the board of directors or any committee designated by the board of
31 directors need be specified in the notice or waiver of notice of the meeting unless required by the
32 bylaws. Except as may be otherwise restricted by the articles of incorporation or bylaws,
33 members of the board of directors or any committee designated by the board of directors may
34 participate in a meeting of the board or committee by means of a conference telephone or similar

1 communications equipment, by means of which all persons participating in the meeting can hear
2 each other at the same time and participation by those means constitutes presence in person at a
3 meeting.

4 **7-1.2-810. Action by directors without a meeting.** -- Unless otherwise provided by the
5 articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of
6 the directors of a corporation, or any action which may be taken at a meeting of the directors or of
7 a committee, may be taken without a meeting if all of the directors, or all of the members of the
8 committee, as the case may be, consent thereto in writing or by electronic transmission, before or
9 after the action, and the writing or writings or electronic transmission or transmissions are filed
10 with the minutes of proceedings of the board or committee. The consent shall have the same
11 effect as a unanimous vote for all purposes, and that may be stated in any certificate or other
12 document filed with the secretary of state.

13 **7-1.2-811. Liability of directors in certain cases.** -- (a) In addition to any other
14 liabilities imposed by law upon directors of a corporation:

15 (1) Directors of a corporation who vote for or assent to the declaration of any dividend or
16 other distribution of the assets of a corporation to its shareholders contrary to the provisions of
17 this chapter or contrary to any restrictions contained in the articles of incorporation, are jointly
18 and severally liable to the corporation for the amount of the dividend which is paid or the value of
19 the assets which are distributed in excess of the amount of the dividend or distribution which
20 could have been paid or distributed without a violation of the provisions of this chapter or the
21 restrictions in the articles of incorporation.

22 (2) Directors of a corporation who vote for or assent to the purchase of its own shares
23 contrary to the provisions of this chapter are jointly and severally liable to the corporation for the
24 amount of consideration paid for the shares which is in excess of the maximum amount which
25 could have been paid for the shares without a violation of the provisions of this chapter.

26 (3) The directors of a corporation who vote for or assent to any distribution of assets of a
27 corporation to its shareholders during the liquidation of the corporation without the payment and
28 discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the
29 corporation are jointly and severally liable to the corporation for the value of the assets which are
30 distributed, to the extent that the debts, obligations, and liabilities of the corporation are not
31 subsequently paid and discharged.

32 (b) A director of a corporation who is present at a meeting of its board of directors at
33 which action on any corporate matter is taken is presumed to have assented to the action taken
34 unless his or her dissent is entered in the minutes of the meeting or unless he or she files his or

1 her written dissent to the action with the person acting as the secretary of the meeting before the
2 meeting's adjournment or forwards the dissent by registered mail to the secretary of the
3 corporation immediately after the adjournment of the meeting. The right to dissent does not
4 apply to a director who voted in favor of the action.

5 (c) A director is not liable under this section if under the circumstances he or she acted
6 with due care and in good faith, and without limiting the generality of what has just been stated, is
7 not liable if he or she relied in good faith upon financial statements of the corporation represented
8 to him or her to be correct and to be based upon generally accepted accounting principles by the
9 president or the officer of the corporation having charge of its books of account, or stated in a
10 written report by an independent public or certified public accountant or firm of accountants
11 fairly to reflect the financial condition of the corporation.

12 (d) Any director against whom a claim is asserted under or pursuant to this section for the
13 payment of a dividend or other distribution of assets of a corporation and who is held liable on the
14 claim, is entitled to contribution from the shareholders who accepted or received any dividend or
15 assets, knowing the dividend or distribution to have been made in violation of this chapter, in
16 proportion to the amounts received by them respectively.

17 **7-1.2-812. Officers.** -- (a) The officers of a corporation consist of a president, a secretary,
18 and a treasurer, and such other officers as shall be authorized by the bylaws or the board of
19 directors each of whom is elected by the board of directors or by the shareholders at a time and in
20 a manner as prescribed by the bylaws. Any other officers and assistant officers and agents as that
21 are necessary may be elected or appointed by the board of directors or by the stockholders or
22 chosen in another manner prescribed by the bylaws. Any two (2) or more offices may be held by
23 the same person. A failure to elect officers does not dissolve or otherwise affect the corporation.

24 (b) All officers of the corporation, as between themselves and the corporation, have the
25 authority and perform any duties in the management of the corporation that may be provided in
26 the bylaws, or that may be determined by resolution of the board of directors, subject to any
27 limitations on the authority contained in the bylaws.

28 **7-1.2-813. Resignation and removal of officers.** -- An officer may resign at any time by
29 delivering notice to the corporation. Any officer may be removed at any time with or without
30 cause by the board of directors or by any other manner permitted by the articles of incorporation
31 or by laws. Election, appointment or removal of an officer or agent does not of itself create
32 contract rights.

33 **7-1.2-814. Indemnification.** -- (a) Definitions. As used in this section:

34 (1) "Director" or "officer" means any person who is or was a director of the corporation

1 and any person who, while a director or officer of the corporation, is or was serving at the request
2 of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or
3 domestic corporation, partnership, joint venture, trust, other enterprise, employee benefit plan, or
4 other entity. A director or officer is considered to be serving an employee benefit plan at the
5 corporation's request if his or her duties to the corporation also impose duties on, or otherwise
6 involve services by, him or her to the plan or participants on or beneficiaries of the plan.
7 "Director" or "officer" includes, unless the context requires otherwise, the estate or personal
8 representative of the director or officer.

9 (2) "Corporation" includes:

10 (i) any domestic or foreign corporation, profit or nonprofit;

11 (ii) any domestic or foreign predecessor entity of the corporation in a merger or other
12 transaction in which the predecessor's existence ceased upon consummation of the transaction;
13 and

14 (iii) any of the classes of quasi public corporations with purposes enumerated as
15 exceptions in Section 71.2-301 to the extent that the corporations are not subject to other
16 provisions of the general laws or special acts authorizing indemnification of their directors and
17 officers.

18 (3) "Expenses" include attorneys' fees.

19 (4) "Liability" means the obligation to pay a judgment, penalties, fines (including an
20 excise tax assessed with respect to an employee benefit plan), settlements, or reasonable expenses
21 actually incurred by the person in connection with the proceeding.

22 (5) "Official capacity" means:

23 (i) When used with respect to a director, the office of director in the corporation; and

24 (ii) When used with respect to an officer, as contemplated in subsection (i), the office in a
25 corporation held by the officer. "Official capacity" does not include service for a person other
26 than a director, as contemplated in subsection (a)(1), the elective or appointive office in the
27 corporation held by the officer or the employment or agency relationship undertaken by the
28 employee or agent on behalf of the corporation, but in each case does not include service for any
29 other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or
30 employee benefit plan.

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

33 (7) "Proceeding" means any threatened, pending or completed action, suit, or proceeding,
34 whether civil, criminal, administrative, or investigative.

1 (b) Permissible indemnification.

2 (1) Except as otherwise provided in this section, a corporation has power to indemnify
3 any person made a party to any proceeding by reason of the fact that he or she is or was a director
4 if:

5 (i) He or she conducted him or herself in good faith; and

6 (ii) He or she reasonably believed,

7 (A) In the case of conduct in his or her official capacity with the corporation, that his or
8 her conduct was in its best interests, and

9 (B) In all other cases, that his or her conduct was at least not opposed to its best interests;

10 and

11 (iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe
12 his or her conduct was unlawful; or

13 (iv) He or she engaged in conduct for which broader indemnification has been made
14 permissible or obligatory under a provision of the articles of incorporation.

15 (2) A director's conduct with respect to an employee benefit plan for a purpose he or she
16 reasonably believed to be in the interests of the participants and beneficiaries of the plan is
17 deemed to be for a purpose which is not opposed to the best interests of the corporation in
18 accordance with (b)(1)(ii)(B).

19 (3) The termination of any proceeding by judgment, order, settlement, conviction, or
20 upon a plea of nolo contendere or its equivalent, is not, of itself, be determinative that the person
21 did not meet the requisite standard of conduct set forth in this subsection.

22 (4) Unless ordered by a court under subsection (d), a corporation may not indemnify a
23 director:

24 (i) in connection with a proceeding by or in the right of the corporation, except for
25 reasonable expenses incurred in connection with the proceeding (if it is determined that the
26 director has met the relevant standard of conduct under (b)(1)(i) and (ii)), or

27 (ii) in connection with any proceeding for which the director was adjudged liable to the
28 corporation on the basis that he or she received an improper personal benefit, whether or not
29 involving action in his or her official capacity.

30 (c) Mandatory indemnification. Unless limited by the articles of incorporation, a director
31 who has been wholly successful, on the merits or otherwise, in the defense of any proceeding
32 referred to in subsection (b) is indemnified against reasonable expenses incurred by him or her in
33 connection with the proceeding; and

34 (d) Court-ordered indemnification.

1 (1) A court of appropriate jurisdiction, upon application of a director and any notice that
2 the court requires, has authority to order indemnification in the following circumstances:

3 (i) If the court determines a director is entitled to reimbursement under subsection (d), the
4 court shall order indemnification, in which case the director is also entitled to recover the
5 expenses of securing the reimbursement; or

6 (ii) If the court determines that the director is fairly and reasonably entitled to
7 indemnification in view of all the relevant circumstances, whether or not he or she has met the
8 standard of conduct set forth in subsection (b)(1) or (b)(2) or has been adjudged liable in the
9 circumstances described in subsection (b)(4)(ii), the court may order such indemnification as the
10 court shall deem proper, except that indemnification with respect to any proceeding by or in the
11 right of the corporation or in which liability has been adjudged in the circumstances described in
12 subsection (b)(4)(i) are limited to expenses.

13 (2) A court of appropriate jurisdiction may be the same court in which the proceeding
14 involving the director's liability took place.

15 (e) Advance for expenses. Reasonable expenses incurred by a director who is a party to a
16 proceeding may be paid or reimbursed by the corporation in advance of the final disposition of
17 the proceeding upon receipt by the corporation of:

18 (1) A written affirmation by the director of his or her good faith belief that he or she has
19 met the standard of conduct necessary for indemnification by the corporation as authorized in this
20 section, and

21 (2) A written undertaking by or on behalf of the director to repay the amount if the court
22 is determined that he or she has not met that standard of conduct, and after a determination that
23 the facts then known to those making the determination would not preclude indemnification
24 under this section. The undertaking required by this subdivision must be an unlimited general
25 obligation of the director but need not be secured and may be accepted without reference to
26 financial ability to make repayment. Determinations and authorizations of payments under this
27 subsection shall be made in the manner specified in subsection (f).

28 (f) Determination and authorization of indemnification.

29 (1) No indemnification under subsection (b) shall be made by the corporation unless
30 authorized in the specific case after a determination has been made that indemnification of the
31 director is permissible in the circumstances because he or she has met the standard of conduct set
32 forth in subsection (b). The determination shall be made:

33 (i) By the board of directors by a majority vote of a quorum consisting of directors not at
34 the time parties to the proceeding; or

1 (ii) If such a quorum cannot be obtained, then by a majority vote of a committee of the
2 board, duly designated to act in the matter by a majority vote of the full board (in which
3 designation directors who are parties may participate), consisting solely of two (2) or more
4 directors not at the time parties to the proceeding; or

5 (iii) By special legal counsel, selected by the board of directors or a committee of the
6 board by vote as set forth in subsection(f)(1)(i) or (f)(1)(ii), or, if the requisite quorum of the full
7 board cannot be obtained for the vote and the committee cannot be established, by a majority vote
8 of the full board (in which selection directors who are parties may participate); or

9 (iv) By the shareholders.

10 (2) Authorization of indemnification and determination as to reasonableness of expenses
11 shall be made in the same manner as the determination that indemnification is permissible, except
12 that if the determination that indemnification is permissible is made by special legal counsel,
13 authorization of indemnification and determination as to reasonableness of expenses shall be
14 made in a manner specified in subsection (f)(1)(iii) for the selection of the counsel. Shares held
15 by directors who are parties to the proceeding shall not be voted on the subject matter under this
16 subsection.

17 (g) Variation by corporate action. The indemnification provided by this section is not
18 deemed exclusive of any other rights to which those seeking indemnification are entitled under
19 any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to
20 action in his or her official capacity and as to action in another capacity while holding office, and
21 shall continue as to a person who has ceased to be a director, officer, partner, trustee, employee,
22 or agent and shall inure to the benefit of the heirs, executors, and administrators of a person.
23 Nothing contained in this section limits the corporation's power to pay or reimburse expenses
24 incurred by a director in connection with his or her appearance as a witness in a proceeding at a
25 time when he or she has not been made a named defendant or respondent in the proceeding.

26 (h) Officers. Unless limited by the articles of incorporation:

27 (1) An officer of the corporation is indemnified under this section as and to the same
28 extent provided for a director, and is entitled to the same extent as a director to seek
29 indemnification pursuant to the provisions of this section;

30 (2) A corporation has the power to indemnify and to advance expenses to an officer,
31 employee, or agent of the corporation to the same extent that it may indemnify and advance
32 expenses to directors pursuant to this section; and

33 (3) A corporation, in addition, has the power to indemnify and to advance expenses to an
34 officer, employee, or agent who is not a director to a further extent, consistent with law, that is

1 provided by its articles of incorporation, bylaws, general or specific action of its board of
2 directors, or contract.

3 (i) Insurance. A corporation has power to purchase and maintain insurance on behalf of
4 any person who is or was a director, officer, employee, or agent of the corporation, or who, while
5 a director, officer, employee, or agent of the corporation, is or was serving at the request of the
6 corporation as a director, officer, partner, trustee, employee, or agent of another foreign or
7 domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan,
8 against any liability asserted against him or her and incurred by him or her in any corporate
9 capacity or arising out of his or her status as a director, officer, employee, or agent of the
10 corporation, whether or not the corporation would have the power to indemnify him or her against
11 the liability under the provisions of this section.

12 (j) Shareholder approval. Any indemnification of, or advance of expenses to, a director
13 in accordance with this section, if arising out of a proceeding by or in the right of the corporation,
14 shall be reported in writing to the shareholders with or before the notice of the next shareholders'
15 meeting.

16 **Part IX. Amendment of Articles of Incorporation.**

17 **7-1.2-901. Right to amend articles of incorporation.** -- (a) A corporation may amend
18 its articles of incorporation, from time to time, in any and as many respects as is desired, to the
19 extent that as its articles of incorporation, as amended, contain only provisions that might be
20 lawfully contained in original articles of incorporation filed as of the time of the filing of the
21 amendment, and, if a change in shares or the rights of shareholders, or an exchange,
22 reclassification, subdivision, combination or cancellation of shares or rights of shareholders is to
23 be made, the provisions that may be necessary to effect the change, exchange, reclassification,
24 subdivision, combination or cancellation.

25 (b) In particular, and without limitation upon the general power of amendment, a
26 corporation may amend its articles of incorporation, from time to time, so as to:

27 (1) To change its corporate name;

28 (2) To change, substitute, enlarge or diminish the nature of its business or its corporate
29 powers;

30 (3) To increase or decrease its authorized capital stock or to reclassify the same, by
31 changing the number, par value, designations, preferences, or relative, participating, optional, or
32 other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or
33 by changing shares with par value into shares without par value, or shares without par value into
34 shares with par value either with or without increasing or decreasing the number of shares, or by

1 subdividing or combining the outstanding shares of any class or series of a class of shares into a
2 greater or lesser number of outstanding shares;

3 (4) To cancel or otherwise affect the right of the holders of the shares of any class to
4 receive dividends which have accrued but have not been declared;

5 (5) To create new classes of shares having rights and preferences either prior and superior
6 or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;
7 or

8 (6) To change the period of its duration.

9 **7-1.2-902. Right to amend legislative charters.** -- Any corporation created by special
10 act of the general assembly which is organized under this chapter, may make amendment to its
11 charter that corporations organized under this chapter may make to their articles of incorporation
12 under Section 7-1.2-901. The proposed amendment shall be effected and evidenced in the same
13 manner, by the same vote and upon the same terms and conditions as are prescribed in Sections 7-
14 1.2-903 and 7-1.2-904.

15 **7-1.2-903. Procedure to amend articles of incorporation.** -- (a) Amendments to the
16 articles of incorporation are made in the following manner:

17 (1) The board of directors adopts a resolution setting forth the proposed amendment and
18 directing that it be submitted to a vote at a meeting of shareholders, which may be either the
19 annual or a special meeting. If no shares have been issued, the amendment is adopted by
20 resolution of the board of directors and the provisions subsequently stated for adoption by
21 shareholders do not apply. The resolution may incorporate the proposed amendment in restated
22 articles of incorporation which contain a statement that, except for the designated amendment, the
23 restated articles of incorporation correctly state without change the corresponding provisions of
24 the articles of incorporation as previously amended, and that the restated articles of incorporation,
25 together with the designated amendment, supersede the original articles of incorporation and all
26 amendments to those articles.

27 (2) Written notice stating the proposed amendment or a summary of the changes to be
28 affected by the amendment shall be given to each shareholder of record entitled to vote on the
29 amendment within the time and in the manner provided in this chapter for the giving of notice of
30 meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the
31 summary may be included in the notice of the annual meeting.

32 (3) At the meeting a vote of the shareholders entitled to vote on the amendment shall be
33 taken on the proposed amendment. The proposed amendment is adopted upon receiving the
34 affirmative vote of the holders of a majority of the shares entitled to vote on the amendment

1 unless any class of shares is entitled to vote on the amendment as a class, pursuant to either the
2 articles of incorporation or the provisions of Section 7-1.2-904, in which event approval of the
3 proposed amendment also requires the affirmative vote of the holders of a majority of the shares
4 of each class of shares entitled to vote as a class on the amendment.

5 (b) Any number of amendments may be submitted to the shareholders, and voted upon by
6 them, at one meeting.

7 (c) The resolution authorizing a proposed amendment to the articles of incorporation may
8 provide that at any time prior to the filing of the amendment with the secretary of state,
9 notwithstanding authorization of the proposed amendment by the shareholders of the corporation,
10 the board of directors may abandon the proposed amendment without further action by the
11 shareholders.

12 (d) Whenever the articles of incorporation shall require for action by the board of
13 directors, by the holders of any class or series of shares or by the holders of any other securities
14 having voting power the vote of a greater number or proportion than is required by any section of
15 this title, the provision of the articles of incorporation requiring such greater vote shall not be
16 altered, amended or repealed except by such greater vote.

17 **7-1.2-904. Class voting on amendments.** -- (a) Except as otherwise provided in this
18 section, the holders of the outstanding shares of a class are entitled to vote as a class upon a
19 proposed amendment, whether or not entitled to vote on the amendment by the provisions of the
20 articles of incorporation, if the amendment would:

21 (1) Increase or decrease the aggregate number of authorized shares of the class.

22 (2) Increase or decrease the par value of the shares of the class.

23 (3) Effect an exchange, reclassification, or cancellation of all or part of the shares of the
24 class.

25 (4) Effect an exchange, or create a right of exchange, of all or any part of the shares of
26 another class into the shares of the class.

27 (5) Change the designations, preferences, limitations, or relative rights of the shares of
28 the class.

29 (6) Change the shares of the class, whether with or without par value, into the same or a
30 different number of shares, either with or without par value, of the same class or another class or
31 classes.

32 (7) Create a new class of shares having rights and preferences prior and superior to the
33 shares of the class, or increase the rights and preferences or the number of authorized shares of
34 any class having rights and preferences prior or superior to the shares of the class.

1 (8) In the case of a preferred or special class of shares, divide the shares of the class into
2 series and fix and determine the designation of the series and the variations in the relative rights
3 and preferences between the shares of the series, or authorize the board of directors to do so.

4 (9) Limit or deny any existing preemptive rights of the shares of the class.

5 (10) Cancel or otherwise affect dividends on the shares of the class which have accrued
6 but have not been declared.

7 (b) If the proposed amendment would affect only the shares of one series of a class and
8 not the entire class, then only the shares of the series so affected is considered a separate class for
9 the purpose of this section. Any class and any series within a class is considered a separate class
10 for purposes of this section if the effect of the proposed amendment upon the class or series
11 would be different than the effect of the amendment upon the other classes or other series within
12 the class. If the proposed amendment would affect two (2) or more classes or series within a
13 class in the same way but would not affect the remaining classes or series within the class in the
14 same way, the two (2) or more classes or series affected in the same way are together considered
15 a separate class for purposes of this section. Except as otherwise provided in the articles of
16 incorporation or the certificate referred to in Section 7-1.2-602(i)(1), if the proposed amendment
17 would have no effect upon one or more classes or series of a class, the classes or series are not
18 entitled to any vote on the proposed amendment and, for the purposes of this section, are not
19 counted in determining the number of shares constituting the class.

20 **7-1.2-905. Articles of amendment.** -- (a) The corporation may amend its articles of
21 incorporation by filing with the secretary of state articles of amendment which shall state:

22 (1) The name of the corporation.

23 (2) The amendment so adopted.

24 (3) The date of the adoption of the amendment by the shareholders or by the board of
25 directors where no shares have been issued.

26 (b) No amendment affects any existing cause of action in favor of or against the
27 corporation, or any pending suit to which the corporation is a party, or the existing rights of
28 persons other than shareholders; and, in the event the corporate name is changed by amendment,
29 no suit brought by or against the corporation under its former name abates for that reason.

30 **7-1.2-906. Restated articles of incorporation.** -- (a) The corporation may at any time
31 restate its articles of incorporation as previously amended by filing with the secretary of state
32 restated articles of incorporation. The restated articles of incorporation may include one or more
33 amendments to the articles of incorporation adopted in accordance with the provisions of Section
34 7-1.2-901.

1 **(b) The restated articles of incorporation shall state all of the provisions of the articles of**
2 **incorporation as previously amended, the additional amendments to the articles of incorporation,**
3 **if any, together with a statement that such additional amendments were adopted in accordance**
4 **with the provisions of Section 7-1.2-903, and a further statement that, except for the designated**
5 **amendments, if any, the restated articles of incorporation correctly set forth without change the**
6 **corresponding provisions of the articles of incorporation as previously amended, and that the**
7 **restated articles of incorporation, together with the designated amendments, if any, supersede the**
8 **original articles of incorporation and all previous amendments to the articles of incorporation.**

9 **7-1.2-907. Amendment of articles of incorporation in reorganization proceedings. --**

10 **(a) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of**
11 **a court of competent jurisdiction in proceedings for the reorganization of the corporation,**
12 **pursuant to the provisions of any applicable statute of the United States relating to reorganizations**
13 **of corporations, the articles of incorporation of the corporation may be amended, in the manner**
14 **provided in this section, in as many respects as are necessary to carry out the plan and put into**
15 **effect, as long as the articles of incorporation, as amended, contain only provisions that might be**
16 **lawfully contained in original articles of incorporation at the time of making the amendment.**

17 **(b) In particular and without limitation upon the general power of amendment, the articles**
18 **of incorporation may be amended for that purpose so as to:**

19 **(1) Change the corporate name, period of duration, or corporate purposes of the**
20 **corporation;**

21 **(2) Repeal, alter, or amend the bylaws of the corporation;**

22 **(3) Change the aggregate number of shares, or shares of any class, which the corporation**
23 **has authority to issue;**

24 **(4) Change the preferences, limitations, and relative rights in respect of all or any part of**
25 **the shares of the corporation, and classify, reclassify, or cancel all or any part of the shares,**
26 **whether issued or unissued;**

27 **(5) Authorize the issuance of bonds, debentures, or other obligations of the corporation,**
28 **whether or not convertible into shares of any class or bearing warrants or other evidences of**
29 **optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions**
30 **of them; and**

31 **(6) Constitute or reconstitute and classify or reclassify the board of directors of the**
32 **corporation, and appoint directors and officers in place of or in addition to all or any of the**
33 **directors or officers then in office.**

34 **(c) Articles of amendment approved by decree or order of the court shall be executed by**

1 the trustee or trustees of such corporation appointed in the reorganization proceedings (or a
2 majority thereof), or if none be appointed and acting, by the person or persons that the court
3 designates or appoints for the purpose, and shall state the name of the corporation, the
4 amendments of the articles of incorporation approved by the court, the date of the decree or order
5 approving the articles of amendment, the title of the proceedings in which the decree or order was
6 entered, and a statement that the decree or order was entered by a court having jurisdiction of the
7 proceedings for the reorganization of the corporation pursuant to the provisions of an applicable
8 statute of the United States.

9 (d) This section shall cease to apply to such corporation upon the entry of a final decree
10 in the reorganization proceedings closing the case and discharging the trustee or trustees, if any.

11 **Part X. Merger.**

12 **7-1.2-1001. Procedure for merger.** -- (a) Any two (2) or more domestic corporations
13 may merge into one of the corporations, or into a new corporation, pursuant to a plan of merger
14 approved in the manner provided in this chapter.

15 (b) The board of directors of each corporation shall, by resolution adopted by each board,
16 approve a plan of merger stating:

17 (1) The names of the corporations proposing to merge, and the name of the corporation
18 which will survive or result from the merger, which is hereinafter designated as the surviving
19 corporation.

20 (2) The terms and conditions of the proposed merger.

21 (3) The manner and basis of converting the shares of each merging corporation (other
22 than those held by the surviving corporation, if any) into shares or obligations or other securities
23 of the surviving corporation or, in whole or in part, into cash, property, or shares, obligations, or
24 other securities of any other corporation.

25 (4) Any amendments to the articles of incorporation of the surviving corporation to be
26 effected by the merger, or if no amendments are desired, a statement that the articles of
27 incorporation of one of the corporations are the articles of incorporation of the surviving
28 corporation, or in the case of a new corporation, all of the statements required to be stated in
29 articles of incorporation for corporations organized under this chapter.

30 (5) Any other provisions with respect to the proposed merger that are deemed necessary
31 or desirable.

32 **7-1.2-1002. Approval by shareholders of merger.** -- (a) The board of directors of each
33 corporation, upon approving the plan of merger, shall, by resolution, direct that the plan be
34 submitted to a vote at a meeting of shareholders, which may be either an annual or a special

1 meeting. Written notice shall be given to each shareholder of record, whether or not entitled to
2 vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in
3 this chapter for the giving of notice of meetings of shareholders, and, whether the meeting is an
4 annual or a special meeting, shall state that the purpose or one of the purposes is to consider the
5 proposed plan of merger. A copy or a summary of the plan of merger, as the case may be,
6 together with a statement of the shareholder's right to dissent and a copy or a summary of Section
7 7-1.2-1202, shall be included in or enclosed with the notice except where no such right is
8 available.

9 (b) At each meeting, a vote of the shareholders shall be taken on the proposed plan of
10 merger. The plan of merger is approved upon receiving the affirmative vote of the holders of a
11 majority of the shares entitled to vote on the plan of merger of each corporation, unless any class
12 of shares of any corporation is entitled to vote as a class on it, in which event, as to the
13 corporation, approval of the plan of merger also requires the affirmative vote of the holders of a
14 majority of the shares of each class of shares entitled to vote as a class on it. Any class of shares
15 of the surviving corporation and the merged corporation in a merger is entitled to vote as a class,
16 whether or not the class is otherwise entitled to vote, if the plan of merger contains any provision
17 which, if contained in a proposed amendment to articles of incorporation, would entitle the class
18 of shares to a class vote.

19 (c)(1) Notwithstanding the foregoing provisions of this section, except as may be
20 required by the articles of incorporation, no approval of a plan of merger by the shareholders of
21 the surviving corporation in a merger, and no notice to any of the shareholders of the corporation,
22 are required if:

23 (i) The plan of merger does not amend the articles of incorporation of the corporation;

24 (ii) The plan of merger does not involve the issuance or transfer by the corporation
25 (either directly or through the medium of options or warrants for, or shares or debt instruments
26 convertible within one year into, the shares) of shares possessing more than twenty percent (20%)
27 of the total combined voting power of all classes of stock then entitled to vote for the election of
28 directors which will be outstanding immediately after the merger; and

29 (iii) Each shareholder of the corporation whose shares were outstanding immediately
30 before the effective date of the merger will hold the same number of shares, with identical
31 preferences, limitations, and relative rights, immediately after the effective date of change.

32 (2) If a plan of merger is adopted by the surviving corporation in a merger without any
33 approval by its shareholders, pursuant to the provisions of this subsection, that fact shall be
34 certified in the articles of merger.

1 (d) After approval as already stated by each corporation, and at any time prior to the
2 filing of the articles of merger, the merger may be abandoned pursuant to provisions for
3 abandonment, if any, set forth in the plan of merger.

4 **7-1.2-1003. Articles of merger.** -- (a) Upon approval, articles of merger shall be
5 executed by its authorized representative and shall state:

6 (1) The plan of merger.

7 (2) If, pursuant to Section 7-1.2-1005, the merger is to become effective at a time
8 subsequent to the issuance of the certificate of merger by the secretary of state, the date when the
9 merger is to become effective.

10 (b) The original articles of merger shall be delivered to the secretary of state. If the
11 secretary of state finds that the articles conform to law, and, unless the surviving corporation is a
12 Rhode Island corporation, that all fees and franchise taxes have been paid, he or she shall:

13 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing;

14 (2) File the original in his or her office; and

15 (3) Issue a certificate of merger;

16 (c) The certificate of merger shall be returned to the surviving or new corporation, as the
17 case may be, or its representative.

18 **7-1.2-1004. Merger of subsidiary corporation.** - (a) Any corporation owning at least
19 ninety percent (90%) of the outstanding shares of each class of another corporation may merge
20 the other corporation into itself without approval by a vote of the shareholders of either
21 corporation. Its board of directors shall, by resolution, approve a plan of merger stating:

22 (1) The name of the subsidiary corporation and the name of the corporation owning at
23 least ninety percent (90%) of its shares, which is subsequently in these provisions designated as
24 the surviving corporation.

25 (2) The manner and basis of converting the shares of the subsidiary corporation (other
26 than those held by the surviving corporation) into shares or other securities or obligations of the
27 surviving corporation or of any other corporation, or in whole or in part, into cash or other
28 consideration to be paid upon the surrender of each share of the subsidiary corporation.

29 (b) A copy of the plan of merger shall be mailed to each shareholder of record of the
30 subsidiary corporation.

31 (c) Articles of merger shall be executed by the surviving corporation by an authorized
32 officer and shall state:

33 (1) The plan of merger; and

34 (2) If, pursuant to Section 7-1.2-1005, the merger is to become effective at a time

1 subsequent to the issuance of the certificate of merger by the secretary of state, the date when the
2 merger is to become effective.

3 (d) On and after the thirtieth day after the mailing of a copy of the agreement of merger to
4 shareholders of the subsidiary corporation or upon the waiver of the mailing by the holders of all
5 outstanding shares, original articles of merger shall be delivered to the secretary of state. If the
6 secretary of state finds that the articles conform to law, the secretary of state shall, when all fees
7 and franchise taxes have been paid:

8 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing;

9 (2) File the original in his or her office; and

10 (3) Issue a certificate of merger.

11 (e) The certificate of merger shall be returned to the surviving corporation or its
12 representative.

13 **7-1.2-1005. Effect of merger.** -- (a) A merger becomes effective upon the issuance of a
14 certificate of merger by the secretary of state or on a later date as is stated in the plan.

15 (b) When a merger becomes effective:

16 (1) The several corporations, parties to the plan of merger, are a single corporation, which
17 is that corporation designated in the plan of merger as the surviving or new corporation.

18 (2) The separate existence of all corporations, parties to the plan of merger, except the
19 surviving or new corporation, ceases.

20 (3) The surviving or new corporation has all the rights, privileges, immunities, and
21 powers and is subject to all the duties and liabilities of a corporation organized under this chapter.

22 (4) The surviving or new corporation at that time and subsequently possesses all the
23 rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of
24 the merging corporations; and all property, real, personal, and mixed, all debts due on whatever
25 account, including subscriptions to shares, all other choses in action, and all and every other
26 interest of or belonging to or due to each of the corporations merged, is taken and deemed to be
27 transferred to and vested in the single corporation without further act or deed; and the title to any
28 real estate, or any interest in real estate, vested in any of the corporations does not revert or is in
29 any way impaired because of the merger.

30 (5) The surviving or new corporation is subsequently responsible and liable for all the
31 liabilities and obligations of each of the corporations merged or consolidated; and any claim
32 existing or action or proceeding pending by or against any of the corporations may be prosecuted
33 as if the merger had not taken place, or the surviving or new corporation may be substituted in its
34 place. Neither the rights of creditors nor any liens upon the property of any corporation is

1 impaired by the merger.

2 (6) The articles of incorporation of the surviving corporation are deemed to be amended
3 to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger;
4 or, in the case of a new corporation, the statements in the articles of merger which are required or
5 permitted to be stated in the articles of incorporation of corporations organized under this chapter
6 are deemed to be the original articles of incorporation of the new corporation.

7 (7) The shares of the corporation or corporations party to the plan that are, under the
8 terms of the plan, to be converted or exchanged, cease to exist, and the holders of the shares are
9 entitled only to the shares, obligations, other securities, cash, or other property into which they
10 have been converted or for which they have been exchanged in accordance with the plan, subject
11 to any rights under Section 7-1.2-1201.

12 **7-1.2-1006. Merger of domestic and foreign corporations.** -- (a) One or more foreign
13 corporations and one or more domestic corporations may be merged in the following manner, if
14 the merger is permitted by the laws of the state under which each foreign corporation is
15 organized:

16 (1) Each domestic corporation shall comply with the provisions of this chapter with
17 respect to the merger of domestic corporations, and each foreign corporation shall comply with
18 the applicable provisions of the laws of the state under which it is organized.

19 (2) If the surviving or new corporation, as the case may be, is to be governed by the laws
20 of any state other than this state, it shall comply with the provisions of this chapter with respect to
21 foreign corporations if it is to transact business in this state, and in every case it shall file with the
22 secretary of state of this state:

23 (i) An agreement that it may be served with process in this state in any proceeding for the
24 enforcement of any obligation of any domestic corporation which is a party to the merger and in
25 any proceeding for the enforcement of the rights of a dissenting shareholder of any domestic
26 corporation against the surviving or new corporation;

27 (ii) An irrevocable appointment of the secretary of state of this state as its agent to accept
28 service of process in any proceeding; and

29 (iii) An agreement that it will promptly pay to the dissenting shareholders of any
30 domestic corporation the amount, if any, to which they are entitled under the provisions of this
31 chapter regarding the rights of dissenting shareholders.

32 (b) The effect of the merger is the same as in the case of the merger of domestic
33 corporations, if the surviving or new corporation is to be governed by the laws of this state. If the
34 surviving or new corporation is to be governed by the laws of any state other than this state, the

1 effect of the merger is the same as in the case of the merger of domestic corporations except
2 insofar as the laws of the other state provide otherwise.

3 (c) At any time prior to the filing of the articles of merger, the merger may be abandoned
4 pursuant to provisions for abandonment, if any, stated in the plan of merger.

5 **Part XI. Dispositions.**

6 **7-1.2-1101. Sale of assets in regular course of business and mortgage or pledge of**
7 **assets.** -- The sale, lease, exchange, or other disposition of all, or substantially all, the property
8 and assets of a corporation in the usual and regular course of its business, and the mortgage or
9 pledge of any or all property and assets of a corporation, whether or not in the usual and regular
10 course of business, may be made upon terms and conditions and for any consideration, which
11 may consist in whole or in part of money or property, real or personal, including shares of any
12 other corporation, domestic or foreign, as is authorized by its board of directors; and in any case
13 no authorization or consent of the shareholders is required.

14 **7-1.2-1102. Sale of assets other than in regular course of business.** -- A sale, lease,
15 exchange, or other disposition of all, or substantially all, the property and assets, with or without
16 the good will, of a corporation, if not in the usual and regular course of its business, may be made
17 upon terms and conditions and for any consideration, which may consist in whole or in part of
18 money or property, real or personal, including shares of any other corporation, domestic or
19 foreign, as is authorized in the following manner:

20 (1) The board of directors' adoption of a resolution recommending the sale, lease,
21 exchange, or other disposition, and directing the submission of the resolution to a vote at a
22 meeting of shareholders, which may be either an annual or a special meeting.

23 (2) Written notice shall be given to each shareholder of record, whether or not entitled to
24 vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in
25 this chapter for the giving of notice of meeting of shareholders, and, whether the meeting is an
26 annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the
27 proposed sale, lease, exchange, or other disposition. A statement of the shareholder's right to
28 dissent and a copy or summary of Section 7-1.2-1202 shall be included in or enclosed with the
29 notice.

30 (3) At the meeting the shareholders may authorize the sale, lease, exchange, or other
31 disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and
32 conditions of it and the consideration to be received by the corporation for it. The authorization
33 requires the affirmative vote of the holders of a majority of the shares of the corporation entitled
34 to vote on the authorization, unless any class of shares is entitled to vote on it as a class, pursuant

1 to the articles of incorporation, in which event approval of the resolution also requires the
2 affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote
3 as a class on the resolution.

4 (4) After the authorization by a vote of shareholders, the board of directors nevertheless,
5 in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to
6 the rights of third parties under any related contracts, without any further action or approval by
7 shareholders.

8 (5) A transfer of all or substantially all of the property and assets of a corporation (i) to
9 one (1) or more subsidiary corporations in which the transferor corporation owns shares
10 possessing at least two-thirds (2/3) of the total combined voting power of all classes of stock
11 entitled to vote at that time for election of directors, or (ii) for cash, with or without an
12 assumption of liabilities of the transferor corporation is governed by the provisions of Section 7-
13 1.2-1101 and not by this section. The sale, lease, exchange, or other disposition of all, or
14 substantially all, the property and assets, with or without the good will, of one or more
15 subsidiaries in which the parent corporation owns shares possessing two-thirds (2/3) or more of
16 the total combined voting power of all classes of stock entitled at that time to vote for the election
17 of directors shall be treated as a disposition of all, or substantially all, the property and assets of
18 the parent corporation within the meaning of this section if the shares of the subsidiary or
19 subsidiaries constitute all or substantially all the property and assets of the parent corporation.

20 **Part XII. Dissenters' Rights.**

21 **7-1.2-1201. Right of shareholders to dissent.** -- (a) Any shareholder of a corporation
22 has the right to dissent from any of the following corporate actions:

23 (1) Any plan of merger to which the corporation is a party, provided articles of merger
24 have been filed in connection with the transaction under Section 7-1.2-1003, unless the
25 corporation is the surviving corporation in a merger and the approval of its shareholders was not
26 required by virtue of the provisions of either Section 7-1.2-1002 or Section 7-1.2-1004; or

27 (2) Any sale or exchange of all or substantially all of the property and assets of a
28 corporation which requires the approval of the shareholders under Section 7-1.2-1102.

29 (b) A shareholder may not dissent as to less than all of the shares registered in his or her
30 name which are owned beneficially by him or her. A nominee or fiduciary may not dissent on
31 behalf of any beneficial owner as to less than all of the shares of the owner registered in the name
32 of the nominee or fiduciary.

33 (c) Unless otherwise provided in the articles of incorporation of the issuing corporation,
34 there is no right to dissent for the holders of the shares of any class or series of stock which, on

1 the date fixed to determine the shareholders entitled to receive notice of the proposed transaction
2 (or a copy of the agreement of merger under Section 7-1.2-1004), were:

3 (1) Registered on a national securities exchange or included as national market securities
4 in the national association of securities dealers automated quotations system or any successor
5 national market system; or

6 (2) Held of record by not less than two thousand (2,000) shareholders.

7 (d) A shareholder entitled to the right to dissent under this section may not challenge a
8 completed corporate action for which the right to dissent is available unless such corporate action:

9 (1) was not effectuated in accordance with the applicable provisions of this chapter or the
10 corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the
11 corporate action; or

12 (2) was procured as a result of fraud or material misrepresentation.

13 **7-1.2-1202. Rights of dissenting shareholders.** -- (a) Any shareholder electing to
14 exercise the right of dissent shall file with the corporation, prior to or at the meeting of
15 shareholders at which the proposed corporate action is submitted to a vote, a written objection to
16 the proposed corporate action. If the proposed corporate action is approved by the required vote
17 and the shareholder has not voted in favor of it, the shareholder may, within ten (10) days after
18 the date on which the vote was taken, or if a corporation is to be merged without a vote of its
19 shareholders into another corporation, any of its shareholders may, within fifteen (15) days after
20 the plan of the merger has been mailed to the shareholders, make written demand on the
21 corporation, or, in the case of a merger, on the surviving or new corporation, domestic or foreign,
22 for payment of the fair value of the shareholder's shares. If the proposed corporate action is
23 effected, the corporation shall pay to the shareholder, upon surrender of the certificate or
24 certificates representing the shares, the fair value of the shares as of the day prior to the date on
25 which the vote was taken approving the proposed corporate action, excluding any appreciation or
26 depreciation in anticipation of the corporate action. Any shareholder failing to make demand
27 within the ten (10) day period or the fifteen (15) day period, as the case may be, is bound by the
28 terms of the proposed corporate action. Any shareholder making the demand is thereafter only
29 entitled to payment as provided in this section and is not entitled to vote or to exercise any other
30 rights of a shareholder.

31 (b) No demand may be withdrawn unless the corporation consents to it. If, however, the
32 demand is withdrawn upon consent, or if the proposed corporate action is abandoned or rescinded
33 or the shareholders revoke the authority to effect the action, or if, in the case of a merger, on the
34 date of the filing of the articles of merger the surviving corporation is the owner of all the

1 outstanding shares of the other corporations, domestic and foreign, that are parties to the merger,
2 or if no demand or petition for the determination of fair value by a court has been made or filed
3 within the time provided in this section, or if a court of competent jurisdiction determines that the
4 shareholder is not entitled to the relief provided by this section, then the right of the shareholder
5 to be paid the fair value of his or her shares ceases and his or her status as a shareholder is
6 restored, without prejudice to any corporate proceedings taken during the interim.

7 (c) Within ten (10) days after the corporate action is effected, the corporation, or, in the
8 case of a merger, the surviving or new corporation, domestic or foreign, shall give written notice
9 of the action to each dissenting shareholder who has made demand as provided in these
10 provisions, and shall make a written offer to each shareholder to pay for the shares at a specified
11 price deemed by the corporation to be the fair value of the shares. The notice and offer shall be
12 accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder
13 holds, as of the latest available date and not more than twelve (12) months prior to the making of
14 the offer, and a profit and loss statement of the corporation for the twelve (12) month period
15 ended on the date of the balance sheet.

16 (d) If within thirty (30) days after the date on which the corporate action was effected the
17 fair value of the shares is agreed upon between any dissenting shareholder and the corporation,
18 payment for the shares shall be made within ninety (90) days after the date on which the
19 corporate action was effected, upon surrender of the certificate or certificates representing the
20 shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest
21 in the shares.

22 (e) If within the period of thirty (30) days a dissenting shareholder and the corporation do
23 not agree on the matter, then the corporation, within thirty (30) days after receipt of written
24 request for the filing from any dissenting shareholder given within sixty (60) days after the date
25 on which the corporate action was effected, shall, or at its election at any time within the period
26 of sixty (60) days may, file a petition in any court of competent jurisdiction in the county in this
27 state where the registered office of the corporation is located praying that the fair value of the
28 shares is found and determined. If, in the case of a merger, the surviving or new corporation is a
29 foreign corporation without a registered office in this state, the petition shall be filed in the county
30 where the registered office of the domestic corporation was last located. If the corporation fails
31 to institute the proceeding as provided, any dissenting shareholder may do so in the name of the
32 corporation. All dissenting shareholders, wherever they reside, shall be made parties to the
33 proceeding as an action against their shares quasi in rem. A copy of the petition shall be served
34 on each dissenting shareholder who is a resident of this state and shall be served by registered or

1 certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall
2 also be made by publication as provided by law. The jurisdiction of the court is plenary and
3 exclusive. All shareholders who are parties to the proceeding are entitled to judgment against the
4 corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint
5 one or more persons as appraisers to receive evidence and recommend a decision on the question
6 of fair value. The appraisers have the power and authority that is specified in the order of their
7 appointment or an amendment of the order. The judgment is payable only upon and concurrently
8 with the surrender to the corporation of the certificate or certificates representing the shares.
9 Upon payment of the judgment, the dissenting shareholder ceases to have any interest in the
10 shares.

11 (f) The judgment shall include an allowance for interest at the rate of interest on
12 judgments in civil actions from the date on which the vote was taken on the proposed corporate
13 action to the date of payment.

14 (g) The costs and expenses of any proceeding shall be determined by the court and
15 assessed against the corporation, but all or any part of the costs and expenses may be apportioned
16 and assessed as the court deems equitable against any or all of the dissenting shareholders who
17 are parties to the proceeding to whom the corporation has made an offer to pay for the shares if
18 the court finds that the action of the shareholders in failing to accept the offer was arbitrary or
19 vexatious or not in good faith. The expenses include reasonable compensation for and reasonable
20 expenses of the appraisers, but exclude the fees and expenses of counsel for and experts
21 employed by any party; but if the fair value of the shares as determined materially exceeds the
22 amount which the corporation offered to pay for the shares, or if no offer was made, the court in
23 its discretion may award to any shareholder who is a party to the proceeding a sum that the court
24 determines to be reasonable compensation to any expert or experts employed by the shareholder
25 in the proceeding.

26 (h) Within twenty (20) days after demanding payment for his or her shares, each
27 shareholder demanding payment shall submit the certificate or certificates representing his or her
28 shares to the corporation for notation on the certificate that the demand has been made. His or
29 her failure to do so shall, at the option of the corporation, terminate his or her rights under this
30 section unless a court of competent jurisdiction, for good and sufficient cause shown, directs
31 otherwise. If shares represented by a certificate on which notation has been made are transferred,
32 each new certificate issued for the shares shall bear similar notation, together with the name of
33 the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer
34 no rights in the corporation other than those which the original dissenting shareholder had after

1 making demand for payment of the fair value of the shares.

2 (i) Shares acquired by a corporation pursuant to payment of the agreed value for the
3 shares or to payment of the judgment entered for the shares, as provided in this section, may be
4 held and disposed of by the corporation. However, in the case of a merger, they may be held and
5 disposed of as the plan of merger otherwise provides.

6 **Part XIII. Dissolution and Revocation.**

7 **7-1.2-1301. Voluntary dissolution by incorporators.** -- (a) A corporation which has not
8 commenced business and which has not issued any shares, may be voluntarily dissolved by its
9 incorporators at any time in the following manner:

10 (1) Articles of dissolution are executed by a majority of the incorporators, and verified by
11 them, and state:

12 (i) The name of the corporation.

13 (ii) The date of issuance of its certificate of incorporation.

14 (iii) That none of its shares has been issued.

15 (iv) That the corporation has not commenced business.

16 (v) That the amount, if any, actually paid in on subscriptions for its shares, less any part
17 of the amount disbursed for necessary expenses, has been returned to those entitled to it.

18 (vi) That no debts of the corporation remain unpaid.

19 (vii) That a majority of the incorporators elect that the corporation be dissolved.

20 (2) The original articles of dissolution are delivered to the secretary of state. If the
21 secretary of state finds that the articles of dissolution conform to law, he or she shall, when all
22 fees and franchise taxes have been paid:

23 (i) Endorse on the original the word "Filed," and the month, day, and year of the filing.

24 (ii) File the original in his or her office.

25 (iii) Issue a certificate of dissolution.

26 (b) The certificate of dissolution is returned to the incorporators or their representative.

27 Upon the issuance of the certificate of dissolution by the secretary of state, the existence of the
28 corporation ceases.

29 **7-1.2-1302. Voluntary dissolution by consent of shareholders.** -- (a) A corporation
30 may be voluntarily dissolved by the written consent of all of its shareholders entitled to vote
31 thereon.

32 (b) Upon the adoption of the resolution:

33 (1) Articles of dissolution shall be executed by the corporation by in accordance with
34 Section 7-1.2-1308.

1 (2) The corporation immediately mails notice of the filing to each known creditor of the
2 corporation.

3 (3) The corporation shall process to collect its assets, sell or otherwise dispose of those of
4 its properties that are not to be distributed in kind to its shareholders, pay, satisfy, and discharge
5 its liabilities and obligations and do all other acts required to liquidate its business and affairs.
6 After paying or adequately providing for the payment of all its obligations, the corporation
7 distributes the remainder of its assets, either in cash or in kind, among its shareholders according
8 to their respective rights and interests.

9 (4) The corporation, at any time during the liquidation of its business and affairs, may
10 apply to a court of competent jurisdiction within the state and county in which the registered
11 office or principal place of business of the corporation is situated, to have the liquidation
12 continued under the supervision of the court as provided in this chapter.

13 **7-1.2-1303. Voluntary dissolution by act of corporation.** -- A corporation may be
14 dissolved by the act of the corporation, when authorized in the following manner:

15 (1) The board of directors adopts a resolution recommending that the corporation be
16 dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of
17 the shareholders, which may be either an annual or a special meeting.

18 (2) Written notice is given to each shareholder of record entitled to vote at the meeting
19 within the time and in the manner provided in this chapter for the giving of notice of meetings of
20 shareholders, and, whether the meeting is an annual or special meeting, states that the purpose, or
21 one of the purposes, of the meeting is to consider the advisability of dissolving the corporation.

22 (3) At the meeting a vote of shareholders entitled to vote at the meeting is taken on a
23 resolution to dissolve the corporation. The resolution is adopted upon receiving the affirmative
24 vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution,
25 unless any class of shares is entitled to vote on the resolution as a class, in which event approval
26 of the resolution also requires the affirmative vote of the holders of a majority of the shares of
27 each class of shares entitled to vote as a class and of the total shares entitled to vote on the
28 resolution.

29 (4) Upon the adoption of the resolution, articles of dissolution shall be executed by the
30 corporation by in accordance with Section 7-1.2-1308.

31 (5) The corporation immediately mails notice of the filing to each known creditor of the
32 corporation.

33 (6) The corporation shall process to collect its assets, sell or otherwise dispose of those of
34 its properties that are not to be distributed in kind to its shareholders, pay, satisfy, and discharge

1 its liabilities and obligations and do all other acts required to liquidate its business and affairs.
2 After paying or adequately providing for the payment of all its obligations, the corporation
3 distributes the remainder of its assets, either in cash or in kind, among its shareholders according
4 to their respective rights and interests.

5 (7) The corporation, at any time during the liquidation of its business and affairs, may
6 apply to a court of competent jurisdiction within the state and county in which the registered
7 office or principal place of business of the corporation is situated, to have the liquidation
8 continued under the supervision of the court as provided in this chapter.

9 **7-1.2-1304. Revocation of voluntary dissolution proceedings by consent of**
10 **shareholders. - (a) By the written consent of all of its shareholders entitled to vote thereon, a**
11 **corporation may, within one hundred twenty (120) days of its effective date of the articles of**
12 **dissolution, revoke voluntary dissolution proceedings previously taken, in the following manner:**

13 (b) Upon the execution of the written consent, a statement of revocation of voluntary
14 dissolution proceedings is executed by the corporation by its authorized representative. The
15 statement proclaims:

16 (1) The name of the corporation.

17 (2) The names and respective addresses of its officers.

18 (3) The names and respective addresses of its directors.

19 (4) A copy of the written consent signed by all shareholders of the corporation revoking
20 the voluntary dissolution proceedings.

21 (5) That the written consent has been signed by all shareholders entitled to vote thereon
22 of the corporation or signed in their names by their authorized attorneys.

23 **7-1.2-1305. Revocation of voluntary dissolution proceedings by act of corporation. --**
24 **By the act of the corporation, a corporation may, at any time within one hundred twenty (120)**
25 **days of its effective date of the articles of dissolution, revoke voluntary dissolution proceedings**
26 **previously taken, in the following manner:**

27 (1) The board of directors adopts a resolution recommending that the voluntary
28 dissolution proceedings be revoked, and directing that the question of the revocation be submitted
29 to a vote at a special meeting of shareholders.

30 (2) Written notice, stating that the purpose, or one of the purposes, of the meeting is to
31 consider the advisability of revoking the voluntary dissolution proceedings, is given to each
32 shareholder of record entitled to vote at the meeting within the time and in the manner provided
33 in this chapter for the giving of notice of special meetings of shareholders.

34 (3) At the meeting, a vote of the shareholders entitled to vote at the meeting is taken on a

1 resolution to revoke the voluntary dissolution proceedings, which requires for its adoption the
2 affirmative vote of the holders of a majority of the shares entitled to vote on the resolution.

3 (4) Upon the adoption of the resolution, a statement of revocation of voluntary
4 dissolution proceedings is executed by the corporation by its authorized representative. The
5 statement proclaims:

6 (i) The name of the corporation.

7 (ii) The names and respective addresses of its officers.

8 (iii) The names and respective addresses of its directors.

9 (iv) A copy of the resolution adopted by the shareholders revoking the voluntary
10 dissolution proceedings.

11 (v) The number of shares outstanding.

12 (vi) The number of shares voted for and against the resolution, respectively.

13 **7-1.2-1306. Filing of statement of revocation of voluntary dissolution proceedings. --**

14 The statement of revocation of voluntary dissolution proceedings, whether by consent of
15 shareholders or by act of the corporation, is delivered to the secretary of state. If the secretary of
16 state finds that the statement conforms to law, he or she shall, when all fees and franchise taxes
17 have been paid:

18 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.

19 (2) File the original in his or her office.

20 **7-1.2-1307. Effect of statement of revocation of voluntary dissolution proceedings. --**

21 (a) Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution
22 proceedings, whether by consent of shareholders or by act of the corporation, the revocation of
23 the voluntary dissolution proceedings becomes effective and the corporation may again carry on
24 its business.

25 (b) Revocation of dissolution is effective upon the effective date of the statement of
26 revocation of voluntary dissolution.

27 (c) When the revocation of dissolution is effective, it relates back to and takes effect as of
28 the effective date of the dissolution and the corporation resumes carrying on its business as if
29 dissolution had never occurred, except as subsequently provided.

30 (d) If, as permitted by the provisions of this title, another corporation, whether business
31 or nonprofit limited partnership or limited liability company, or domestic or foreign, qualified to
32 transact business in this state, bears or has filed a fictitious business name statement with respect
33 to or reserved or registered a name which is the same as, or deceptively similar to, the name of a
34 corporation with respect to which the certificate of revocation is proposed to be withdrawn, then

1 the secretary of state shall condition effectiveness of the statement of revocation of voluntary
2 dissolution upon the amendment by the corporation revoking voluntary dissolution proceedings
3 of its articles of incorporation or otherwise complying with the provisions of this chapter with
4 respect to the use of a name available to it under the laws of this state so as to designate a name
5 which is not the same as, or deceptively similar to, its former name.

6 **7-1.2-1308. Articles of dissolution.** -- Articles of dissolution shall be executed by the
7 corporation by its authorized representative. The statement proclaims:

8 (1) The name of the corporation.

9 (2) That the secretary of state has previously filed a statement of intent to dissolve the
10 corporation, and the date on which the statement was filed.

11 (3) That all debts, obligations, and liabilities of the corporation have been paid and
12 discharged or that adequate provision has been made for the payment.

13 (4) That all the remaining property and assets of the corporation have been distributed
14 among its shareholders in accordance with their respective rights and interests.

15 (5) That there are not suits pending against the corporation in any court, or that adequate
16 provision has been made for the satisfaction of any judgment, order, or decree which may be
17 entered against it in any pending suit.

18 **7-1.2-1309. Filing of articles of dissolution.** -- (a) The articles of dissolution are
19 delivered to the secretary of state. If the secretary of state finds that the articles of dissolution
20 conform to law, he or she shall, when all fees and franchise taxes have been paid:

21 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.

22 (2) File the original in his or her office.

23 (3) Issue a certificate of dissolution.

24 (b) The certificate of dissolution is returned to the representative of the dissolved
25 corporation. Upon the issuance of the certificate of dissolution the existence of the corporation
26 ceases, except for the purpose of suits, other proceedings, and appropriate corporate action by
27 shareholders, directors, and officers as provided in this chapter.

28 **7-1.2-1310. Revocation of certificate of incorporation.** -- (a) The certificate of
29 incorporation of a corporation may be revoked by the secretary of state upon the conditions
30 prescribed in this section when it is established that:

31 (1) The corporation procured its articles of incorporation through fraud; or

32 (2) The corporation has continued to exceed or abuse the authority conferred upon it by
33 law; or

34 (3) The corporation has failed to file its annual report within the time required by this

1 chapter, or has failed to pay any fees, when they have become due and payable; or

2 (4) The corporation has failed for thirty (30) days to appoint and maintain a registered
3 agent in this state as required by this chapter; or

4 (5) The corporation has failed, after change of its registered office or registered agent, to
5 file in the office of the secretary of state a statement of the change as required by this chapter; or

6 (6) The corporation has failed to file in the office of the secretary of state any amendment
7 to its articles of incorporation or any articles of merger within the time prescribed by this chapter;
8 or

9 (7) A misrepresentation has been made of any material matter in any application, report,
10 affidavit, or other document submitted by the corporation pursuant to this chapter.

11 (b) No certificate of incorporation of a corporation shall be revoked by the secretary of
12 state unless:

13 (1) The secretary of state shall have given the corporation not less than sixty (60) days
14 notice thereof by regular mail addressed to the registered office of the corporation in this state on
15 file with the secretary of state's office; provided, however, that if a prior mailing addressed to the
16 registered office of the corporation in this state currently on file with the secretary of state's office
17 has been returned to the secretary of state as undeliverable by the United States Postal Service for
18 any reason, or if the revocation notice is returned as undeliverable to the secretary of state's office
19 by the United States Postal Service for any reason, the secretary of state shall give notice as
20 follows:

21 (i) To the corporation at its principal office of record as shown in its most recent annual
22 report, and no further notice shall be required; or

23 (ii) In the case of a domestic corporation which has not yet filed an annual report, then to
24 any one of the incorporators listed on the articles of incorporation, and no further notice shall be
25 required; and

26 (2) The corporation fails prior to revocation to file the annual report or pay the fees, or
27 file the required statement of change of registered agent or registered office, or file the articles of
28 amendment or articles of merger, or correct the misrepresentation.

29 **7-1.2-1311. Issuance of certificates of revocation.** – (a) Upon revoking any certificate
30 of incorporation, the secretary of state shall:

31 (1) Issue a certificate of revocation;

32 (2) File the certificate in his or her office; and

33 (3) Send to the corporation by regular mail a copy of the certificate of revocation,
34 addressed to the registered office of the corporation in this state on file with the secretary of

1 state's office; provided, however, that if a prior mailing addressed to the registered office of the
2 corporation in this state currently on file with the secretary of state's office has been returned to
3 the secretary of state as undeliverable by the United States Postal Service for any reason, or if the
4 revocation certificate is returned as undeliverable to the secretary of state's office by the United
5 States Postal Service for any reason, the secretary of state shall give notice as follows:

6 (i) To the corporation at its principal office of record as shown in its most recent annual
7 report, and no further notice shall be required; or

8 (ii) In the case of a domestic corporation which has not yet filed an annual report, then to
9 any one of the incorporators listed on the articles of incorporation, and no further notice shall be
10 required.

11 (b) Upon the issuance of the certificate of revocation, the authority of the corporation to
12 transact business in this state ceases.

13 (c) Notwithstanding anything to the contrary, the administrative dissolution of a
14 corporation does not terminate the authority of its registered agent.

15 **7-1.2-1312. Withdrawal of certificate of revocation.** -- (a) Within five (5) years after
16 issuing a certificate of revocation as provided in Section 7-1.2-1311, the secretary of state may
17 withdraw the certificate of revocation and retroactively reinstate the corporation in good standing
18 as if its certificate of incorporation had not been revoked, except as subsequently provided:

19 (1) Upon the filing by the corporation of the documents it had previously failed to file as
20 set forth in subdivisions (3) through (6) inclusive, of Section 7-1.2-1310(a); and

21 (2) Upon the payment by the corporation of a penalty in the amount of fifty dollars
22 (\$50.00) for each year or part of a year that has elapsed since the issuance of the certificate of
23 revocation.

24 (b) If, as permitted by the provisions of this title, another corporation, whether business
25 or nonprofit limited partnership or limited liability company, or domestic or foreign, qualified to
26 transact business in this state, bears or has filed a fictitious business name statement with respect
27 to or reserved or registered a name which is the same as, or deceptively similar to, the name of a
28 corporation with respect to which the certificate of revocation is proposed to be withdrawn, then
29 the secretary of state shall condition the withdrawal of the certificate of revocation upon the
30 reinstated corporation's amending its articles of incorporation or otherwise complying with the
31 provisions of this chapter with respect to the use of a name available to it under the laws of this
32 state so as to designate a name which is not the same as, or deceptively similar to, its former
33 name.

34 (c) Upon the withdrawal of the certificate of revocation and reinstatement of the

1 corporation in good standing as provided in subsection (a), title to any real estate, or any interest
2 in real estate, held by the corporation at the time of the issuance of the certificate of revocation
3 and not conveyed subsequent to the revocation of its certificate of incorporation shall be deemed
4 to be revested in the corporation without further act or deed.

5 **7-1.2-1313. Appeal from revocation of articles of incorporation. -- Any corporation**
6 aggrieved by the action of the secretary of state in revoking its articles of incorporation may
7 appeal the action in the manner provided in Section 7-1.2-1601.

8 **7-1.2-1314. Jurisdiction of court to liquidate assets and business of corporation. --**

9 (a) The superior court has full power to liquidate the assets and business of a corporation:

10 (1) In an action by a shareholder when it is established that, whether or not the corporate
11 business has been or could be operated at a profit, dissolution would be beneficial to the
12 shareholders because:

13 (i) The directors or those other persons that may be responsible for management pursuant
14 to Section 7-1.2-1701(a) are deadlocked in the management of the corporate affairs and the
15 shareholders are unable to break the deadlock; or

16 (ii) The acts of the directors or those in control of the corporation are illegal, oppressive,
17 or fraudulent; or

18 (iii) The shareholders are deadlocked in voting power, and have failed, for a period which
19 includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose
20 terms have expired or would have expired upon the election of their successors; or

21 (iv) The corporate assets are being misapplied or are in danger of being wasted or lost; or

22 (v) Two (2) or more factions of shareholders are divided and there is such internal
23 dissension that serious harm to the business and affairs of the corporation is threatened; or

24 (vi) The holders of one-half (1/2) or more of all the outstanding capital stock of the
25 corporation have voted to dissolve the corporation;

26 (2)(i) In an action by a creditor:

27 (A) When it is established that the corporation is insolvent; or

28 (B) When it is established that the corporate assets are being misapplied or are in danger
29 of being wasted or lost.

30 (ii) If it is established that the claim of a creditor has been reduced to judgment and an
31 execution on the judgment returned unsatisfied or that a corporation has admitted, in writing, that
32 the claim of a creditor is due and owing, the establishment of the facts are prima facie evidence of
33 insolvency.

34 (iii) Every petition filed by a creditor for the liquidation of the assets and business of a

1 corporation shall contain a statement as to whether the creditor is or is not an officer, director, or
2 shareholder of the corporation. Every petition for the liquidation of the assets and business of a
3 corporation filed by an officer, director, or shareholder of a corporation or by a creditor who is an
4 officer, director or shareholder, shall contain, to the best of petitioner's knowledge, information,
5 and belief, the names and addresses of all known creditors of any class of the corporation.

6 (3) Upon application by a corporation which has filed a statement of intent to dissolve, as
7 provided in this chapter, to have its liquidation continued under the supervision of the court. The
8 application shall contain, to the best of petitioner's knowledge, information, and belief, the names
9 and addresses of all known creditors of any class of the corporation.

10 (4) When an action has been filed by the attorney general to dissolve a corporation and it
11 is established that liquidation of its business and affairs should precede the entry of a decree of
12 dissolution.

13 (b) Proceedings under subsections (a)(1), (a)(2), or (a)(3) shall be brought in the county
14 in which the registered or principal office of the corporation is situated.

15 (c) It is not necessary to make shareholders parties to any action or proceeding unless
16 relief is sought against them personally.

17 **7-1.2-1315. Avoidance of dissolution by stock buyout.** -- Whenever a petition for
18 dissolution of a corporation is filed by one or more shareholders (subsequently in this section
19 referred to as the "petitioner") pursuant to either Section 7-1.2-1314 or a right to compel
20 dissolution which is authorized under Section 7-1.2-1701 or is otherwise valid, one or more of its
21 other shareholders may avoid the dissolution by filing with the court prior to the commencement
22 of the hearing, or, in the discretion of the court, at any time prior to a sale or other disposition of
23 the assets of the corporation, an election to purchase the shares owned by the petitioner at a price
24 equal to their fair value. If the shares are to be purchased by other shareholders, notice shall be
25 sent to all shareholders of the corporation other than the petitioner, giving them an opportunity to
26 join in the election to purchase the shares. If the parties are unable to reach an agreement as to
27 the fair value of the shares, the court shall, upon the giving of a bond or other security sufficient
28 to assure to the petitioner payment of the value of the shares, stay the proceeding and determine
29 the value of the shares, in accordance with the procedure set forth in Section 7-1.2-1202, as of the
30 close of business on the day on which the petition for dissolution was filed. Upon determining
31 the fair value of the stock, the court shall state in its order directing that the stock be purchased,
32 the purchase price and the time within which the payment is to be made, and may decree any
33 other terms and conditions of sale that it determines to be appropriate, including payment of the
34 purchase price in installments extending over a period of time, and, if the shares are to be

1 purchased by shareholders, the allocation of shares among shareholders electing to purchase
2 them, which, so far as practicable, are to be proportional to the number of shares previously
3 owned. The petitioner is entitled to interest, at the rate on judgments in civil actions, on the
4 purchase price of the shares from the date of the filing of the election to purchase the shares, and
5 all other rights of the petitioner as owner of the shares terminate on that date. The costs of the
6 proceeding, which include reasonable compensation and expenses of appraisers but not fees and
7 expenses of counsel or of experts retained by a party, shall be allocated between or among the
8 parties as the court determines. Upon full payment of the purchase price, under the terms and
9 conditions specified by the court, or at any other time that is ordered by the court, the petitioner
10 shall transfer the shares to the purchaser.

11 **7-1.2-1316. Procedure in liquidation of corporation by court.** - (a) In proceedings to
12 liquidate the assets and business of a corporation the court has general equity jurisdiction and
13 power to issue any orders, injunctions, and decrees that justice and equity require, to appoint a
14 receiver or receivers pendente lite, with any powers and duties that the court, from time to time,
15 directs, and to take any other proceedings that are requisite to preserve the corporate assets
16 wherever situated, and carry on the business of the corporation until a full hearing can be had.

17 (b) After a hearing had upon any notice that the court directs to be given to all parties to
18 the proceedings and to any other parties in interest designated by the court, the court may appoint
19 a liquidating receiver or receivers with authority to take charge of any of the corporation's estate
20 and effects of which he or she has been appointed receiver and to collect the assets of the
21 corporation, including all amounts owing to the corporation whether by shareholders on account
22 of any unpaid portion of the consideration for the issuance of shares or otherwise.

23 (c) The hearing date for the appointment of a permanent receiver is not to be more than
24 twenty-one (21) days after commencement of the action, unless the hearing date is extended by
25 the court for good cause shown.

26 (d) The liquidating receiver or receivers has authority subject to court order, to sue and
27 defend in all courts in his or her own name as receiver of the corporation, or in its name, to
28 intervene in any action or proceeding relating to its assets or business, to compromise any dispute
29 or controversy, to preserve the assets of the corporation, to carry on its business, to sell, convey,
30 and dispose of all or any part of the assets of the corporation wherever situated, either at public or
31 private sale, to redeem any mortgages, security interests, pledges, or liens of or upon any of its
32 assets, and generally to do all other acts which might be done by the corporation or that is
33 necessary for the administration of his or her trust according to the course of equity. The assets
34 of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the

1 assets shall be applied to the expenses of the liquidation and to the payment of the liabilities and
2 obligations of the corporation, and any remaining assets or proceeds shall be distributed under the
3 direction of the court among its shareholders according to their respective rights and interests.
4 The order appointing the receiver or receivers shall state their powers and duties. The powers and
5 duties may be increased or diminished at any time during the proceeding.

6 (e) The court has power to allow from time to time as expenses of the liquidation
7 compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the
8 payment of the compensation out of the assets of the corporation or the proceeds of any sale or
9 disposition of the assets.

10 (f) The court appointing the receiver has exclusive jurisdiction of the corporation and its
11 property, wherever situated, and of all questions arising in the proceedings concerning the
12 property.

13 **7-1.2-1317. Bond of receivers.** -- A receiver shall in all cases give any bond that the
14 court directs with any sureties that the court requires.

15 **7-1.2-1318. Filing of claims in liquidation proceedings.** -- In proceedings to liquidate
16 the assets and business of a corporation, the court may require all creditors of the corporation to
17 file with the receiver, in any form that the court prescribes, proofs under oath of their respective
18 claims. If the court requires the filing of claims it shall fix a date, which is not to be less than four
19 (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe
20 the notice that is to be given to creditors and claimants of the fixed date. Prior to the fixed date,
21 the court may extend the time for the filing of claims. Creditors and claimants failing to file
22 proofs of claim on or before the fixed date may be barred, by court order, from participating in
23 the distribution of the assets of the corporation.

24 **7-1.2-1319. Discontinuance of liquidation proceedings.** -- The liquidation of the assets
25 and business of a corporation may be discontinued at any time during the liquidation proceedings
26 when it is established that cause for liquidation no longer exists. In that event the court shall
27 dismiss the proceedings, direct the receiver to redeliver to the corporation all its remaining
28 property and assets, and order any notice to creditors that the court deems proper under the
29 circumstances.

30 **7-1.2-1320. Decree of involuntary dissolution.** -- In proceedings to liquidate the assets
31 and business of a corporation, when the costs and expenses of the proceedings and all debts,
32 obligations, and liabilities of the corporation have been paid and discharged and all of its
33 remaining property and assets distributed to its shareholders, or in case its property and assets are
34 not sufficient to satisfy and discharge the costs, expenses, debts, and obligations, all the property

1 and assets have been applied as far as they will go to their payment, the court shall enter a decree
2 dissolving the corporation, at which time the existence of the corporation ceases.

3 **7-1.2-1321. Filing of decree of dissolution.** -- In case the court enters a decree
4 dissolving a corporation, it is the duty of the clerk of the court to file a certified copy of the
5 decree with the secretary of state. No fee shall be charged by the secretary of state for that filing.

6 **7-1.2-1322. Deposit with state treasury of amount due certain shareholders.** -- Upon
7 the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to
8 a creditor or shareholder who is unknown or cannot be found, or who is under disability and there
9 is no person legally competent to receive the distributive portion, shall be reduced to cash and
10 deposited with the general treasury and paid over to the creditor or shareholder or to his or her
11 legal representative upon satisfactory proof to the general treasury of his or her right to the
12 payment.

13 **7-1.2-1323. Jurisdiction of court to appoint a receiver.** -- Upon the establishment of
14 any of the grounds for liquidation of the assets and business of (1) a domestic corporation or (2) a
15 foreign corporation, to the extent the foreign corporation has assets within the state, stated in
16 Section 7-1.2-1314, and upon the establishment that the liquidation would not be appropriate, the
17 superior court has full power to appoint a receiver, with any powers and duties that the court,
18 from time to time, directs, and to take any other proceedings that the court deems advisable under
19 the circumstances. The provisions of Sections 7-1.2-1314 through 7-1.2-1322, insofar as they are
20 consistent with the nature of the proceeding, apply to the proceeding, and in the proceeding the
21 court has the full powers of a court of equity to make or enter any orders, injunctions, and decrees
22 and grant any other relief in the proceeding that justice and equity require.

23 **7-1.2-1324. Survival of remedy after dissolution.** - The dissolution of a corporation
24 either:

25 (1) by the issuance of a certificate of dissolution by the secretary of state; or

26 (2) by a decree of court when the court has not liquidated the assets and business of the
27 corporation as provided in this chapter; or

28 (3) by expiration of its period of duration, shall not take away or impair any remedy
29 available to or against the corporation, its directors, officers, or shareholders, for any right or
30 claim existing, or any liability incurred, prior to the dissolution if action or other proceeding on
31 the right, claim, or liability is commenced within five (5) years after the date of the dissolution.

32 Any action or proceeding by or against the corporation may be prosecuted or defended by the
33 corporation in its corporate name. The shareholders, directors, and officers have power to take
34 any corporate or other action that is appropriate to protect the remedy, right, or claim. If the

1 corporation was dissolved by the expiration of its period of duration, the corporation may amend
2 its articles of incorporation at any time during the period of five (5) years so as to extend its
3 period of duration.

4 **7-1.2-1325. Continuation of certain corporate powers.** -- Any corporation dissolved in
5 any manner under this chapter or any corporation whose existence is terminated under Section
6 44-12-8 or any corporation whose certificate of incorporation is revoked by the secretary of state
7 under Section 7-1.2-1310 nevertheless continues for five (5) years after the date of the
8 dissolution, termination, or revocation for the purpose of enabling it to settle and close its affairs,
9 to dispose of and convey its property, to discharge its liabilities, and to distribute its assets, but
10 not for the purpose of continuing the business for which it was organized. The shareholders,
11 directors, and officers have power to take any corporate or other action that is appropriate to carry
12 out the purposes of this section.

13 **Part XIV. Foreign Corporations.**

14 **7-1.2-1401. Admission of foreign corporation and other entities.** -- (a) No foreign
15 corporation has the right to transact business in this state until it has procured a certificate of
16 authority to do so from the secretary of state. No foreign corporation is entitled to procure a
17 certificate of authority under this chapter to transact any business in this state which a corporation
18 organized under this chapter is not permitted to transact. A foreign corporation shall not be
19 denied a certificate of authority because the laws of the state or country under which the
20 corporation is organized governing its organization and internal affairs differ from the laws of this
21 state, and nothing contained in this chapter shall be construed to authorize this state to regulate
22 the organization or the internal affairs of the corporation.

23 (b) Without excluding other activities which may not constitute transacting business in
24 this state, a foreign corporation is not considered to be transacting business in this state, for the
25 purposes of this chapter, because of carrying on in this state any one or more of the following
26 activities:

27 (1) Maintaining or defending any action or suit or any administrative or arbitration
28 proceeding, or effecting the settlement of the suit or the settlement of claims or disputes.

29 (2) Holding meetings of its directors or shareholders or carrying on other activities
30 concerning its internal affairs.

31 (3) Maintaining bank accounts.

32 (4) Maintaining offices or agencies for the transfer, exchange, and registration of its
33 securities, or appointing and maintaining trustees or depositaries with relation to its securities.

34 (5) Effecting sales through independent contractors.

1 (6) Soliciting or procuring orders, whether by mail or through employees or agents or
2 otherwise, where the orders require acceptance outside of this state before becoming binding
3 contracts.

4 (7) Creating as borrower or lender, or acquiring indebtedness or mortgages or other
5 security interests in real or personal property.

6 (8) Securing or collecting debts or enforcing any rights in property securing the debts.

7 (9) Transacting any business in interstate commerce.

8 (10) Conducting an isolated transaction completed within a period of thirty (30) days and
9 not in the course of a number of repeated transactions of like nature.

10 (11) Acting as a general partner of a limited partnership which has filed a certificate of
11 limited partnership as provided in Section 7-13-8 or has registered with the secretary of state as
12 provided in Section 7-13-49.

13 (12) Acting as a member of a limited liability company which has registered with the
14 secretary of state as provided in Section 7-13-49.

15 (c) Any “other entity”, as defined in Section 7-16-5.1(a), Massachusetts trust or business
16 trust established by law of any other state, desiring to do business in this state, is deemed to be a
17 foreign corporation and is required to register under, and comply with the provisions of, this
18 chapter.

19 **7-1.2-1402. Powers of foreign corporation.** -- A foreign corporation which has received
20 a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal
21 has been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges
22 as a domestic corporation organized for the purposes stated in the application pursuant to which
23 the certificate of authority is issued; and, except as otherwise provided in this chapter, is subject
24 to the same duties, restrictions, penalties, and liabilities now or subsequently imposed upon a
25 domestic corporation of like character.

26 **7-1.2-1403. Corporate name of foreign corporation.** - No certificate of authority or
27 amended certificate of authority shall be issued to a foreign corporation unless the corporate name
28 of the corporation:

29 (1) Contains the word “corporation,” “company,” “incorporated,” or “limited,” or
30 contains an abbreviation of one of the words, or the corporation, for use in this state, adds at the
31 end of its name one of the words or an abbreviation of the word.

32 (2) Does not contain any word or phrase which indicates or implies that it is organized for
33 any purpose other than one or more of the purposes contained in its articles of incorporation or
34 that it is authorized or empowered to conduct the business of any types prohibited by Section 7-

1 1.2-301.

2 (3) Is not the same as, or deceptively similar to, the name of any domestic corporation,
3 limited partnership or limited liability company existing under the laws of this state or any
4 foreign corporation, limited partnership or limited liability company authorized to transact
5 business in this state, or a name the exclusive right to which is, at the time, filed, reserved or
6 registered in the manner provided in this title, subject to the following:

7 (i) This provision does not apply if the foreign corporation applying for a certificate of
8 authority files with the secretary of state any one of the following:

9 (A) A fictitious business name statement pursuant to Section 7-1.2-402; or

10 (B) The written consent of the other corporation or holder of a filed, reserved or
11 registered name to use that name or a deceptively similar name and one or more words are added
12 to make the name distinguishable from the other name; or

13 (C) A certified copy of a final decree of a court of competent jurisdiction establishing the
14 prior right of the foreign corporation to the use of the name in this state; and

15 (ii) The name may be the same as, or deceptively similar to, the name of a corporation or
16 other association, the certificate of incorporation or organization of which has been revoked by
17 the secretary of state as permitted by law.

18 **7-1.2-1404. Change of name by foreign corporation.** -- Whenever a foreign corporation
19 which is authorized to transact business in this state changes its name to one that does not satisfy
20 the requirements of Section 7-1.2-1403, it may not transact business in this state under the
21 changed name until it adopts a name satisfying the requirements of section 7-1.2-1403 and
22 obtains an amended certificate of authority under section 7-1.2-1406.

23 **7-1.2-1405. Application for certificate of authority.** - A foreign corporation, in order to
24 procure a certificate of authority to transact business in this state, shall make application for the
25 certificate of authority to the secretary of state, which application shall state:

26 (1) The name of the corporation and the state or country under the laws of which it is
27 incorporated.

28 (2) The name which the corporation elects to use in this state in accordance with 7-1.2-
29 1403.

30 (3) The date of incorporation and the period of duration of the corporation.

31 (4) The address of the principal office of the corporation in the state or country under the
32 laws of which it is incorporated.

33 (5) The name and address of its proposed registered agent in this state at the address.

34 (6) The purpose or purposes of the corporation which it proposes to pursue in the

1 transaction of business in this state.

2 (7) The names and respective addresses of the directors of the corporation if the state or
3 country under the laws of which it was incorporated requires that it have directors and if it does
4 and need not, then the names and respective addresses of its principal officers.

5 (8) A statement of the aggregate number of shares which the corporation has authority to
6 issue, itemized by classes, par value of shares, shares without par value, and series, if any, within
7 a class.

8 (9) An estimate, expressed as a percentage, of the proportion that the estimated value of
9 the property of the corporation to be located within this state during the following year bears to
10 the value of all property of the corporation to be owned during the following year, wherever
11 located, and an estimate, expressed as a percentage, of the proportion that the gross amount of
12 business to be transacted by the corporation at or from places of business in this state during the
13 following year bears to the gross amount which will be transacted by the corporation during the
14 following year.

15 **7-1.2-1406. Filing of application for certificate of authority.** - (a) The application of
16 the corporation for a certificate of authority shall be delivered to the secretary of state, together
17 with a copy of its articles of incorporation and all amendments to the articles, duly authenticated
18 by the proper officer of the state or country under the laws of which it is incorporated.

19 (b) If the secretary of state finds that the application conforms to law, he or she shall,
20 when all fees have been paid:

21 (1) Endorse on the original of the application the word "Filed," and the month, day, and
22 year of the filing.

23 (2) File in his or her office the original of the application and the copy of the articles of
24 incorporation and amendments to the articles.

25 (3) Issue a certificate of authority to transact business in this state.

26 (c) The certificate of authority shall be delivered to the corporation or its representative.

27 **7-1.2-1407. Effect of certificate of authority.** -- Upon the issuance of a certificate of
28 authority by the secretary of state, the corporation is authorized to transact business in this state
29 for the purposes stated in its application, subject, however, to the right of this state to suspend or
30 to revoke the authority as provided in this chapter.

31 **7-1.2-1408. Registered office and registered agent of foreign corporation.** -- (a) Each
32 foreign corporation authorized to transact business in this state shall have and continuously
33 maintain in this state a registered agent, who shall be either:

34 (1) An individual resident in this state; or

1 (2) Corporation, limited partnership, limited liability company, and in each case either
2 domestic or one authorized to transact business in this state.

3 (b) Foreign corporations who are the holders of mortgages on real estate located within
4 this state which do not maintain the loan documentation and records within the state shall
5 authorize the registered agent to accept mortgage discharge payment and to issue a discharge of
6 the mortgages upon the payment.

7 **7-1.2-1409. Change of registered office or registered agent of foreign corporation. --**

8 (a) A foreign corporation authorized to transact business in this state may change its registered
9 office or change its registered agent, or both, upon filing in the office of the secretary of state a
10 statement stating:

11 (1) The name of the corporation.

12 (2) The address of its then registered office.

13 (3) If the address of its registered office is changed, the address to which the registered
14 office is to be changed.

15 (4) The name of its then registered agent.

16 (5) If its registered agent is changed, the name of its successor registered agent.

17 (6) The address of its registered office and the address of the business office of its
18 registered agent, as changed.

19 (b) The statement shall be executed by an authorized representative of the corporation
20 and delivered to the secretary of state. If the secretary of state finds that the statement conforms
21 to the provisions of this chapter, he or she shall file the statement in this office, and upon the
22 filing, the change of address of the registered office, or the appointment of a new registered agent,
23 or both, becomes effective.

24 (c) Any registered agent of a foreign corporation may resign as the agent upon filing a
25 written notice of resignation with the secretary of state, who shall immediately mail a copy of the
26 notice to the corporation at its principal office in the state or country under the laws of which it is
27 incorporated. The appointment of the agent terminates upon the expiration of thirty (30) days
28 after receipt of the notice by the secretary of state.

29 (d) If a registered agent changes his or her or its business address to another place within
30 the state, he or she or it may change the address and the address of the registered office of any
31 corporations of which he or she or it is registered agent by filing a statement as required above
32 except that it must be signed only by the registered agent, need not be responsive to subsection
33 (a)(5), and must recite that a copy of the statement has been mailed to each corporation.

34 **7-1.2-1410. Service of process on foreign corporation. -- (a) The registered agent**

1 appointed by a foreign corporation authorized to transact business in this state shall be an agent of
2 the corporation upon whom any process, notice, or demand required or permitted by law to be
3 served upon the corporation may be served.

4 (b) Whenever a foreign corporation authorized to transact business in this state fails to
5 appoint or maintain a registered agent in this state, or whenever any registered agent cannot with
6 reasonable diligence be found at the registered office, or whenever the certificate of authority of a
7 foreign corporation is suspended or revoked, the secretary of state is an agent of the corporation
8 upon whom any process, notice, or demand may be served. Service on the secretary of state of
9 any process, notice, or demand shall be made by delivering to and leaving with him or her, or
10 with any clerk having charge of the corporation department of his or her office, duplicate copies
11 of the process, notice, or demand. In the event any process, notice, or demand is served on the
12 secretary of state, he or she shall immediately forward one of the copies by registered mail,
13 addressed to the corporation at its principal office if known to him or her, in the state or country
14 under the laws of which it is incorporated. Any service had in this manner on the secretary of
15 state is returnable in not less than thirty (30) days.

16 (c) Every foreign corporation as a condition precedent to carrying on business in this state
17 shall, and by so carrying on business in this state does, consent that any process, including the
18 process of garnishment, may be served upon the secretary of state in the manner provided by this
19 section, except that notice of the service shall be given by the plaintiff or his or her attorney in the
20 manner as the court in which the action is commenced or pending orders as affording the
21 corporation reasonable opportunity to defend the action or to learn of the garnishment.
22 Notwithstanding the preceding requirements, however, once service has been made on the
23 secretary of state as provided, the court has the authority in the event of failure to comply with the
24 requirement of notice to the foreign corporation to order notice that is sufficient to apprise it of
25 the pendency of the action against it, and additionally, may extend the time for answering by the
26 foreign corporation.

27 (d) The secretary of state shall keep a record of all processes, notices, and demands
28 served upon him or her under this section, and record in the record the time of the service and his
29 or her action on it.

30 (e) Nothing contained in these provisions limits or affects the right to serve any process,
31 notice, or demand, required or permitted by law to be served upon a corporation in any manner
32 now or subsequently permitted by law.

33 **7-1.2-1411. Amendment to articles of incorporation of foreign corporation. --**

34 Whenever the articles of incorporation of a foreign corporation authorized to transact business in

1 this state are amended, the foreign corporation shall, within thirty (30) days after the amendment
2 becomes effective, file in the office of the secretary of state a copy of the amendment duly
3 authenticated by the proper officer of the state or country under the laws of which it is
4 incorporated; but the filing of the copy does not of itself enlarge or alter the purpose or purposes
5 which the corporation is authorized to pursue in the transaction of business in this state, nor
6 authorize the corporation to transact business in this state under any other name than the name
7 stated in its certificate of authority.

8 **7-1.2-1412. Merger of foreign corporation authorized to transact business in this**
9 **state. -- Whenever a foreign corporation authorized to transact business in this state is a party to a**
10 **statutory merger permitted by the laws of the state or country under which it is incorporated, and**
11 **the corporation is the surviving corporation, it shall, within thirty (30) days after the merger**
12 **becomes effective, file with the secretary of state a copy of the articles of merger duly**
13 **authenticated by the proper officer of the state or country under the laws of which the statutory**
14 **merger was effected; and it is not necessary for the corporation to procure either a new or**
15 **amended certificate of authority to transact business in this state unless the name of the**
16 **corporation is changed by the merger or unless the corporation desires to pursue in this state other**
17 **or additional purposes than those which it is then authorized to transact in this state.**

18 **7-1.2-1413. Amended certificate of authority. -- (a) A foreign corporation authorized to**
19 **transact business in this state shall make application for and procure an amended certificate of**
20 **authority if it changes its corporate name, increases its number of authorized shares, or desires to**
21 **pursue in this state other or additional purposes than those stated in its prior application for a**
22 **certificate of authority.**

23 **(b) The requirements in respect to the form and contents of the application, the manner of**
24 **its execution, the filing of the application with the secretary of state, the issuance of an amended**
25 **certificate of authority, and the effect of it, is the same as in the case of an original application for**
26 **a certificate of authority.**

27 **7-1.2-1414. Withdrawal of foreign corporation. -- (a) A foreign corporation authorized**
28 **to transact business in this state may withdraw from this state upon procuring from the secretary**
29 **of state a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign**
30 **corporation shall deliver to the secretary of state an application for withdrawal, stating:**

31 **(1) The name of the corporation and the state or country under the laws of which it is**
32 **incorporated.**

33 **(2) That the corporation is not transacting business in this state.**

34 **(3) That the corporation surrenders its authority to transact business in this state.**

1 (4) That the corporation revokes the authority of its registered agent in this state to accept
2 service of process and consents that service of process in any action, suit, or proceeding based
3 upon any cause of action arising in this state during the time the corporation was authorized to
4 transact business in this state may subsequently be made on the corporation by service on the
5 secretary of state.

6 (5) The post office address to which the secretary of state may mail a copy of any process
7 against the corporation that is served on him or her.

8 (b) If the corporation is in the hands of a receiver or trustee, the application for
9 withdrawal shall be executed on behalf of the corporation by the receiver or trustee and verified
10 by him or her.

11 **7-1.2-1415. Filing of application for withdrawal. --** (a) An original application for
12 withdrawal shall be delivered to the secretary of state. If the secretary of state finds that the
13 application conforms to the provisions of this chapter, he or she shall, when all fees and taxes
14 have been paid:

15 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.

16 (2) File the original in his or her office.

17 (3) Issue a certificate of withdrawal.

18 (b) The certificate of withdrawal shall be returned to the corporation or its representative.
19 Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact
20 business in this state ceases.

21 **7-1.2-1416. Revocation of certificate of authority. --** (a) The certificate of authority of
22 a foreign corporation to transact business in this state may be revoked by the secretary of state
23 under the conditions prescribed in this section when:

24 (1) The corporation fails to file its annual report within the time required by this chapter,
25 or fails to pay any fees, when they become due and payable; or

26 (2) The corporation fails to appoint and maintain a registered agent in this state as
27 required by this chapter; or

28 (3) The corporation fails, after changing its registered office or registered agent, to file in
29 the office of the secretary of state a statement of the change as required by this chapter; or

30 (4) The corporation fails to file in the office of the secretary of state any amendment to its
31 articles of incorporation or any articles of merger within the time prescribed by this chapter; or

32 (5) A misrepresentation has been made of any material matter in any application, report,
33 affidavit, or other document submitted by the corporation pursuant to this chapter.

34 (b) No certificate of authority of a foreign corporation shall be revoked by the secretary

1 of state unless the secretary of state shall have given the corporation not less than sixty (60) days
2 notice thereof by regular mail addressed to the registered office of the corporation in this state on
3 file with the secretary of state's office; provided, however, that if a prior mailing addressed to the
4 registered office of the corporation in this state currently on file with the secretary of state's office
5 has been returned to the secretary of state as undeliverable by the United States Postal Service for
6 any reason, or if the revocation notice is returned as undeliverable to the secretary of state's office
7 by the United States Postal Service for any reason, the secretary of state shall give notice as
8 follows:

9 (1) To the corporation at its principal office of record as shown in its most recent annual
10 report, and no further notice shall be required; or

11 (2) In the case of a foreign corporation which has not yet filed an annual report, then to
12 the corporation at its principal office shown in its application for certificate of authority, and no
13 further notice shall be required.

14 **7-1.2-1417. Issuance of certificate of revocation.** -- (a) Upon revoking any certificate of
15 authority, the secretary of state shall:

16 (1) Issue a certificate of revocation.

17 (2) File the certificate in his or her office.

18 (3) Send to the corporation by regular mail the certificate of revocation, addressed to the
19 registered office of the corporation in this state on file with the secretary of state's office;
20 provided, however, that if a prior mailing addressed to the registered office of the corporation in
21 this state currently on file with the secretary of state's office has been returned to the secretary of
22 state as undeliverable by the United States Postal Service for any reason, or if the revocation
23 certificate is returned as undeliverable to the secretary of state's office by the United States Postal
24 Service for any reason, the secretary of state shall give notice as follows:

25 (i) To the corporation at its principal office of record as shown in its most recent annual
26 report, and no further notice shall be required; or

27 (ii) In the case of a foreign corporation that has not yet filed an annual report then to the
28 corporation at its principal office shown in its application for certificate of authority, and no
29 further notice shall be required.

30 (b) Upon the issuance of the certificate of revocation, the authority of the corporation to
31 transact business in this state ceases.

32 **7-1.2-1418. Withdrawal of certificate of revocation.** -- Within five (5) years after
33 issuing a certificate of revocation as provided in Section 7-1.2-1417, the secretary of state may
34 withdraw the certificate of revocation retroactively and retroactively reinstate the corporation in

1 good standing as though its certificate of authority had not been revoked, except as subsequently
2 provided;

3 (1) Upon the filing by the corporation of the documents it had previously failed to file as
4 stated in subdivisions (1) through (4) of Section 7-1.2-1416; and

5 (2) Upon the payment by the corporation of a penalty in the amount of fifty dollars
6 (\$50.00) for each year or part of a year that has elapsed since the issuance of the certificate of
7 revocation.

8 (b) If, as permitted by the provisions of this title, another corporation, whether business
9 or nonprofit, limited partnership or limited liability company, domestic or foreign, qualified to
10 transact business in this state, bears or has filed a fictitious business name statement with respect
11 to or reserved or registered a name which is the same as, or deceptively similar to, the name of a
12 corporation with respect to which the certificate of revocation is proposed to be withdrawn, then
13 the secretary of state shall condition the withdrawal of the certificate of revocation on the
14 reinstated corporation's amending its application for a certificate of authority or otherwise
15 complying with the provisions of this chapter with respect to the use of the name available to it
16 under the laws of this state.

17 **7-1.2-1419. Application to corporations previously authorized to transact business in**
18 **this state. -- Foreign corporations which are authorized to transact business in this state as of**
19 **May 14, 1969, for a purpose or purposes for which a corporation might secure authority under**
20 **this chapter, are, subject to the limitations stated in their certificates of authority, entitled to all the**
21 **rights and privileges applicable to foreign corporations procuring certificates of authority to**
22 **transact business in this state under this chapter, and as of May 14, 1969 the corporations are**
23 **subject to all the limitations, restrictions, liabilities, and duties prescribed in these provisions for**
24 **foreign corporations procuring certificates of authority to transact business in this state under this**
25 **chapter.**

26 **7-1.2-1420. Transacting business without certificate of authority. -- (a) No foreign**
27 **corporation transacting business in this state without a certificate of authority is permitted to**
28 **maintain any action, suit, or proceeding in any court of this state, until the corporation has**
29 **obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any**
30 **court of this state by any successor or assignee of the corporation on any right, claim, or demand**
31 **arising out of the transaction of business by the corporation in this state, until a certificate of**
32 **authority has been obtained by the corporation or by its successor.**

33 (b) The failure of a foreign corporation to obtain a certificate of authority to transact
34 business in this state does not impair the validity of any contract or act of the corporation, and

1 does not prevent the corporation from defending any action, suit, or proceeding in any court of
2 this state.

3 (c) A foreign corporation which transacts business in this state without a certificate of
4 authority is liable to this state, for the years or parts of years during which it transacted business
5 in this state without a certificate of authority, in an amount equal to all fees and franchise taxes
6 which would have been imposed upon the corporation had it duly applied for and received a
7 certificate of authority to transact business in this state as required by this chapter and
8 subsequently filed all reports required by this chapter, plus all penalties imposed by this chapter
9 for failure to pay the fees and franchise taxes. The attorney general shall bring proceedings to
10 recover all amounts due this state under the provisions of this section.

11 (d) The Superior Court has jurisdiction to enjoin any foreign corporation, or any agent of
12 a foreign corporation, from transacting any business in this state if the corporation fails to comply
13 with any section of this chapter applicable to it or if the corporation secured a certificate of the
14 secretary of state under Sections 7-1.2-1405 and 7-1.2-1406 on the basis of false or misleading
15 representations. The attorney general shall, upon his or her own motion or upon the relation of
16 proper parties, proceed for this purpose by complaint in any county in which the corporation is
17 doing business.

18 **Part XV. Reports and Records.**

19 **7-1.2-1501. Annual reports of domestic and foreign corporations. -- (a) Each**
20 domestic corporation, and each foreign corporation authorized to transact business in this state,
21 shall file, within the time prescribed by this chapter, an annual report stating:

22 (1) The name of the corporation and the state or country under the laws of which it is
23 incorporated;

24 (2) A brief statement of the character of the business in which the corporation is actually
25 engaged in this state;

26 (3) The names and respective addresses of the directors and officers of the corporation;

27 (4) A statement of the aggregate number of shares which the corporation has authority to
28 issue, itemized by classes, par value of shares, shares without par value, and series, if any, within
29 a class;

30 (5) A statement of the aggregate number of issued shares, itemized by classes, par value
31 of shares, shares without par value, and series, if any, within a class;

32 (6) Any additional information that is by the secretary of state.

33 (b) The annual report shall be made on forms prescribed and furnished by the secretary of
34 state, and the information contained therein shall be given as of the date of the execution of the

1 report. It shall be executed on behalf of the corporation by its authorized representative, or, if the
2 corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the
3 corporation by the receiver or trustee.

4 (c) The annual report of a domestic or foreign corporation shall be delivered to the
5 secretary of state between January 1 and March 1 of each year, except that the first annual report
6 of a domestic or foreign corporation shall be filed between January 1 and March 1 of the year
7 following the calendar year in which its certificate of incorporation or its certificate of authority
8 was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to
9 March 1 the report was deposited in the United States mail in a sealed envelope, properly
10 addressed, with postage prepaid, is deemed to be a compliance with this requirement.

11 (d) If the secretary of state finds that the annual report conforms to the requirements of
12 this chapter, he or she shall file the report. If he or she finds that it does not conform, he or she
13 shall promptly return the report to the corporation for any necessary corrections, in which event
14 the penalties subsequently prescribed for failure to file the report within the time previously
15 provided do not apply if the report is corrected to conform to the requirements of this chapter and
16 returned to the secretary of state within thirty (30) days from the date on which it was mailed to
17 the corporation by the secretary of state.

18 (e) Each corporation, domestic or foreign, that fails or refuses to file its annual report for
19 any year within the time prescribed by this chapter is subject to a penalty of ten percent (10%).
20 The penalty shall be assessed by the tax administrator at the time of the assessment of the
21 franchise tax.

22 **7-1.2-1502. Books and records.** -- (a) Each corporation shall keep correct and complete
23 books and records of account, keep minutes of the proceedings of its shareholders and of the
24 board of directors and committees of the board, and shall also keep at its registered office or
25 principal place of business, or at the office of its transfer agent or registrar, a record of its
26 shareholders giving the names and addresses of all shareholders and the number and class of the
27 shares held by each. Any books, records, and minutes may be in written form or any other form
28 capable of being converted into written form within a reasonable time.

29 (b) Any director, shareholder or holder of voting trust certificates for shares of a
30 corporation, upon written demand stating the purpose for the demand, shall have the right to
31 examine, in person, or by agent or attorney, at any reasonable time or times, for any proper
32 purpose, its relevant books and records of account, minutes, and record of shareholders and to
33 make extracts from those books and records of account, minutes, and record of shareholders.

34 (c) Any officer or agent who, or a corporation which, refuses to allow any director,

1 shareholder or holder of voting trust certificates, or his or her agent or attorney, to examine and
2 make extracts from its books and records of account, minutes, and record of shareholders, for any
3 proper purpose, is liable to the shareholder or holder of voting trust certificates in a penalty of ten
4 percent (10%) of the value of the shares owned by the shareholder, or in respect of which the
5 voting trust certificates are issued, in addition to any other damages or remedy afforded him or
6 her by law. It is a defense to any action for penalties under this section that the person bringing
7 the suit has within two (2) years sold or offered for sale any list of shareholders or of holders of
8 voting trust certificates for shares of the corporation or any other corporation or has aided or
9 abetted any person in procuring any list of shareholders or of holders of voting trust certificates
10 for that purpose, or has improperly used any information secured through any prior examination
11 of the books and records of account, or minutes, or record of shareholders, or of holders of voting
12 trust certificates for shares of the corporation or any other corporation, or was not acting in good
13 faith or for a proper purpose in making his or her demand.

14 (d) Nothing contained in these provisions impairs the power of any court of competent
15 jurisdiction, upon proof by a director, shareholder or holder of voting trust certificates of proper
16 purpose, to compel the production for examination by the director, shareholder or holder of
17 voting trust certificates of the books and records of account, minutes, and record of shareholders
18 of a corporation.

19 (e) Upon the written request of any director, shareholder or holder of voting trust
20 certificates for shares of a corporation, the corporation shall mail to the director, shareholder or
21 holder of voting trust certificates its most recent financial statements showing in reasonable detail
22 its assets and liabilities and the results of its operations.

23 **Part XVI. Fees and Secretary of State.**

24 **7-1.2-1601. Fees and charges collected by the secretary of state.** -- (a) The secretary of
25 state has the reasonably necessary power and authority to enable him or her to administer this
26 chapter efficiently and to perform the duties imposed upon the secretary by this chapter.

27 (b) The secretary of state shall charge and collect in accordance with the provisions of
28 this chapter:

29 (1) Fees for filing documents and issuing certificates.

30 (2) Miscellaneous charges.

31 (3) License fees.

32 (c) The secretary of state shall, between the first and fifteenth day of each month, make
33 an itemized return, in writing, to the state controller of the amount of all fees and charges
34 collected by him or her, and pay to the general treasurer all of the state moneys in his or her

1 hands.

2 (d) All reports required by this chapter to be filed in the office of the secretary of state
3 shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms
4 for all other documents to be filed in the office of the secretary of state may be furnished by the
5 secretary of state on request for the forms, but the use of the forms, unless otherwise specifically
6 prescribed in this chapter, is not mandatory.

7 (e)(1) If the secretary of state fails to approve any articles of incorporation, amendment,
8 merger, or dissolution, or any other document required by this chapter to be approved by the
9 secretary of state before the document is filed in his or her office, the secretary shall, within ten
10 (10) days after the delivery of the document to him or her, give written notice of his or her
11 disapproval to the person or corporation, domestic or foreign, delivering the document, specifying
12 the reasons for the disapproval. From the disapproval the person or corporation may appeal to the
13 superior court of the county in which the registered office of the corporation is, or is proposed to
14 be, situated by filing with the clerk of the court a petition setting forth a copy of the articles or
15 other document sought to be filed and a copy of the written disapproval of the document by the
16 secretary of state; at which time the matter shall be tried de novo by the court, and the court shall
17 either sustain the action of the secretary of state or direct the secretary to take any action that the
18 court deems proper.

19 (2) If the secretary of state revokes the certificate of authority to transact business in this
20 state of any foreign corporation pursuant to the provisions of Sections 7-1.2-1416 and 7-1.2-1417,
21 in addition to the remedy provided in Section 7-1.2-1418, the foreign corporation may likewise
22 appeal to the superior court of the county where the registered office of the corporation in this
23 state is situated, by filing with the clerk of the court a petition setting forth a copy of its certificate
24 of authority to transact business in this state and a copy of the notice of revocation given by the
25 secretary of state; at that time the matter shall be tried de novo by the court, and the court shall
26 either sustain the action of the secretary of state or direct the secretary to take any action that the
27 court deems proper.

28 (3) Appeals from all final orders and judgments entered by the superior court under this
29 section in review of any ruling or decision of the secretary of state may be taken as in other civil
30 actions.

31 **7-1.2-1602. Fees and charges payable to the secretary of state upon filing, certifying**
32 **or copying of papers. -- (a) The secretary of state shall charge and collect for filing:**

33 (1) Articles of incorporation and issuing a certificate of incorporation, seventy dollars
34 (\$70.00).

- 1 (2) Articles of amendment and issuing a certificate of amendment, fifty dollars (\$50.00).
- 2 (3) Restated articles of incorporation, seventy dollars (\$70.00).
- 3 (4) Articles of merger and issuing a certificate of merger, one hundred dollars (\$100).
- 4 (5) An application to reserve a corporate name, fifty dollars (\$50.00).
- 5 (6) A notice of transfer of a reserved corporate name, fifty dollars (\$50.00).
- 6 (7)(i) Filing a statement of change of registered agent and registered office or filing a
7 statement of change of registered agent, twenty dollars (\$20.00).
- 8 (ii) Filing a statement of change of registered office only, without fee.
- 9 (8) A statement of the establishment of a series of shares, ten dollars (\$10.00).
- 10 (9) A statement of cancellation of shares, ten dollars (\$10.00).
- 11 (10) A statement of intent to dissolve, without fee.
- 12 (11) A statement of revocation of voluntary dissolution proceedings, ten dollars (\$10.00).
- 13 (12) Articles of dissolution, fifty dollars (\$50.00).
- 14 (13) An application of a foreign corporation for a certificate of authority to transact
15 business in this state and issuing a certificate of authority, one hundred fifty dollars (\$150).
- 16 (14) An application of a foreign corporation for an amended certificate of authority to
17 transact business in this state and issuing an amended certificate of authority, seventy-five dollars
18 (\$75.00).
- 19 (15) A copy of an amendment to the articles of incorporation of a foreign corporation
20 holding a certificate of authority to transact business in this state, fifty dollars (\$50.00).
- 21 (16) A copy of articles of merger of a foreign corporation holding a certificate of
22 authority to transact business in this state, one hundred fifty dollars (\$150).
- 23 (17) An application for withdrawal of a foreign corporation and issuing a certificate of
24 withdrawal, fifty dollars (\$50.00).
- 25 (18) An annual report, fifty dollars (\$50.00).
- 26 (19) Any other statement or report, except an annual report, of a domestic or foreign
27 corporation, ten dollars (\$10.00).
- 28 (b) The secretary of state shall charge and collect:
- 29 (1) For furnishing a certified copy of any document, instrument, or paper relating to a
30 corporation, fifty cents \$.50/page and five dollars (\$5.00) for the certificate and affixing the seal
31 to it;
- 32 (2) At the time of any service of process on him or her as resident agent of a corporation,
33 fifteen dollars (\$15.00), which amount may be recovered as taxable costs by the party to the suit
34 or action making the service if the party prevails in the suit or action.

1 (c)(1) The secretary of state shall charge and collect from each domestic corporation
2 license fees, based on the number of shares which it has authority to issue or the increase in the
3 number of shares which it has authority to issue, at the time of:

- 4 (i) Filing articles of incorporation;
5 (ii) Filing articles of amendment increasing the number of authorized shares; and
6 (iii) Filing articles of merger increasing the number of authorized shares which the
7 surviving or new corporation, if a domestic corporation, has the authority to issue above the
8 aggregate number of shares which the constituent domestic corporations and constituent foreign
9 corporations authorized to transact business in this state had authority to issue.

10 (2) The license fees charged to a domestic corporation are as follows: (i) one hundred
11 sixty dollars (\$160) for less than seventy-five million (75,000,000) shares of authorized stock and
12 (ii) one-fifth (1/5) cent per share of each authorized share for seventy-five million (75,000,000)
13 shares or greater.

14 (3) The above license fee calculations also apply when a corporation files an amendment
15 or merger showing an increase in authorized shares.

16 (d)(1) The secretary of state shall charge and collect from each foreign corporation
17 license fees at the time of:

- 18 (i) Filing an application for a certificate of authority to transact business in this state;
19 (ii) Filing articles of amendment which increased the number of authorized shares; and
20 (iii) Filing articles of merger which increased the number of authorized shares which the
21 surviving or new corporation, if a foreign corporation, has authority to issue above the aggregate
22 number of shares which the constituent domestic corporations and constituent foreign
23 corporations authorized to transact business in this state had authority to issue.

24 (2) The license fees charged to a foreign corporation are as follows: (i) one hundred sixty
25 dollars (\$160) for less than seventy-five million (75,000,000) shares of authorized stock
26 represented in the State of Rhode Island and (ii) one-fifth (1/5) cent per share of each authorized
27 share for 75,000,000 shares or greater.

28 (3) The above license fee calculations also apply when a corporation files an amendment
29 or merger showing an increase in authorized shares.

30 (4) The number of authorized shares represented in this state is that proportion of its total
31 authorized shares which the sum of the value of its property located in this state and the gross
32 amount of business transacted by it at or from places of business in this state bears to the sum of
33 the value of all of its property, wherever located, and the gross amount of its business, wherever
34 transacted. The proportion is determined from information contained in the application for a

1 certificate of authority to transact business in this state or in the application for an amended
2 certificate of authority to transact business in this state.

3 **7-1.2-1603. Penalties imposed upon officers and directors.** -- Any person who signs
4 any articles, statement, report, application, or other document intended to be filed with the
5 secretary of state which is known to the person to be false in any material respect, is guilty of a
6 misdemeanor, and upon conviction of it may be fined in any amount not exceeding five hundred
7 dollars (\$500). For purposes of this chapter, a document is signed whether by any manual,
8 facsimile or electronic signature.

9 **7-1.2-1604. Interrogatories.** -- (a) The secretary of state may propound to any domestic
10 or foreign corporation subject to the provisions of this chapter, and to any of its officers or
11 directors, any interrogatories that may be reasonably necessary and proper to enable the secretary
12 of state to ascertain whether the corporation has complied with all the applicable provisions of
13 this chapter. The interrogatories shall be answered within thirty (30) days after their mailing, or
14 within any additional time that is fixed by the secretary of state, and the answers to the
15 interrogatories shall be full and complete and shall be made in writing and under oath. If the
16 interrogatories are directed to an individual they shall be answered by him or her, and if directed
17 to a corporation they shall be answered by the president, vice president, secretary, or assistant
18 secretary of the corporation. The secretary of state need not file any document to which the
19 interrogatories relate until the interrogatories are answered as provided in these provisions, and
20 not then if the interrogatory answers disclose that the document is not in conformity with the
21 provisions of this chapter. The secretary of state shall certify to the attorney general, for any
22 action that the attorney general deems appropriate, all interrogatories and their answers which
23 disclose a violation of any of the provisions of this chapter.

24 (b) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and
25 fully within the time prescribed by this chapter interrogatories propounded by the secretary of
26 state, in accordance with the provisions of this chapter, is guilty of a misdemeanor and upon
27 conviction of it may be fined in any amount not exceeding five hundred dollars (\$500).

28 (c) Interrogatories propounded by the secretary of state and the answers to the
29 interrogatories are not open to public inspection nor shall the secretary of state disclose any facts
30 or information obtained from them except insofar as the secretary's official duty requires the facts
31 or information to be made public or in the event the interrogatories or their answers are required
32 for evidence in any criminal proceedings or in any other action by this state.

33 **7-1.2-1605. Certificates and certain copies to be received in evidence.** -- All
34 certificates issued by the secretary of state in accordance with the provisions of this chapter, and

1 all copies of documents filed in his or her office in accordance with the provisions of this chapter
2 when certified by the secretary, shall be taken and received in all courts, public offices, and
3 official bodies as prima facie evidence of the facts stated in them. A certificate by the secretary
4 of state under the great seal of this state, as to the existence or nonexistence of the facts relating to
5 corporations shall be taken and received in all courts, public offices, and official bodies as prima
6 facie evidence of the existence or nonexistence of the facts stated in them.

7 **Part XVII. Close corporations.**

8 **7-1.2-1701. Close corporations.** - (a) Provisions of the articles of incorporation or
9 bylaws of a corporation organized under this chapter, or provisions of an agreement relating to a
10 corporation, which would otherwise be invalid because they:

11 (1) Restrict, or assign to one or more shareholders or other persons, any or all of the
12 powers normally vested in the board of directors or provide that there shall be no board of
13 directors; or

14 (2) Grant the right to one or more stockholders to dissolve the corporation at will or on
15 the occurrence of a specified contingency; or

16 (3) Impose too great a restraint on the transfer of shares of the corporation;
17 shall nevertheless be valid if the provisions have been approved by all the shareholders of
18 the corporation and if the corporation's original or amended articles of incorporation contain a
19 heading immediately after the name of the corporation stating that it is a close corporation
20 pursuant to Section 7-1.2-1701. This subsection shall not be deemed to invalidate any provision
21 in articles of incorporation, bylaws, or agreements that would otherwise be valid. A provision
22 authorized by subsection (a)(1) may include a provision that there shall be no board of directors.

23 (b) The provisions of Section 7-1.2-709 limiting the duration of a voting trust or
24 shareholders' agreement to ten (10) years shall not be applicable to a close corporation that
25 complies with subsection (a). If close corporation status is terminated pursuant to subsection (d),
26 the effective term of voting trust or shareholders' agreement shall be ten (10) years from the
27 termination or the term provided therein, whichever is shorter.

28 (c) The effect of any provision authorized by subsection (a)(1) shall be to relieve the
29 directors and to impose on the person or persons undertaking to exercise responsibility the
30 liability for managerial acts or omissions that would otherwise be imposed on directors to the
31 extent that and so long as the discretion or powers of the board in its management of corporate
32 affairs is controlled by any such provision. Action which is valid pursuant to subsection (a)(1)
33 will be deemed to be action by the board of directors for purposes of compliance with any
34 provision of this chapter providing for action by the board of directors.

1 (d) If a close corporation's original or amended articles of incorporation so provide, the
2 corporation need not hold an annual meeting of shareholders unless one or more shareholders
3 deliver written notice to the corporation requesting a meeting at least thirty (30) days before the
4 meeting date stated or fixed in accordance with the bylaws of the corporation.

5 (e)(1) The articles of incorporation shall be amended to terminate close corporation status
6 pursuant to this section if:

7 (A) All of the shareholders, or such lesser number as may be specified in the articles of
8 incorporation, the bylaws, or an agreement relating to the corporation, approve the termination; or

9 (B) There are more than thirty (30) shareholders of record and any shareholder, after
10 thirty (30) days' notice to the corporation of his or her intention to do so during which time the
11 number is not reduced to thirty (30) or less, demands termination; or

12 (C) Any person who acquires of record shares of the corporation without notice or
13 knowledge of its close corporation status demands termination; provided, that notice shall be
14 conclusively presumed if certificates representing the shares so acquired state on their face, under
15 the name of the corporation, that it is a close corporation pursuant to this section.

16 (2) If the directors and shareholders fail to effect the amendment promptly, the superior
17 court shall have jurisdiction to enter whatever order is necessary to effect the amendment. The
18 termination shall not affect the validity of any provision relating to the corporation or its
19 management which would be valid, notwithstanding the provisions of this section.

20 **Part XVIII. Miscellaneous.**

21 **7-1.2-1801. Unauthorized assumption of corporate powers.** -- All persons who assume
22 to act as a corporation without authority so to do are jointly and severally liable for all debts and
23 liabilities incurred or arising as a result of that action.

24 **7-1.2-1802. Application to existing corporations organized under general acts.** -- The
25 provisions of this chapter apply to all existing corporations organized under any general act of
26 this state providing for the organization of corporations for a purpose or purposes for which a
27 corporation might be organized under this chapter, where the power has been reserved to amend,
28 repeal, or modify the act under which the corporation was organized and where the act is repealed
29 by this chapter.

30 **7-1.2-1803. Application to foreign and interstate commerce.** -- The provisions of this
31 chapter apply to commerce with foreign nations and among the several states only insofar as the
32 provisions are permitted under the constitution of the United States.

33 **7-1.2-1804. Applicability to corporations created by special acts.** -- The provisions of
34 this chapter apply to all existing corporations previously or subsequently created by any special

1 act of the general assembly of a kind that could be organized under this chapter, except insofar as
2 the provisions are inconsistent with the provisions of any applicable special act passed after May
3 5, 1920 or with the provisions of any applicable special act passed that are not subject to
4 amendment or repeal at the will of the general assembly. A corporation created by special act of
5 the kind that could be organized under this chapter but whose charter is not subject to
6 amendment, repeal, or modification by the general assembly, may at a called meeting for the
7 purpose, by a unanimous vote of its stockholders or members, adopt the provisions of this chapter
8 upon the filing in the office of the secretary of state of a certified copy of the vote, attested by its
9 president or vice president and its secretary or assistant secretary under its corporate seal, and the
10 payment to the secretary of state of the fee prescribed by Section 7-1.2-1602. The corporation
11 shall subsequently be governed in all respects by the provisions of this chapter and its charter
12 shall subsequently be subject to amendment or repeal at the will of the general assembly.

13 SECTION 3. This act shall take effect on January 1, 2005.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

1 This act would repeal the existing Rhode Island Business Corporation Act and replace it
2 with a revised Rhode Island Business Corporation Act.

3 This act would take effect on January 1, 2005.

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LC02505
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