

LC02407

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 17, 2005

Referred To: Senate Commerce, Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 7-1.2-105, 7-1.2-106, 7-1.2-202, 7-1.2-203, 7-1.2-301, 7-1.2-302,
2 7-1.2-401, 7-1.2-501, 7-1.2-502, 7-1.2-503, 7-1.2-601, 7-1.2-602, 7-1.2-603, 7-1.2-604, 7-1.2-
3 608, 7-1.2-609, 7-1.2-610, 7-1.2-612, 7-1.2-613, 7-1.2-614, 7-1.2-701, 7-1.2-702, 7-1.2-704, 7-
4 1.2-705, 7-1.2-707, 7-1.2-708, 7-1.2-709, 7-1.2-710, 7-1.2-711, 7-1.2-801, 7-1.2-802, 7-1.2-804,
5 7-1.2-805, 7-1.2-807, 7-1.2-809, 7-1.2-811, 7-1.2-814, 7-1.2-902, 7-1.2-903, 7-1.2-904, 7-1.2-
6 905, 7-1.2-906 and 7-1.2-907, 7-1.2-1003, 7-1.2-1004, 7-1.2-1005, 7-1.2-1102, 7-1.2-1201, 7-1.2-
7 1202, 7-1.2-1301, 7-1.2-1302, 7-1.2-1303, 7-1.2-1304, 7-1.2-1307, 7-1.2-1309, 7-1.2-1311, 7-
8 1.2-1312, 7-1.2-1313, 7-1.2-1314, 7-1.2-1315, 7-1.2-1316, 7-1.2-1318, 7-1.2-1319, 7-1.2-1323,
9 7-1.2-1324, 7-1.2-1325, 7-1.2-1401, 7-1.2-1403, 7-1.2-1404, 7-1.2-1405, 7-1.2-1406, 7-1.2-1408,
10 7-1.2-1409, 7-1.2-1410, 7-1.2-1413, 7-1.2-1415, 7-1.2-1416, 7-1.2-1417, 7-1.2-1418, 7-1.2-1501,
11 7-1.2-1502, 7-1.2-1601, 7-1.2-1602, 7-1.2-1604, 7-1.2-1605, 7-1.2-1701 and 7-1.2-1804 of the
12 General Laws in Chapter 7-1.2 entitled "Rhode Island Business Corporation Act" are hereby
13 amended to read as follows:

7-1.2-105. Execution, filing and recording of instruments. [Effective July 1, 2005.] --

15 (a) Whenever any instrument is to be filed with the secretary of state or in accordance with this
16 chapter, the instrument must be executed as follows:

17 (1) The articles of incorporation, and any other instrument to be filed before the election
18 of the initial board of directors if the initial directors were not named in the articles of
19 incorporation, must be signed by the incorporator or incorporators (or, in the case of any such

1 other instrument, such incorporator's or incorporators' successors and assigns).

2 (2) All other instruments must be signed:

3 (i) By any authorized officer of the corporation; or

4 (ii) If it appears from the instrument that there are no authorized officers, then by a
5 majority of the directors or by the director or directors authorized by a majority of the directors;
6 or

7 (iii) If it appears from the instrument that there are no authorized officers or directors,
8 then by the holders of record of all outstanding shares, or by those holders of record designated
9 by a majority of all outstanding shares; or

10 (b) Whenever this chapter requires any instrument to be acknowledged, such
11 requirement is satisfied by either:

12 (1) The formal acknowledgment by any individual signing the instrument that it is his or
13 her act and deed or the act and deed of the corporation, and that the facts stated therein are true.
14 This acknowledgment must be made before a individual who is authorized by the law of the place
15 of execution to take acknowledgment; or

16 (2) The signature, without more, of the individual or individuals signing the instrument,
17 in which case such signature or signatures constitutes the affirmation or acknowledgment of the
18 signatory, under penalties of perjury, that the instrument is that individual's act and deed or the
19 act and deed of the corporation, and that the facts stated therein are true.

20 (c) Whenever any instrument is to be filed with the secretary of state or in accordance
21 with this section or chapter, such requirement means that:

22 (1) The signed instrument must be delivered to the office of the secretary of state;

23 (2) All taxes and fees authorized by law to be collected by the secretary of state in
24 connection with the filing of the instrument must be tendered to the secretary of state; and

25 (3) Upon delivery of the instrument, the secretary of state shall record the date and time
26 of its delivery. Upon such delivery and tender of the required taxes and fees, the secretary of state
27 shall certify that the instrument has been filed in the secretary of state's office by endorsing upon
28 the signed instrument the word "Filed", and the date and time of its filing. This endorsement is
29 the "filing date" of the instrument, and is conclusive of the date and time of its filing in the
30 absence of actual fraud.

31 (d) Any instrument filed in accordance with subsection (c) of this section is effective
32 upon its filing date. Any instrument may provide that it is not to become effective until a
33 specified time subsequent to the time it is filed, but not later than the 90th day after the date of its
34 filing.

1 (e) If another section of this chapter specifically prescribes a manner of executing,
2 acknowledging or filing a specified instrument or a time when that instrument becomes effective
3 which differs from the corresponding provisions of this section, then such other section governs.

4 (f) Whenever any instrument authorized to be filed with the secretary of state under any
5 provision of this chapter, has been so filed and is an inaccurate record of the corporate action
6 therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the
7 instrument may be corrected by filing with the secretary of state a certificate of correction of the
8 instrument which must be executed, acknowledged and filed in accordance with this section. The
9 certificate of correction must specify the inaccuracy or defect to be corrected and set forth the
10 portion of the instrument in corrected form. The corrected instrument must be specifically
11 designated as such in its heading, specify the inaccuracy or defect to be corrected, and set forth
12 the entire instrument in corrected form. An instrument corrected in accordance with this section is
13 effective as of the date the original instrument was filed, except as to those individuals who are
14 substantially and adversely affected by the correction and as to those individuals the instrument as
15 corrected is effective from its filing date.

16 (g) Notwithstanding that any instrument authorized to be filed with the secretary of state
17 under this chapter is when filed inaccurately, defectively or erroneously executed, sealed or
18 acknowledged, or otherwise defective in any respect, the secretary of state has no liability to any
19 individual for the preclearance for filing, the acceptance for filing or the filing and indexing of
20 such instrument by the secretary of state.

21 (h) Any signature on any instrument authorized to be filed with the secretary of state
22 under this chapter may be a facsimile or an electronically transmitted signature.

23 **7-1.2-106. Definitions. [Effective July 1, 2005.] --** As used in this chapter:

24 (1) "Articles of incorporation" means the original or restated articles of incorporation and
25 all of their amendments including agreements of merger.

26 (2) "Authorized shares" means the shares of all classes which the corporation is
27 authorized to issue.

28 (3) "Corporation" or "domestic corporation" means a corporation for profit subject to the
29 provisions of this chapter, except a foreign corporation.

30 (4) "Electronic transmission" means any form of communication, not directly involving
31 the physical transmission of paper, that creates a record that may be retained, retrieved, and
32 reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a
33 recipient through an automated process.

34 (5) "Employee" includes officers but not directors. A director may accept duties which

1 also make him or her an employee.

2 (6) "Foreign corporation" means a corporation for profit organized under laws other than
3 the laws of this state for a purpose or purposes for which a corporation may be organized under
4 this chapter.

5 (7) "Individual" means a natural person.

6 (8) "Insolvent" means the inability of a corporation to pay its debts as they become due
7 in the usual course of its business.

8 (9) "Person" means an individual or an entity. An entity includes domestic and foreign
9 business corporation, domestic and foreign nonprofit corporation; estate; trust; domestic and
10 foreign unincorporated entity; and a state, the ~~united~~ United States and a foreign government.

11 (10) "Shares" means the units into which the proprietary interests in a corporation are
12 divided.

13 (11) "Subscriber" means one who subscribes for shares in a corporation, whether before
14 or after incorporation.

15 (12) "Shareholder" means one who is a holder of record of shares in a corporation.

16 (13) The singular shall be construed to include the plural, the plural the singular, and the
17 masculine the feminine, when consistent with the intent of this chapter.

18 **7-1.2-202. Articles of incorporation. [Effective July 1, 2005.]** -- (a) The articles of
19 incorporation must state:

20 (1) A corporate name that satisfies the requirements of section 7-1.2-401.

21 (2) The total number of shares which the corporation has authority to issue, and if the
22 corporation is to be authorized to issue more than one class of shares;

23 (i) The total number of shares of each class; and

24 (ii) A statement of all or any of the designations and the powers, preferences, and rights,
25 including voting rights, and the qualifications, limitations, or restrictions of them, which are
26 permitted by the provisions of this chapter in respect of any class or classes of shares of the
27 corporation and the fixing of which by the articles of association is desired, and an express grant
28 of the authority as it may then be desired to grant to the board of directors to fix by vote or votes
29 any of them that may be desired but which is not fixed by the articles.

30 (3) The address of its initial registered office, and the name of its initial registered agent
31 at the address.

32 (4) The name and address of each incorporator.

33 (b) The articles of incorporation may state:

34 (1) A par value of authorized shares or classes of shares.

1 (2) Any provisions electing to provide preemptive rights to shareholders pursuant to the
2 provisions of section 7-1.2-613.

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

8 (i) Any breach of the director's duty of loyalty to the corporation or its shareholders;

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

11 (iii) Liability imposed pursuant to the provisions of section 7-1.2-811; or

12 (iv) Any transaction from which the director derived an improper personal benefit
13 (unless the transaction is permitted by section 7-1.2-807); and also including;

14 (v) Any provision which under this chapter is required or permitted to be set forth in the
15 bylaws.

16 No provision eliminating or limiting the personal liability of a director will be effective
17 with respect to causes of action arising prior to the inclusion of the provision in the articles of
18 incorporation of the corporation.

19 (4) If, pursuant to section 7-1.2-105(d), the corporate existence is to begin at a time
20 subsequent to the issuance of the certificate of incorporation by the secretary of state, the date
21 when corporate existence begins.

22 (c) The provisions permitted by subsection (b)(3) may also be included in the articles of
23 incorporation or legislative charter of any existing or future financial institution, insurance
24 company, public utility, or other quasi public corporation having purposes enumerated as
25 exceptions to this chapter in section 7-1.2-301.

26 (d) The period of duration of a corporation is perpetual unless otherwise stated in the
27 articles of incorporation.

28 (e) It is not necessary to set forth in the articles of incorporation any of the corporate
29 powers enumerated in this chapter.

30 **7-1.2-203. Bylaws. [Effective July 1, 2005.]** -- (a) The bylaws may contain any
31 provisions for the regulation and management of the affairs of the corporation not inconsistent
32 with law or the articles of incorporation. The initial bylaws of a corporation must be adopted by
33 its incorporators or by its board of directors at its organization meeting. Subsequently, the bylaws
34 may be amended by the shareholders, or, unless otherwise provided in the articles of

1 incorporation or bylaws, by the board of directors, but any amendment to the bylaws by the board
2 of directors may be changed by the shareholders.

3 (b) Emergency Bylaws.

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

11 (i) A meeting of the board of directors may be called by any officer or director in any
12 manner and under conditions prescribed in the emergency bylaws;

13 (ii) The director or directors in attendance at the meeting, or any greater number fixed by
14 the emergency bylaws, constitutes a quorum; and

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

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

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

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

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

1 (6) To the extent required to constitute a quorum at any meeting of the board of directors
2 during any emergency, the officers of the corporation who are present are, unless otherwise
3 provided in emergency bylaws, deemed, in order of rank and within the same rank in order of
4 seniority, directors for the meeting.

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

9 **7-1.2-301. Purposes. [Effective July 1, 2005.] --** Corporations may be organized under
10 this chapter for any lawful purpose or purposes, except for the purpose of carrying on within this
11 state the business of a bank, savings bank, trust company, building and loan association, loan and
12 investment company, safe deposit company, railroad, electric railroad or street railway company,
13 telegraph or telephone company, gas or electric light, heat or power company, canal, aqueduct, or
14 water company, turnpike company, or any corporation which now has or may subsequently have
15 the right to take or condemn land or other property within this state under the power of eminent
16 domain, or to exercise or acquire franchises in streets or highways of this state, and further except
17 for the purpose of rendering the professional services specified in chapter 5.1 of this title [which](#)
18 must be organized under the provisions of that chapter.

19 **7-1.2-302. Powers. [Effective July 1, 2005.] --** (a) In addition to the powers enumerated
20 below, every corporation, its officers, directors and shareholders possess and may exercise all the
21 powers and privileges granted by this chapter or by any other law or by its articles of
22 incorporation, together with any powers incidental thereto, so far as such powers and privileges
23 are necessary or convenient to the conduct, promotion or attainment of its business.

24 (b) Each corporation has power to:

25 (1) Have perpetual existence unless a limited period of duration is stated in its articles of
26 incorporation.

27 (2) Sue and be sued, complain and defend, in its corporate name.

28 (3) Have a corporate seal which may be altered at pleasure, and to use the seal by
29 causing it, or a facsimile of it, to be impressed or affixed or reproduced in any other manner.

30 (4) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and
31 otherwise deal in and with, real or personal property, or any interest in that property, wherever
32 situated.

33 (5) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of
34 all or any part of its property and assets.

1 (6) Lend money and use its credit to assist its employees.

2 (7) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,
3 employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and
4 with, shares or other interests in, or obligations of, other domestic or foreign corporations,
5 associations, partnerships, limited liability companies or individuals, or direct or indirect
6 obligations of the United States or of any other government, state, territory, governmental district
7 or municipality or of any of their instrumentalities.

8 (8) Make contracts and guarantees and incur liabilities, borrow money at the rate of
9 interest that the corporation may determine, issue its notes, bonds, and other obligations, and
10 secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and
11 income.

12 (9) Lend money for its corporate purposes, invest and reinvest its funds, and take and
13 hold real and personal property as security for the payment of the funds loaned or invested.

14 (10) Conduct its business, carry on its operations, and have offices and exercise the
15 powers granted by this chapter, within or without this state.

16 (11) Elect or appoint officers and agents of the corporation, and define their duties, and
17 fix their compensation.

18 (12) Make and alter bylaws, not inconsistent with its articles of incorporation or with the
19 laws of this state, for the administration and regulation of the affairs of the corporation.

20 (13) Make donations for the public welfare or for charitable, scientific, or educational
21 purposes.

22 (14) Transact any lawful business which the board of directors finds will aid
23 governmental authority.

24 (15) Pay pensions and establish pension plans, pension trusts, profit sharing plans, stock
25 bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers,
26 and employees.

27 (16) Provide insurance for its benefit on the life of any of its directors, officers, or
28 employees, or on the life of any shareholder for the purpose of acquiring at his [or her](#) death shares
29 of its ~~share~~ [stock](#) owned by the shareholder.

30 (17) Be a promoter, partner, member, associate, or manager of any partnership, limited
31 liability company, joint venture, trust, or other enterprise.

32 (18) Make payments or donations, or do any other act, not inconsistent with law, that
33 furthers the business and affairs of the corporation.

34 (19) Indemnify any individual pursuant to section 7-1.2-814.

1 (20) Make guarantees, although not in furtherance of its corporate purposes, when
2 authorized at a meeting of shareholders by the affirmative vote of the holders of a majority of the
3 shares of the corporation entitled to vote on guarantees, or a greater percentage that is provided in
4 the articles of incorporation or bylaws.

5 (21) If authorized by a like vote, to mortgage, pledge, or give a security interest in all or
6 any of its property, franchises, and income to secure a guarantee or to secure obligations other
7 than its own.

8 (c) Every corporation is governed by the provisions and ~~be~~ is subject to the restrictions
9 and liabilities contained in this chapter.

10 **7-1.2-401. Corporate name. [Effective July 1, 2005.]** -- (a) The corporate name:

11 (1) Must contain the word "corporation," "company," "incorporated," or "limited," or an
12 abbreviation of one of these words.

13 (2) ~~Is~~ Shall not be the same as, or deceptively similar to, the name of any entity on file
14 with the secretary of state or a name the exclusive right to which is, at the time filed, reserved or
15 registered in the manner provided in this chapter, or the name of a corporation, whether business
16 or nonprofit, limited partnership, limited liability partnership or limited liability company which
17 has in effect a registration of its name as provided in this title, subject to the following:

18 (b) This provision does not apply if the applicant files with the secretary of state a
19 certified copy of a final decree of a court of competent jurisdiction establishing the prior right of
20 the applicant to the use of the name in this state.

21 (c) The name may be the same as the name of a corporation or other association the
22 certificate of incorporation or organization of which has been revoked by the secretary of state as
23 permitted by law and the revocation has not been withdrawn within one year from the date of the
24 revocation.

25 (d) A corporation with which another corporation, domestic or foreign, is merged, or
26 which is formed by the reorganization of one or more domestic or foreign corporations or upon a
27 sale, lease, or other disposition to, or exchange with, a domestic corporation of all or substantially
28 all the assets of another corporation, domestic or foreign, including its name, may have the same
29 name as that used in this state by any of the corporations if at the time the other corporation was
30 organized under the laws of, or is authorized to transact business in, this state.

31 **7-1.2-501. Registered office and registered agent. [Effective July 1, 2005.]** --

32 **Designation of registered agent without authority.** -- (a) Each corporation shall have and
33 continuously maintain in this state:

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

1 (2) A registered agent, who may be
2 (i) An individual resident in this state,
3 (ii) A domestic corporation, a domestic limited partnership, a domestic limited liability
4 partnership, a domestic limited liability company, or
5 (iii) A foreign corporation, a foreign limited partnership, a foreign limited liability
6 partnership or a foreign limited liability company authorized to transact business in this state, in
7 each case, having a business office identical with the office of such registered agent which
8 generally is open during normal business hours to accept service of process and otherwise
9 perform the functions of a registered agent; provided, however, that in the case where the
10 registered agent of a corporation is an attorney, the business address of the agent need not be
11 identical with the registered office, but may be the usual business address of the attorney.

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

16 **7-1.2-502. Change of registered office or registered agent. [Effective July 1, 2005.] --**

17 (a) A corporation may change its registered office or change its registered agent, or both, upon
18 filing in the office of the secretary of state a statement stating:

19 (1) The name of the corporation.

20 (2) The address of its then registered office.

21 (3) If the address of its registered office has changed, the new address of the registered
22 office.

23 (4) The name of its then registered agent.

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

25 (6) The address of its registered office and the address of the business office of its
26 registered agent, as changed.

27 (b) The statement must be executed by the corporation by its authorized representative,
28 and delivered to the secretary of state. If the secretary of state finds that the statement conforms to
29 the provisions of this chapter, the secretary of state shall file the statement in his office, and upon
30 that filing or upon a later date not more than thirty (30) days after the filing, as is set forth in the
31 statement, the change of address of the registered office, or the appointment of a new registered
32 agent, or both, as the case may be, becomes effective.

33 (c) Any registered agent of a corporation may resign as an agent upon filing a written
34 notice of the resignation with the secretary of state, who shall immediately notify the corporation

1 of the resignation at its registered office. The appointment of the agent terminates upon the
2 expiration of thirty (30) days after receipt of the notice by the secretary of state.

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

9 **7-1.2-503. Service of process on corporation. [Effective July 1, 2005.]** -- (a) The
10 registered agent appointed by a corporation is an agent of the corporation upon whom any
11 process, notice, or demand required or permitted by law to be served upon the corporation may be
12 served.

13 (b) Whenever a corporation fails to appoint or maintain a registered agent in this state, or
14 whenever its registered agent cannot with reasonable diligence be found at the registered office,
15 then the secretary of state is an agent of the corporation upon whom any process, notice, or
16 demand may be served. Service on the secretary of state of any process, notice, or demand is
17 made by delivering to and leaving with him or her or with any clerk having charge of the
18 corporation department of his or her office, duplicate copies of the process, notice, or demand. In
19 the event any process, notice, or demand is served on the secretary of state, the secretary of state
20 shall immediately forward one of the copies by certified mail, addressed to the corporation at its
21 registered office. Any service upon the secretary of state is returnable in not less than thirty (30)
22 days.

23 (c) The secretary of state shall maintain a record of any such service setting forth the
24 name of the plaintiff and defendant, the title, docket number and nature of the proceeding in
25 which process has been served upon the ~~Secretary of State~~ secretary of state, the fact that service
26 has been effected pursuant to this subsection, the return date thereof, and the day and hour when
27 the service was made. The secretary of state shall not be required to retain such information for a
28 period longer than five (5) years from receipt of the service of process.

29 (d) Nothing contained in these provisions limits or affects the right to serve any process,
30 notice, or demand required or permitted by law to be served upon a corporation in any other
31 manner permitted by law.

32 **Part VI. Shares and Distributions.**

33 **7-1.2-601. ~~Right of corporation to acquire and, dispose of and cancel its own shares.~~**
34 **Right of corporation to acquire, dispose of and cancel its own shares. -- [Effective July 1,**

1 **2005.1** -- (a) Unless a corporation's articles of incorporation provide otherwise, subject to
2 subsection (f), a corporation may at any time, by resolution of its board of directors, redeem
3 purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or dispose of its own
4 shares.

5 (b) In this section, "redeemable shares" means shares issued pursuant to section 7-1.2-
6 602(c)(1). When redeemable shares are called for redemption, those shares are not outstanding
7 shares for the purpose of voting or determining the total number of shares entitled to vote on any
8 matter on and after the date on which written notice of redemption has been sent to holders
9 thereof and a sum sufficient to redeem such shares has been set aside to pay the redemption price
10 to the holders of the shares upon surrender of certificates therefor.

11 (c) When redeemable shares are redeemed or purchased by the corporation, the
12 redemption or purchase effects a cancellation of the shares and a statement of cancellation must
13 be filed pursuant to subsection (e).

14 (d) When shares of a corporation other than redeemable shares are purchased, a
15 corporation may, at any time, by resolution of its board of directors, cancel all or any part of the
16 shares of the corporation of any class or series reacquired by it by filing a statement of
17 cancellation as provided in subsection (e).

18 (e) A statement of cancellation adopted by the board of directors must be delivered to the
19 secretary of state for filing as follows:

20 (1) The statement of cancellation shall be executed by an authorized officer of the
21 corporation, and must state:

- 22 (i) The name of the corporation.
- 23 (ii) The number of shares canceled through redemption or purchase, itemized by classes
24 and series.
- 25 (iii) The aggregate number of issued shares, itemized by classes and series, after giving
26 effect to the cancellation.
- 27 (iv) If the articles of incorporation provide that the canceled shares are not to be reissued,
28 then the number of shares which the corporation has authority to issue, itemized by classes and
29 series, after giving effect to the cancellation.

30 (2) An original statement of cancellation must be delivered to the secretary of state. If
31 the secretary of state finds that the statement of cancellation conforms to law, the secretary of
32 state shall, when all fees and franchise taxes have been paid:

- 33 (i) Endorse on the original the word "Filed", and the month, day, and year of the filing.
- 34 (ii) File the original in his [or her](#) office.

1 (3) Upon filing of the statement of cancellation, the shares are restored to the status of
2 authorized but unissued shares unless the articles of incorporation provide that the shares, when
3 redeemed or purchased, are not to be reissued, in which case the filing of the statement of
4 cancellation constitutes an amendment to the articles of incorporation and reduces the number of
5 shares of the class canceled which the corporation is authorized to issue by the number of shares
6 canceled.

7 (f) No redemption or purchase of shares may be made by a corporation if, after giving it
8 effect:

9 (1) The corporation would be insolvent; or

10 (2) The corporation's total assets would be less than the sum of its total liabilities plus
11 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the
12 corporation were to be dissolved at the time of the redemption, to satisfy the preferential rights
13 upon dissolution of shareholders whose preferential rights are superior to those redeeming shares
14 (unless such preferential rights are waived by a majority of the shareholders entitled to such
15 preferential rights, voting by class).

16 The board of directors may base a determination that a redemption is not prohibited
17 under subsection (f) either on financial statements prepared on the basis of accounting practices
18 and principles that are reasonable in the circumstances or on a fair valuation or other method that
19 is reasonable in the circumstances.

20 (g) Nothing contained in this section is construed to forbid the cancellation of shares in
21 any other manner permitted by this chapter.

22 **7-1.2-602. Authorized shares -- Shares in classes or series -- Issuance of shares.**

23 **[Effective July 1, 2005.]** -- (a) Every corporation has the power to create and issue the number of
24 shares stated in its articles of incorporation or any amendment thereto.

25 (b) Classes and series. - As stated in the articles of incorporation or in any amendment
26 thereto, or in the resolution or resolutions providing for the issue of such shares adopted by the
27 board of directors pursuant to authority expressly vested in it by the provisions of its articles of
28 incorporation, a corporation may issue one or more classes of shares, including one or more
29 classes of common shares, or one or more series of shares within any class thereof, any or all of
30 which classes or series of shares may be certificated or uncertificated, with par value or without
31 par value, and which classes or series may have such voting powers, full or limited, or no voting
32 powers, and such designations, preferences and relative, participating, optional or other special
33 rights and qualifications, limitations or restrictions thereof as are stated and expressed in the
34 articles of incorporation or any amendment thereto, or in the resolution or resolutions providing

1 for the issue of such shares adopted by the board of directors pursuant to the authority expressly
2 vested in it by the provisions of its articles of incorporation.

3 (c) Without limiting the authority contained in these provisions, a corporation, when
4 provided for in its articles of incorporation, may issue shares of preferred or special classes or
5 series:

6 (1) Redeemable for cash, property, promissory notes or rights, including securities of any
7 other corporation, at the option of either the holder or the corporation or upon the happening of a
8 specified event, at the time or times, at the price or prices, or the rate or rates, and with the
9 adjustments stated and expressed or provided for in the articles of incorporation or any
10 amendment thereto, or in the vote or votes providing for the issuance of the shares adopted by the
11 board of directors as previously provided; provided, however, that immediately following any
12 such redemption the corporation must have outstanding one or more shares of one or more classes
13 or series, which share, or shares together, have unlimited voting rights.

14 (2) Entitling the holders of the shares to cumulative, noncumulative, or partially
15 cumulative dividends.

16 (3) Having preference over any other class or classes or series of shares as to the
17 payment of dividends.

18 (4) Having preference in the assets of the corporation over any other class or classes or
19 series of shares upon the voluntary or involuntary liquidation of the corporation.

20 (5) To the extent not inconsistent with this chapter, having limited or no voting rights, or
21 having special voting rights including the power to elect one or more directors.

22 (6) Convertible into, or exchangeable for, at the option of either the holder or the
23 corporation or upon the happening of a specified event, shares of any other class or classes or any
24 other series of shares of the corporation, at such price or prices or at such rate or rates of
25 exchange and with such adjustments as are stated in the articles of incorporation or in the
26 resolution or resolutions providing for the issuance of such shares adopted by the board of
27 directors.

28 (d) If the articles of incorporation expressly vest authority in the board of directors, then,
29 to the extent that the articles of incorporation have not established series and fixed and
30 determined the variations in the relative rights and preferences as between the series, the board of
31 directors has authority to divide any or all of the classes into series and, within the limitations, if
32 any, stated in the articles of incorporation, to fix and determine the relative rights and preferences
33 of the shares of any series established.

34 (e) (1) Open-End investment company. - Notwithstanding the provisions of subsections

1 (a) and (b) of this section, the board of directors of a corporation that is registered or intends to
2 register as an open-end investment company under the Investment Company Act of 1940, as
3 heretofore or hereafter amended, after the registration as an open-end investment company takes
4 effect, may increase or decrease the aggregate number of shares or the number of shares of any
5 class or series that the corporation has authority to issue unless a provision has been included in
6 the ~~charter~~ articles of incorporation of the corporation after July 1, 2001 prohibiting such an
7 action by the board of directors to increase or decrease the aggregate number of shares or the
8 number of shares of any class or series that the corporation has authority to issue.

9 (2) Conditional license of franchise. - Any shares of a corporation which holds (directly
10 or indirectly) a license or franchise from a governmental agency to conduct its business or is a
11 member of a national securities exchange, which license, franchise or membership is conditioned
12 upon some or all of the holders of its shares possessing prescribed qualifications may be made
13 subject to redemption by the corporation to the extent necessary to prevent the loss of such
14 license, franchise or membership or to reinstate it.

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

25 (g) Rights upon liquidation. - The holders of the preferred or special shares of any class
26 or of any series of shares are entitled to the rights upon the dissolution of, or upon any
27 distribution of the assets or liquidation, voluntary or involuntary, of the corporation as are stated
28 and expressed in the articles of incorporation or in the vote or votes providing for the issue of the
29 shares adopted by the board of directors as previously provided.

30 (h) Facts ascertainable outside the articles of incorporation. - Any of the voting powers,
31 designations, preferences, rights and qualifications, limitations or restrictions of any class or
32 series of shares may be made dependent upon facts ascertainable outside the articles of
33 incorporation or outside the resolution or resolutions providing for the issue of such shares
34 adopted by the board of directors pursuant to authority expressly vested in it by its articles of

1 incorporation, provided that the manner in which such facts operate upon the voting powers,
2 designations, preferences, rights and qualifications, limitations or restrictions of such class or
3 series of shares is clearly and expressly set forth in the articles of incorporation or in the
4 resolution or resolutions providing for the issue of such shares adopted by the board of directors.
5 The term "facts," as used in this subsection, includes, but is not limited to, the occurrence of any
6 event, including a determination or action by any person, including the corporation.

7 ~~(h)~~ (i) Amendment of rights and restrictions by board of directors. - Subject to subsection
8 (j), unless otherwise provided in the articles of incorporation, if no shares have been issued of a
9 class or series established by resolution of the board of directors, the voting powers, designations,
10 preferences, and relative, participating, optional or other rights, if any or the qualifications,
11 limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the
12 board of directors.

13 ~~(i)~~ (j) (1) Issuance. - Before any corporation issues any shares of any class or of any
14 series of any class of which the voting powers, designations, preferences, and relative,
15 participating, optional, or other rights, if any, or the qualifications, limitations, or restrictions of
16 the share, if any, have not been stated in the articles of incorporation but are provided for in a
17 vote or votes adopted by the board of directors pursuant to authority expressly vested in it by the
18 provisions of the articles of incorporation, a certificate presenting a copy of the vote or votes and
19 the number of shares of the class or series must be signed by an authorized officer of the
20 corporation and filed in accordance with section 7-1.2-105. Upon ~~the~~ filing, the certificate
21 constitutes an amendment to the articles of incorporation.

22 (2) Increase or decrease of shares. Unless otherwise provided in any vote or votes, the
23 number of shares of any class or series as stated in the vote or votes may be increased or
24 decreased (but not below the number of shares then outstanding) by a certificate likewise made,
25 signed, and filed presenting a statement that a specified increase or decrease in the number of
26 shares had been authorized and directed by a vote or votes likewise adopted by the board of
27 directors. If the number of shares is decreased, the number of shares specified in the certificate
28 resume the status which they had before to the adoption of the prior resolution.

29 **7-1.2-603. Subscription for shares. [Effective July 1, 2005.]** -- (a) A subscription for
30 shares entered into before incorporation is irrevocable for a period of six (6) months, unless the
31 subscription agreement provides a longer or shorter period or all the subscribers agree to
32 revocation. A subscription for shares is not ~~be~~ enforceable against a subscriber unless in writing
33 and signed by the subscriber or by an agent of the subscriber.

34 (b) The board of directors may determine the payment terms of subscriptions for shares

1 that were entered into before incorporation, unless the subscription agreement specifies them. A
2 call for payment by the board of directors must be uniform so far as practicable as to all shares of
3 the same class or series, unless the subscription agreement specifies otherwise.

4 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully
5 paid and nonassessable when the corporation receives the consideration specified in the
6 subscription agreement.

7 (d) If a subscriber defaults in payment of money or property under a subscription
8 agreement entered into before incorporation, the corporation may collect the amount owed as any
9 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation
10 may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days
11 after the corporation sends written demand for payment to the subscriber.

12 (e) A subscription agreement entered into on or after incorporation is a contract between
13 the subscriber and the corporation subject to section 7-1.2-604.

14 **7-1.2-604. Issuance of and consideration for shares. [Effective July 1, 2005.]** -- (a)
15 Shares with par value may be issued for such consideration having a value not less than the par
16 value thereof, as determined from time to time by the board of directors, or by the shareholders if
17 the articles of incorporation so ~~provides.~~ provide.

18 (b) Shares without par value may be issued for such consideration as is determined from
19 time to time by the board of directors, or by the shareholders if the articles of incorporation so
20 ~~provides.~~ provide.

21 (c) The board of directors may authorize shares to be issued for consideration consisting
22 of any tangible or intangible property or benefit to the corporation, including cash, promissory
23 notes, services performed, contracts for services to be performed, or other securities of the
24 corporation.

25 (d) Before the corporation issues shares, the board of directors must determine that the
26 consideration received or to be received for shares to be issued is adequate. The determination by
27 the board of directors is conclusive insofar as the adequacy of consideration for the issuance of
28 the shares relates to whether the shares are validly issued, fully paid and nonassessable.

29 (e) When the corporation receives the consideration for which the board of directors
30 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

31 (f) The corporation may place in escrow shares issued for a contract for future services
32 or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares,
33 and may credit distributions in respect of the shares against their purchase price, until the services
34 are performed, the note is paid, or the benefits received. If the services are not performed, the

1 note is not paid, or the benefits are not received, the shares escrowed or restricted and the
2 distributions credited may be cancelled in whole or part.

3 **7-1.2-608. Form and content of certificates. [Effective July 1, 2005.]** -- (a) The shares
4 of a corporation may but need not be represented by certificates as determined by the ~~Board of~~
5 ~~Directors.~~ board of directors. Every holder of shares represented by certificates and upon request
6 every holder of uncertificated shares is entitled to have a certificate signed by the officer or
7 officers designated for the purpose by the bylaws of the corporation, and in the absence of any
8 designation, by the chairperson or the vice chairperson of the board of directors, or the president
9 or a vice president, and by the treasurer or the assistant treasurer, or the secretary or an assistant
10 secretary of the corporation, representing the number of shares registered in certificate form and
11 may be sealed with the seal of the corporation or a facsimile of the seal. Any or all of the
12 signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar
13 who has signed or whose facsimile signature has been placed upon the certificate has ceased to be
14 the officer, transfer agent, or registrar before the certificate is issued, it may be issued by the
15 corporation with the same effect as if he were the officer, transfer agent, or registrar at the date of
16 its issue.

17 (b) Every certificate representing shares issued by a corporation which is authorized to
18 issue shares of more than one class must state upon the face or back of the certificate, or state that
19 the corporation will furnish to any shareholder upon request and without charge, a full statement
20 of the designations, preferences, limitations, and relative rights of the shares of each class
21 authorized to be issued and, if the corporation is authorized to issue any preferred or special class
22 in series, the variations in the relative rights and preferences between the shares of each series so
23 far as the series have been fixed and determined and the authority of the board of directors to fix
24 and determine the relative rights and preferences of subsequent series.

25 (c) Each certificate representing shares must state upon the face of the certificate:

26 (1) That the corporation is organized under the laws of this state.

27 (2) The name of the person to whom issued.

28 (3) The number and class of shares, and the designation of the series, if any, which the
29 certificate represents.

30 (4) The par value of each of the shares, if any.

31 (d) No certificate may be issued for any share until the share is fully paid.

32 (e) Within a reasonable time after the issuance or transfer of uncertificated shares, the
33 corporation shall send to the registered owner of the shares a written notice containing the
34 information and statements required to be presented or stated on certificates pursuant to

1 subsections (b) and (c) and section 7-1.2-609(b).

2 (f) Except as otherwise expressly provided by law, the rights and obligations of the
3 holders of uncertificated shares and the rights and obligations of the holders of certificates
4 representing shares of the same class and series are identical.

5 **7-1.2-609. Share transfer and ownership restrictions. [Effective July 1, 2005.]** -- (a)

6 The shares of a corporation are personal property and are transferable in accordance with the
7 provisions of section 6A-8-204, as amended from time to time, except as may otherwise be
8 provided in this chapter.

9 (b) The articles of incorporation, bylaws, an agreement among all or less than all of the
10 shareholders; or an agreement between all or less than all of the shareholders and the corporation
11 may impose restrictions on the transfer or registration of transfer of shares of the corporation. A
12 restriction does not affect shares issued before the restriction was adopted, unless the holders of
13 the shares are parties to the restriction agreement or voted in favor of the restriction.

14 (c) A restriction on the transfer or registration of transfer of shares is valid and
15 enforceable against the holder or a transferee of the holder if the restriction is authorized by this
16 chapter and its existence is noted conspicuously on the front or back of the certificate or is
17 ~~contained~~ noted in the initial transaction statement required by section 6A-8-204(2). Unless so
18 noted, a restriction is not enforceable against a person without knowledge of the restriction.

19 (d) A restriction on the transfer, ownership or registration of transfer of shares is
20 authorized:

21 (1) To maintain the corporation's status when it is dependent on the number or identity of
22 its shareholders;

23 (2) To preserve exemptions under federal or state securities law;

24 (3) To permit a corporation to qualify as:

25 (i) A real estate investment trust under the provisions of the Internal Revenue Code of
26 1986, as heretofore or hereafter amended, or regulations adopted thereunder; or

27 (ii) An investment company under the Investment Company Act of 1940, as heretofore
28 or hereafter amended, or regulations adopted thereunder; and

29 (4) 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 **7-1.2-610. Fractional shares. [Effective July 1, 2005.]** -- (a) 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 (b) A certificate for a fractional share, but not scrip, entitles unless it otherwise provides,
15 the holder to exercise voting rights, to receive dividends on that share, and to participate in any of
16 the assets of the corporation in the event of liquidation. The board of directors may issue scrip
17 subject to the condition that it becomes void if not exchanged for certificates representing full
18 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 **7-1.2-612. Liability of subscribers and shareholders. [Effective July 1, 2005.]** -- (a) A

22 holder of or subscriber to shares of a corporation is under no obligation to the corporation or its
23 creditors with respect to the shares other than the obligation to pay to the corporation the unpaid
24 portion of the consideration for which the shares were issued or to be issued, which in no event
25 may be less than the amount of the consideration for which the shares could be lawfully issued.

26 (b) Any person becoming an assignee or transferee of shares or of a subscription for
27 shares in good faith and without knowledge or notice that the full consideration for the shares has
28 not been paid is not personally liable to the corporation or its creditors for any unpaid portion of
29 the consideration. An executor, administrator, conservator, guardian, trustee, assignee for the
30 benefit of creditors, or receiver is not personally liable to the corporation as a holder of or
31 subscriber to shares of a corporation but the estate and funds in his or her hands ~~is~~ are so liable.

32 (c) No pledgee or other holder of shares as collateral security is personally liable as a
33 shareholder.

34 **7-1.2-613. Shareholder's preemptive rights. [Effective July 1, 2005.]** -- (a) Except to

1 the extent limited or denied by this section or by the articles of incorporation, shareholders of a
2 corporation incorporated prior to July 1, 2005 have a preemptive right to acquire unissued shares
3 or securities convertible into shares or carrying a right to subscribe to or acquire shares. Unless
4 otherwise provided in the articles of incorporation:

5 (1) No preemptive right exists:

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

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

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

13 (3) Holders of shares of any class are not entitled to any preemptive right to shares of
14 any class that is preferred or limited as to dividends or assets or to any obligations, unless
15 convertible into shares of that class or carrying a right to subscribe to or acquire shares of that
16 class.

17 (4) Holders of shares without voting power have no preemptive right to shares with
18 voting power.

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

22 (b) The shareholders of a corporation incorporated on or after ~~January~~ July 1, 2005 do
23 not have a preemptive right to acquire a corporation's unissued shares or securities convertible
24 into shares or carrying a right to subscribe for or acquire shares except to the extent the articles of
25 incorporation so provide. A statement included in the articles of incorporation that "the
26 corporation elects to have preemptive rights" (or words of similar import) means that the
27 following principles apply except to the extent the articles of incorporation expressly provide
28 otherwise:

29 (1) The shareholders of the corporation have a preemptive right, granted on uniform
30 terms and conditions prescribed by the board of directors, to provide a fair and reasonable
31 opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued
32 shares upon the decision of the board of directors to issue them.

33 (2) A shareholder may waive his or her preemptive right. A waiver evidenced by a
34 writing is irrevocable even though it is not supported by consideration.

- 1 (3) There is no preemptive right with respect to:
- 2 (i) Shares issued as compensation to directors, officers, agents, or employees of the
- 3 corporation, its subsidiaries or affiliates;
- 4 (ii) Shares issued to satisfy conversion or option rights created to provide compensation
- 5 to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
- 6 (iii) Shares authorized in articles of incorporation that are issued within six (6) months
- 7 from the effective date of incorporation; or
- 8 (iv) Shares sold otherwise than for money.

9 (4) Holders of shares of any class without general voting rights but with preferential

10 rights to distributions or assets have no preemptive rights with respect to shares of any class.

11 (5) Holders of shares of any class with general voting rights but without preferential

12 rights to distributions or assets have no preemptive rights with respect to shares of any class with

13 preferential rights to distributions or assets unless the shares with preferential rights are

14 convertible into or carry a right to subscribe for or acquire shares without preferential rights.

15 (6) Shares subject to preemptive rights that are not acquired by shareholders may be

16 issued to any person for a period of one year after being offered to shareholders at a consideration

17 set by the board of directors that is not lower than the consideration set for the exercise of

18 preemptive rights. An offer at a lower consideration or after the expiration of one year is subject

19 to the shareholders' preemptive rights.

20 (c) For purposes of this section, "shares" includes a security convertible into or carrying

21 a right to subscribe for or acquire shares.

22 **7-1.2-614. Distributions to shareholders. [Effective July 1, 2005.]** – (a) Distributions

23 of other than shares.

24 ~~(i)~~ (1) ~~A~~ The board of directors may authorize and the corporation may make

25 distributions to its shareholders subject to restriction the articles of incorporation and the

26 limitation in ~~subsection~~ subdivision (iii).

27 ~~(ii)~~ (2) If the board of directors does not fix the record date for determining shareholders

28 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of

29 the corporation's shares), it is the date the board of directors authorizes the distribution.

30 ~~(iii)~~ (3) No distribution may be made if, after giving it effect:

31 ~~(i)~~ (i) The corporation would be insolvent; or

32 ~~(ii)~~ (ii) The corporation's total assets would be less than the sum of its total liabilities plus

33 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the

34 corporation to be dissolved at the time of the distribution, to satisfy the preferential rights upon

1 dissolution of shareholders whose preferential rights are superior to those receiving the
2 distribution (unless such preferential rights are waived by a majority of the shareholders entitled
3 to such preferential rights, voting by class).

4 ~~(iv)~~ (4) The board of directors may base a determination that a distribution is not
5 prohibited under subsection (iii) either on financial statements prepared on the basis of
6 accounting practices and principles that are reasonable in the circumstances or on a fair valuation
7 or other method that is reasonable in the circumstances.

8 ~~(v)~~ (5) Except as provided in ~~subsection (vii)~~, subdivision (7), the effect of a distribution
9 under ~~subsection (iii)~~ subdivision (3) is measured:

10 ~~(1)~~ (i) In the case of distribution by purchase, redemption, or other acquisition of the
11 corporation's shares, as of the earlier of ~~(a)~~ (A) the date money or other property is transferred or
12 debt incurred by the corporation or ~~(b)~~ (B) the date the shareholder ceases to be a shareholder
13 with respect to the acquired shares;

14 ~~(2)~~ (ii) In the case of any other distribution of indebtedness, as of the date the
15 indebtedness is distributed; and

16 ~~(3)~~ (iii) In all other cases, as of ~~(a)~~ (A) the date the distribution is authorized if the
17 payment occurs within one hundred twenty (120) days after the date of authorization or ~~(b)~~ (B)
18 the date the payment is made if it occurs more than one hundred twenty (120) days after the date
19 of authorization.

20 ~~(vi)~~ (6) A corporation's indebtedness to a shareholder incurred by reason of a distribution
21 made in accordance with this section is at parity with the corporation's indebtedness to its general,
22 unsecured creditors except to the extent subordinated by agreement.

23 ~~(vii)~~ (7) Indebtedness of a corporation, including indebtedness issued as a distribution, is
24 not considered a liability for purposes of determinations under ~~subsection~~ subdivision (iii) (3) if
25 its terms of the indebtedness provide that payment of principal and interest are made only if and
26 to the extent that payment of a distribution to shareholders could then be made under this section.
27 If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a
28 distribution, the effect of which is measured on the date the payment is actually made.

29 (b) Distributions of shares.

30 ~~(1)~~ (1) Unless the articles of incorporation provide otherwise, shares may be issued pro
31 rata and without consideration to the corporation's shareholders or to the shareholders of one or
32 more classes or series. An issuance of shares under this subsection is a share distribution.

33 ~~(ii)~~ (2) Shares of one class or series may not be issued as a share distribution in respect to
34 shares of another class or series unless ~~(A)~~ (i) the articles of incorporation so authorize, ~~(B)~~ (ii) a

1 majority of the votes entitled to be cast by the class or series to be issued approve the issue, or ~~(E)~~
2 (iii) there are not outstanding shares of the class or series to be issued.

3 ~~(iii)~~ (3) If the board of directors does not fix the record date for determining shareholders
4 entitled to share distribution, it is the date the board of directors authorizes the share distribution.

5 **7-1.2-701. Meetings of shareholders. [Effective July 1, 2005.]** -- (a) Meetings of
6 shareholders may be held at any place, either within or without this state, that may be stated in or
7 fixed in accordance with the bylaws. If no other place is stated or fixed, all meetings will be held
8 at the registered office of the corporation. An annual meeting of shareholders may be held at any
9 time that is stated or fixed in accordance with the bylaws. Failure to hold the annual meeting at
10 the designated time does not work a forfeiture or dissolution of the corporation. If the annual
11 meeting is not held within any thirteen (13) month period the superior court may, in its discretion,
12 on the application of any shareholder, summarily order a meeting to be held.

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

15 (c) Notice of any meeting of shareholders must be delivered not less than ten (10) nor
16 more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at the
17 meeting in the manner prescribed by section 7-1.2-702.

18 (d) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is
19 adjourned to a different date, time, or place, notice need not be given of the new date, time, or
20 place if the new date, time, or place is announced at the meeting before adjournment. If a new
21 record date for the adjourned meeting is or must be fixed pursuant to the articles of incorporation,
22 the bylaws or otherwise, however, notice of the adjourned meeting must be given under this
23 section to persons who are shareholders as of the new record date.

24 (e) A shareholder's attendance at a meeting:

25 ~~(i)~~ (1) Waives objection to lack of notice or defective notice of the meeting, unless the
26 shareholder at the beginning of the meeting objects to holding the meeting or transacting business
27 at the meeting; and

28 ~~(ii)~~ (2) Waives objection to consideration of a particular matter at the meeting that is not
29 within the purpose or purposes described in the meeting notice, unless the shareholder objects to
30 considering the matter when it is presented.

31 (f) Upon the application of any shareholder, director, or person aggrieved, the superior
32 court for the county where the principal office of the corporation is located, shall immediately
33 hear and determine the petition of the aggrieved with respect to the following:

34 ~~(i)~~ (1) The validity of any election or appointment of any director or officer of a

1 corporation and the right of any person to hold the office;

2 ~~(ii)~~ (2) If any office is claimed by more than one individual, the individual entitled to the
3 office;

4 ~~(iii)~~ (3) The voting and other rights of persons claiming rights in respect of the contested
5 election or appointment; or

6 ~~(iv)~~ (4) Failure of the corporation to hold an annual meeting within any thirteen (13)
7 month period. The superior court may confirm the election or appointment, order a new election,
8 or direct any other relief that may be just and proper.

9 (g) If authorized by the board of directors in its sole discretion or by the bylaws, and
10 subject to such guidelines and procedures as the board of directors may adopt or the bylaws may
11 prescribe, shareholders and proxy holders not physically present at a meeting of shareholders
12 may, by means of remote communication:

13 ~~(A)~~ (1) Participate in a meeting of shareholders; and

14 ~~(B)~~ (2) Be deemed present in person and vote at a meeting of shareholders whether such
15 meeting is to be held at a designated place or solely by means of remote communication,
16 provided that:

17 ~~(A)~~ (i) The corporation shall implement reasonable measures to verify that each person
18 deemed present and permitted to vote at the meeting by means of remote communication is a
19 shareholder or proxy holder;

20 ~~(B)~~ (ii) The corporation shall implement reasonable measures to provide such
21 shareholders and proxy holders a reasonable opportunity to participate in the meeting and to vote
22 on matters submitted to the shareholders, including an opportunity to read or hear the proceedings
23 of the meeting substantially concurrently with such proceedings; and

24 ~~(C)~~ (iii) If any shareholder or proxy holder votes or takes other action at the meeting by
25 means of remote communication, the corporation shall maintain a record of that vote or other
26 action.

27 **7-1.2-702. Notice to shareholders. [Effective July 1, 2005.]** -- (a) Any notice to
28 shareholders given by the corporation under any provision of this chapter, the articles of
29 incorporation, or the bylaws is effective if given in writing, or by facsimile or a form of electronic
30 transmission consented to by the shareholder to whom the notice is given. Any consent to
31 alternative notice is revocable by the shareholder by written notice to the corporation. Any
32 consent to alternative notice is deemed revoked if:

33 (1) The corporation is unable to deliver by facsimile or electronic transmission two (2)
34 consecutive notices given by the corporation in accordance with such consent; and

1 (2) Such inability becomes known to the secretary or an assistant secretary of the
2 corporation or to the transfer agent, or other person responsible for the giving of notice; provided,
3 however, the inadvertent failure to treat such inability as a revocation does not invalidate the
4 action.

5 (b) If mailed, the notice is deemed to be delivered when deposited in the United States
6 mail addressed to the shareholder at his [or her](#) address as it appears on the stock transfer books of
7 the corporation, with prepaid postage on the mail.

8 (c) In the case of any corporation which has fifty (50) or more shareholders of record, if
9 two (2) successive notices, reports, or other communications addressed to a shareholder of the
10 corporation at the address of the shareholder appearing on the books of the corporation have been
11 returned to the corporation by the United States postal service marked to indicate that the United
12 States postal service is unable to deliver the notices, reports, or other communications to the
13 shareholder at the address, all future notices, reports, or other communications are deemed to
14 have been given without further mailing if they are available for the shareholder upon written
15 demand of the shareholder at the principal executive office of the corporation for a period of one
16 year from the date of the giving of the notice, report, or other communication to other
17 shareholders.

18 (d) A shareholder may waive any notice required by this section, the articles of
19 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be
20 in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation
21 for inclusion in the minutes or filing with the corporate records.

22 **7-1.2-704. Voting list. [Effective July 1, 2005.]** -- (a) After fixing a record date for a
23 meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to
24 notice of a shareholders' meeting.

25 (b) The shareholders' list must be available for inspection by any shareholder, at least ten
26 (10) days before the meeting is given for which the list was prepared and continuing through the
27 meeting, at the corporation's registered office or principal place of business. A shareholder, his [or](#)
28 [her](#) agent, or attorney is entitled on written demand to inspect the list during regular business
29 hours during the period it is available for inspection.

30 (c) The corporation shall make the shareholders' list available to any shareholder in
31 attendance, whether in person or by remote communication, and any shareholder, his agent, or
32 attorney is entitled to inspect the list at any time during the meeting or any adjournment.

33 (d) The persons who appear from the list to be shareholders entitled to vote at the
34 meeting may vote at the meeting.

1 (e) If the right to vote at any meeting is challenged, the person presiding at the meeting,
2 shall rely on the list to determine the right of the challenged person to vote.

3 **7-1.2-705. Quorum of shareholders required for shareholders' action. [Effective July**

4 **1, 2005.]** -- (a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of
5 the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of
6 shareholders, but in no event does a quorum consist of less than one-third (1/3) of the shares
7 entitled to vote at the meeting. If a quorum is present, unless the vote of a greater number or
8 voting by classes is required by this chapter or the articles of incorporation or bylaws, in all
9 matters other than the election of directors, the affirmative vote of the majority of shares present
10 in person or represented by proxy at the meeting and entitled to vote on the subject matter is the
11 act of the shareholders.

12 (b) Directors are elected by a plurality of the votes of the shares present in person or
13 represented by proxy at the meeting and entitled to vote on the election of directors. No
14 amendment to the bylaws made by the board of directors pursuant to section 71.2-203 may
15 require a greater number or voting by classes.

16 **7-1.2-707. Action by shareholders without a meeting. [Effective July 1, 2005.]** -- (a)

17 Any action required or permitted to be taken at a meeting of shareholders by this chapter, or the
18 articles of incorporation or bylaws of a corporation, may be taken without a meeting if all the
19 shareholders entitled to vote on the action consent to the action in writing.

20 (b) (1) Except for actions pursuant to section 71.2-1002 or section 71.2-1102, any
21 action required or permitted to be taken at a meeting of shareholders by this chapter or the
22 ~~certificate~~ [articles](#) of incorporation or bylaws of a corporation, may be taken without a meeting
23 upon the written consent of less than all the shareholders entitled to vote on the action, if:

24 (i) Shareholders who consent would be entitled to cast at least the minimum number of
25 votes that would be required to take the action at a meeting at which all shareholders entitled to
26 vote on the action are present and voting in person or by proxy; and

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

28 (2) Prompt notice of the action must be given to all shareholders who would have been
29 entitled to vote upon the action if the meeting were held.

30 (c) Whenever action is taken pursuant to this section, the written consents of the
31 shareholders consenting to the action must be filed with the minutes of proceedings of
32 shareholders.

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

1 (e) If any other provision of this chapter requires the filing of a certificate upon the
2 taking of an action by shareholders, and action is taken in the manner authorized by this section,
3 the certificate must state that the action was taken without a meeting pursuant to the written
4 consents of the shareholders and must include the number of shares represented by the consents.

5 (f) The record date for determining shareholders entitled to express consent in writing,
6 without a meeting, is determined in accordance with section 7-1.2-703 and, if no record date is
7 fixed for the determination of shareholders entitled to vote by written consent, the date on which
8 such request for written consent is delivered, in accordance with section 7-1.2-702, to
9 shareholders is the record date for the determination of shareholders entitled to express such
10 written consent.

11 **7-1.2-708. Voting of shares. [Effective July 1, 2005.]** -- (a) Each outstanding share,
12 regardless of series or class, is entitled to one vote on each matter submitted to a vote at a meeting
13 of shareholders, except to the extent that the voting rights of the shares of any class or classes are
14 limited, enlarged, or denied by the articles of incorporation as permitted by this chapter. If the
15 articles of incorporation provide for more or less than one vote for any share, on any matter,
16 every reference in this chapter to a majority or other proportion of shares refers to a majority or
17 other proportion of votes entitled to be cast.

18 (b) Shares held, directly or indirectly, by another corporation if a majority of the shares
19 entitled to vote for the election of directors of the other corporation is held by the corporation,
20 may not be voted at any meeting or counted in determining the total number of outstanding shares
21 at any given time. Nothing contained in these provisions is construed as limiting the right of any
22 corporation to vote shares, including, but not limited to, its own shares, held in a fiduciary
23 capacity.

24 (c) Every shareholder entitled to vote at a meeting of shareholders or to express consent
25 without a meeting may authorize another person or persons to act for him or her by proxy,
26 executed, in writing, by the shareholder or by his or her duly authorized attorney in fact. No
27 proxy is valid after three (3) years from the date of its execution, unless otherwise provided in the
28 proxy.

29 (1) Without limiting the manner in which a shareholder may authorize another person or
30 persons to act for him or her as proxy pursuant to ~~this~~ subsection (c) of this section, the following
31 constitutes a valid means by which a shareholder may grant that authority:

32 (i) A shareholder may execute a writing authorizing another person or persons to act for
33 him or her as proxy. Execution may be accomplished by the shareholder or his or her authorized
34 officer, director, employee or agent signing the writing or causing his or her signature to be

1 affixed to the writing by any reasonable means including, but not limited to, facsimile signature.

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

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

19 (3) The death or incapacity of the shareholder appointing a proxy does not affect the
20 right of the corporation to accept the proxy's authority unless notice of the death or incapacity is
21 received by the secretary or other officer or agent authorized to tabulate votes before the proxy
22 exercises his [or her](#) authority under the appointment.

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 shares equals, or by distributing the votes on the same principle
29 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, conservator or trustee may be voted by him [or her](#), either in person or by proxy, without a

1 transfer of the shares into his or her name.

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

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

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

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

23 (k) (1) An executed proxy is irrevocable if it specifies that it is irrevocable and if, and
24 only so long as, it is coupled with an interest sufficient in law to support an irrevocable power
25 coupled with it. A proxy may be made irrevocable regardless of whether the interest with which it
26 is coupled is an interest in the shares itself or an interest in the corporation generally.

27 (2) Without limiting the generality of subsection (k)(1) and subject to that subsection, a
28 proxy is coupled with an interest and is irrevocable if it is held by any of the following or a
29 nominee of any of the following:

30 (i) A pledgee under a valid pledge;

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

32 (iii) A creditor or creditors of the corporation who extend or continue credit to the
33 corporation in consideration of the proxy if the proxy states that it was given in consideration of
34 the extension or continuation of credit, the amount of the credit, and the name of the person

1 extending or continuing credit; and

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

8 (3) A provision contained in a proxy making it irrevocable is not enforceable against a
9 purchaser for value of the shares subject to the provision without actual knowledge of the
10 existence of the provision, unless notice of the proxy and its irrevocability appears plainly on the
11 certificate or certificates representing the shares; provided that if such shares are uncertificated, a
12 provision contained in a proxy making it irrevocable is enforceable against a purchaser for value
13 of the shares subject to the provision without actual knowledge of the existence of the provision
14 if, and only if, notice of the proxy and its irrevocability was provided in writing to such purchaser
15 prior to the consummation of the purchase of such shares.

16 **7-1.2-709. Voting trusts and agreements among shareholders. [Effective July 1,**

17 **2005.]** -- (a) Any number of shareholders of a corporation may create a voting trust for the
18 purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their
19 shares, for a period not to exceed ten (10) years, by entering into a written voting trust agreement
20 specifying the terms and conditions of the voting trust, by depositing a counterpart of the
21 agreement with the corporation at its registered office, and by transferring their shares to the
22 trustee or trustees for the purposes of the agreement. The trustee or trustees shall keep a record of
23 the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving
24 the names and addresses of all the holders and the number and class of the shares in respect of
25 which the voting trust certificates held by each are issued, and shall deposit a copy of the record
26 with the corporation at its registered office. The counterpart of the voting trust agreement and the
27 copy of the record deposited with the corporation are subject to the same right of examination by
28 a shareholder of the corporation, in person or by agent or attorney, as are the books and records of
29 the corporation, and the counterpart and the copy of the record is subject to examination by any
30 holder of record of voting trust certificates, either in person or by agent or attorney, at any
31 reasonable time for any proper purpose. The trust certificates must state that they are issued
32 pursuant to the voting trust agreement, and that fact must be stated in the stock ledger of the
33 corporation.

34 (b) Agreements among shareholders regarding the voting of their shares are valid and

1 enforceable in accordance with their terms for a period ~~of~~ not to exceed ten (10) years. An
2 agreement is not subject to the provision of this section regarding voting trusts unless it is stated
3 in the agreement that it is a voting trust.

4 (c) The provisions of this section are construed as permissive and should not be
5 interpreted to invalidate any voting or other agreement among shareholders, or any irrevocable
6 proxy which is otherwise not illegal.

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

10 **7-1.2-710. Voting and inspection rights of bondholders and debenture holders.**

11 **[Effective July 1, 2005.]** -- The articles of incorporation may, to the extent and in the manner
12 provided in the articles [of incorporation](#), confer on the holders of bonds or other evidences of
13 indebtedness of the corporation rights to vote in the election of directors and on any other matters
14 on which shareholders may vote and rights to inspect the books and records of the corporation.

15 **7-1.2-711. Actions by shareholders. [Effective July 1, 2005.]** -- (a) Subchapter

16 Definitions. - In this subchapter:

17 (1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or,
18 to the extent provided in subsection (h) of this section, in the right of a foreign corporation.

19 (2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or
20 held by a nominee on the beneficial owner's behalf.

21 (b) Standing. - A shareholder may not commence or maintain a derivative proceeding
22 unless the shareholder:

23 (i) Was a shareholder of the corporation at the time of the act or omission complained of
24 or became a shareholder through transfer by operation of law from one who was a shareholder at
25 that time; and

26 (ii) Fairly and adequately represents the interests of the corporation in enforcing the right
27 of the corporation.

28 (c) Demand. - No shareholder may commence a derivative proceeding until:

29 (1) A written demand had been made upon the corporation to take suitable action; and

30 (2) [Ninety](#) (90) days have expired from the date the demand was made unless the
31 shareholder has earlier been notified that the demand has been rejected by the corporation or
32 unless irreparable injury to the corporation would result by waiting for the expiration of the
33 [ninety](#) (90) day period.

34 (d) Stay of proceedings. - If the corporation commences an inquiry into the allegations

1 made in the demand or complaint, the court may stay any derivative proceeding for such period
2 as the court deems appropriate.

3 (e) Dismissal.

4 (1) On motion by the corporation, the court shall dismiss a derivative proceeding if one
5 of the groups specified in ~~subsections~~ [paragraphs](#) (ii) or (vi) has determined in good faith after
6 conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the
7 derivate proceedings is not in the best interests of the corporation.

8 (2) Unless a panel is appointed pursuant to ~~subsection~~ [paragraph](#) (vi), the determination
9 in ~~subsection~~ [paragraph](#) (i) must be made by:

10 (i) A majority vote of independent directors present at a meeting of the board of directors
11 if the independent directors constitute a quorum; or

12 (ii) A majority vote of a committee consisting of two [\(2\)](#) or more independent directors
13 appointed by majority vote of independent directors present at a meeting of the board of directors,
14 whether or not such independent directors constituted a quorum.

15 (3) None of the following by itself causes a director to be considered not independent for
16 purposes of this section:

17 (i) The nomination or election of the directors or persons who are defendants in the
18 derivative proceedings or against whom action is demanded;

19 (ii) The naming of the director as a defendant in the derivative proceeding or as a person
20 against whom action is demanded; or

21 (iii) The approval by the director of the act being challenged in the derivative proceeding
22 or demand if the act resulted in no personal benefit to the director.

23 (4) If a derivative proceeding is commenced after a determination has been made
24 rejecting a demand by a shareholder, the complaint must allege with particularity facts
25 establishing either (A) that a majority of the board of directors did not consist of independent
26 directors at the time the determination was made, or (B) that the requirements of subsection (a) [of](#)
27 [this section](#) have not been met.

28 (5) If a majority of the board of directors does not consist of independent directors at the
29 time the determination is made, the corporation has the burden of proving that the requirements of
30 ~~subsection~~ [paragraph](#) (i) have been met. If a majority of the board of directors consists of
31 independent directors at the time the determination is made, the plaintiff has the burden of
32 proving that the requirements of ~~subsection~~ [paragraph](#) (i) have not been met.

33 (6) The court may appoint a panel of one or more independent persons upon motion by
34 the corporation to make a determination whether the maintenance of the derivative proceeding is

1 in the best interests of the corporation. In such case, the plaintiff has the burden of proving that
2 the requirements of ~~subsection~~ [paragraph](#) (i) have not been met.

3 (f) Discontinuance or settlement. - A derivative proceeding may not be discontinued or
4 settled without the court's approval. If the court determines that a proposed discontinuance or
5 settlement will substantially affect the interests of the corporation's shareholders or a class of
6 shareholders, the court shall direct that notice be given to the shareholders affected.

7 (g) Payment of expenses. - On termination of the derivative proceeding the court may:

8 (1) Order the corporation to pay the plaintiff's reasonable expenses (including counsel
9 fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit
10 to the corporation;

11 (2) Order the plaintiff to pay any defendant's reasonable expenses (including counsel
12 fees) incurred in defending the proceeding if it finds that the proceeding was commenced or
13 maintained without reasonable cause or for an improper purpose; or

14 (3) Order a party to pay an opposing party's reasonable expenses (including counsel fees)
15 incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading,
16 motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by
17 existing law or a good faith argument for the extension, modification or reversal of existing law
18 and was interposed for an improper purpose, such as to harass or cause unnecessary delay or
19 needless increase in the cost of litigation.

20 (h) Applicability to foreign corporations. - In any derivative proceeding in the right of a
21 foreign corporation, the matters covered by this subchapter are governed by the laws of the
22 jurisdiction of incorporation of the foreign corporation except for subsections (d), (f), and (g) of
23 this section.

24 **7-1.2-801. Board of directors. [Effective July 1, 2005.]** -- (a) Except as may be
25 otherwise provided in this chapter or in the articles of incorporation, the business and affairs of a
26 corporation are managed by a board of directors. Directors need not be residents of this state or
27 shareholders of the corporation unless the articles of incorporation or bylaws require it. The
28 articles of incorporation or bylaws may prescribe other qualifications for directors. The board of
29 directors has authority to fix the compensation of directors unless otherwise provided in the
30 articles of incorporation.

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

33 (1) In good faith;

34 (2) With the care that a person in a like position would reasonably believe appropriate

1 under similar circumstances; and

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

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

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

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

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

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

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

17 (f) For the purposes of subsections (b) through (e), "corporation" also includes any
18 financial institution, insurance company, public utility or other quasi-public corporation having
19 purposes enumerated as exceptions to this chapter in section 7-1.2-301 and the provisions of
20 subsections (b) through (e) of this section are applicable to the directors of that corporation.

21 **7-1.2-802. Number and election of directors. [Effective July 1, 2005.]** -- The board of
22 directors of a corporation consists of one or more members. The number of directors is fixed by,
23 or in the manner provided in, the articles of incorporation or the bylaws except as to the number
24 constituting the initial board of directors, which number is fixed by the articles of incorporation.
25 The number of directors may be increased or decreased from time to time by amendment to, or in
26 the manner provided in, the articles of incorporation or the bylaws, but no decrease has the effect
27 of shortening the term of any incumbent director. If the articles of incorporation provide for the
28 election of directors in the manner specified in subsection (d) of section 7-1.2-708, the number of
29 directors may not be decreased unless approved by the shareholders with less than the number of
30 shares previously entitled to elect one director voting against the decrease. In the absence of a
31 bylaw fixing the number of directors, the number is the same as that provided for in the articles of
32 incorporation. The names and addresses of the members of the first board of directors must be
33 stated in the articles of incorporation. Those persons hold office until the first annual meeting of
34 shareholders, and until their successors have been elected and qualified. At the first annual

1 meeting of shareholders and at each subsequent annual meeting, the shareholders shall elect
2 directors to hold office until the next succeeding annual meeting, except in the case of the
3 classification of directors as permitted by this chapter. Each director holds office for the term for
4 which he [or she](#) is elected and until his [or her](#) successor has been elected and qualified. Any
5 director may resign at any time upon notice given in writing to the corporation.

6 **7-1.2-804. Vacancies. [Effective July 1, 2005.]** -- Any vacancy occurring in the board of
7 directors may be filled by the affirmative vote of a majority of the remaining directors though less
8 than a quorum of the board of directors. A director elected to fill a vacancy is elected for the
9 unexpired term of his [or her](#) predecessor in office. Any directorship to be filled by reason of an
10 increase in the number of directors may be filled by the board of directors for a term of office
11 continuing only until the next election of directors by the shareholders. If at any time, by reason
12 of death, resignation or other cause, a corporation should have no directors in office, then any
13 officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or
14 other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may
15 call a special meeting of shareholders in accordance with the provisions of the articles of
16 incorporation or the bylaws, or may apply to the superior court for a decree summarily ordering a
17 meeting for the purposes of conducting an election.

18 **7-1.2-805. Removal of directors. [Effective July 1, 2005.]** -- (a) Any or all of the
19 directors may be removed for cause by vote of the shareholders. The articles of incorporation or
20 the specific provisions of a bylaw adopted by the shareholders may provide for the removal by
21 action of the board, except in the case of any director elected by cumulative voting, or by the
22 holders of the shares of any class or series, or holders of bonds, voting as a class, when entitled by
23 the provisions of the articles of incorporation.

24 (b) Unless the articles of incorporation provide that directors may be removed only for
25 cause, any or all of the directors may be removed without cause by vote of the shareholders.

26 (c) The removal of directors, with or without cause, as provided in subsections (a) and
27 (b) [of this section](#) is subject to the following:

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

33 (2) When by the provisions of the articles of incorporation the holders of the shares of
34 any class or series, or holders of bonds, voting as a class, are entitled to elect one or more

1 directors, any director so elected may be removed only by the applicable vote of the holders of
2 the shares of that class or series or the holders of the bonds, voting as a class.

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

7 **7-1.2-807. Director and officer conflicts of interest. [Effective July 1, 2005.]** -- (a) No
8 contract or transaction between a corporation and one or more of its directors or officers, or
9 between a corporation and any other corporation, partnership, association, or other organization
10 in which one or more of its directors or officers are directors or officers or have a financial
11 interest, is void or voidable nor are the directors or officers liable with respect to the contract or
12 transaction solely for this reason, or solely because the director or officer is present at, or
13 participates in, the meeting of the board or committee of the board which authorizes the contract
14 or transaction, or solely because his [or her](#) or their votes are counted for that purpose, if:

15 (1) The material facts as to his [or her](#) or their interest or relationship are disclosed or are
16 known to the board of directors or the committee, and the board of directors or committee
17 authorizes, approves, or ratifies the contract or transaction by the affirmative votes of a majority
18 of the disinterested directors, even though the disinterested directors are less than a quorum; or

19 (2) The material facts as to his [or her](#) or their interest or relationship are disclosed or are
20 known to the shareholders entitled to vote on the contract or transaction, and the contract or
21 transaction is specifically authorized, approved, or ratified by vote of the shareholders; or

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

23 (b) Common or interested directors may be counted in determining the presence of a
24 quorum at a meeting of the board of directors or of a committee which authorizes the contract or
25 transaction.

26 **7-1.2-809. Place, notice, and form of notice of directors' and committee meetings.**
27 **[Effective July 1, 2005.]** -- (a) Meetings of the board of directors, or any committee designated
28 by the board, regular or special, may be held either within or without this state.

29 (b) Regular meetings of the board of directors or any committee designated by the board
30 may be held with or without notice as prescribed in the bylaws. Unless the articles of
31 incorporation or the bylaws provide for an alternative period, special meetings of the board of
32 directors or any committee designated by the board must be preceded by at least two (2) days'
33 notice of the date, time, and place of the meeting. Attendance of a director at a meeting
34 constitutes a waiver of notice of the meeting, except where a director attends a meeting for the

1 express purpose of objecting to the transaction of any business because the meeting is not
2 lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any
3 regular or special meeting of the board of directors or any committee designated by the board of
4 directors need be specified in the notice or waiver of notice of the meeting unless required by the
5 bylaws. Except as may be otherwise restricted by the articles of incorporation or bylaws,
6 members of the board of directors, or any committee designated by the board of directors, may
7 participate in a meeting of the board or committee by means of a conference telephone or similar
8 communications equipment, by means of which all persons participating in the meeting can hear
9 each other at the same time and participation by those means constitutes presence in person at a
10 meeting.

11 **7-1.2-811. Liability of directors in certain cases. [Effective July 1, 2005.]** -- (a) In
12 addition to any other liabilities imposed by law upon directors of a corporation:

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

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

24 (3) Directors of a corporation who vote for or assent to any distribution of assets of a
25 corporation to its shareholders during the liquidation of the corporation without the payment and
26 discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the
27 corporation are jointly and severally liable to the corporation for the value of the assets which are
28 distributed, to the extent that the debts, obligations, and liabilities of the corporation are not
29 subsequently paid and discharged.

30 (b) A director who is present at a meeting of its board of directors at which action on any
31 corporate matter is taken is presumed to have assented to the action taken unless his [or her](#) dissent
32 is entered in the minutes of the meeting or unless he [or she](#) files his [or her](#) written dissent to the
33 action with the person acting as the secretary of the meeting before the meeting's adjournment or
34 forwards the dissent by registered mail to the secretary of the corporation immediately after the

1 adjournment of the meeting. The right to dissent does not apply to a director who voted in favor
2 of the action.

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

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

15 **7-1.2-814. Indemnification. [Effective July 1, 2005.]**-- (a) Definitions. - As used in this
16 section:

17 (1) "Director" or "officer" means any individual who is or was a director or officer of
18 the corporation and any individual who, while a director or officer of the corporation, is or was
19 serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent
20 of another foreign or domestic corporation, limited liability company, partnership, joint venture,
21 trust, other enterprise, employee benefit plan, or other entity. A director or officer is considered to
22 be serving an employee benefit plan at the corporation's request if his or her duties to the
23 corporation also impose duties on, or otherwise involve services by, him or her to the plan or
24 participants or beneficiaries of the plan. "Director" or "officer" includes, unless the context
25 requires otherwise, the estate or personal representative of the director or officer.

26 (2) "Corporation" includes:

27 (i) Any domestic or foreign corporation, profit or nonprofit;

28 (ii) Any domestic or foreign predecessor entity of the corporation in a merger or other
29 transaction in which the predecessor's existence ceased upon consummation of the transaction;
30 and

31 (iii) Any of the classes of quasi public corporations with purposes enumerated as
32 exceptions in section 7-1.2-301 to the extent that the corporations are not subject to other
33 provisions of the general laws or special acts authorizing indemnification of their directors and
34 officers.

1 (3) "Expenses" include attorneys' fees.

2 (4) "Liability" means the obligation to pay a judgment, penalties, fines (including an
3 excise tax assessed with respect to an employee benefit plan), settlements, or reasonable expenses
4 actually incurred by the person in connection with the proceeding.

5 (5) "Official capacity" means:

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

7 (ii) When used with respect to an officer, as contemplated in subsection (i), the office in
8 a corporation held by the officer. "Official capacity" does not include service for ~~a~~ an individual
9 other than a director, as contemplated in ~~subsection~~ subdivision (a)(1), the elective or appointive
10 office in the corporation held by the officer or the employment or agency relationship undertaken
11 by the employee or agent on behalf of the corporation, but in each case does not include service
12 for any other foreign or domestic corporation or any partnership, joint venture, trust, other
13 enterprise, or employee benefit plan.

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

16 (7) "Proceeding" means any threatened, pending or completed action, suit, or
17 proceeding, whether civil, criminal, administrative, or investigative.

18 (b) Permissible indemnification.

19 (1) Except as otherwise provided in this section, a corporation has power to indemnify
20 any individual made a party to any proceeding by reason of the fact that he or she is or was a
21 director if:

22 (i) He or she conducted himself or herself in good faith; and

23 (ii) He or she reasonably believed; (A) ~~In the~~ The case of conduct in his or her official
24 capacity with the corporation, that his or her conduct was in its best interests; and (B) ~~In all~~ All
25 other cases, that his or her conduct was at least not opposed to ~~its~~ the corporations best interests;
26 and

27 (iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe
28 his or her conduct was unlawful; or

29 (iv) He or she engaged in conduct for which broader indemnification has been made
30 permissible or obligatory under a provision of the articles of incorporation.

31 (2) A director's conduct with respect to an employee benefit plan for a purpose he or she
32 reasonably believed to be in the interests of the participants and beneficiaries of ~~the~~ plan is
33 deemed to be for a purpose which is not opposed to the best interests of the corporation in
34 accordance with (b)(1)(ii)(B).

1 (3) The termination of any proceeding by judgment, order, settlement, conviction, or
2 upon a plea of nolo contendere or its equivalent, is not, of itself, ~~be~~ determinative that the
3 individual did not meet the requisite standard of conduct set forth in this subsection.

4 (4) Unless ordered by a court under subsection (d) [of this section](#), a corporation may not
5 indemnify a director:

6 (i) In connection with a proceeding by or in the right of the corporation, except for
7 reasonable expenses incurred in connection with the proceeding (if it is determined that the
8 director has met the relevant standard of conduct under (b)(1)(i) and (ii)), or

9 (ii) In connection with any proceeding for which the director was adjudged liable to the
10 corporation on the basis that he [or she](#) received an improper personal benefit, whether or not
11 involving action in his [or her](#) official capacity.

12 (c) Mandatory Indemnification. - Unless limited by the articles of incorporation, a
13 director who has been wholly successful, on the merits or otherwise, in the defense of any
14 proceeding referred to in subsection (b) [of this section](#) is indemnified against reasonable expenses
15 incurred by him [or her](#) in connection with the proceeding. ~~;~~ ~~and~~

16 (d) Court-ordered indemnification.

17 (1) A court of appropriate jurisdiction, upon application of a director and any notice that
18 the court requires, has authority to order indemnification in the following circumstances:

19 (i) If the court determines a director is entitled to reimbursement under subsection (d) [of](#)
20 [this section](#), the court shall order indemnification, in which case the director is also entitled to
21 recover the expenses of securing the reimbursement; or

22 (ii) If the court determines that the director is fairly and reasonably entitled to
23 indemnification in view of all the relevant circumstances, whether or not he [or she](#) has met the
24 standard of conduct set forth in ~~subsection~~ [subdivision](#) (b)(1) or (b)(2) or has been adjudged liable
25 in the circumstances described in ~~subsection~~ [paragraph](#) (b)(4)(ii), the court may order such
26 indemnification as the court shall deem proper, except that indemnification with respect to any
27 proceeding by or in the right of the corporation or in which liability has been adjudged in the
28 circumstances described in ~~subsection~~ [paragraph](#) (b)(4)(i) are limited to expenses.

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

31 (e) Advance for expenses. - Reasonable expenses incurred by a director who is a party to
32 a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of
33 the proceeding upon receipt by the corporation of:

34 (1) A written affirmation by the director of his [or her](#) good faith belief that he [or she](#) has

1 met the standard of conduct necessary for indemnification by the corporation as authorized in this
2 section; and

3 (2) A written undertaking by or on behalf of the director to repay the amount if the court
4 determines that he [or she](#) has not met that standard of conduct, and after a determination that the
5 facts then known to those making the determination would not preclude indemnification under
6 this section. The undertaking required by this subdivision must be an unlimited general obligation
7 of the director but need not be secured and may be accepted without reference to financial ability
8 to make repayment. Determinations and authorizations of payments under this subsection are
9 made in the manner specified in subsection (f).

10 (f) Determination and authorization of indemnification.

11 (1) No indemnification under subsection (b) may be made by the corporation unless
12 authorized in the specific case after a determination has been made that indemnification of the
13 director is permissible in the circumstances because he [or she](#) has met the standard of conduct set
14 forth in subsection (b). The determination must be made:

15 (i) By the board of directors by a majority vote of a quorum consisting of directors not at
16 the time parties to the proceeding; or

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

21 (iii) By special legal counsel, selected by the board of directors or a committee of the
22 board by vote as set forth in ~~subsection~~ [paragraph](#) (f)(1)(i) or (f)(1)(ii), or, if the requisite quorum
23 of the full board cannot be obtained for the vote and the committee cannot be established, by a
24 majority vote of the full board (in which selection directors who are parties may participate); or

25 (iv) By the shareholders.

26 (2) Authorization of indemnification and determination as to reasonableness of expenses
27 are made in the same manner as the determination that indemnification is permissible, except that
28 if the determination that indemnification is permissible is made by special legal counsel,
29 authorization of indemnification and determination as to reasonableness of expenses must be
30 made in a manner specified in ~~subsection~~ [paragraph](#) (f)(1)(iii) for the selection of the counsel.
31 Shares held by directors who are parties to the proceeding may not be voted on the subject matter
32 under this subsection.

33 (g) Variation by Corporate Action. - The indemnification provided by this section is not
34 deemed exclusive of any other rights to which those seeking indemnification are entitled under

1 any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to
2 action in his official capacity and as to action in another capacity while holding office, and
3 continues as to ~~a~~ an individual who has ceased to be a director, officer, partner, trustee, employee,
4 or agent and inures to the benefit of the heirs, executors, and administrators of ~~{a person}~~ an
5 individual. Nothing contained in this section limits the corporation's power to pay or reimburse
6 expenses incurred by a director in connection with his or her appearance as a witness in a
7 proceeding at a time when he or she has not been made a named defendant or respondent in the
8 proceeding.

9 (h) Officers. - Unless limited by the articles of incorporation:

10 (1) An officer of the corporation is indemnified under this section as and to the same
11 extent provided for a director, and is entitled to the same extent as a director to seek
12 indemnification pursuant to the provisions of this section;

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

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

20 (i) Insurance. - A corporation has the power to purchase and maintain insurance on
21 behalf of any individual who is or was a director, officer, employee, or agent of the corporation,
22 or who, while a director, officer, employee, or agent of the corporation, is or was serving at the
23 request of the corporation as a director, officer, partner, trustee, employee, or agent of another
24 foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee
25 benefit plan, against any liability asserted against him or her and incurred by him or her in any
26 corporate capacity or arising out of his or her status as a director, officer, employee, or agent of
27 the corporation, whether or not the corporation would have the power to indemnify him or her
28 against the liability under the provisions of this section.

29 (j) Shareholder approval. - Any indemnification of, or advance of expenses to, a director
30 in accordance with this section, if arising out of a proceeding by or in the right of the corporation,
31 must be reported, in writing, to the shareholders with or before the notice of the next
32 shareholders' meeting.

33 **Part IX. Amendment of Articles of Incorporation**

34 **7-1.2-902. Right to amend legislative charters. [Effective July 1, 2005.] -- Any**

1 corporation created by special act of the general assembly, which is organized under this chapter,
2 whose charter is subject to amendment or repeal at the will of the general assembly, may make
3 amendment to its charter that corporations organized under this chapter may make to their articles
4 of incorporation under section 7-1.2-901. The proposed amendment is effected and evidenced in
5 the same manner, by the same vote and upon the same terms and conditions as are prescribed in
6 sections 7-1.2-903 and 7-1.2-904.

7 **7-1.2-903. Procedure to amend articles of incorporation. [Effective July 1, 2005.] --**

8 (a) Amendments to ~~the~~ [a corporations](#) 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 must be given to each shareholder entitled to vote on the amendment
21 within the time and in the manner provided in this chapter for the giving of notice of meetings of
22 shareholders. If the meeting is an annual meeting, the proposed amendment or the summary may
23 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 must 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 7-1.2-904, 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 articles 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 shareholders of the corporation,
2 the board of directors may abandon the proposed amendment without further action by the
3 shareholders.

4 (d) Whenever the articles of incorporation require for action by the board of directors, by
5 the holders of any class or series of shares or by the holders of any other securities having voting
6 power the vote of a greater number or proportion than is required by any section of this title, the
7 provision of the articles of incorporation requiring such greater vote may not be altered, amended
8 or repealed except by such greater vote.

9 **7-1.2-904. Class voting on amendments. [Effective July 1, 2005.]** -- (a) Except as
10 otherwise provided in this section, the holders of the outstanding shares of a class are entitled to
11 vote as a class upon a proposed amendment, whether or not entitled to vote on the amendment by
12 the provisions of the articles of incorporation, if the amendment would:

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

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

15 (3) Effect an exchange, reclassification, or cancellation of all or part of the shares of the
16 class.

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

19 (5) Change the designations, preferences, limitations, or relative rights of the shares of
20 the class.

21 (6) Change the shares of the class, whether with or without par value, into the same or a
22 different number of shares, either with or without par value, of the same class or another class or
23 classes.

24 (7) Create a new class of shares having rights and preferences prior and superior to the
25 shares of the class, or increase the rights and preferences or the number of authorized shares of
26 any class having rights and preferences prior or superior to the shares of the class.

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

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

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

33 (b) If the proposed amendment would affect only the shares of one series of a class and
34 not the entire class, then only the shares of the series so affected is considered a separate class for

1 the purpose of this section. Any class and any series within a class is considered a separate class
2 for purposes of this section if the effect of the proposed amendment upon the class or series
3 would be different than the effect of the amendment upon the other classes or other series within
4 the class. If the proposed amendment would affect two (2) or more classes or series within a class
5 in the same way, but would not affect the remaining classes or series within the class in the same
6 way, the two (2) or more classes or series affected in the same way are together considered a
7 separate class for purposes of this section. Except as otherwise provided in the articles of
8 incorporation or the certificate referred to in section 7-1.2-602, if the proposed amendment would
9 have no effect upon one or more classes or series of a class, the classes or series are not entitled to
10 any vote on the proposed amendment and, for the purposes of this section, are not counted in
11 determining the number of shares constituting the class.

12 **7-1.2-905. Articles of amendment. [Effective July 1, 2005.]** -- (a) The corporation may
13 amend its articles of incorporation by filing with the secretary of state articles of amendment
14 which must state:

15 (1) The name of the corporation.

16 (2) The amendment so adopted.

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

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

23 **7-1.2-906. Restated articles of incorporation. [Effective July 1, 2005.]** -- (a) The
24 corporation may at any time restate its articles of incorporation as previously amended by filing
25 with the secretary of state restated articles of incorporation. The restated articles of incorporation
26 may include one or more amendments to the articles of incorporation adopted in accordance with
27 the provisions of section 7-1.2-901.

28 (b) The restated articles of incorporation must state all of the provisions of the articles of
29 incorporation as previously amended, the additional amendments to the articles of incorporation,
30 if any, together with a statement that such additional amendments were adopted in accordance
31 with the provisions of section 7-1.2-903, and a further statement that, except for the designated
32 amendments, if any, the restated articles of incorporation correctly set forth without change the
33 corresponding provisions of the articles of incorporation as previously amended, and that the
34 restated articles of incorporation, together with the designated amendments, if any, supersede the

1 original articles of incorporation and all previous amendments to the articles of incorporation.

2 **7-1.2-907. Amendment of articles of incorporation in reorganization proceedings.**

3 **[Effective July 1, 2005.]** -- (a) Whenever a plan of reorganization of a corporation has been
4 confirmed by decree or order of a court of competent jurisdiction in proceedings for the
5 reorganization of the corporation, pursuant to the provisions of any applicable statute of the
6 United States relating to reorganizations of corporations, the articles of incorporation of the
7 corporation may be amended, in the manner provided in this section, in as many respects as are
8 necessary to carry out the plan and put into effect, as long as the articles of incorporation, as
9 amended, contain only provisions that might be lawfully contained in original articles of
10 incorporation at the time of making the amendment.

11 (b) Articles of amendment approved by decree or order of the court must be executed by
12 the trustee or trustees of such corporation appointed in the reorganization proceedings (or a
13 majority thereof), or if none ~~be~~ are appointed and acting, by the person or persons that the court
14 designates or appoints for the purpose, and must state the name of the corporation, the
15 amendments of the articles of incorporation approved by the court, the date of the decree or order
16 approving the articles of amendment, the title of the proceedings in which the decree or order was
17 entered, and a statement that the decree or order was entered by a court having jurisdiction of the
18 proceedings for the reorganization of the corporation pursuant to the provisions of an applicable
19 statute of the United States.

20 (c) This section does not apply to such corporation upon the entry of a final decree in the
21 reorganization proceedings closing the case and discharging the trustee or trustees, if any.

22 **Part X. Merger.**

23 **7-1.2-1003. Articles of merger. [Effective July 1, 2005.]** -- (a) Upon approval, articles

24 of merger must be executed by each corporation by its authorized representative and must state:

25 (1) The plan of merger.

26 (2) If, pursuant to section 7-1.2-1005, the merger is to become effective at a time
27 subsequent to the issuance of the certificate of merger by the secretary of state, the date when the
28 merger is to become effective.

29 (b) The original articles of merger must be delivered to the secretary of state. If the
30 secretary of state finds that the articles conform to law, and, unless the surviving corporation is a
31 Rhode Island corporation, that all fees and franchise taxes have been paid, the secretary of state
32 shall:

33 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing;

34 (2) File the original in his office; and

1 (3) Issue a certificate of merger;

2 (c) The secretary of state shall ~~return~~ deliver the certificate of merger to the surviving or
3 new corporation, as the case may be, or its representative.

4 **7-1.2-1004. Merger of subsidiary corporation. [Effective July 1, 2005.]** -- (a) Any
5 corporation owning at least ninety percent (90%) of the outstanding shares of each class of
6 another corporation may merge the other corporation into itself without approval by a vote of the
7 shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of
8 merger stating:

9 (1) The name of the subsidiary corporation and the name of the corporation owning at
10 least ninety percent (90%) of its shares, which is subsequently in these provisions designated as
11 the surviving corporation.

12 (2) The manner and basis of converting the shares of the subsidiary corporation (other
13 than those held by the surviving corporation) into shares or other securities or obligations of the
14 surviving corporation or of any other corporation, or in whole or in part, into cash or other
15 consideration to be paid upon the surrender of each share of the subsidiary corporation.

16 (b) A copy of the plan of merger must be mailed to each shareholder of the subsidiary
17 corporation.

18 (c) Articles of merger must be executed by the surviving corporation by an authorized
19 officer and must state:

20 (1) The plan of merger; and

21 (2) If, pursuant to section 71.2-1005, the merger is to become effective at a time
22 subsequent to the issuance of the certificate of merger by the secretary of state, the date when the
23 merger is to become effective.

24 (d) On and after the thirtieth (30th) day after the mailing of a copy of the agreement of
25 merger to shareholders of the subsidiary corporation or upon the waiver of the mailing by the
26 holders of all outstanding shares, original articles of merger must be delivered to the secretary of
27 state. If the secretary of state finds that the articles conform to law, the secretary of state shall,
28 when all fees and franchise taxes have been paid:

29 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing;

30 (2) File the original in his office; and

31 (3) Issue a certificate of merger.

32 (e) The secretary of state shall ~~return~~ deliver the certificate of merger to the surviving
33 corporation or its representative.

34 **7-1.2-1005. Effect of merger. [Effective July 1, 2005.]** -- (a) A merger becomes

1 effective upon the issuance of a certificate of merger by the secretary of state or on a later date as
2 is stated in the plan.

3 (b) When a merger becomes effective:

4 (1) The several corporations, parties to the plan of merger, are a single corporation,
5 which is that corporation designated in the plan of merger as the surviving or new corporation.

6 (2) The separate existence of all corporations, parties to the plan of merger, except the
7 surviving or new corporation, ceases.

8 (3) The surviving or new corporation has all the rights, privileges, immunities, and
9 powers and is subject to all the duties and liabilities of a corporation organized under this chapter.

10 (4) The surviving or new corporation at that time and subsequently possesses all the
11 rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of
12 the merging corporations; and all property, real, personal, and mixed, all debts due on whatever
13 account, including subscriptions to shares, all other choses in action, and all and every other
14 interest of or belonging to or due to each of the corporations merged, is taken and deemed to be
15 transferred to and vested in the single corporation without further act or deed; and the title to any
16 real estate, or any interest in real estate, vested in any of the corporations does not revert or is in
17 any way impaired because of the merger.

18 (5) The surviving or new corporation is subsequently responsible and liable for all the
19 liabilities and obligations of each of the corporations merged or consolidated; and any claim
20 existing or action or proceeding pending by or against any of the corporations may be prosecuted
21 as if the merger had not taken place, or the surviving or new corporation may be substituted in its
22 place. Neither the rights of creditors nor any liens upon the property of any corporation is
23 impaired by the merger.

24 (6) The articles of incorporation of the surviving corporation are deemed to be amended
25 to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger;
26 or, in the case of a new corporation, the statements in the articles of merger which are required or
27 permitted to be stated in the articles of incorporation of corporations organized under this chapter
28 are deemed to be the original articles of incorporation of the new corporation.

29 (7) The shares of the corporation or corporations party to the plan that are, under the
30 terms of the plan, to be converted or exchanged, cease to exist, and the holders of the shares are
31 entitled only to the shares, obligations, other securities, cash, or other property into which they
32 have been converted or for which they have been exchanged in accordance with the plan, subject
33 to any rights under section 7-1.2-1201.

34 **7-1.2-1102. Sale of assets other than in regular course of business. [Effective July 1,**

1 **2005.] --** A sale, lease, exchange, or other disposition of all, or substantially all, the property and
2 assets, with or without the good will, of a corporation, if not in the usual and regular course of its
3 business, may be made upon terms and conditions and for any consideration, which may consist
4 in whole or in part of money or property, real or personal, including shares of any other
5 corporation, domestic or foreign, as is authorized in the following manner:

6 (a) The board of directors' adoption of a resolution recommending the sale, lease,
7 exchange, or other disposition, and directing the submission of the resolution to a vote at a
8 meeting of shareholders, which may be either an annual or a special meeting.

9 (b) Written notice must be given to each shareholder, whether or not entitled to vote at
10 the meeting, not less than twenty (20) days before the meeting, in the manner provided in this
11 chapter for the giving of notice of meeting of shareholders. The notice must state whether the
12 meeting is an annual or a special meeting, and that the purpose, or one of the purposes, is to
13 consider the proposed sale, lease, exchange, or other disposition. A statement of the shareholder's
14 right to dissent and a copy or summary of section 7-1.2-1202 must be included in or enclosed
15 with the notice.

16 (c) At the meeting the shareholders may authorize the sale, lease, exchange, or other
17 disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and
18 conditions of it and the consideration to be received by the corporation for it. The authorization
19 requires the affirmative vote of the holders of a majority of the shares of the corporation entitled
20 to vote on the authorization, unless any class of shares is entitled to vote on it as a class, pursuant
21 to the articles of incorporation, in which event approval of the resolution also requires the
22 affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote
23 as a class on the resolution.

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

28 (e) A transfer of all or substantially all of the property and assets of a corporation

29 (i) To one or more subsidiary corporations in which the transferor corporation owns
30 shares possessing at least two-thirds (2/3) of the total combined voting power of all classes of
31 shares entitled to vote at that time for election of directors, or

32 (ii) For cash, with or without an assumption of liabilities of the transferor corporation is
33 governed by the provisions of section 7-1.2-1101 and not by this section. The sale, lease,
34 exchange, or other disposition of all, or substantially all, the property and assets, with or without

1 the good will, of one or more subsidiaries in which the parent corporation owns shares possessing
2 two-thirds (2/3) or more of the total combined voting power of all classes of shares entitled at that
3 time to vote for the election of directors is treated as a disposition of all, or substantially all, the
4 property and assets of the parent corporation within the meaning of this section if the shares of
5 the subsidiary or subsidiaries constitute all or substantially all the property and assets of the
6 parent corporation.

7 **7-1.2-1201. Right of shareholders to dissent. [Effective July 1, 2005.]** -- (a) Any
8 shareholder of a corporation has the right to dissent from any of the following corporate actions:

9 (1) Any plan of merger to which the corporation is a party, provided articles of merger
10 have been filed in connection with the transaction under section 7-1.2-1003, unless the
11 corporation is the surviving corporation in a merger and the approval of its shareholders was not
12 required by virtue of the provisions of either section 7-1.2-1002 or section 7-1.2-1004; or

13 (2) Any sale or exchange of all or substantially all of the property and assets of a
14 corporation which requires the approval of the shareholders under section 7-1.2-1102.

15 (b) A shareholder may not dissent as to less than all of the shares registered in his [or her](#)
16 name which are owned beneficially by him [or her](#). A nominee or fiduciary may not dissent on
17 behalf of any beneficial owner as to less than all of the shares of the owner registered in the name
18 of the nominee or fiduciary.

19 (c) Unless otherwise provided in the articles of incorporation of the issuing corporation,
20 there is no right to dissent for the holders of the shares of any class or series which, on the date
21 fixed to determine the shareholders entitled to receive notice of the proposed transaction (or a
22 copy of the agreement of merger under section 7-1.2-1004), were:

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

26 (2) Held of record by not less than two thousand (2,000) shareholders.

27 (d) A shareholder entitled to the right to dissent under this section may not challenge a
28 completed corporate action for which the right to dissent is available unless such corporate action:

29 (1) Was not effectuated in accordance with the applicable provisions of this chapter or
30 the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the
31 corporate action; or

32 (2) Was procured as a result of fraud or material misrepresentation.

33 **7-1.2-1202. Rights of dissenting shareholders. [Effective July 1, 2005.]** -- (a) Any
34 shareholder electing to exercise the right of dissent shall file with the corporation, prior to or at

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

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

27 (c) Within ten (10) days after the corporate action is effected, the corporation, or, in the
28 case of a merger, the surviving or new corporation, domestic or foreign, shall give written notice
29 of the action to each dissenting shareholder who has made demand as provided in these
30 provisions, and shall make a written offer to each dissenting shareholder to pay for the shares at a
31 specified price deemed by the corporation to be the fair value of the shares. The notice and offer
32 must be accompanied by a balance sheet of the corporation the shares of which the dissenting
33 shareholder holds, as of the latest available date and not more than twelve (12) months prior to
34 the making of the offer, and a profit and loss statement of the corporation for the twelve (12)

1 month period ended on the date of the balance sheet.

2 (d) If within thirty (30) days after the date on which the corporate action was effected the
3 fair value of the shares is agreed upon between any dissenting shareholder and the corporation,
4 payment for the shares must be made within ninety (90) days after the date on which the
5 corporate action was effected, upon surrender of the certificate or certificates representing the
6 shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest
7 in the shares.

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

31 (f) The judgment should include an allowance for interest at the rate of interest on
32 judgments in civil actions from the date on which the vote was taken on the proposed corporate
33 action to the date of payment.

34 (g) The court shall determine and assess the costs and expenses of any proceeding

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

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

22 (i) Shares acquired by a corporation pursuant to payment of the agreed value for the
23 shares or to payment of the judgment entered for the shares, as provided in this section, may be
24 held and disposed of by the corporation. However, in the case of a merger, they may be held and
25 disposed of as the plan of merger otherwise provides.

26 **Part XIII. Dissolution and Revocation.**

27 **7-1.2-1301. Voluntary dissolution by incorporators. [Effective July 1, 2005.]** -- (a) A
28 corporation which has not commenced business and which has not issued any shares, may be
29 voluntarily dissolved by its incorporators at any time in the following manner:

30 (1) Articles of dissolution are executed by a majority of the incorporators, and verified
31 by them, and state:

32 (i) The name of the corporation.

33 (ii) The date of issuance of its certificate of incorporation.

34 (iii) That none of its shares ~~has~~ have been issued.

1 (iv) That the corporation has not commenced business.
2 (v) That the amount, if any, actually paid in on subscriptions for its shares, less any part
3 of the amount disbursed for necessary expenses, has been returned to those entitled to it.

4 (vi) That no debts of the corporation remain unpaid.

5 (vii) That a majority of the incorporators elect that the corporation be dissolved.

6 (2) The original articles of dissolution are delivered to the secretary of state. If the
7 secretary of state finds that the articles of dissolution conform to law, the secretary of state shall,
8 when all fees and franchise taxes have been paid:

9 (i) Endorse on the original the word "Filed," and the month, day, and year of the filing.

10 (ii) File the original in his [or her](#) office.

11 (iii) Issue a certificate of dissolution.

12 (b) The certificate of dissolution is delivered to the incorporators or their representative.

13 Upon the issuance of the certificate of dissolution by the secretary of state, the existence of the
14 corporation ceases.

15 **7-1.2-1302. Voluntary dissolution by consent of shareholders. [Effective July 1,**

16 **2005.]** -- (a) A corporation may be voluntarily dissolved by the written consent of all of its
17 shareholders entitled to vote thereon.

18 (b) Upon the adoption of the resolution:

19 (1) The corporation shall execute and file articles of dissolution in accordance with
20 sections 7-1.2-1308 and 7-1.2-1309.

21 (2) The corporation [shall](#) immediately ~~delivers~~ [deliver](#) notice of the filing to each known
22 creditor of the corporation.

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

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

33 **7-1.2-1303. Voluntary dissolution by act of corporation. [Effective July 1, 2005.]** -- A

34 corporation may be dissolved by the act of the corporation, when authorized in the following

1 manner:

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

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

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

16 (4) Upon the adoption of the resolution, the corporation shall execute and file articles of
17 dissolution in accordance with sections 7-1.2-1308 and 7-1.2-1309.

18 (5) The corporation shall immediately ~~delivers~~ deliver notice of the filing to each known
19 creditor of the corporation.

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

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

30 **7-1.2-1304. Revocation of voluntary dissolution proceedings by consent of**
31 **shareholders. [Effective July 1, 2005.]** -- (a) By the written consent of all of its shareholders
32 entitled to vote thereon, a corporation may, within one hundred twenty (120) days of its effective
33 date of the articles of dissolution, revoke voluntary dissolution proceedings previously taken, in
34 the following manner:

1 (b) Upon the execution of the written consent, a statement of revocation of voluntary
2 dissolution proceedings is executed by the corporation by its authorized representative. The
3 statement proclaims:

4 (1) The name of the corporation.

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

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

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

9 (5) That the written consent has been signed by all shareholders entitled to vote thereon
10 of the corporation or signed in their names by their authorized attorneys.

11 **7-1.2-1307. Effect of statement of revocation of voluntary dissolution proceedings.**

12 **[Effective July 1, 2005.]** -- (a) Upon the filing by the secretary of state of a statement of
13 revocation of voluntary dissolution proceedings, whether by consent of its shareholders or by act
14 of the corporation, the revocation of the voluntary dissolution proceedings becomes effective and
15 the corporation may again carry on its business.

16 (b) Revocation of dissolution is effective upon the effective date of the statement of
17 revocation of voluntary dissolution.

18 (c) When the revocation of dissolution is effective, it relates back to and takes effect as
19 of the effective date of the dissolution and the corporation resumes carrying on its business as if
20 dissolution had never occurred, except as subsequently provided.

21 (d) If, as permitted by the provisions of this title, another corporation, whether business
22 or nonprofit, limited partnership, limited liability partnership or limited liability company,
23 domestic or foreign, qualified to transact business in this state, bears or has filed a fictitious
24 business name statement with respect to or reserved or registered a name which is not the same
25 as, or deceptively similar to, the name of a corporation with respect to which the certificate of
26 revocation is proposed to be withdrawn, then the secretary of state shall condition effectiveness of
27 the statement of revocation of voluntary dissolution upon the amendment by the corporation
28 revoking voluntary dissolution proceedings of its articles of incorporation or otherwise complying
29 with the provisions of this chapter with respect to the use of a name available to it under the laws
30 of this state so as to designate a name which is the same as, or deceptively similar to, its former
31 name.

32 **7-1.2-1309. Filing of articles of dissolution. [Effective July 1, 2005.]** -- (a) The articles

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

1 been paid:

2 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.

3 (2) File the original in his [or her](#) office.

4 (3) Issue a certificate of dissolution.

5 (b) The certificate of dissolution is delivered to the representative of the dissolved
6 corporation. Upon the issuance of the certificate of dissolution the existence of the corporation
7 ceases, except for the purpose of suits, other proceedings, and appropriate corporate action by
8 shareholders, directors, and officers as provided in this chapter.

9 **7-1.2-1311. Issuance of certificates of revocation. [Effective July 1, 2005.]** -- (a) Upon
10 revoking any certificate of incorporation, the secretary of state shall:

11 (1) Issue a certificate of revocation;

12 (2) File the certificate in his [or her](#) office; and

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

20 (i) To the corporation at its principal office of record as shown in its most recent annual
21 report, and no further notice is required; or

22 (ii) In the case of a domestic corporation which has not yet filed an annual report, then to
23 any one of the incorporators listed on the articles of incorporation, and no further notice is
24 required.

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

27 (c) Notwithstanding anything to the contrary, the issuance of a certificate of revocation
28 of a corporation does not terminate the authority of its registered agent.

29 **7-1.2-1312. Withdrawal of certificate of revocation. [Effective July 1, 2005.]** -- (a)
30 Within ten (10) years after issuing a certificate of revocation as provided in section 7-1.2-1311,
31 the secretary of state may withdraw the certificate of revocation and retroactively reinstate the
32 corporation in good standing as if its articles of incorporation had not been revoked, except as
33 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) -- (6) of section 7-1.2-1310(a); and

2 (2) Upon the payment by the corporation of a penalty for each year or part of a year that
3 has elapsed since the issuance of the certificate of revocation.

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

14 (c) Upon the withdrawal of the certificate of revocation and reinstatement of the
15 corporation in good standing as provided in subsection (a) [of this section](#), title to any real estate,
16 or any interest in real estate, held by the corporation at the time of the issuance of the certificate
17 of revocation and not conveyed subsequent to the revocation of its articles of incorporation is
18 deemed to be revested in the corporation without further act or deed.

19 **7-1.2-1313. Appeal from revocation of articles of incorporation. [Effective July 1,**
20 **2005.]** -- Any corporation aggrieved by the action of the secretary of state in revoking its articles
21 of incorporation may appeal the action in the manner provided in section 7-1.2-1601.

22 **7-1.2-1314. Jurisdiction of court to liquidate assets and business of corporation.**
23 **[Effective July 1, 2005.]** -- (a) The superior court has full power to liquidate the assets and
24 business of a corporation:

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

28 (i) The directors or those other individuals that may be responsible for management
29 pursuant to section 7-1.2-1701(a) are deadlocked in the management of the corporate affairs and
30 the shareholders are unable to break the deadlock; or

31 (ii) The acts of the directors or those in control of the corporation are illegal, oppressive,
32 or fraudulent; or

33 (iii) The shareholders are deadlocked in voting power, and have failed, for a period
34 which includes at least two (2) consecutive annual meeting dates, to elect successors to directors

1 whose terms have expired or would have expired upon the election and qualification of their
2 successors; or

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

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

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

8 (2) (i) In an action by a creditor:

9 (A) When it is established that the corporation is insolvent; or

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

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

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

22 (3) When an action has been filed by the attorney general to dissolve a corporation and it
23 is established that liquidation of its business and affairs should precede the entry of a decree of
24 dissolution.

25 (b) Proceedings under ~~subsections~~ subdivisions (a)(1) or (a)(2) should be brought in the
26 county in which the registered or principal office of the corporation is situated.

27 (c) It is not necessary to make shareholders parties to any action or proceeding unless
28 relief is sought against them personally.

29 **7-1.2-1315. Avoidance of dissolution by share buyout. [Effective July 1, 2005.] --**

30 Whenever a petition for dissolution of a corporation is filed by one or more shareholders
31 (subsequently in this section referred to as the "petitioner") pursuant to either section 7-1.2-1314
32 or a right to compel dissolution which is authorized under section 7-1.2-1701 or is otherwise
33 valid, one or more of its other shareholders may avoid the dissolution by filing with the court
34 prior to the commencement of the hearing, or, in the discretion of the court, at any time prior to a

1 sale or other disposition of the assets of the corporation, an election to purchase the shares owned
2 by the petitioner at a price equal to their fair value. If the shares are to be purchased by other
3 shareholders, notice must be sent to all shareholders of the corporation other than the petitioner,
4 giving them an opportunity to join in the election to purchase the shares. If the parties are unable
5 to reach an agreement as to the fair value of the shares, the court shall, upon the giving of a bond
6 or other security sufficient to assure to the petitioner payment of the value of the shares, stay the
7 proceeding and determine the value of the shares, in accordance with the procedure set forth in
8 section 7-1.2-1202, as of the close of business on the day on which the petition for dissolution
9 was filed. Upon determining the fair value of the shares, the court shall state in its order directing
10 that the shares be purchased, the purchase price and the time within which the payment is to be
11 made, and may decree any other terms and conditions of sale that it determines to be appropriate,
12 including payment of the purchase price in installments extending over a period of time, and, if
13 the shares are to be purchased by shareholders, the allocation of shares among shareholders
14 electing to purchase them, which, so far as practicable, are to be proportional to the number of
15 shares previously owned. The petitioner is entitled to interest, at the rate on judgments in civil
16 actions, on the purchase price of the shares from the date of the filing of the election to purchase
17 the shares, and all other rights of the petitioner as owner of the shares terminate on that date. The
18 costs of the proceeding, which include reasonable compensation and expenses of appraisers but
19 not fees and expenses of counsel or of experts retained by a party, will be allocated between or
20 among the parties as the court determines. Upon full payment of the purchase price, under the
21 terms and conditions specified by the court, or at any other time that is ordered by the court, the
22 petitioner shall transfer the shares to the purchaser.

23 **7-1.2-1316. Procedure in liquidation of corporation by court. [Effective July 1,**
24 **2005.]** -- (a) In proceedings to liquidate the assets and business of a corporation, the court has
25 general equity jurisdiction and power to issue any orders, injunctions, and decrees that justice and
26 equity require, to appoint a receiver or receivers pendente lite, with any powers and duties that the
27 court, from time to time, directs, and to take any other proceedings that are requisite to preserve
28 the corporate assets wherever situated, and carry on the business of the corporation until a full
29 hearing can be had.

30 (b) After a hearing had upon any notice that the court directs to be given to all parties to
31 the proceedings and to any other parties in interest designated by the court, the court may appoint
32 a liquidating receiver or receivers with authority to take charge of any of the corporation's estate
33 and effects of which he or she has been appointed receiver and to collect the assets of the
34 corporation, including all amounts owing to the corporation whether by shareholders on account

1 of any unpaid portion of the consideration for the issuance of shares or otherwise.

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

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

19 (e) The court has power to allow from time to time as expenses of the liquidation
20 compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the
21 payment of the compensation out of the assets of the corporation or the proceeds of any sale or
22 disposition of the assets.

23 (f) The court appointing the receiver has exclusive jurisdiction of the corporation and its
24 property, wherever situated, and of all questions arising in the proceedings concerning the
25 property.

26 **7-1.2-1318. Filing of claims in liquidation proceedings. [Effective July 1, 2005.]** -- In
27 proceedings to liquidate the assets and business of a corporation, the court may require all
28 creditors of the corporation to file with the receiver, in any form that the court prescribes, proofs
29 under oath of their respective claims. If the court requires the filing of claims, it shall fix a date,
30 which is not to be less than four (4) months from the date of the order, as the last day for the
31 filing of claims, and shall prescribe the notice that is to be given to creditors and claimants of the
32 fixed date. Prior to the fixed date, the court may extend the time for the filing of claims. Creditors
33 and claimants failing to file proofs of claim on or before the fixed date may be barred, by court
34 order, from participating in the distribution of the assets of the corporation.

1 **7-1.2-1319. Discontinuance of liquidation proceedings. [Effective July 1, 2005.] --**

2 The liquidation of the assets and business of a corporation may be discontinued at any time
3 during the liquidation proceedings when it is established that cause for liquidation no longer
4 exists. In that event the court dismisses the proceedings, it shall direct the receiver to redeliver to
5 the corporation all its remaining property and assets, and shall order any notice to creditors that
6 the court deems proper under the circumstances.

7 **7-1.2-1323. Jurisdiction of court to appoint a receiver. [Effective July 1, 2005.] --**

8 Upon the establishment of any of the grounds for liquidation of the assets and business of

9 (1) A domestic corporation, or

10 (2) A foreign corporation, to the extent the foreign corporation has assets within the
11 state, stated in section 7-1.2-1314, and upon the establishment that the liquidation would not be
12 appropriate, the superior court has full power to appoint a receiver, with any powers and duties
13 that the court, from time to time, directs, and to take any other proceedings that the court deems
14 advisable under the circumstances. The provisions of sections 7-1.2-1314 -- 7-1.2-1322, insofar
15 as they are consistent with the nature of the proceeding, apply to the proceeding, and in the
16 proceeding the court has the full powers of a court of equity to make or enter any orders,
17 injunctions, and decrees and grant any other relief in the proceeding that justice and equity
18 require.

19 **7-1.2-1324. Survival of remedy after dissolution. [Effective July 1, 2005.] --** The

20 dissolution of a corporation either:

21 (a) By the issuance of a certificate of dissolution by the secretary of state; or

22 (b) By a decree of court when the court has not liquidated the assets and business of the
23 corporation as provided in this chapter; or

24 (c) By expiration of its period of duration; does not take away or impair any remedy
25 available to or against the corporation, its directors, officers, or shareholders, for any right or
26 claim existing, or any liability incurred, prior to the dissolution if action or other proceeding on
27 the right, claim, or liability is commenced within two (2) years after the date of the dissolution.

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

34 **7-1.2-1325. Continuation of certain corporate powers. [Effective July 1, 2005.] --**

1 Any corporation dissolved in any manner under this chapter or any corporation whose existence
2 is terminated under section 44-12-8 or any corporation whose articles of incorporation are
3 revoked by the secretary of state under section 71.2-1310 nevertheless continues for five (5)
4 years after the date of the dissolution, termination, or revocation for the purpose of enabling it to
5 settle and close its affairs, to dispose of and convey its property, to discharge its liabilities, and to
6 distribute its assets, but not for the purpose of continuing the business for which it was organized.
7 The shareholders, directors, and officers have power to take any corporate or other action that is
8 appropriate to carry out the purposes of this section.

9 **Part XIV. Foreign Corporations.**

10 **7-1.2-1401. Admission of foreign corporation and other entities. [Effective July 1,**
11 **2005.]** – (a) No foreign corporation has the right to transact business in this state until it has
12 procured a certificate of authority to do so from the secretary of state. No foreign corporation is
13 entitled to procure a certificate of authority under this chapter to transact any business in this state
14 which a corporation organized under this chapter is not permitted to transact. A foreign
15 corporation may not be denied a certificate of authority because the laws of the state or country
16 under which the corporation is organized governing its organization and internal affairs differ
17 from the laws of this state, and nothing contained in this chapter authorizes this state to regulate
18 the organization or the internal affairs of the corporation.

19 (b) Without excluding other activities which may not constitute transacting business in
20 this state, a foreign corporation is not considered to be transacting business in this state, for the
21 purposes of this chapter, because of carrying on in this state any one or more of the following
22 activities:

23 (1) Maintaining or defending any action or suit or any administrative or arbitration
24 proceeding, or effecting the settlement of the suit or the settlement of claims or disputes.

25 (2) Holding meetings of its directors or shareholders or carrying on other activities
26 concerning its internal affairs.

27 (3) Maintaining bank accounts.

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

30 (5) Effecting sales through independent contractors.

31 (6) Soliciting or procuring orders, whether by mail or through employees or agents or
32 otherwise, where the orders require acceptance outside of this state before becoming binding
33 contracts.

34 (7) Creating, as borrower or lender, or acquiring indebtedness or mortgages or other

1 security interests in real or personal property.

2 (8) Securing or collecting debts or enforcing any rights in property securing the debts.

3 (9) Transacting any business in interstate commerce.

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

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

9 (12) Acting as a member of a limited liability company which has registered with the
10 secretary of state as provided in section 7-16-49.

11 (c) Any "other entity", as defined in section 7-16-5.1(a), Massachusetts trust or business
12 trust established by law of any other state, desiring to do business in this state, is deemed to be a
13 foreign corporation and is required to register under, and comply with the provisions of, this
14 chapter.

15 **7-1.2-1403. Corporate name of foreign corporation. [Effective July 1, 2005.]** -- The
16 secretary of state shall not issue a certificate of authority or amended certificate of authority to a
17 foreign corporation unless the corporate name of the corporation:

18 (a) Contains the word "corporation," "company," "incorporated," or "limited," or
19 contains an abbreviation of one of these words, or the corporation, for use in this state, adds at the
20 end of its name one of the words or an abbreviation of the word.

21 (b) Does not contain any word or phrase which indicates or implies that it is organized
22 for any purpose other than one or more of the purposes contained in its articles or certificate of
23 incorporation or that it is authorized or empowered to conduct the business of any types
24 prohibited by section 7-1.2-301.

25 (c) Is not the same as, or deceptively similar to, the name of any entity on file with the
26 secretary of state or a name the exclusive right to which is, at the time, filed, reserved or
27 registered in the manner provided in this title, subject to the following:

28 (1) This provision does not apply if the foreign corporation applying for a certificate of
29 authority files with the secretary of state any one of the following:

30 (i) A fictitious business name statement pursuant to section 7-1.2-402; or

31 (ii) A certified copy of a final decree of a court of competent jurisdiction establishing the
32 prior right of the foreign corporation to the use of the name in this state; and

33 (2) The name may be the same as the name of a corporation or other association, the
34 articles of incorporation or organization of which has been revoked by the secretary of state and

1 the revocation has not been withdrawn within one year from the date of the revocation.

2 **7-1.2-1404. Change of name by foreign corporation. [Effective July 1, 2005.] --**

3 Whenever a foreign corporation which is authorized to transact business in this state changes its
4 name to one that does not satisfy the requirements of section 7-1.2-1403, it may not transact
5 business in this state under the changed name until it adopts a name satisfying the requirements of
6 section 7-1.2-1403 and obtains an amended certificate of authority under section 7-1.2-~~1406~~
7 [1411](#).

8 **7-1.2-1405. Application for certificate of authority. [Effective July 1, 2005.] --** In

9 order to procure a certificate of authority to transact business in this state, a foreign corporation
10 must make application for the certificate of authority to the secretary of state, which application
11 includes:

12 (a) The name of the corporation and the state or country under the laws of which it is
13 incorporated.

14 (b) The name which the corporation elects to use in this state in accordance with [section](#)
15 7-1.2-1403.

16 (c) The date of incorporation and the period of duration of the corporation.

17 (d) The address of the principal office of the corporation in the state or country under the
18 laws of which it is incorporated.

19 (e) The name and address of its proposed registered agent in this state ~~at the address~~.

20 (f) The purpose or purposes of the corporation which it proposes to pursue in the
21 transaction of business in this state.

22 (g) The names and respective addresses of the directors of the corporation if the state or
23 country under the laws of which it was incorporated requires that it have directors and if it does
24 and need not, then the names and respective addresses of its principal officers.

25 (h) A statement of the aggregate number of shares which the corporation has authority to
26 issue, itemized by classes, par value of shares, shares without par value, and series, if any, within
27 a class.

28 (i) An estimate, expressed as a percentage, of the proportion that the estimated value of
29 the property of the corporation to be located within this state during the following year bears to
30 the value of all property of the corporation to be owned during the following year, wherever
31 located, and an estimate, expressed as a percentage, of the proportion that the gross amount of
32 business to be transacted by the corporation at or from places of business in this state during the
33 following year bears to the gross amount which will be transacted by the corporation during the
34 following year.

1 **7-1.2-1406. Filing of application for certificate of authority. [Effective July 1, 2005.]**

2 -- (a) A foreign corporation must deliver the application for a certificate of authority to the
3 secretary of state, together with a certificate of good standing issued by the proper officer of the
4 state or country under the laws of which it is incorporated.

5 (b) If the secretary of state finds that the application conforms to law, the secretary of
6 state shall, when all fees have been paid:

7 (1) Endorse on the original of the application the word "Filed," and the month, day, and
8 year of the filing.

9 (2) File in his [or her](#) office the original of the application and a certificate of good
10 standing issued by the proper officer of the state or country under the laws of which it is
11 incorporated.

12 (3) Issue a certificate of authority to transact business in this state.

13 (c) The secretary of state shall deliver the certificate of authority to the corporation or its
14 representative.

15 **7-1.2-1408. Registered office and registered agent of foreign corporation. [Effective**

16 **July 1, 2005.]** -- (a) Each foreign corporation authorized to transact business in this state must
17 have and continuously maintain in this state a registered agent, who is either:

18 (1) An individual resident in this state; or

19 (2) ~~Corporation,~~ [A corporation](#), limited partnership, [limited liability partnership](#), limited
20 liability company, and in each case either domestic or one authorized to transact business in this
21 state.

22 (b) Foreign corporations who are the holders of mortgages on real estate located within
23 this state which do not maintain the loan documentation and records within the state shall
24 authorize the registered agent to accept mortgage discharge payment and to issue a discharge of
25 the mortgages upon the payment.

26 **7-1.2-1409. Change of registered office or registered agent of foreign corporation.**

27 **[Effective July 1, 2005.]** -- (a) A foreign corporation authorized to transact business in this state
28 may change its registered office or change its registered agent, or both, upon filing in the office of
29 the secretary of state a statement stating:

30 (1) The name of the corporation.

31 (2) The address of its then registered office.

32 (3) If the address of its registered office is changed, the address to which the registered
33 office is to be changed.

34 (4) The name of its then registered agent.

1 (5) If its registered agent is changed, the name of its successor registered agent.

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

4 (b) The statement must be executed by an authorized representative of the corporation
5 and delivered to the secretary of state. If the secretary of state finds that the statement conforms to
6 the provisions of this chapter, the secretary of state shall file the statement in his or her office, and
7 upon the filing, the change of address of the registered office, or the appointment of a new
8 registered agent, or both, becomes effective.

9 (c) Any registered agent of a foreign corporation may resign as the agent upon filing a
10 written notice of resignation with the secretary of state, who shall immediately mail a copy of the
11 notice to the corporation at its principal office in the state or country under the laws of which it is
12 incorporated. The appointment of the agent terminates upon the expiration of thirty (30) days
13 after receipt of the notice by the secretary of state.

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

20 **7-1.2-1410. Service of process on foreign corporation. [Effective July 1, 2005.]** -- (a)
21 The registered agent appointed by a foreign corporation authorized to transact business in this
22 state is an agent of the corporation upon whom any process, notice, or demand required or
23 permitted by law to be served upon the corporation may be served.

24 (b) Whenever a foreign corporation authorized to transact business in this state fails to
25 appoint or maintain a registered agent in this state, or whenever any registered agent cannot with
26 reasonable diligence be found at the registered office, or whenever the certificate of authority of a
27 foreign corporation is suspended or revoked, the secretary of state is an agent of the corporation
28 upon whom any process, notice, or demand may be served. Service on the secretary of state of
29 any process, notice, or demand must be made by delivering to and leaving with him or her, or
30 with any clerk having charge of the corporation department of his or her office, duplicate copies
31 of the process, notice, or demand. In the event any process, notice, or demand is served on the
32 secretary of state, the secretary of state shall immediately forward one of the copies by registered
33 mail, addressed to the corporation at its principal office if known to him or her, in the state or
34 country under the laws of which it is incorporated. Any service had in this manner on the

1 secretary of state is returnable in not less than thirty (30) days.

2 (c) Every foreign corporation as a condition precedent to carrying on business in this
3 state must, and by so carrying on business in this state does, consent that any process, including
4 the process of garnishment, may be served upon the secretary of state in the manner provided by
5 this section, except that notice of the service must be given by the plaintiff or his [or her](#) attorney
6 in the manner as the court in which the action is commenced or pending orders as affording the
7 corporation reasonable opportunity to defend the action or to learn of the garnishment.
8 Notwithstanding the preceding requirements, however, once service has been made on the
9 secretary of state as provided, the court has the authority in the event of failure to comply with the
10 requirement of notice to the foreign corporation to order notice that is sufficient to apprise it of
11 the pendency of the action against it, and additionally, may extend the time for answering by the
12 foreign corporation.

13 (d) The secretary of state shall keep a record of all processes, notices, and demands
14 served upon him [or her](#) under this section, and record in the record the time of the service and his
15 [or her](#) action on it.

16 (e) Nothing contained in these provisions limits or affects the right to serve any process,
17 notice, or demand, required or permitted by law to be served upon a corporation in any manner
18 now or subsequently permitted by law.

19 **7-1.2-1413. Filing of application for withdrawal. [Effective July 1, 2005.]** -- (a) An
20 original application for withdrawal must be delivered to the secretary of state. If the secretary of
21 state finds that the application conforms to the provisions of this chapter, the secretary of state
22 shall, when all fees and taxes have been paid:

23 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.

24 (2) File the original in his [or her](#) office.

25 (3) Issue a certificate of withdrawal.

26 (b) The secretary of state shall deliver the certificate of withdrawal to the corporation or
27 its representative. Upon the issuance of the certificate of withdrawal, the authority of the
28 corporation to transact business in this state ceases.

29 **7-1.2-1415. Issuance of certificate of revocation. [Effective July 1, 2005.]** -- (a) Upon
30 revoking any certificate of authority, the secretary of state shall:

31 (1) Issue a certificate of revocation.

32 (2) File the certificate in his [or her](#) office.

33 (3) Send to the corporation by regular mail the certificate of revocation, addressed to the
34 registered office of the corporation in this state on file with the secretary of state's office;

1 provided, however, that if a prior mailing addressed to the registered agent of the corporation in
2 this state currently on file with the secretary of state's office has been returned to the secretary of
3 state as undeliverable by the United States Postal Service for any reason, or if the revocation
4 certificate is returned as undeliverable to the secretary of state's office by the United States Postal
5 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 is required; or

8 (ii) In the case of a foreign corporation that has not yet filed an annual report then to the
9 corporation at its principal office shown in its application for certificate of authority, and no
10 further notice is 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 **7-1.2-1416. Withdrawal of certificate of revocation. [Effective July 1, 2005.] --** (a)
14 Within ten (10) years after issuing a certificate of revocation as provided in section 7-1.2-1415,
15 the secretary of state may withdraw the certificate of revocation and retroactively reinstate the
16 corporation in good standing as if its certificate of incorporation had not been revoked, except as
17 subsequently provided:

18 (1) Upon the filing by the corporation of the documents it had previously failed to file as
19 set forth in ~~subsections~~ subdivisions (a)(1) -- (a)(4) of section 7-1-2-1414.

20 (2) Upon the payment by the corporation of a penalty for each year or part of a year that
21 has elapsed since the issuance of the certificate of revocation; and

22 (3) Upon the filing by the corporation of a certificate of good standing from the Rhode
23 Island ~~Division of Taxation~~ division of taxation.

24 (b) If, as permitted by the provisions of this title, another corporation, whether business
25 or nonprofit limited partnership, limited liability partnership or limited liability company, or
26 domestic or foreign, qualified to transact business in this state, bears or has filed a fictitious
27 business name statement with respect to or reserved or registered a name which is not the same
28 as, or deceptively similar to, the name of a corporation with respect to which the certificate of
29 revocation is proposed to be withdrawn, then the secretary of state shall condition the withdrawal
30 of the certificate of revocation upon the reinstated corporation's amending its articles of
31 incorporation or otherwise complying with the provisions of this chapter with respect to the use
32 of a name available to it under the laws of this state so as to designate a name which is not the
33 same as, or deceptively similar to, its former 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 **7-1.2-1417. Application to corporations previously authorized to transact business in**
6 **this state. [Effective July 1, 2005.]** -- Foreign corporations which are authorized to transact
7 business in this state as of May 14, 1969, for a purpose or purposes for which a corporation might
8 secure authority under this chapter, are, subject to the limitations stated in their certificates of
9 authority, entitled to all the rights and privileges applicable to foreign corporations procuring
10 certificates of authority to transact business in this state under this chapter, and as of May 14,
11 1969, the corporations are subject to all the limitations, restrictions, liabilities, and duties
12 prescribed in these provisions for foreign corporations procuring certificates of authority to
13 transact business in this state under this chapter.

14 **7-1.2-1418. Transacting business without certificate of authority. [Effective July 1,**
15 **2005.]** -- (a) No foreign corporation transacting business in this state without a certificate of
16 authority is permitted to maintain any action, suit, or proceeding in any court of this state, until
17 the corporation has obtained a certificate of authority. Nor may any action, suit, or proceeding be
18 maintained in any court of this state by any successor or assignee of the corporation on any right,
19 claim, or demand arising out of the transaction of business by the corporation in this state, until a
20 certificate of authority has been obtained by the corporation or by its successor.

21 (b) The failure of a foreign corporation to obtain a certificate of authority to transact
22 business in this state does not impair the validity of any contract or act of the corporation, and
23 does not prevent the corporation from defending any action, suit, or proceeding in any court of
24 this state.

25 (c) A foreign corporation which transacts business in this state without a certificate of
26 authority is liable to this state, for the years or parts of years during which it transacted business
27 in this state without a certificate of authority, in an amount equal to all fees and franchise taxes
28 which would have been imposed upon the corporation had it duly applied for and received a
29 certificate of authority to transact business in this state as required by this chapter and
30 subsequently filed all reports required by this chapter, plus all penalties imposed by this chapter
31 for failure to pay the fees and franchise taxes. The attorney general may bring proceedings to
32 recover all amounts due this state under the provisions of this section.

33 (d) The ~~Superior Court~~ [superior court](#) has jurisdiction to enjoin any foreign corporation,
34 or any agent of a foreign corporation, from transacting any business in this state if the corporation

1 fails to comply with any section of this chapter applicable to it or if the corporation secured a
2 certificate of the secretary of state under sections 7-1.2-1405 and 7-1.2-1406 on the basis of false
3 or misleading representations. The attorney general may, upon motion or upon the relation of
4 proper parties, proceed for this purpose by complaint in any county in which the corporation is
5 doing business.

6 **Part XV. Reports and Records.**

7 **7-1.2-1501. Annual reports of domestic and foreign corporations. [Effective July 1,**

8 **2005.]** -- (a) Each domestic corporation, and each foreign corporation authorized to transact
9 business in this state, shall file, within the time prescribed by this chapter, an annual report
10 stating:

11 (1) The name of the corporation and the state or country under the laws of which it is
12 incorporated;

13 (2) A brief statement of the character of the business in which the corporation is actually
14 engaged in this state;

15 (3) The names and respective addresses of the directors and officers of the corporation;

16 (4) A statement of the aggregate number of shares which the corporation has authority to
17 issue, itemized by classes, par value of shares, if any, and series, if any, within a class;

18 (5) A statement of the aggregate number of issued shares, itemized by classes, par value
19 of shares, if any, and series, if any, within a class;

20 (6) Any additional information that is required by the secretary of state.

21 (b) The annual report must be made on forms prescribed and furnished by the secretary
22 of state, and the information contained therein must be given as of the date of the execution of the
23 report. It must be executed on behalf of the corporation by its authorized representative, or, if the
24 corporation is in the hands of a receiver or trustee, it must be executed on behalf of the
25 corporation by the receiver or trustee.

26 (c) The annual report of a domestic or foreign corporation must be delivered to the
27 secretary of state between January 1st and the March 1st of each year, except that the first annual
28 report of a domestic or foreign corporation must be filed between January 1st and March 1st of
29 the year following the calendar year in which its articles of incorporation were filed with or its
30 certificate of authority was issued by the secretary of state. Proof to the satisfaction of the
31 secretary of state that prior to March 1st the report was deposited in the United States mail in a
32 sealed envelope, properly addressed, with postage prepaid, is deemed to be a compliance with
33 this requirement.

34 (d) If the secretary of state finds that the annual report conforms to the requirements of

1 this chapter, the secretary of state shall file the report. If the secretary of state finds that it does
2 not conform, the secretary of state shall promptly return the report to the corporation for any
3 necessary corrections, in which event the penalties subsequently prescribed for failure to file the
4 report within the time previously provided do not apply if the report is corrected to conform to the
5 requirements of this chapter and returned to the secretary of state within thirty (30) days from the
6 date on which it was mailed to the corporation by the secretary of state.

7 (e) Each corporation, domestic or foreign, that fails or refuses to file its annual report for
8 any year within thirty (30) days after the time prescribed by this chapter is subject to a penalty of
9 twenty-five dollars (\$25.00) per year.

10 **7-1.2-1502. Books and records. [Effective July 1, 2005.]** -- (a) Each corporation shall
11 keep correct and complete books and records of account, keep minutes of the proceedings of its
12 shareholders and of the board of directors and committees of the board, and shall also keep at its
13 registered office or principal place of business, legal counsel's office, or at the office of its
14 transfer agent or registrar, a record of its shareholders giving the names and addresses of all
15 shareholders and the number and class of the shares held by each. Any books, records, and
16 minutes may be in written form or any other form capable of being converted into written form
17 within a reasonable time.

18 (b) Any director, shareholder or holder of voting trust certificates for shares of a
19 corporation, upon written demand stating the purpose for the demand, has the right to examine, in
20 person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its
21 relevant books and records of account, minutes, and record of shareholders and to make extracts
22 from those books and records of account, minutes, and record of shareholders.

23 (c) Any officer or agent who, or a corporation which, refuses to allow any shareholder or
24 holder of voting trust certificates, or his or her agent or attorney, to examine and make extracts
25 from its books and records of account, minutes, and record of shareholders, for any proper
26 purpose, is liable to the shareholder or holder of voting trust certificates in a penalty of ten
27 percent (10%) of the value of the shares owned by the shareholder, or in respect of which the
28 voting trust certificates are issued, in addition to any other damages or remedy afforded him or
29 her by law. It is a defense to any action for penalties under this section that the person bringing
30 the suit has within two (2) years sold or offered for sale any list of shareholders or of holders of
31 voting trust certificates for shares of the corporation or any other corporation or has aided or
32 abetted any person in procuring any list of shareholders or of holders of voting trust certificates
33 for that purpose, or has improperly used any information secured through any prior examination
34 of the books and records of account, or minutes, or record of shareholders, or of holders of voting

1 trust certificates for shares of the corporation or any other corporation, or was not acting in good
2 faith or for a proper purpose in making his [or her](#) demand.

3 (d) Nothing contained in these provisions impairs the power of any court of competent
4 jurisdiction, upon proof by a director, shareholder or holder of voting trust certificates of proper
5 purpose, to compel the production for examination by the director, shareholder or holder of
6 voting trust certificates of the books and records of account, minutes, and record of shareholders
7 of a corporation.

8 (e) Upon the written request of any director, shareholder or holder of voting trust
9 certificates for shares of a corporation, the corporation shall mail to the director, shareholder or
10 holder of voting trust certificates its most recent financial statements showing in reasonable detail
11 its assets and liabilities and the results of its operations.

12 **Part XVI. The Secretary of State and Fees.**

13 **7-1.2-1601. The secretary of state. [Effective July 1, 2005.]** -- (a) The secretary of state
14 has the reasonably necessary power and authority to enable him [or her](#) to administer this chapter
15 efficiently and to perform the duties imposed upon the secretary by this chapter.

16 (b) The secretary of state shall charge and collect in accordance with the provisions of
17 this chapter:

18 (1) Fees for filing documents and issuing certificates.

19 (2) Miscellaneous charges.

20 (3) License fees.

21 (c) The secretary of state shall, between the first [\(1st\)](#) and fifteenth [\(15th\)](#) day of each
22 month, make an itemized return, in writing, to the state controller of the amount of all fees and
23 charges collected by him [or her](#) in the prior month, and pay to the general treasurer all of the state
24 moneys in his [or her](#) hands.

25 (d) All reports required by this chapter to be filed in the office of the secretary of state
26 must be made on forms which are prescribed and furnished by the secretary of state. Forms for all
27 other documents to be filed in the office of the secretary of state may be furnished by the
28 secretary of state on request for the forms, but the use of the forms, unless otherwise specifically
29 prescribed in this chapter, is not mandatory.

30 (e) (1) If the secretary of state fails to approve any articles of incorporation, amendment,
31 merger, or dissolution, or any other document required by this chapter to be approved by the
32 secretary of state before the document is filed in his [or her](#) office, the secretary of state shall,
33 within ten (10) days after the delivery of the document to the secretary of state, give written
34 notice of disapproval to the person or corporation, domestic or foreign, delivering the document,

1 specifying the reasons for the disapproval. From the disapproval the person or corporation may
2 appeal to the superior court of the county in which the registered office of the corporation is, or is
3 proposed to be, situated by filing with the clerk of the court a petition setting forth a copy of the
4 articles or other document sought to be filed and a copy of the written disapproval of the
5 document by the secretary of state; at which time the matter may be tried de novo by the court,
6 and the court shall either sustain the action of the secretary of state or direct the secretary to take
7 any action that the court deems proper.

8 (2) If the secretary of state revokes the certificate of authority to transact business in this
9 state of any foreign corporation pursuant to the provisions of sections 7-1.2-1414 and 7-1.2-1415,
10 in addition to the remedy provided in section 7-1.2-1416, the foreign corporation may likewise
11 appeal to the superior court of the county where the registered office of the corporation in this
12 state is situated, by filing with the clerk of the court a petition setting forth a copy of its certificate
13 of authority to transact business in this state and a copy of the notice of revocation given by the
14 secretary of state; at that time the matter may be tried de novo by the court, and the court shall
15 either sustain the action of the secretary of state or direct the secretary to take any action that the
16 court deems proper.

17 (3) Appeals from all final orders and judgments entered by the superior court under this
18 section in review of any ruling or decision of the secretary of state may be taken as in other civil
19 actions.

20 **7-1.2-1602. Fees and charges payable to the secretary of state upon filing, certifying**
21 **or copying of papers. [Effective July 1, 2005.]** -- (a) The secretary of state shall charge and
22 collect for filing:

23 (1) Articles of incorporation and issuing a certificate of incorporation, seventy dollars
24 (\$70.00).

25 (2) Articles of amendment and issuing a certificate of amendment, fifty dollars (\$50.00).

26 (3) Restated articles of incorporation, seventy dollars (\$70.00).

27 (4) Articles of merger or consolidation and issuing a certificate of merger or
28 consolidation, one hundred dollars (\$100).

29 (5) An application to reserve a corporate name, fifty dollars (\$50.00).

30 (6) A notice of transfer of a reserved corporate name, fifty dollars (\$50.00).

31 (7) (i) Filing a statement of change of registered agent and registered office or filing a
32 statement of change of registered agent, twenty dollars (\$20.00).

33 (ii) Filing a statement of change of registered office only, without fee.

34 (8) A statement of the establishment of a series of shares, ten dollars (\$10.00).

- 1 (9) A statement of cancellation of shares, ten dollars (\$10.00).
- 2 (10) A statement of reduction of stated capital, ten dollars (\$10.00).
- 3 (11) A statement of intent to dissolve, without fee.
- 4 (12) A statement of revocation of voluntary dissolution proceedings, ten dollars
5 (\$10.00).
- 6 (13) Articles of dissolution, fifty dollars (\$50.00).
- 7 (14) An application of a foreign corporation for a certificate of authority to transact
8 business in this state and issuing a certificate of authority, one hundred fifty dollars (\$150).
- 9 (15) An application of a foreign corporation for an amended certificate of authority to
10 transact business in this state and issuing an amended certificate of authority, seventy-five dollars
11 (\$75.00).
- 12 (16) A copy of an amendment to the articles of incorporation of a foreign corporation
13 holding a certificate of authority to transact business in this state, fifty dollars (\$50.00).
- 14 (17) A copy of articles of merger of a foreign corporation holding a certificate of
15 authority to [transact business in this state, fifty dollars \(\\$50.00\)](#).
- 16 (18) An application for withdrawal of a foreign corporation and issuing a certificate of
17 withdrawal, fifty dollars (\$50.00).
- 18 (19) An annual report, fifty dollars (\$50.00).
- 19 (20) Registered name application, fifty dollars (\$50.00).
- 20 (21) Certificate of good standing/letter of status, twenty dollars (\$20.00).
- 21 (22) Certificate of fact, thirty dollars (\$30.00).
- 22 (23) Any other statement or report, except an annual report, of a domestic or foreign
23 corporation, ten dollars (\$10.00).
- 24 (b) The secretary of state shall charge and collect:
- 25 (1) To withdraw the certificate of revocation or a corporation, whether domestic or
26 foreign, a penalty in the amount of [fifty dollars](#) (\$50.00) for each year or part of a year that has
27 elapsed since the issuance of the certificate of revocation.
- 28 (2) For furnishing a certified copy of any document, instrument, or paper relating to a
29 corporation, fifteen cents ~~\$.15/~~ [\(\\$0.15\)](#) per page and [ten dollars](#) (\$10.00) for the certificate and
30 affixing the seal to it.
- 31 (3) At the time of any service of process on him [or her](#) as resident agent of a corporation,
32 [fifteen dollars](#) (\$15.00), which amount may be recovered as taxable costs by the party to the suit
33 or action making the service if the party prevails in the suit or action.
- 34 (c) (1) The secretary of state shall charge and collect from each domestic corporation

1 license fees, based on the number of shares which it has authority to issue or the increase in the
2 number of shares which it has authority to issue, at the time of:

- 3 (i) Filing articles of incorporation;
- 4 (ii) Filing articles of amendment increasing the number of authorized shares; and
- 5 (iii) Filing articles of merger increasing the number of authorized shares which the
6 surviving or new corporation, if a domestic corporation, has the authority to issue above the
7 aggregate number of shares which the constituent domestic corporations and constituent foreign
8 corporations authorized to transact business in this state had authority to issue.

9 (2) The license fees charged to a domestic corporation are as follows:

- 10 (i) One hundred sixty dollars (\$160) for less than seventy-five million (75,000,000)
11 authorized shares and
- 12 (ii) One-fifth (1/5) cent per share of each authorized share for seventy-five million
13 (75,000,000) 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:

- 25 (i) One hundred sixty dollars (\$160) for less than seventy-five million (75,000,000)
26 authorized shares represented in the State of Rhode Island and
- 27 (ii) One-fifth (1/5) cent per share of each authorized share for 75,000,000 shares or
28 greater.

29 (3) The above license fee calculations also apply when a corporation files an amendment
30 or merger showing an increase in authorized shares.

31 (4) The number of authorized shares represented in this state is that proportion of its total
32 authorized shares which the sum of the value of its property located in this state and the gross
33 amount of business transacted by it at or from places of business in this state bears to the sum of
34 the value of all of its property, wherever located, and the gross amount of its business, wherever

1 transacted. The proportion is determined from information contained in the application for a
2 certificate of authority to transact business in this state or in the application for an amended
3 certificate of authority to transact business in this state.

4 **7-1.2-1604. Interrogatories. [Effective July 1, 2005.]** -- (a) The secretary of state may
5 propound to any domestic or foreign corporation subject to the provisions of this chapter, and to
6 any of its officers or directors, any interrogatories that may be reasonably necessary and proper to
7 enable the secretary of state to ascertain whether the corporation has complied with all the
8 applicable provisions of this chapter. The interrogatories must be answered within thirty (30) days
9 after their mailing, or within any additional time that is fixed by the secretary of state, and the
10 answers to the interrogatories must be full and complete and made in writing and under oath. If
11 the interrogatories are directed to an individual, they must be answered by him [or her](#), and if
12 directed to a corporation they must be answered by the president, vice president, secretary, or
13 assistant secretary of the corporation. The secretary of state need not file any document to which
14 the interrogatories relate until the interrogatories are answered as provided in these provisions,
15 and not then if the interrogatory answers disclose that the document is not in conformity with the
16 provisions of this chapter. The secretary of state shall certify to the attorney general, for any
17 action that the attorney general deems appropriate, all interrogatories and their answers which
18 disclose a violation of any of the provisions of this chapter.

19 (b) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and
20 fully within the time prescribed by this chapter interrogatories propounded by the secretary of
21 state, in accordance with the provisions of this chapter, is guilty of a misdemeanor and upon
22 conviction of it may be fined in any amount not exceeding five hundred dollars (\$500).

23 (c) Interrogatories propounded by the secretary of state and the answers to the
24 interrogatories are not open to public inspection, nor may the secretary of state disclose any facts
25 or information obtained from them except insofar as the secretary's official duty requires the facts
26 or information to be made public or in the event the interrogatories or their answers are required
27 for evidence in any criminal proceedings or in any other action by this state.

28 **7-1.2-1605. Certificates and certain copies to be received in evidence. [Effective July**
29 **1, 2005.]** – All certificates issued by the secretary of state in accordance with the provisions of
30 this chapter, and all copies of documents filed in his [or her](#) office in accordance with the
31 provisions of this chapter when certified by the secretary, is prima facie evidence of the facts
32 stated in them. A certificate by the secretary of state under the great seal of this state, as to the
33 existence or nonexistence of the facts relating to corporations is prima facie evidence of the
34 existence or nonexistence of the facts stated in them.

1 Part XVII. Close corporations.

2 7-1.2-1701. Close corporations. [Effective July 1, 2005.] -- (a) Provisions of the articles

3 of incorporation or bylaws of a corporation organized under this chapter, or provisions of an
4 agreement relating to a corporation, which would otherwise be invalid because they:

5 (1) Restrict, or assign to one or more shareholders or other individuals, any or all of the
6 powers normally vested in the board of directors or provide that there is no board of directors; or

7 (2) Grant the right to one or more shareholders to dissolve the corporation at will or on
8 the occurrence of a specified contingency; or

9 (3) Impose too great a restraint on the transfer of shares of the corporation; are
10 nevertheless valid if the provisions have been approved by all the shareholders of the corporation
11 and if the corporation's original or amended articles of incorporation contain a heading
12 immediately after the name of the corporation stating that it is a close corporation pursuant to
13 section 7-1.2-1701. This subsection does not invalidate any provision in articles of incorporation,
14 bylaws, or agreements that would otherwise be valid.

15 (b) The provisions of section 7-1.2-709 limiting the duration of a voting trust or
16 shareholders' agreement to ten (10) years is not be applicable to a close corporation that complies
17 with subsection (a). If close corporation status is terminated pursuant to subsection (d), the
18 effective term of voting trust or shareholders' agreement is ten (10) years from the termination or
19 the term provided therein, whichever is shorter.

20 (c) The effect of any provision authorized by ~~subsection~~ subdivision (a)(1) is to relieve
21 the directors and to impose on the individual or individuals undertaking to exercise responsibility
22 the liability for managerial acts or omissions that would otherwise be imposed on directors to the
23 extent that and so long as the discretion or powers of the board in its management of corporate
24 affairs is controlled by any such provision. Action which is valid pursuant to ~~subsection~~
25 subdivision (a)(1) is deemed to be action by the board of directors for purposes of compliance
26 with any provision of this chapter providing for action by the board of directors.

27 (d) If a close corporation's original or amended articles of incorporation so provide, the
28 corporation need not hold an annual meeting of shareholders unless one or more shareholders
29 deliver written notice to the corporation requesting a meeting at least thirty (30) days before the
30 meeting date stated or fixed in accordance with the bylaws of the corporation.

31 (e) (1) The articles of incorporation must be amended to terminate close corporation
32 status pursuant to this section if:

33 (i) All of the shareholders, or such lesser number as may be specified in the articles of
34 incorporation, the bylaws, or an agreement relating to the corporation, approve the termination; or

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

4 (iii) Any individual who acquires of record shares of the corporation without notice or
5 knowledge of its close corporation status demands termination; provided, that notice shall be
6 conclusively presumed if certificates representing the shares so acquired state on their face, under
7 the name of the corporation, that it is a close corporation pursuant to this section.

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

12 **Part XVIII. Miscellaneous**

13 **7-1.2-1804. Applicability to corporations created by special acts. [Effective July 1,**
14 **2005.] --** The provisions of this chapter apply to all existing corporations previously or
15 subsequently created by any special act of the general assembly of a kind that could be organized
16 under this chapter, except insofar as the provisions are inconsistent with the provisions of any
17 applicable special act passed after May 5, 1920 or with the provisions of any applicable special
18 act passed that are not subject to amendment or repeal at the will of the general assembly. A
19 corporation created by special act of the kind that could be organized under this chapter, but
20 whose charter is not subject to amendment, repeal, or modification by the general assembly, may
21 at a called meeting for the purpose, by a unanimous vote of its shareholders or members, adopt
22 the provisions of this chapter upon the filing in the office of the secretary of state of a certified
23 copy of the vote, attested by its president or vice president and its secretary or assistant secretary
24 under its corporate seal, and the payment to the secretary of state of the fee prescribed by section
25 7-1.2-1602. The corporation is subsequently governed in all respects by the provisions of this
26 chapter and its charter shall subsequently be subject to amendment or repeal at the will of the
27 general assembly.

28 SECTION 2. This act shall take effect upon passage.

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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 amend various sections of the Rhode Island Business Corporation Act.
- 2 This act would take effect upon passage.

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