

SENATE BILL NO. 325

INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE

5 MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH

6 THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL

7 TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING

8 FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE

9 DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF

10 DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF

11 INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY

12 POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING

13 RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS;

14 PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR

15 SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS;

16 PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS,

17 DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR

18 DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS,

19 OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST

20 TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND

21 CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING

22 FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT

23 TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF

24 APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER

25 REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION;

26 PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING

27 FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION,

28 AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF

29 CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112,

30 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104,



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2 **NEW SECTION. Section 3. Requirements for documents -- extrinsic facts.** (1) A document must  
3 satisfy the requirements of this section and any other section that adds to or varies these requirements to be  
4 entitled to filing by the secretary of state.

5 (2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of  
6 state.

7 (3) The document must contain the information required by [sections 1 through 221] and may contain  
8 other information.

9 (4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that  
10 can be retrieved or reproduced in typewritten or printed form.

11 (5) The document must be in the English language. A corporate name need not be in English if written  
12 in English letters or Arabic or Roman numerals.

13 (6) The document must be signed:

14 (a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by  
15 another of its officers;

16 (b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

17 (c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that  
18 fiduciary.

19 (7) The person executing the document shall sign it and state beneath or opposite the signature the  
20 person's name and the capacity in which the document is signed. The document may but need not contain a  
21 corporate seal, attestation, acknowledgment, or verification.

22 (8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the  
23 document must be in or on the prescribed form.

24 (9) The document must be delivered to the office of the secretary of state for filing. ~~Delivery may be made~~  
25 ~~by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or~~  
26 ~~printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy~~  
27 ~~to be delivered with the document. THE SECRETARY OF STATE MAY AUTHORIZE SHALL ALLOW MAY AUTHORIZE~~  
28 EXCEPTIONS TO THE REQUIREMENT OF FILING DOCUMENTS BY ELECTRONIC TRANSMISSION.

29 (10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee  
30 and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the

1 time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of  
2 state.

3 (11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed  
4 document to be dependent on facts objectively ascertainable outside the plan or filed document, the following  
5 provisions apply:

6 (a) The manner in which the facts will operate on the terms of the plan or filed document must be set  
7 forth in the plan or filed document.

8 (b) The facts may include:

9 (i) any of the following that is available in a nationally recognized news or information medium, either in  
10 print or electronically:

11 (A) statistical or market indices;

12 (B) market prices of any security or group of securities;

13 (C) interest rates;

14 (D) currency exchange rates; or

15 (E) similar economic or financial data;

16 (ii) a determination or action by any person or body, including the corporation or any other party to a plan  
17 or filed document; or

18 (iii) the terms of or actions taken under an agreement to which the corporation is a party or any other  
19 agreement or document.

20 (c) As used in this subsection (11):

21 (i) "filed document" means a document filed by the secretary of state under any provision of [sections  
22 1 through 221] except [sections 203 through 214] or [section 221]; and

23 (ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

24 (d) The following provisions of a plan or filed document may not be made dependent on facts outside  
25 the plan or filed document:

26 (i) the name and address of any person required in a filed document;

27 (ii) the registered office of any entity required in a filed document;

28 (iii) the registered agent of any entity required in a filed document;

29 (iv) the number of authorized shares and designation of each class or series of shares;

30 (v) the effective date of a filed document; and

1 (vi) any required statement in a filed document of the date on which the underlying transaction was  
2 approved or the manner in which that approval was given.

3 (e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed  
4 document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a  
5 document that is a matter of public record and the affected shareholders have not received notice of the fact from  
6 the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed  
7 document setting forth the fact promptly after the time when the fact referred to is first ascertainable or  
8 subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by  
9 the authorization of the original filed document to which they relate and may be filed by the corporation without  
10 further action by the board of directors or the shareholders.

11  
12 **NEW SECTION. Section 4. Forms.** (1) (a) The secretary of state may prescribe and furnish on request  
13 forms for:

- 14 (i) an application for a certificate of existence or certificate of registration;
  - 15 (ii) a foreign corporation's registration statement;
  - 16 (iii) a foreign corporation's statement of withdrawal;
  - 17 (iv) a foreign corporation's transfer of registration statement; and
  - 18 (v) the annual report.
- 19 (b) If the secretary of state requires, use of these forms is mandatory.

20 (2) The secretary of state may prescribe and furnish on request forms for other documents required or  
21 permitted to be filed by [sections 1 through 221], but their use is not mandatory.

22  
23 **NEW SECTION. Section 5. Filing -- service -- copying fees.** (1) The secretary of state shall establish  
24 fees for:

- 25 (a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];
  - 26 (b) issuing certificates and statements as required by [sections 1 through 26]; and
  - 27 (c) copying and transmitting documents, priority handling, and responding to requests for information.
- 28 (2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

29  
30 **NEW SECTION. Section 6. Effective date -- filed document.** (1) Except to the extent otherwise

1 provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

2 (a) on the date and at the time of filing, as provided in [section 8(2)];

3 (b) on the date of filing and at the time specified in the document as its effective time if later than the time  
4 under subsection (1)(a);

5 (c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or

6 (d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified,  
7 which may not be more than 90 days after the date of filing.

8 (2) If a filed document does not specify the time zone or place at which a date or time or both are to be  
9 determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this  
10 state.

11  
12 **NEW SECTION. Section 7. Correcting filed document.** (1) A document filed by the secretary of state  
13 pursuant to [sections 1 through 221] may be corrected if:

14 (a) the document contains an inaccuracy;

15 (b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

16 (c) the electronic transmission was defective.

17 (2) A document is corrected:

18 (a) by preparing articles of correction that:

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

20 (ii) specify the inaccuracy or defect to be corrected; and

21 (iii) correct the inaccuracy or defect; and

22 (b) by delivering the articles of correction to the secretary of state for filing.

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

26  
27 **NEW SECTION. Section 8. Filing duty -- secretary of state.** (1) If a document delivered to the office  
28 of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

29 (2) The secretary of state files a document by recording it as filed on the date and time of receipt. After  
30 filing a document, the secretary of state shall return to the person who delivered the document for filing a copy

1 of the document with an acknowledgment of the date and time of filing.

2 (3) If the secretary of state refuses to file a document, it must be returned to the person who delivered  
3 the document for filing within 5 10 days after the document was delivered, together with a brief, written  
4 explanation of the reason for the refusal.

5 (4) The secretary of state's duty to file documents under this section is ministerial. The secretary of  
6 state's filing or refusing to file a document does not create a presumption that:

7 (a) the document does or does not conform to the requirements of [sections 1 through 221]; or

8 (b) the information contained in the document is correct or incorrect.

9 (5) The secretary of state may correct errors caused by a filing officer. The error and the correction must  
10 be retained in the file containing the document in which the error appeared. For the purposes of this subsection,  
11 a filing officer is a person employed in a filing office as defined in 30-9A-102.

12

13 **NEW SECTION. Section 9. Appeal from secretary of state -- refusal to file document.** (1) If the  
14 secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing  
15 may petition the district court of the first judicial district to compel its filing. The document and the explanation of  
16 the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in  
17 a summary proceeding.

18 (2) The court may order the secretary of state to file the document or take other action the court  
19 considers appropriate.

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

21

22 **NEW SECTION. Section 10. Evidentiary effect -- certified copy of filed document.** A certificate from  
23 the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence  
24 that the original document is on file with the secretary of state.

25

26 **NEW SECTION. Section 11. Certificate of existence or registration.** (1) Any person may apply to  
27 the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration  
28 for a foreign corporation.

29 (2) A certificate of existence sets forth:

30 (a) the domestic corporation's corporate name;





- 1 (a) a payment of a dividend;
- 2 (b) a purchase, redemption, or other acquisition of shares;
- 3 (c) a distribution of indebtedness;
- 4 (d) a distribution in liquidation; or
- 5 (e) another form.
- 6 (8) "Document" means:
- 7 (a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or
- 8 similar instruments and copies of those instruments; or
- 9 (b) an electronic record.
- 10 (9) "Domestic", with respect to an entity, means an entity governed as to its internal affairs by the law
- 11 of this state.
- 12 (10) "Effective date", when referring to a document accepted for filing by the secretary of state, means
- 13 the time and date determined in accordance with [section 6].
- 14 (11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
- 15 electromagnetic, or similar capabilities.
- 16 (12) "Electronic record" means information that is stored in an electronic or other nontangible medium
- 17 and is retrievable in paper form through an automated process used in conventional commercial practice unless
- 18 otherwise authorized in accordance with [section 15(10)].
- 19 (13) "Electronic transmission" or "electronically transmitted" means any form or process of communication
- 20 not directly involving the physical transfer of paper or another tangible medium that:
- 21 (a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and
- 22 (b) is retrievable in paper form by the recipient through an automated process used in conventional
- 23 commercial practice unless otherwise authorized in accordance with [section 15(10)].
- 24 (14) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit
- 25 corporation.
- 26 (15) "Eligible interests" means interests or memberships.
- 27 (16) "Employee" includes an officer but not a director. A director may accept duties that make the director
- 28 also an employee.
- 29 (17) "Entity" includes:
- 30 (a) a domestic and foreign business corporation;

- 1 (b) a domestic and foreign nonprofit corporation;
- 2 (c) an estate;
- 3 (d) a trust;
- 4 (e) a domestic and foreign unincorporated entity; and
- 5 (f) a state, the United States, and a foreign government.
- 6 (18) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter,  
7 including attorney fees.
- 8 (19) "Filing entity" means an unincorporated entity, other than a limited liability partnership, that is of a  
9 type that is created by filing a public organic record or is required to file a public organic record that evidences  
10 its creation.
- 11 (20) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the organic  
12 law of a jurisdiction other than this state.
- 13 (21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a  
14 law other than the law of this state that would be a business corporation if incorporated under the law of this state.
- 15 (22) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of  
16 this state that would be a nonprofit corporation if incorporated under the law of this state.
- 17 (23) "Foreign registration statement" means the foreign registration statement described in [section 205].
- 18 (24) "Governmental subdivision" includes an authority, a county, a district, and a municipality.
- 19 (25) "Governor" means any person under whose authority the powers of an entity are exercised and  
20 under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing  
21 the entity and its organic rules.
- 22 (26) "Includes" and "including" denote a partial definition or a nonexclusive list.
- 23 (27) "Individual" means a natural person.
- 24 (28) "Interest" means either or both of the following rights under the organic law governing an  
25 unincorporated entity:
- 26 (a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or  
27 (b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent,  
28 assignee, proxy, or person responsible for managing its business and affairs.
- 29 (29) "Interest holder" means a person who holds of record an interest.
- 30 (30) (a) "Interest holder liability" means:



- 1 (i) the bylaws of a domestic or foreign business or nonprofit corporation; or  
2 (ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity,  
3 are binding on all its interest holders, and are not part of its public organic record, if any.
- 4 (b) When private organic rules have been amended or restated, the term means the private organic rules  
5 as last amended or restated.
- 6 (42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.
- 7 (43) (a) "Public organic record" means:  
8 (i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or  
9 (ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates  
10 the unincorporated entity and is required to be filed.
- 11 (b) When a public organic record has been amended or restated, the term means the public organic  
12 record as last amended or restated.
- 13 (44) "Record date" means the date fixed for determining the identity of the corporation's shareholders  
14 and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the  
15 record date is fixed, the determination must be made as of the close of business at the principal office of the  
16 corporation on the record date.
- 17 (45) "Record shareholder" means:  
18 (a) the person in whose name shares are registered in the records of the corporation; or  
19 (b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant  
20 to [section 73] on file with the corporation to the extent of the rights granted by the certificate.
- 21 (46) "Registered foreign corporation" means a foreign corporation registered to do business in this state  
22 pursuant to [sections 203 through 214].
- 23 (47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility  
24 under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders  
25 and for authenticating records of the corporation.
- 26 (48) "Share exchange" means a transaction pursuant to [section 163].
- 27 (49) "Shareholder" means a record shareholder.
- 28 (50) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation  
29 are divided.
- 30 (51) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

1 (a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed  
2 signature; or

3 (b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or  
4 process, including an electronic signature in an electronic transmission.

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

7 (53) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after  
8 incorporation.

9 (54) "Type of entity" means a generic form of entity:

10 (a) recognized at common law; or

11 (b) formed under an organic law, regardless of whether some entities formed under that law are subject  
12 to provisions of that law that create different categories of the form of entity.

13 (55) (a) "Unincorporated entity" means an organization or artificial legal person that either has a separate  
14 legal existence or has the power to acquire an estate in real property in its own name and that is not any of the  
15 following:

16 (i) a domestic or foreign business or nonprofit corporation;

17 (ii) a series of a limited liability company or of another type of entity;

18 (iii) an estate;

19 (iv) a trust; or

20 (v) a state, the United States, or a foreign government.

21 (b) The term includes a general partnership, limited liability partnership, limited liability company, limited  
22 partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated  
23 nonprofit association.

24 (56) "United States" includes a district, authority, bureau, commission, department, and any other agency  
25 of the United States.

26 (57) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting  
27 trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the  
28 voting trust agreement.

29 (58) "Voting group" means all shares of one or more classes or series that under the articles of  
30 incorporation or [sections 1 through 221] are entitled to vote and be counted together collectively on a matter at

1 a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 221] to vote  
2 generally on the matter are for that purpose a single voting group.

3 (59) "Voting power" means the current power to vote in the election of directors.

4 (60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation  
5 held in a voting trust established pursuant to [section 80(1)].

6 (61) "Writing" or "written" means any information in the form of a document.

7  
8 **NEW SECTION. Section 15. Notices and other communications.** (1) A notice under [sections 1  
9 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed  
10 between the sender and the recipient, words in a notice or other communication under [sections 1 through 221]  
11 must be in English.

12 (2) A notice or other communication may be given by any method of delivery, except that electronic  
13 transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or  
14 other communication may be given by means of a broad nonexclusionary distribution to the public, which may  
15 include:

16 (a) a newspaper of general circulation in the area where published;

17 (b) radio, television, or other form of public broadcast communication; or

18 (c) other methods of distribution that the corporation has previously identified to its shareholders.

19 (3) A notice or other communication to a domestic corporation or to a foreign corporation registered to  
20 do business in this state may be delivered to the corporation's registered agent at its registered office or to the  
21 secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign  
22 corporation that has not yet delivered an annual report, in its foreign registration statement.

23 (4) A notice or other communications may be delivered by electronic transmission if consented to by the  
24 recipient or if authorized by subsection (10). A CORPORATION THAT FILES DOCUMENTS WITH THE OFFICE OF THE  
25 SECRETARY OF STATE UNDER [SECTIONS 1 THROUGH 221] IS CONSIDERED TO HAVE GIVEN ITS IRREVOCABLE CONSENT  
26 TO DELIVERY OF NOTICES OR OTHER COMMUNICATIONS BY THE OFFICE OF THE SECRETARY OF STATE TO THE  
27 CORPORATION BY ELECTRONIC TRANSMISSION.

28 (5) Any consent under subsection (4) may be revoked by the person who consented by written or  
29 electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

30 (a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation



1 (10) A notice or other communication may be in the form of an electronic transmission that cannot be  
2 directly reproduced in paper form by the recipient through an automated process used in conventional commercial  
3 practice only if:

4 (a) the electronic transmission is otherwise retrievable in perceivable form; and

5 (b) the sender and the recipient have consented in writing to the use of that form of electronic  
6 transmission.

7 (11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular  
8 circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for  
9 notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221],  
10 those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices  
11 of meetings of directors by electronic transmission.

12 (12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or  
13 supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the  
14 provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal  
15 act.

16  
17 **NEW SECTION. Section 16. Number of shareholders.** (1) For purposes of [sections 1 through 221],  
18 the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one  
19 shareholder:

20 (a) three or fewer co-owners;

21 (b) a corporation, partnership, trust, estate, or other entity; and

22 (c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

23 (2) For purposes of [sections 1 through 221], shareholdings registered in substantially similar names  
24 constitute one shareholder if it is reasonable to believe that the names represent the same person.

25  
26 **NEW SECTION. Section 17. Qualified director.** (1) A qualified director is a director who, at the time  
27 action is to be taken under:

28 (a) [section 28(2)(f)], is not a director:

29 (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities  
30 to the corporation would apply; or

- 1 (ii) who has a material relationship with any other person to whom the limitation or elimination would  
2 apply;
- 3 (b) [section 87], does not have:
- 4 (i) a material interest in the outcome of the proceeding; or  
5 (ii) a material relationship with a person who has such an interest;
- 6 (c) [section 122 or 124]:
- 7 (i) is not a party to the proceeding;  
8 (ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought  
9 a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or  
10 disclaimer is challenged in the proceeding; and
- 11 (iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);
- 12 (d) [section 131] is not a director:
- 13 (i) as to whom the transaction is a director's conflicting interest transaction; or  
14 (ii) who has a material relationship with another director as to whom the transaction is a director's  
15 conflicting interest transaction; or
- 16 (e) [section 133] is not a director who:
- 17 (i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of  
18 another person; or  
19 (ii) has a material relationship with a director or officer who pursues or takes advantage of the business  
20 opportunity, directly or indirectly through or on behalf of another person.
- 21 (2) For purposes of this section:
- 22 (a) "material interest" means an actual or potential benefit or detriment, other than one that would  
23 devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the  
24 objectivity of the director's judgment when participating in the action to be taken; and
- 25 (b) "material relationship" means a familial, financial, professional, employment, or other relationship that  
26 would reasonably be expected to impair the objectivity of the director's judgment when participating in the action  
27 to be taken.
- 28 (3) The presence of one or more of the following circumstances does not automatically prevent a director  
29 from being a qualified director:
- 30 (a) nomination or election of the director to the current board by any director who is not a qualified

1 director with respect to the matter (or by any person that has a material relationship with that director), acting  
2 alone or participating with others;

3 (b) service as a director of another corporation of which a director who is not a qualified director with  
4 respect to the matter (or any individual who has a material relationship with that director) is or was also a director;  
5 or

6 (c) with respect to action to be taken under [section 87], status as a named defendant, as a director  
7 against whom action is demanded, or as a director who approved the conduct being challenged.

8

9 **NEW SECTION. Section 18. Householdng.** (1) A corporation has delivered written notice or any other  
10 report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders  
11 who share a common address if:

12 (a) the corporation delivers one copy of the notice, report, or statement to the common address;

13 (b) the corporation addresses the notice, report, or statement to those shareholders either as a group  
14 or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders  
15 has consented; and

16 (c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement  
17 to the shareholders' common address.

18 (2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who  
19 deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation  
20 shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30  
21 days after delivery of the written notice of revocation.

22 (3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice  
23 by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who  
24 share a common address as permitted by subsection (1) is considered to have consented to receiving a single  
25 copy at the common address, provided that the notice of intention explains that consent may be revoked and the  
26 method for revoking.

27

28 **NEW SECTION. Section 19. Definitions -- ratification of defective corporate actions.** In [sections  
29 19 through 26], the following definitions apply:

30 (1) "Corporate action" means any action taken by or on behalf of the corporation, including any action

1 taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the  
2 corporation, or the shareholders.

3 (2) "Date of the defective corporate action" means the date, or the approximate date if the exact date  
4 is unknown, the defective corporate action was purported to have been taken.

5 (3) "Defective corporate action" means:

6 (a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly  
7 taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization;

8 and

9 (b) an overissue.

10 (4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate  
11 action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a  
12 corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure  
13 would render the corporate action void or voidable.

14 (5) "Overissue" means the purported issuance of:

15 (a) shares of a class or series in excess of the number of shares of a class or series the corporation has  
16 the power to issue under [section 46] at the time of the issuance; or

17 (b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

18 (6) "Putative shares" means the shares of any class or series (including shares issued upon exercise  
19 of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect  
20 to those shares) that were created or issued as a result of a defective corporate action and that:

21 (a) but for any failure of authorization would constitute valid shares; or

22 (b) cannot be determined by the board of directors to be valid shares.

23 (7) "Valid shares" means the shares of any class or series that have been duly authorized and validly  
24 issued in accordance with [sections 1 through 221], including as a result of ratification or validation under  
25 [sections 19 through 26].

26 (8) (a) "Validation effective time", with respect to any defective corporate action ratified under [sections  
27 19 through 26], means the later of:

28 (i) the time at which the ratification of the defective corporate action is approved by the shareholders or,  
29 if approval of shareholders is not required, the time at which the notice required by [section 23] becomes effective  
30 in accordance with [section 15]; or

- 1           (ii) the time at which any articles of validation filed in accordance with [section 25] become effective.  
2           (b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under  
3 [section 26] or otherwise unless ordered by the court.

4  
5           **NEW SECTION. Section 20. Defective corporate actions.** (1) A defective corporate action is not void  
6 or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

7           (2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive  
8 means of ratifying or validating a defective corporate action, and the absence or failure of ratification in  
9 accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate  
10 action properly ratified under common law or otherwise or create a presumption that any corporate action is or  
11 was a defective corporate action or is void or voidable.

12           (3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued  
13 or purportedly issued on:

14           (a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an  
15 amendment to the articles of incorporation authorizing, designating, or creating the shares; or

16           (b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the  
17 authorization, designation, or creation of the shares.

18  
19           **NEW SECTION. Section 21. Ratification -- defective corporate actions.** (1) To ratify a defective  
20 corporate action under this section, other than the ratification of an election of the initial board of directors under  
21 subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

22           (a) the defective corporate action to be ratified and, if the defective corporate action involved the  
23 issuance of putative shares, the number and type of putative shares purportedly issued;

24           (b) the date of the defective corporate action;

25           (c) the nature of the failure of authorization with respect to the defective corporate action to be ratified;

26 and

27           (d) that the board of directors approves the ratification of the defective corporate action.

28           (2) In the event that a defective corporate action to be ratified relates to the election of the initial board  
29 of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification,  
30 are exercising the powers of directors may take an action stating:









1 section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an  
2 exhibit to the articles of validation; and

3 (ii) the date and time that the filing is considered to have become effective.  
4

5 **NEW SECTION. Section 26. Judicial proceedings -- validity of corporate actions.** (1) Upon  
6 application by the corporation, any successor entity to the corporation, a director of the corporation, any  
7 shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any  
8 shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective  
9 corporate action ratified under [section 21], or any other person claiming to be substantially and adversely  
10 affected by a ratification under [section 21], the district court in the county where the corporation's principal office  
11 is located or, if its principal office is not located in this state, of the first judicial district may:

- 12 (a) determine the validity and effectiveness of any corporate action or defective corporate action;  
13 (b) determine the validity and effectiveness of any ratification under [section 21];  
14 (c) determine the validity of any putative shares; and  
15 (d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate  
16 action.

17 (2) In connection with an action under this section, the court may make findings or orders and take into  
18 account any factors or considerations regarding matters it considers proper under the circumstances.

19 (3) Service of process of the application under subsection (1) on the corporation may be made in any  
20 manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no  
21 other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the  
22 court may require that notice of the action be provided to other persons specified by the court and permit the other  
23 persons to intervene in the action.

24 (4) Notwithstanding any other provision of this section or otherwise under applicable law, any action  
25 asserting that the ratification of any defective corporate action and any putative shares issued as a result of the  
26 defective corporate action should not be effective or should be effective only on certain conditions must be  
27 brought within 120 days of the validation effective time.  
28

29 **NEW SECTION. Section 27. Incorporators.** One or more persons may act as the incorporator or  
30 incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

1

2 **NEW SECTION. Section 28. Articles of incorporation.** (1) The articles of incorporation must set forth:

3 (a) a corporate name for the corporation that satisfies the requirements of [section 39];

4 (b) the number of shares the corporation is authorized to issue;

5 (c) the street and mailing addresses of the corporation's initial registered office and the name of its initial

6 registered agent at that office; and

7 (d) the name and address of each incorporator.

8 (2) The articles of incorporation may set forth:

9 (a) the names and addresses of the individuals who are to serve as the initial directors;

10 (b) provisions not inconsistent with law regarding:

11 (i) the purpose or purposes for which the corporation is organized;

12 (ii) managing the business and regulating the affairs of the corporation;

13 (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its

14 shareholders;

15 (iv) a par value for authorized shares or classes of shares; or

16 (v) the imposition of interest holder liability on shareholders;

17 (c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

18 (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for

19 money damages for any action taken or any failure to take any action as a director, except liability for:

20 (i) the amount of a financial benefit received by a director to which the director is not entitled;

21 (ii) an intentional infliction of harm on the corporation or the shareholders;

22 (iii) a violation of [section 113]; or

23 (iv) an intentional violation of criminal law;

24 (e) a provision permitting or making obligatory indemnification of a director for liability as defined in

25 [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

26 (i) receipt of a financial benefit to which the director is not entitled;

27 (ii) an intentional infliction of harm on the corporation or its shareholders;

28 (iii) a violation of [section 113]; or

29 (iv) an intentional violation of criminal law; and

30 (f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation

1 the right to have or participate in any or one or more classes or categories of business opportunities before the  
2 pursuit or taking of the opportunity by the director or other person, provided that any application of such a  
3 provision to an officer or a related person of that officer:

4 (i) also requires approval of that application by the board of directors, subsequent to the effective date  
5 of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131];  
6 and

7 (ii) may be limited by the authorizing action of the board.

8 (3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections  
9 1 through 221].

10 (4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable  
11 outside the articles of incorporation in accordance with [section 3(11)].

12 (5) As used in this section, "related person" has the meaning specified in [section 129].

13  
14 **NEW SECTION. Section 29. Incorporation.** (1) Unless a delayed effective date is specified, the  
15 corporate existence begins when the articles of incorporation are filed.

16 (2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators  
17 satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the  
18 incorporation or involuntarily dissolve the corporation.

19  
20 **NEW SECTION. Section 30. Liability for preincorporation transactions.** All persons purporting to  
21 act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly  
22 and severally liable for all liabilities created while so acting.

23  
24 **NEW SECTION. Section 31. Organization of corporation.** (1) After incorporation:

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

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

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

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

2 (2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an  
3 organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written  
4 consents describing the action taken and signed by each incorporator.

5 (3) An organizational meeting may be held in or out of this state.

6  
7 **NEW SECTION. Section 32. Bylaws.** (1) The incorporators or board of directors of a corporation shall  
8 adopt initial bylaws for the corporation.

9 (2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles  
10 of incorporation.

11 (3) The bylaws may contain one or both of the following provisions:

12 (a) a requirement that if the corporation solicits proxies or consents with respect to an election of  
13 directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and  
14 subject to the procedures or conditions provided in the bylaws, one or more individuals nominated by a  
15 shareholder in addition to individuals nominated by the board of directors; and

16 (b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting  
17 proxies or consents in connection with an election of directors, to the extent and subject to procedures and  
18 conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record  
19 date precedes its adoption.

20 (4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw  
21 described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition  
22 or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical,  
23 and orderly process.

24  
25 **NEW SECTION. Section 33. Emergency bylaws.** (1) Unless the articles of incorporation provide  
26 otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in  
27 subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may  
28 make all provisions necessary for managing the corporation during the emergency, including:

29 (a) procedures for calling a meeting of the board of directors;

30 (b) quorum requirements for the meeting; and

1 (c) designation of additional or substitute directors.

2 (2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective  
3 during the emergency. The emergency bylaws are not effective after the emergency ends.

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

5 (a) binds the corporation; and

6 (b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

7 (4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily  
8 be assembled because of some catastrophic event.

9

10 **NEW SECTION. Section 34. Forum selection.** (1) The articles of incorporation or the bylaws may  
11 require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this  
12 state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the  
13 corporation has a reasonable relationship.

14 (2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the  
15 effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts  
16 specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this  
17 state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter  
18 jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be  
19 brought in that other court of this state, notwithstanding that the other court of this state is not specified in the  
20 provision, and in any other court specified in the provision that has the requisite jurisdiction.

21 (3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate  
22 claim in the courts of this state or require the claims to be determined by arbitration.

23 (4) For the purposes of this section, "internal corporate claim" means:

24 (a) any claim that is based on a violation of a duty under the laws of this state by a current or former  
25 director, officer, or shareholder in such capacity;

26 (b) any derivative action or proceeding brought on behalf of the corporation;

27 (c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the  
28 articles of incorporation or bylaws; or

29 (d) any action asserting a claim governed by the internal affairs doctrine that is not included in this  
30 subsection (4).

1  
 2           **NEW SECTION. Section 35. Purposes.** (1) Every corporation incorporated under [sections 1 through  
 3 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles  
 4 of incorporation.

5           (2) A corporation engaging in a business that is subject to regulation under another statute of this state  
 6 may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other  
 7 statute.

8  
 9           **NEW SECTION. Section 36. General powers.** Unless its articles of incorporation provide otherwise,  
 10 every corporation has perpetual duration and succession in its corporate name and has the same powers as an  
 11 individual to do all things necessary or convenient to carry out its business and affairs, including power:

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

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

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

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

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

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

23           (7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other  
 24 securities and obligations, which may be convertible into or include the option to purchase other securities of the  
 25 corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

26           (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as  
 27 security for repayment;

28           (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or  
 29 other entity;

30           (10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221]

1 within or outside this state;

2 (11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties,  
3 fix their compensation, and lend them money and credit;

4 (12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans,  
5 share option plans, and benefit or incentive plans for any or all of its current or former directors, officers,  
6 employees, and agents;

7 (13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

8 (14) to transact any lawful business that will aid governmental policy; and

9 (15) to make payments or donations or do any other act not inconsistent with law that furthers the  
10 business and affairs of the corporation.

11

12 **NEW SECTION. Section 37. Emergency powers.** (1) In anticipation of or during an emergency as  
13 provided in subsection (4), the board of directors of a corporation may:

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

16 (b) relocate the principal office, designate alternative principal offices or regional offices, or authorize  
17 the officers to do so.

18 (2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

19 (a) notice of a meeting of the board of directors must be given only to those directors whom it is  
20 practicable to reach and may be given in any practicable manner; and

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

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

26 (a) binds the corporation; and

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

28 (4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily  
29 be assembled because of some catastrophic event.

30

1            **NEW SECTION. Section 38. Lack of power to act.** (1) Except as provided in subsection (2), the  
 2 validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to  
 3 act.

4            (2) A corporation's power to act may be challenged:

5            (a) in a proceeding by a shareholder against the corporation to enjoin the act;

6            (b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal  
 7 representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

8            (c) in a proceeding by the attorney general under [section 197].

9            (3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the  
 10 court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and  
 11 may award damages for loss, other than anticipated profits, suffered by the corporation or another party because  
 12 of enjoining the unauthorized act.

13

14            **NEW SECTION. Section 39. Corporate name.** (1) A corporate name:

15            (a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.",  
 16 "inc.", "co.", or "ltd.", or words or abbreviations of similar meaning in another language; and

17            (b) may not contain language stating or implying that the corporation is organized for a purpose other  
 18 than that permitted by [section 35] and its articles of incorporation.

19            (2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the  
 20 records of the secretary of state from:

21            (a) the corporate name of a corporation incorporated in this state that is not administratively dissolved.

22 If the corporation has been administratively dissolved, this provision applies to its corporate name for a period  
 23 of 120 days following the effective date of its administrative dissolution.

24            (b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law  
 25 of this state;

26            (c) the name of a foreign corporation registered to do business in this state or an alternate name adopted  
 27 by a foreign corporation registered to do business in this state because its corporate name is unavailable;

28            (d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively  
 29 dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate  
 30 name for a period of 120 days following the effective date of its administrative dissolution.

1 (e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name  
2 adopted by a foreign nonprofit corporation registered to do business in this state because its real name is  
3 unavailable;

4 (f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved.  
5 If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies  
6 to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

7 (g) the name of a foreign unincorporated entity registered to do business in this state or an alternate  
8 name adopted by a foreign unincorporated entity registered to do business in this state because its real name  
9 is unavailable; and

10 (h) any assumed business name, trademark, or service mark reserved or registered with the secretary  
11 of state.

12 (3) A corporation may apply to the secretary of state for authorization to use a name that is not  
13 distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The  
14 secretary of state shall authorize use of the name applied for if:

15 (a) the other corporation or unincorporated entity consents to the use in writing and submits an  
16 undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable  
17 in the records of the secretary of state from the name of the applying corporation; or

18 (b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of  
19 competent jurisdiction establishing the applicant's right to use the name applied for in this state.

20 (4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the  
21 fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign  
22 limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability  
23 partnership is incorporated or authorized to transact business in this state and the proposed user corporation,  
24 domestic filing entity, or limited liability partnership:

25 (a) has merged with the other corporation, filing entity, or limited liability partnership;

26 (b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

27 (c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing  
28 entity, or limited liability partnership; or

29 (d) has obtained written permission from the other corporation, filing entity, or limited liability partnership  
30 for use of the name and has filed a copy of the grant of permission with the secretary of state.

1 (5) [Sections 1 through 221] do not control the use of fictitious names.

2

3 **NEW SECTION. Section 40. Reserved name.** (1) A person may reserve the exclusive use of a  
4 corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not  
5 available, by delivering an application to the secretary of state for filing. The application must set forth the name  
6 and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the  
7 corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive  
8 use for a nonrenewable 120-day period.

9 (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering  
10 to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

11

12 **NEW SECTION. Section 41. Registered name.** (1) A foreign corporation may register its corporate  
13 name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary  
14 for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the  
15 secretary of state from the corporate names that are not available under [section 39(2)].

16 (2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted  
17 by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state  
18 or country and date of its incorporation, and a brief description of the nature of the business that is to be  
19 conducted in this state.

20 (3) The name is registered for the applicant's exclusive use on the effective date of the application and  
21 for the remainder of the calendar year unless renewed.

22 (4) A foreign corporation whose name registration is effective may renew it for successive years by  
23 delivering to the secretary of state for filing a renewal application that complies with the requirements of  
24 subsection (2) between October 1 and December 31 of each year the registration is effective. The renewal  
25 application when filed renews the registration for the following calendar year.

26 (5) A foreign corporation whose name registration is effective may:

27 (a) register to do business as a foreign corporation under the registered name if it complies with [section  
28 39(1)(b)]; or

29 (b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under  
30 [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic





































1

2        **NEW SECTION. Section 69. Remote participation -- shareholder's meetings.** (1) Shareholders of  
3 any class or series of shares may participate in any meeting of shareholders by means of remote communication  
4 to the extent the board of directors authorizes the participation for that class or series. Participation as a  
5 shareholder by means of remote communication is subject to guidelines and procedures the board of directors  
6 adopts and must be in conformity with subsection (2).

7        (2) Shareholders participating in a shareholders' meeting by means of remote communication are  
8 considered present and may vote at the meeting if the corporation has implemented reasonable measures:

9            (a) to verify that each person participating remotely as a shareholder is a shareholder; and

10            (b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on  
11 matters submitted to the shareholders, including an opportunity to communicate and to read or hear the  
12 proceedings of the meeting substantially concurrently with the proceedings.

13

14        **NEW SECTION. Section 70. Shareholders' list for meeting.** (1) After fixing a record date for a  
15 meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to  
16 notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to  
17 determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list  
18 of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting  
19 group and, within each voting group, by class or series of shares and must show the address of and number of  
20 shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the  
21 electronic mail address or other electronic contact information of a shareholder.

22        (2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2  
23 business days after notice is given of the meeting for which the list was prepared and continuing through the  
24 meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the  
25 meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the  
26 record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to  
27 inspect and, subject to the requirements of [section 216(3)], to copy the list, during regular business hours and  
28 at the shareholder's expense, during the period it is available for inspection.

29        (3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any  
30 shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or

1 any adjournment.

2 (4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a  
3 shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the  
4 county where the corporation's principal office is located or, if its principal office is not located in this state, the  
5 first judicial district, on application of the shareholder, may summarily order the inspection or copying at the  
6 corporation's expense and may postpone the meeting for which the list was prepared until the inspection or  
7 copying is complete.

8 (5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of  
9 action taken at the meeting.

10

11 NEW SECTION. **Section 71. Voting entitlements of shares.** (1) Except as provided in subsections  
12 (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class  
13 or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to  
14 vote.

15 (2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the  
16 corporation:

17 (a) directly; or

18 (b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the  
19 corporation or that is otherwise controlled by the corporation.

20 (3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote  
21 unless they are held for the benefit of or otherwise belong to the corporation:

22 (a) directly; or

23 (b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the  
24 corporation or that is otherwise controlled by the corporation.

25 (4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective  
26 and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial  
27 institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

28 (5) For purposes of this section, "voting power" means the current power to vote in the election of  
29 directors of a corporation or to elect, select, or appoint governors of another entity.

30

1            NEW SECTION. **Section 72. Proxies.** (1) A shareholder may vote the shareholder's shares in person  
2 or by proxy.

3            (2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise  
4 act for the shareholder by signing an appointment form or by an electronic transmission. An electronic  
5 transmission must contain or be accompanied by information from which the recipient can determine the date  
6 of the transmission and that the transmission was authorized by the sender or the sender's agent or  
7 attorney-in-fact.

8            (3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission  
9 of the appointment is received by the inspector of election or the officer or agent of the corporation authorized  
10 to tabulate votes. An appointment is valid for the term provided in the appointment form and, if no term is  
11 provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

12           (4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states  
13 that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest  
14 include the appointment of:

- 15            (a) a pledgee;
- 16            (b) a person who purchased or agreed to purchase the shares;
- 17            (c) a creditor of the corporation who extended it credit under terms requiring the appointment;
- 18            (d) an employee of the corporation whose employment contract requires the appointment; and
- 19            (e) a party to a voting agreement created under [section 81].

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

23           (6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is  
24 coupled is extinguished.

25           (7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in  
26 effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a  
27 transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee  
28 did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was  
29 not noted conspicuously on the certificate representing the shares or on the information statement for shares  
30 without certificates.

1           (8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment  
2 form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the  
3 shareholder making the appointment.

4

5           **NEW SECTION. Section 73. Shares held by intermediaries and nominees.** (1) A corporation's board  
6 of directors may establish a procedure under which a person on whose behalf shares are registered in the name  
7 of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with  
8 the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must  
9 be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges  
10 that the record shareholder otherwise would have, the record shareholder does not have those rights or  
11 privileges.

12           (2) The procedure must specify:

13           (a) the types of intermediaries or nominees to which it applies;

14           (b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial  
15 ownership certificate is filed;

16           (c) the manner in which the procedure is selected, which must include that the beneficial ownership  
17 certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose  
18 behalf the shares are held;

19           (d) the information that must be provided when the procedure is selected;

20           (e) the period for which selection of the procedure is effective;

21           (f) requirements for notice to the corporation with respect to the arrangement; and

22           (g) the form and contents of the beneficial ownership certificate.

23           (3) The procedure may specify any other aspects of the rights and duties created by the filing of a  
24 beneficial ownership certificate.

25

26           **NEW SECTION. Section 74. Acceptance of votes -- other instruments.** (1) If the name signed on  
27 a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a  
28 shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver,  
29 shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

30           (2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment

1 does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled  
2 to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the  
3 act of the shareholder if:

4 (a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the  
5 entity;

6 (b) the name signed purports to be that of an administrator, executor, guardian, or conservator  
7 representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the  
8 corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy  
9 appointment;

10 (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if  
11 the corporation requests, evidence of this status acceptable to the corporation has been presented with respect  
12 to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

13 (d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the  
14 shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority  
15 to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder  
16 demand, or proxy appointment; or

17 (e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to  
18 be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the  
19 co-owners.

20 (3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy  
21 appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis  
22 for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

23 (4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under  
24 [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment  
25 in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the  
26 shareholder for the consequences of the acceptance or rejection.

27 (5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder  
28 demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines  
29 otherwise.

30 (6) If an inspector of election has been appointed under [section 79], the inspector of election also may

1 request information and make determinations under subsections (1), (2), and (3). Any determination made by the  
2 inspector of election under those subsections is controlling.

3  
4 **NEW SECTION. Section 75. Quorum and voting requirements -- voting groups.** (1) Shares entitled  
5 to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares  
6 exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a  
7 majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group  
8 for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the  
9 articles of incorporation may not provide for a lower quorum.

10 (2) Once a share is represented for any purpose at a meeting, it is considered present for quorum  
11 purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is  
12 or must be fixed for that adjourned meeting.

13 (3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is  
14 approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action  
15 unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

16 (4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting  
17 requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

18 (5) The election of directors is governed by [section 78].

19 (6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate  
20 voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that  
21 provision.

22  
23 **NEW SECTION. Section 76. Action by single and multiple voting groups.** (1) If the articles of  
24 incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that  
25 matter is taken when it is voted on by that voting group as provided in [section 75].

26 (2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting  
27 groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted  
28 separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different  
29 times.

30

1            **NEW SECTION. Section 77. Modifying quorum or voting requirements.** An amendment to the  
2 articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same  
3 quorum requirement and be adopted by the same vote and voting groups required to take action under the  
4 quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

5  
6            **NEW SECTION. Section 78. Voting for directors -- cumulative voting.** (1) Unless otherwise provided  
7 in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote  
8 in the election at a meeting at which a quorum is present.

9            (2) Shareholders do not have a right to cumulate their votes for directors unless the articles of  
10 incorporation provide for that right.

11            (3) A statement included in the articles of incorporation that "[all] [a designated voting group of]  
12 shareholders are entitled to cumulate their votes for directors" or words of similar meaning means that the  
13 shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of  
14 directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product  
15 among two or more candidates.

16            (4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting  
17 unless:

18            (a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative  
19 voting is authorized; or

20            (b) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation  
21 not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during  
22 the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating  
23 in the election are entitled to cumulate their votes without giving further notice.

24  
25            **NEW SECTION. Section 79. Inspectors of election.** (1) A corporation that has a class of equity  
26 securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other  
27 corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with  
28 determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties  
29 of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an  
30 officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors

1 in the performance of the duties of inspector under subsection (2) and may rely on information provided by those  
2 and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is  
3 unwarranted.

4 (2) The inspectors shall:

5 (a) ascertain the number of shares outstanding and the voting power of each;

6 (b) determine the shares represented at a meeting;

7 (c) determine the validity of proxy appointments and ballots;

8 (d) count the votes; and

9 (e) make a written report of the results.

10 (3) In performing their duties, the inspectors may examine:

11 (a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

12 (b) any envelope or related writing submitted with the proxy appointment forms;

13 (c) any ballots;

14 (d) any evidence or other information specified in [section 74]; and

15 (e) the relevant books and records of the corporation relating to its shareholders and their entitlement  
16 to vote, including any securities position list provided by a depository clearing agency.

17 (4) The inspectors also may consider other information that they believe is relevant and reliable for the  
18 purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of  
19 evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of  
20 banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized  
21 by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this  
22 subsection, they shall in their report under subsection (2) specify the information considered by them, including  
23 the purpose or purposes for which the information was considered, the person or persons from whom they  
24 obtained the information, when the information was obtained, the means by which the information was obtained,  
25 and the basis for the inspectors' belief that the information is relevant and reliable.

26 (5) Determinations of law by the inspectors of election are subject to de novo review by a court in a  
27 proceeding under [section 92] or other judicial proceeding.

28

29 **NEW SECTION. Section 80. Voting trusts.** (1) One or more shareholders may create a voting trust,  
30 conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the

1 provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to  
2 the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses  
3 of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust,  
4 and deliver copies of the list and agreement to the corporation at its principal office.

5 (2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the  
6 trustee's name.

7 (3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that  
8 became effective prior to [the effective date of sections 1 through 221] remains governed by the statute  
9 concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous  
10 agreement of the parties to the voting trust.

11  
12 **NEW SECTION. Section 81. Voting agreements.** (1) Two or more shareholders may provide for the  
13 manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created  
14 under this section is not subject to the provisions of [section 80].

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

16  
17 **NEW SECTION. Section 82. Shareholder agreements.** (1) An agreement among the shareholders  
18 of a corporation that complies with this section is effective among the shareholders and the corporation even  
19 though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

20 (a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

21 (b) governs the authorization or making of distributions, regardless of whether they are in proportion to  
22 ownership of shares, subject to the limitations in [section 60];

23 (c) establishes who may be directors or officers of the corporation or their terms of office or manner of  
24 selection or removal;

25 (d) governs, in general or in regard to specific matters, the exercise or division of voting power by or  
26 between the shareholders and directors or by or among any of them, including use of weighted voting rights or  
27 director proxies;

28 (e) establishes the terms and conditions of any agreement for the transfer or use of property or the  
29 provision of services between the corporation and any shareholder, director, officer, or employee of the  
30 corporation or among any of them;

1 (f) transfers to one or more shareholders or other persons all or part of the authority to exercise the  
2 corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue  
3 about which there exists a deadlock among directors or shareholders;

4 (g) requires dissolution of the corporation at the request of one or more of the shareholders or on the  
5 occurrence of a specified event or contingency; or

6 (h) otherwise governs the exercise of the corporate powers or the management of the business and  
7 affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among  
8 any of them and is not contrary to public policy.

9 (2) An agreement authorized by this section is:

10 (a) as set forth:

11 (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time  
12 of the agreement; or

13 (ii) in a written agreement that is signed by all persons who are shareholders at the time of the  
14 agreement and is made known to the corporation; and

15 (b) subject to amendment only by all persons who are shareholders at the time of the amendment unless  
16 the agreement provides otherwise.

17 (3) The existence of an agreement authorized by this section must be noted conspicuously on the front  
18 or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If  
19 at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation  
20 shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The  
21 failure to note the existence of the agreement on the certificate or information statement does not affect the  
22 validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase,  
23 did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser  
24 is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or  
25 information statement for the shares in compliance with this subsection and, if the shares are not represented  
26 by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the  
27 shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the  
28 earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the  
29 shares.

30 (4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement

1 is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the  
 2 articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

3 (5) An agreement authorized by this section that limits the discretion or powers of the board of directors  
 4 relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested  
 5 liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the  
 6 directors are limited by the agreement.

7 (6) The existence or performance of an agreement authorized by this section may not be a ground for  
 8 imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or  
 9 its performance treats the corporation as if it were a partnership or results in failure to observe the corporate  
 10 formalities otherwise applicable to the matters governed by the agreement.

11 (7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement  
 12 authorized by this section if no shares have been issued when the agreement is made.

13 (8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the  
 14 agreement.

15  
 16 **NEW SECTION. Section 83. Definitions -- derivative proceedings.** In [sections 83 through 90] the  
 17 following definitions apply:

18 (1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent  
 19 provided in [section 90], in the right of a foreign corporation.

20 (2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust  
 21 beneficial owner.

22  
 23 **NEW SECTION. Section 84. Standing.** A shareholder may not commence or maintain a derivative  
 24 proceeding unless the shareholder:

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

27 (2) fairly and adequately represents the interests of the corporation in enforcing the right of the  
 28 corporation.

29  
 30 **NEW SECTION. Section 85. Demand.** A shareholder may not commence a derivative proceeding until:

- 1           (1) a written demand has been made on the corporation to take suitable action; and  
2           (2) 90 days have expired from the date delivery of the demand was made unless the shareholder has  
3 earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the  
4 corporation would result by waiting for the expiration of the 90-day period.

5  
6           NEW SECTION. Section 86. Stay of proceedings. If the corporation commences an inquiry into the  
7 allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the  
8 court considers appropriate.

9  
10          NEW SECTION. Section 87. Dismissal. (1) A derivative proceeding must be dismissed by the court  
11 on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith,  
12 after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative  
13 proceeding is not in the best interests of the corporation.

14           (2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be  
15 made by:

16           (a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified  
17 directors constitute a quorum; or

18           (b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote  
19 of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors  
20 constitute a quorum.

21           (3) If a derivative proceeding is commenced after a determination has been made rejecting a demand  
22 by a shareholder, the complaint must allege with particularity facts establishing either:

23           (a) that a majority of the board of directors did not consist of qualified directors at the time the  
24 determination was made; or

25           (b) that the requirements of subsection (1) have not been met.

26           (4) If a majority of the board of directors consisted of qualified directors at the time the determination was  
27 made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not,  
28 the corporation has the burden of proving that the requirements of subsection (1) have been met.

29           (5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make  
30 a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

1 In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

2

3 **NEW SECTION. Section 88. Discontinuance -- settlement.** A derivative proceeding may not be  
4 discontinued or 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 or series of  
6 shareholders, the court shall direct that notice be given to the shareholders affected.

7

8 **NEW SECTION. Section 89. Payment of expenses.** On termination of the derivative proceeding, the  
9 court may:

10 (1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the  
11 proceeding has resulted in a substantial benefit to the corporation;

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

14 (3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading,  
15 motion, or other paper if it finds that the pleading, motion, or other paper:

16 (a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith  
17 argument for the extension, modification, or reversal of existing law; or

18 (b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or  
19 needless increase in the cost of litigation.

20

21 **NEW SECTION. Section 90. Applicability to foreign corporations.** In any derivative proceeding in  
22 the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of  
23 the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

24

25 **NEW SECTION. Section 91. Shareholder action to appoint custodian or receiver.** (1) The district  
26 court of the county where a corporation's principal office is located or, if its principal office is not located in this  
27 state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is  
28 insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

29 (a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable  
30 to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or



1 (b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the  
2 corporation is threatened or being suffered.

3 (2) The court:

4 (a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and  
5 duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the  
6 business of the corporation until a full hearing is held;

7 (b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons  
8 designated by the court, before appointing a custodian or receiver; and

9 (c) has jurisdiction over the corporation and all of its property, wherever located.

10 (3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to  
11 do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with  
12 or without sureties, in an amount the court directs.

13 (4) The court shall describe the powers and duties of the custodian or receiver in its appointing order,  
14 which may be amended from time to time. Among other powers:

15 (a) a custodian may exercise all of the powers of the corporation, through or in place of its board of  
16 directors, to the extent necessary to manage the business and affairs of the corporation; and

17 (b) a receiver:

18 (i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private  
19 sale if authorized by the court; and

20 (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

21 (5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership  
22 may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

23 (6) The court from time to time during the custodianship or receivership may order compensation to be  
24 paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of  
25 the corporation or proceeds from the sale of its assets.

26 (7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an  
27 unrestricted voting trust beneficial owner.

28

29 **NEW SECTION. Section 92. Judicial determination -- corporate offices -- review of elections and**  
30 **shareholder votes.** (1) Upon application of or in a proceeding commenced by a person specified in subsection

1 (2), the district court of the county where a corporation's principal office is located or, if its principal office is not  
2 located in this state, of the first judicial district may determine:

3 (a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the  
4 corporation;

5 (b) the right of an individual to hold the office of director or officer of the corporation;

6 (c) the result or validity of any vote by the shareholders of the corporation;

7 (d) the right of a director to membership on a committee of the board of directors; and

8 (e) the right of a person to nominate or an individual to be nominated as a candidate for election or  
9 appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or  
10 any comparable right under any provision of the articles of incorporation, contract, or applicable law.

11 (2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the  
12 following persons:

13 (a) the corporation;

14 (b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the  
15 corporation;

16 (c) a director of the corporation, an individual claiming the office of director, or a director whose  
17 membership on a committee of the board of directors is contested, in each case who is seeking a determination  
18 of the person's right to the office or membership;

19 (d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case  
20 who is seeking a determination of the person's right to the office; and

21 (e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

22 (3) In connection with any application or proceeding under subsection (1), the following must be named  
23 as defendants unless the person made the application or commenced the proceeding:

24 (a) the corporation;

25 (b) any individual whose right to office or membership on a committee of the board of directors is  
26 contested;

27 (c) any individual claiming the office or membership at issue; and

28 (d) any person claiming a right covered by subsection (1)(e) that is at issue.

29 (4) In connection with any application or proceeding under subsection (1), service of process may be  
30 made on each of the persons specified in subsection (3) by either:

1 (a) service of process on the corporation addressed to the person in any manner provided by statute of  
2 this state or by rule of the applicable court for service on the corporation; or

3 (b) service of process on the person in any manner provided by statute of this state or by rule of the  
4 applicable court.

5 (5) When service of process is made on a person other than the corporation by service on the  
6 corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly  
7 provide written notice of the service, together with copies of all process and the application or complaint, to the  
8 person at the person's last-known residence or business address or as permitted by statute of this state or by  
9 rule of the applicable court.

10 (6) In connection with any application or proceeding under subsection (1), the court shall dispose of the  
11 application or proceeding on an expedited basis and also may:

12 (a) order additional or further notice the court considers proper under the circumstances;

13 (b) order that additional persons be joined as parties to the proceeding if the court determines that  
14 joinder is necessary for a just adjudication of matters before the court;

15 (c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or  
16 otherwise;

17 (d) appoint a master to conduct an election or meeting;

18 (e) enter temporary, preliminary, or permanent injunctive relief;

19 (f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the  
20 resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to  
21 own shares to vote at any meeting of the shareholders; and

22 (g) order any other relief the court determines is equitable, just, and proper.

23 (7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this  
24 section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the  
25 shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

26 (8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the  
27 court that existed before the enactment of this section, and an application or proceeding pursuant to this section  
28 is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

29

30 NEW SECTION. **Section 93. Board of directors -- requirements -- functions.** (1) Except as may be

1 provided in an agreement authorized under [section 82], each corporation must have a board of directors.

2 (2) Except as may be provided in an agreement authorized under [section 82] and subject to any  
3 limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by  
4 or under the authority of the board of directors, and the business and affairs of the corporation must be managed  
5 by or under the direction of and subject to the oversight of the board of directors.

6  
7 **NEW SECTION. Section 94. Qualifications of directors.** (1) The articles of incorporation or bylaws  
8 may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as  
9 applied to the corporation and must be lawful.

10 (2) A requirement that is based on a past, prospective, or current action or expression of opinion by a  
11 nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not  
12 a permissible qualification under this section. However, qualifications may include not being or having been  
13 subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial  
14 action or for cause.

15 (3) A director need not be a resident of this state or a shareholder unless the articles of incorporation  
16 or bylaws prescribe those requirements.

17 (4) A qualification for nomination for director prescribed before a person's nomination applies to the  
18 person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination  
19 does not apply to the person with respect to the nomination.

20 (5) A qualification for director prescribed before a director has been elected or appointed applies only  
21 at the time an individual becomes a director or during a director's term. A qualification prescribed after a director  
22 has been elected or appointed does not apply to that director before the end of that director's term.

23  
24 **NEW SECTION. Section 95. Directors -- number -- election.** (1) A board of directors must consist of  
25 one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or  
26 bylaws.

27 (2) The number of directors may be increased or decreased from time to time by amendment to or in the  
28 manner provided in the articles of incorporation or bylaws.

29 (3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders'  
30 meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or

1 unless their terms are staggered under [section 98].

2

3 NEW SECTION. **Section 96. Election of directors -- certain classes or series of shares.** If the  
 4 articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares  
 5 into classes or series, the articles of incorporation may also authorize the election of all or a specified number  
 6 of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple  
 7 classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes  
 8 of the election of directors.

9

10 NEW SECTION. **Section 97. Terms of directors generally.** (1) The terms of the initial directors of a  
 11 corporation expire at the first shareholders' meeting at which directors are elected.

12 (2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with  
 13 [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the  
 14 extent:

15 (a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

16 (b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to  
 17 receive a specified vote for election.

18 (3) A decrease in the number of directors does not shorten an incumbent director's term.

19 (4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which  
 20 directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or  
 21 appointed for the unexpired term of the director's predecessor in office.

22 (5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a  
 23 bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director  
 24 continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of  
 25 directors.

26

27 NEW SECTION. **Section 98. Staggered terms for directors.** The articles of incorporation may provide  
 28 for staggering the terms of directors by dividing the total number of directors into two or three groups, with each  
 29 group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors  
 30 in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group

1 expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any,  
 2 expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held  
 3 subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose  
 4 terms expire.

5  
 6 **NEW SECTION.** **Section 99. Resignation of directors.** (1) A director may resign at any time by  
 7 delivering a written notice of resignation to the board of directors or its chair or to the secretary.

8 (2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed  
 9 effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned  
 10 on failing to receive a specified vote for election as a director may provide that it is irrevocable.

11  
 12 **NEW SECTION.** **Section 100. Removal of directors by shareholders.** (1) The shareholders may  
 13 remove one or more directors with or without cause unless the articles of incorporation provide that directors may  
 14 be removed only for cause.

15 (2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group  
 16 may participate in the vote to remove that director.

17 (3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast  
 18 not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number.  
 19 However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the  
 20 number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is  
 21 taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to  
 22 elect the director under cumulative voting do not consent to the removal.

23 (4) A director may be removed by the shareholders only at a meeting called for the purpose of removing  
 24 the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

25  
 26 **NEW SECTION.** **Section 101. Removal of directors by judicial proceeding.** (1) The district court of  
 27 the county where a corporation's principal office is located or, if its principal office is not located in this state, of  
 28 the first judicial district may remove a director from office or may order other relief, including barring the director  
 29 from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the  
 30 corporation if the court finds that:

1 (a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly  
2 abused the position of director, or intentionally inflicted harm on the corporation; and

3 (b) considering the director's course of conduct and the inadequacy of other available remedies, removal  
4 or other relief would be in the best interests of the corporation.

5 (2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must  
6 comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

7  
8 **NEW SECTION. Section 102. Vacancy -- board of directors.** (1) Unless the articles of incorporation  
9 provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase  
10 in the number of directors:

- 11 (a) the shareholders may fill the vacancy;
- 12 (b) the board of directors may fill the vacancy; or
- 13 (c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative  
14 vote of a majority of all the directors remaining in office.

15 (2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders  
16 of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the  
17 remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it  
18 is filled by the directors.

19 (3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date  
20 under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take  
21 office until the vacancy occurs.

22  
23 **NEW SECTION. Section 103. Compensation of directors.** Unless the articles of incorporation or  
24 bylaws provide otherwise, the board of directors may fix the compensation of directors.

25  
26 **NEW SECTION. Section 104. Meetings.** (1) The board of directors may hold regular or special  
27 meetings in or out of this state.

28 (2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any  
29 meeting of the board of directors through the use of any means of communication by which all directors  
30 participating may simultaneously hear each other during the meeting. A director participating in a meeting by this

1 means is considered to be present in person at the meeting.

2 (3) If requested by a director, minutes of any regular or special meeting must be prepared and be  
3 distributed to each director.

4  
5 **NEW SECTION. Section 105. Action without meeting.** (1) Except to the extent that the articles of  
6 incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or  
7 permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each  
8 director signs a consent describing the action to be taken and delivers it to the corporation.

9 (2) Action taken under this section is the act of the board of directors when one or more consents signed  
10 by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the  
11 action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and  
12 delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the  
13 directors.

14 (3) A consent signed under this section has the effect of action taken at a meeting of the board of  
15 directors and may be described in that manner in any document.

16  
17 **NEW SECTION. Section 106. Notice of meeting.** (1) Unless the articles of incorporation or bylaws  
18 provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place,  
19 or purpose of the meeting.

20 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings  
21 of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting.  
22 The notice need not describe the purpose of the special meeting unless required by the articles of incorporation  
23 or bylaws.

24  
25 **NEW SECTION. Section 107. Waiver of notice.** (1) A director may waive any notice required by  
26 [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in  
27 the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled  
28 to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate  
29 records.

30 (2) A director's attendance at or participation in a meeting waives any required notice to the director of

1 the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the  
2 meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at  
3 the meeting.

4  
5 **NEW SECTION. Section 108. Quorum and voting.** (1) Unless the articles of incorporation or bylaws  
6 provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a  
7 quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance  
8 with the articles of incorporation or bylaws.

9 (2) The quorum of the board of directors specified in or fixed in accordance with the articles of  
10 incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

11 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is  
12 the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number  
13 of directors or unless otherwise expressly provided in [sections 1 through 221].

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

16 (a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or  
17 transacting business at the meeting;

18 (b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

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

22  
23 **NEW SECTION. Section 109. Committees of board.** (1) Unless [sections 1 through 221], the articles  
24 of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board  
25 committees composed exclusively of one or more directors to perform functions of the board of directors.

26 (2) The establishment of a board committee and appointment of members to it must be approved by the  
27 greater of:

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

29 (b) the number of directors required by the articles of incorporation or bylaws to take action under  
30 [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

- 1 (3) [Sections 104 through 108] apply to board committees and their members.
- 2 (4) A board committee may exercise the powers of the board of directors under [section 93] to the extent
- 3 specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may
- 4 not:
  - 5 (a) authorize or approve distributions except according to a formula or method, or within limits,
  - 6 prescribed by the board of directors;
  - 7 (b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by
  - 8 shareholders;
  - 9 (c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;
  - 10 (d) adopt, amend, or repeal bylaws;
  - 11 (e) approve a plan of merger, including plans not requiring shareholder approval;
  - 12 (f) authorize or approve reacquisition of shares except according to a formula or method prescribed by
  - 13 the board of directors; or
  - 14 (g) authorize or approve the issuance of or sale or contract for sale of shares or determine the
  - 15 designation and relative rights, preferences, and limitations of a class or series of shares. However, the board
  - 16 of directors may authorize a committee or a senior executive officer of the corporation to do so within limits
  - 17 specifically prescribed by the board of directors.
- 18 (5) The board of directors may appoint one or more directors as alternate members of any board
- 19 committee to replace any absent or disqualified member during the member's absence or disqualification. If the
- 20 articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or
- 21 members present at any board committee meeting and not disqualified from voting may, by unanimous action,
- 22 appoint another director to act in place of an absent or disqualified member during that member's absence or
- 23 disqualification.

24

25 **NEW SECTION. Section 110. Submission of matters for shareholder vote.** A corporation may agree

26 to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors

27 determines it no longer recommends the matter.

28

29 **NEW SECTION. Section 111. Standards of conduct for directors.** (1) Each member of the board of

30 directors, when discharging the duties of a director, shall act:



- 1 (a) in good faith; and
- 2 (b) in a manner the director reasonably believes to be in the best interests of the corporation.
- 3 (2) The members of the board of directors or a board committee, when becoming informed in connection
- 4 with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with
- 5 the care that a person in a ~~similar~~ LIKE position would reasonably believe appropriate under similar circumstances.
- 6 (3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed
- 7 to the other board or committee members information not already known by them but known by the director to
- 8 be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required
- 9 to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally
- 10 enforceable obligation of confidentiality, or a professional ethics rule.
- 11 (4) In discharging board or board committee duties, a director who does not have knowledge that makes
- 12 reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a)
- 13 or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty
- 14 to perform one or more of the board's functions that are delegable under applicable law.
- 15 (5) In discharging board or board committee duties, a director who does not have knowledge that makes
- 16 reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial
- 17 statements and other financial data, prepared or presented by any of the persons specified in subsection (6).
- 18 (6) A director is entitled to rely, in accordance with subsection (4) or (5), on:
- 19 (a) one or more officers or employees of the corporation whom the director reasonably believes to be
- 20 reliable and competent in the functions performed or the information, opinions, reports, or statements provided;
- 21 (b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving
- 22 skills or expertise the director reasonably believes are matters:
- 23 (i) within the particular person's professional or expert competence; or
- 24 (ii) as to which the particular person merits confidence; or
- 25 (c) a board committee of which the director is not a member if the director reasonably believes the
- 26 committee merits confidence.

27

28 **NEW SECTION. Section 112. Standards of liability for directors.** (1) A director may not be liable to

29 the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action,

30 as a director unless the party asserting liability in a proceeding establishes that:

- 1 (a) no defense interposed by the director precludes liability based on:
- 2 (i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];
- 3 (ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section
- 4 132]; or
- 5 (iii) the protection afforded by [section 133]; and
- 6 (b) the challenged conduct consisted or was the result of:
- 7 (i) action not in good faith; or
- 8 (ii) a decision:
- 9 (A) that the director did not reasonably believe to be in the best interests of the corporation; or
- 10 (B) as to which the director was not informed to an extent the director reasonably believed appropriate
- 11 in the circumstances; or
- 12 (iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of
- 13 independence due to the director's domination or control by, another person having a material interest in the
- 14 challenged conduct and:
- 15 (A) the relationship, domination, or control could reasonably be expected to have affected the director's
- 16 judgment respecting the challenged conduct in a manner adverse to the corporation; and
- 17 (B) after a reasonable expectation of an effect on the director's judgment has been established, the
- 18 director may not have established that the challenged conduct was reasonably believed by the director to be in
- 19 the best interests of the corporation; or
- 20 (iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs
- 21 of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry,
- 22 when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive
- 23 director to the need for an inquiry; or
- 24 (v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's
- 25 duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.
- 26 (2) The party seeking to hold the director liable:
- 27 (a) for money damages also has the burden of establishing that:
- 28 (i) harm to the corporation or its shareholders has been suffered; and
- 29 (ii) the harm suffered was proximately caused by the director's challenged conduct; or
- 30 (b) for other money payment under a legal remedy, such as compensation for the unauthorized use of

1 corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought  
2 is appropriate in the circumstances; or

3 (c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to  
4 the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy  
5 sought is appropriate in the circumstances.

6 (3) Nothing in this section:

7 (a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to  
8 the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise  
9 applicable;

10 (b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such  
11 as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional  
12 interest under [section 130];

13 (c) affects any rights to which the corporation or a shareholder may be entitled under another statute of  
14 this state or the United States; or

15 (d) invalidates or otherwise limits the business judgment rule under the common law.

16  
17 **NEW SECTION. Section 113. Director's liability for unlawful distributions.** (1) A director who votes  
18 for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or  
19 [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could  
20 have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes  
21 that when taking the action the director did not comply with [section 111].

22 (2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

23 (a) contribution from every other director who could be held liable under subsection (1) for the unlawful  
24 distribution; and

25 (b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution  
26 the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

27 (3) A proceeding to enforce:

28 (a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after  
29 the date:

30 (i) on which the effect of the distribution was measured under [section 60(5) or (7)];



































1 would become subject to interest holder liability, approval of the plan of domestication must require the signing  
2 in connection with the domestication, by each affected shareholder, of a separate written consent to become  
3 subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability  
4 with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect  
5 to the domesticated corporation are substantially identical to those of the existing interest holder liability, other  
6 than changes that eliminate or reduce that interest holder liability.

7

8 **NEW SECTION. Section 140. Articles of domestication -- effectiveness.** (1) After:

9 (a) a plan of domestication of a domestic corporation has been adopted and approved as required by  
10 [sections 1 through 221]; or

11 (b) a foreign corporation that is a domesticating corporation has approved a domestication as required  
12 under its organic law, articles of domestication must be signed by the domesticating corporation. The articles  
13 must set forth:

14 (i) the name of the domesticating corporation and its jurisdiction of formation;

15 (ii) the name of the domesticated corporation and its jurisdiction of formation; and

16 (iii) if the domesticating corporation is:

17 (A) a domestic corporation, a statement that the plan of domestication was approved in accordance with  
18 [sections 134 through 148]; or

19 (B) a foreign corporation, a statement that the domestication was approved in accordance with its  
20 organic law.

21 (2) If the domesticated corporation is a domestic corporation, the articles of domestication must have  
22 attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28].  
23 Provisions that would not be required to be included in restated articles of incorporation may be omitted from the  
24 articles of incorporation attached to the articles of domestication.

25 (3) The articles of domestication must be delivered to the secretary of state for filing and take effect on  
26 the effective date determined in accordance with [section 6].

27 (4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on  
28 the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the  
29 domestication becomes effective on the later of:

30 (a) the date and time provided by the organic law of the domesticated corporation; or

1 (b) the date the articles of domestication are effective.

2 (5) If the domesticating corporation is a foreign corporation that is registered to do business in this state  
3 under [sections 203 through 214], its registration statement is canceled automatically when the domestication  
4 becomes effective.

5

6 **NEW SECTION. Section 141. Amendment of plan of domestication -- abandonment.** (1) A plan of  
7 domestication of a domestic corporation may be amended:

8 (a) in the same manner the plan was approved if the plan does not provide for the manner in which it  
9 may be amended; or

10 (b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent  
11 to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

12 (i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other  
13 securities, cash, other property, or any combination to be received by any of the shareholders of the  
14 domesticating corporation under the plan;

15 (ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately  
16 after the domestication becomes effective except changes that do not require approval of the shareholders of the  
17 domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in  
18 the plan; or

19 (iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder  
20 in any material respect.

21 (2) After a plan of domestication has been adopted and approved by a domestic corporation as required  
22 by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be  
23 abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the  
24 plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

25 (3) If a domestication is abandoned after the articles of domestication have been delivered to the  
26 secretary of state for filing but before the articles of domestication have become effective, articles of abandonment  
27 signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles  
28 of domestication become effective. The articles of abandonment take effect on filing, and the domestication is  
29 abandoned and does not become effective. The articles of abandonment must contain:

30 (a) the name of the domesticating corporation;

- 1 (b) the date on which the articles of domestication were filed by the secretary of state; and  
2 (c) a statement that the domestication has been abandoned in accordance with this section.

3  
4 **NEW SECTION. Section 142. Effect of domestication.** (1) When a domestication becomes effective:

5 (a) all property owned by and every contract right possessed by the domesticating corporation are the  
6 property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

7 (b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations,  
8 and liabilities of the domesticated corporation;

9 (c) the name of the domesticated corporation may be but need not be substituted for the name of the  
10 domesticating corporation in any pending proceeding;

11 (d) the articles of incorporation and bylaws of the domesticated corporation become effective;

12 (e) the shares of the domesticating corporation are reclassified into shares or other securities,  
13 obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of  
14 the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided  
15 to them by those terms and to any appraisal rights they may have under the organic law of the domesticating  
16 corporation; and

17 (f) the domesticated corporation is:

18 (i) incorporated under and subject to the organic law of the domesticated corporation;

19 (ii) the same corporation without interruption as the domesticating corporation; and

20 (iii) considered to have been incorporated on the date the domesticating corporation was originally  
21 incorporated.

22 (2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the  
23 domesticated corporation is considered to have:

24 (a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the  
25 rights of shareholders who exercise appraisal rights in connection with the domestication; and

26 (b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections  
27 171 through 183].

28 (3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign  
29 corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state  
30 who had interest holder liability with respect to the domesticating corporation before the domestication becomes

1 effective is as follows:

2 (a) The domestication does not discharge that prior interest holder liability with respect to any interest  
3 holder liabilities that arose before the domestication becomes effective.

4 (b) The provisions of the organic law of the domesticating corporation continue to apply to the collection  
5 or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not  
6 occurred.

7 (c) The shareholder has the rights of contribution from other persons that are provided by the organic  
8 law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a)  
9 as if the domestication had not occurred.

10 (d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with  
11 respect to any interest holder liabilities that are incurred after the domestication becomes effective.

12 (4) A shareholder who becomes subject to interest holder liability with respect to the domesticated  
13 corporation as a result of the domestication has that interest holder liability only with respect to interest holder  
14 liabilities that arise after the domestication becomes effective.

15 (5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

16 (6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation  
17 immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which  
18 it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to  
19 the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

20 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,  
21 subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains  
22 payable after the domestication inures to the domesticated corporation.

23 (8) A trust obligation that would govern property if transferred to the domesticating corporation applies  
24 to property that is transferred to the domesticated corporation after the domestication takes effect.

25

26 **NEW SECTION. Section 143. Conversion.** (1) By complying with [sections 143 through 148], a  
27 domestic corporation may become:

28 (a) a domestic eligible entity; or

29 (b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

30 (2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic

1 eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided  
2 by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved  
3 in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible  
4 entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may  
5 nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic  
6 eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through  
7 148]. For purposes of applying [sections 143 through 148]:

8 (a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken  
9 together are considered a domestic business corporation and its shareholders, shares, and articles of  
10 incorporation, respectively and vice versa, as the context may require; and

11 (b) if the business and affairs of the eligible entity are managed by a person or persons that are not  
12 identical to the members or interest holders, the person or persons are considered the board of directors.

13 (3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign  
14 eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to  
15 become a business corporation in another jurisdiction.

16 (4) If a protected agreement of a domestic converting corporation in effect immediately before the  
17 conversion becomes effective contains a provision applying to a merger of the corporation that is a converting  
18 entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion  
19 of the corporation as if the conversion were a merger until the first time the provision is amended after the  
20 enactment date.

21  
22 **NEW SECTION. Section 144. Plan of conversion.** (1) A domestic corporation may convert to a  
23 domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan  
24 of conversion must include:

25 (a) the name of the converting corporation;

26 (b) the name, jurisdiction of formation, and type of entity of the converted entity;

27 (c) the manner and basis of converting the shares of the domestic corporation into eligible interests or  
28 other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any  
29 combination;

30 (d) the other terms and conditions of the conversion; and

1 (e) the full text that will be in effect immediately after the conversion becomes effective of the organic  
2 rules of the converted entity, which must be in writing.

3 (2) In addition to the requirements of subsection (1), a plan of conversion may contain any other  
4 provision not prohibited by law.

5 (3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside  
6 the plan in accordance with [section 3(11)].

7  
8 **NEW SECTION. Section 145. Action on plan of conversion.** In the case of a conversion of a domestic  
9 corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following  
10 manner:

11 (1) The plan of conversion must first be adopted by the board of directors.

12 (2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of  
13 conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders  
14 approve the plan unless:

15 (i) the board of directors makes a determination that because of conflicts of interest or other special  
16 circumstances it should not make the recommendation; or

17 (ii) [section 110] applies.

18 (b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders  
19 of the basis for its determination.

20 (3) The board of directors may set conditions for approval of the plan of conversion by the shareholders  
21 or for the effectiveness of the plan of conversion.

22 (4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each  
23 shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion  
24 is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is  
25 to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The  
26 notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in  
27 writing as they will be in effect immediately after the conversion.

28 (5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires  
29 a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes  
30 entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the

1 plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of  
2 incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes  
3 entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in  
4 [section 75(3)].

5 (6) If as a result of the conversion one or more shareholders of the converting domestic corporation  
6 would become subject to interest holder liability, approval of the plan of conversion must require the signing in  
7 connection with the transaction, by each affected shareholder, of a separate written consent to become subject  
8 to the interest holder liability.

9

10 **NEW SECTION. Section 146. Articles of conversion -- effectiveness.** (1) After:

11 (a) a plan of conversion of a domestic corporation has been adopted and approved as required by  
12 [sections 1 through 221]; or

13 (b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as  
14 required under its organic law, articles of conversion must be signed by the converting entity and must:

15 (i) state the name, jurisdiction of formation, and type of entity of the converting entity;

16 (ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

17 (iii) if the converting entity is:

18 (A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections  
19 143 through 148]; or

20 (B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with  
21 its organic law; or

22 (II) a domestic eligible entity the organic law of which does not provide for approval of the conversion,  
23 state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through  
24 148]; and

25 (iv) if the converted entity is:

26 (A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached  
27 the public organic record of the converted entity, except that provisions that would not be required to be included  
28 in a restated public organic record may be omitted; or

29 (B) a domestic limited liability partnership, have attached the filing required to become a limited liability  
30 partnership.

1 (2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the  
2 requirements of [section 28], except that provisions that would not be required to be included in restated articles  
3 of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible  
4 entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that  
5 the public organic record does not need to be signed.

6 (3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the  
7 effective date determined in accordance with [section 6].

8 (4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of  
9 conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the  
10 conversion itself becomes effective on the later of:

11 (a) the date and time provided by the organic law of that eligible entity; or

12 (b) the date the articles of conversion become effective.

13 (5) Articles of conversion under this section may be combined with any required conversion filing under  
14 the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing  
15 satisfies the requirements of both the other organic law and this section.

16 (6) If the converting entity is a foreign eligible entity that is registered to do business in this state under  
17 a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign  
18 qualification is canceled automatically on the effective date of its conversion.

19  
20 **NEW SECTION. Section 147. Amendment of plan of conversion -- abandonment.** (1) A plan of  
21 conversion of a converting entity that is a domestic corporation may be amended:

22 (a) in the same manner the plan was approved if the plan does not provide for the manner in which it  
23 may be amended; or

24 (b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent  
25 to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

26 (i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible  
27 interests or other securities, cash, other property, or any combination to be received by any of the shareholders  
28 of the converting corporation under the plan;

29 (ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes  
30 effective except changes that do not require approval of the eligible interest holders of the converted entity under

1 its organic law or organic rules; or

2 (iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in  
3 any material respect.

4 (2) After a plan of conversion has been approved by a converting entity that is a domestic corporation  
5 in the manner required by [sections 143 through 148] and before the articles of conversion become effective, the  
6 plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures  
7 set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of  
8 directors.

9 (3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of  
10 state for filing and before the articles of conversion become effective, articles of abandonment, signed by the  
11 converting entity, must be delivered to the secretary of state for filing before the articles of conversion become  
12 effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not  
13 become effective. The articles of abandonment must contain:

- 14 (a) the name of the converting entity;  
15 (b) the date on which the articles of conversion were filed by the secretary of state; and  
16 (c) a statement that the conversion has been abandoned in accordance with this section.

17

18 **NEW SECTION. Section 148. Effect of conversion.** (1) When a conversion becomes effective:

19 (a) all property owned by and every contract right possessed by the converting entity remain the property  
20 and contract rights of the converted entity without transfer, reversion, or impairment;

21 (b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and  
22 other liabilities of the converted entity;

23 (c) the name of the converted entity may be but need not be substituted for the name of the converting  
24 entity in any pending action or proceeding;

25 (d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign  
26 nonprofit corporation, its public organic record and its private organic rules become effective;

27 (e) if the converted entity is a nonfiling entity, its private organic rules become effective;

28 (f) if the converted entity is a limited liability partnership, the filing required to become a limited liability  
29 partnership and its private organic rules become effective;

30 (g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests

1 or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other  
2 property in accordance with the terms of the conversion, and the shareholders or interest holders of the  
3 converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they  
4 may have under the organic law of the converting entity; and

5 (h) the converted entity is:

6 (i) incorporated or organized under and subject to the organic law of the converted entity;

7 (ii) the same entity without interruption as the converting entity; and

8 (iii) considered to have been incorporated or otherwise organized on the date that the converting entity  
9 was originally incorporated or organized.

10 (2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the  
11 converted entity is considered to have:

12 (a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the  
13 rights of shareholders who exercise appraisal rights in connection with the conversion; and

14 (b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections  
15 171 through 183].

16 (3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic  
17 law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible  
18 interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible  
19 entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that  
20 arise after the conversion becomes effective.

21 (4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest  
22 holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had  
23 interest holder liability with respect to that converting eligible entity before the conversion becomes effective is  
24 as follows:

25 (a) The conversion does not discharge that prior interest holder liability with respect to any interest holder  
26 liabilities that arose before the conversion became effective.

27 (b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge  
28 of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

29 (c) The eligible interest holder has the rights of contribution from other persons that are provided by the  
30 organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as

1 if the conversion had not occurred.

2 (d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest  
3 holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

4 (5) A conversion does not require the converting entity to wind up its affairs and does not constitute or  
5 cause the dissolution or termination of the entity.

6 (6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or  
7 foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from  
8 the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted  
9 by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

10 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,  
11 subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after  
12 the conversion inures to the converted entity.

13 (8) A trust obligation that would govern property if transferred to the converting entity applies to property  
14 that is transferred to the converted entity after the conversion takes effect.

15  
16 **NEW SECTION. Section 149. Authority to amend.** (1) A corporation may amend its articles of  
17 incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation  
18 as of the effective date of the amendment or to delete a provision that is not required to be contained in the  
19 articles of incorporation.

20 (2) A shareholder of the corporation does not have a vested property right resulting from any provision  
21 in the articles of incorporation, including provisions relating to management, control, capital structure, dividend  
22 entitlement, or purpose or duration of the corporation.

23  
24 **NEW SECTION. Section 150. Amendment before issuance of shares.** If a corporation has not yet  
25 issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more  
26 amendments to the corporation's articles of incorporation.

27  
28 **NEW SECTION. Section 151. Amendment by board of directors and shareholders.** If a corporation  
29 has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

30 (1) The proposed amendment must first be adopted by the board of directors.

1 (2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by  
2 the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors  
3 shall recommend that the shareholders approve the amendment unless:

4 (i) the board of directors makes a determination that because of conflicts of interest or other special  
5 circumstances it should not make the recommendation; or

6 (ii) [section 110] applies.

7 (b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis  
8 for its determination.

9 (3) The board of directors may set conditions for the approval of the amendment by the shareholders  
10 or for the effectiveness of the amendment.

11 (4) If the amendment is required to be approved by the shareholders and the approval is to be given at  
12 a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting  
13 of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose  
14 or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied  
15 by a copy of the amendment.

16 (5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires  
17 a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes  
18 entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group  
19 on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting  
20 group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing  
21 a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than  
22 is provided for in [section 75(3)].

23 (6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic  
24 corporation would become subject to new interest holder liability, approval of the amendment requires the signing  
25 in connection with the amendment, by each affected shareholder, of a separate written consent to become  
26 subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder  
27 liability, the terms and conditions of the new interest holder liability:

28 (a) are substantially identical to those of the existing interest holder liability; or

29 (b) are substantially identical to those of the existing interest holder liability other than changes that  
30 eliminate or reduce that interest holder liability.

1 (7) For purposes of [section 157] and subsection (6) of this section, "new interest holder liability" means  
2 interest holder liability of a person resulting from an amendment of the articles of incorporation if:

3 (a) the person did not have interest holder liability before the amendment becomes effective; or

4 (b) the person had interest holder liability before the amendment becomes effective, the terms and  
5 conditions of which are changed when the amendment becomes effective.

6

7 **NEW SECTION. Section 152. Voting on amendments by voting groups.** (1) The holders of the  
8 outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise  
9 required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment  
10 would:

11 (a) effect an exchange or reclassification of all or part of the shares of the class into shares of another  
12 class;

13 (b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of  
14 another class into shares of the class;

15 (c) change the rights, preferences, or limitations of all or part of the shares of the class;

16 (d) change the shares of all or part of the class into a different number of shares of the same class;

17 (e) create a new class of shares having rights or preferences with respect to distributions that are prior  
18 or superior to the shares of the class;

19 (f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect  
20 to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares  
21 of the class;

22 (g) limit or deny an existing preemptive right of all or part of the shares of the class; or

23 (h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been  
24 authorized on all or part of the shares of the class.

25 (2) If a proposed amendment would affect a series of a class of shares in one or more of the ways  
26 described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group  
27 on the proposed amendment.

28 (3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote  
29 as separate voting groups under this section would affect those two or more classes or series in the same or a  
30 substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a

1 single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or  
2 added as a condition by the board of directors pursuant to [section 151(3)].

3 (4) A class or series of shares is entitled to the voting rights granted by this section even if the articles  
4 of incorporation provide that the shares are nonvoting shares.

5  
6 **NEW SECTION. Section 153. Amendment by board of directors.** Unless the articles of incorporation  
7 provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of  
8 incorporation without shareholder approval:

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

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

12 (3) to delete the name and address of the initial registered agent or registered office if a statement of  
13 change is on file with the secretary of state;

14 (4) if the corporation has only one class of shares outstanding:

15 (a) to change each issued and unissued authorized share of the class into a greater number of whole  
16 shares of that class; or

17 (b) to increase the number of authorized shares of the class to the extent necessary to permit the  
18 issuance of shares as a share dividend;

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

22 (6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the  
23 corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired  
24 shares;

25 (7) to delete a class of shares from the articles of incorporation as a result of the operation of [section  
26 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the  
27 class and the articles of incorporation prohibit the reissue of the acquired shares; or

28 (8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder  
29 approval.

30

1            **NEW SECTION. Section 154. Articles of amendment.** (1) After an amendment to the articles of  
2 incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the  
3 articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment,  
4 which must set forth:

5            (a) the name of the corporation;

6            (b) the text of each amendment adopted or the information required by [section 3(11)(e)];

7            (c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares,  
8 provisions for implementing the amendment if not contained in the amendment itself, which may be made  
9 dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section  
10 3(11)(e)];

11           (d) the date of each amendment's adoption; and

12           (e) if an amendment:

13           (i) was adopted by the incorporators or board of directors without shareholder approval, a statement that  
14 the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval  
15 was not required;

16           (ii) required approval by the shareholders, a statement that the amendment was duly approved by the  
17 shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

18           (iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

19           (2) Articles of amendment take effect on the effective date determined in accordance with [section 6].  
20

21           **NEW SECTION. Section 155. Restated articles of incorporation.** (1) A corporation's board of  
22 directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all  
23 amendments into a single document.

24           (2) If the restated articles include one or more new amendments that require shareholder approval, the  
25 amendments must be adopted and approved as provided in [section 151].

26           (3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing  
27 articles of restatement setting forth:

28           (a) the name of the corporation;

29           (b) the text of the restated articles of incorporation;

30           (c) a statement that the restated articles consolidate all amendments into a single document; and

1 (d) if a new amendment is included in the restated articles, the statements required under [section 154]  
2 with respect to the new amendment.

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

5 (5) The secretary of state may certify restated articles of incorporation as the articles of incorporation  
6 currently in effect without including the statements required by subsection (3)(d).

7  
8 **NEW SECTION. Section 156. Amendment pursuant to reorganization.** (1) A corporation's articles  
9 of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of  
10 reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United  
11 States.

12 (2) The individual or individuals designated by the court shall deliver to the secretary of state for filing  
13 articles of amendment setting forth:

14 (a) the name of the corporation;

15 (b) the text of each amendment approved by the court;

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

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

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

19 (3) This section does not apply after entry of a final decree in the reorganization proceeding even though  
20 the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the  
21 reorganization plan.

22  
23 **NEW SECTION. Section 157. Effect of amendment.** (1) An amendment to the articles of incorporation  
24 does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the  
25 corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a  
26 corporation's name does not affect a proceeding brought by or against the corporation in its former name.

27 (2) A shareholder who becomes subject to new interest holder liability with respect to the corporation  
28 as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect  
29 to interest holder liabilities that arise after the amendment becomes effective.

30 (3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder

1 liability of a shareholder who had interest holder liability with respect to the corporation before the amendment  
2 becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

3 (a) The amendment does not discharge that prior interest holder liability with respect to any interest  
4 holder liabilities that arose before the amendment becomes effective.

5 (b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in  
6 effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder  
7 liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

8 (c) The shareholder has the rights of contribution from other persons that are provided by the articles  
9 of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to  
10 any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

11 (d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability  
12 with respect to any interest holder liabilities that arise after the amendment becomes effective.

13

14 **NEW SECTION. Section 158. Authority to amend.** (1) A corporation's shareholders may amend or  
15 repeal the corporation's bylaws.

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

17 (a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power  
18 exclusively to the shareholders in whole or part; or

19 (b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw  
20 expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

21 (3) A shareholder of the corporation does not have a vested property right resulting from any provision  
22 in the bylaws.

23

24 **NEW SECTION. Section 159. Bylaw increasing quorum or voting requirement for directors.** (1)  
25 A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

26 (a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides  
27 otherwise; or

28 (b) if adopted by the board of directors, either by the shareholders or by the board of directors.

29 (2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for  
30 the board of directors may provide that it can be amended or repealed only by a specified vote of either the

1 shareholders or the board of directors.

2 (3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a  
3 quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted  
4 by the same vote required to take action under the quorum and voting requirement then in effect or proposed to  
5 be adopted, whichever is greater.

6  
7 **NEW SECTION. Section 160. Bylaw provisions relating to election of directors.** (1) Unless the  
8 articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote  
9 specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed  
10 in the election of directors as follows:

11 (a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal  
12 to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the  
13 votes;

14 (b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled  
15 to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but  
16 receives more votes against than for election shall serve as a director for a term that terminates on the date that  
17 is the earlier of:

18 (i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

19 (ii) the date on which an individual is selected by the board of directors to fill the office held by the  
20 director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to  
21 subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may  
22 not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

23 (iii) the board of directors may select any qualified individual to fill the office held by a director who  
24 received more votes against than for election.

25 (2) Subsection (1) does not apply to an election of directors by a voting group if:

26 (a) at the expiration of the time fixed under a provision requiring advance notification of director  
27 candidates; or

28 (b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before  
29 notice is given of the meeting at which the election is to occur, there are more candidates for election by the  
30 voting group than the number of directors to be elected, one or more of whom are properly proposed by

1 shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board  
2 of directors determines before the notice of meeting is given that the individual's candidacy does not create a  
3 bona fide election contest.

4 (3) A bylaw electing to be governed by this section may be repealed:

5 (a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides  
6 otherwise;

7 (b) if adopted by the board of directors, by the board of directors or the shareholders.

8

9 **NEW SECTION. Section 161. Definitions -- mergers and share exchanges.** As used in [sections 161  
10 through 168], the following definitions apply:

11 (1) "Acquired entity" means the domestic or foreign corporation or eligible entity that will have all of one  
12 or more classes or series of its shares or eligible interests acquired in a share exchange.

13 (2) "Acquiring entity" means the domestic or foreign corporation or eligible entity that will acquire all of  
14 one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

15 (3) "New interest holder liability" means interest holder liability of a person resulting from a merger or  
16 share exchange that is:

17 (a) with respect to an entity that is different from the entity in which the person held shares or eligible  
18 interests immediately before the merger or share exchange became effective; or

19 (b) with respect to the same entity as the one in which the person held shares or eligible interests  
20 immediately before the merger or share exchange became effective if:

21 (i) the person did not have interest holder liability immediately before the merger or share exchange  
22 became effective; or

23 (ii) the person had interest holder liability immediately before the merger or share exchange became  
24 effective, the terms and conditions of which were changed when the merger or share exchange became effective.

25 (4) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under  
26 a plan of merger but does not include a survivor created by the merger.

27 (5) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one or  
28 more other corporations or eligible entities are merged.

29

30 **NEW SECTION. Section 162. Merger.** (1) By complying with [sections 161 through 168]:

1 (a) one or more domestic business corporations may merge with one or more domestic or foreign  
2 business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

3 (b) two or more foreign business corporations or domestic or foreign eligible entities may merge,  
4 resulting in a survivor that is a domestic business corporation created in the merger.

5 (2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign  
6 business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation  
7 or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the  
8 merger is permitted by the organic law of the foreign business corporation or eligible entity.

9 (3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the  
10 approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent  
11 of all of the interest holders of the eligible entity, and the merger may then be effected as provided in the other  
12 provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

13 (a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation  
14 or other organic rules taken together are considered a domestic business corporation and its shareholders,  
15 shares, and articles of incorporation, respectively and vice versa, as the context may require; and

16 (b) if the business and affairs of the eligible entity are managed by a person or persons that are not  
17 identical to the members or interest holders, the person or persons are considered the board of directors.

18 (4) The plan of merger must include:

19 (a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

20 (b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created  
21 in the merger, a statement to that effect;

22 (c) the terms and conditions of the merger;

23 (d) the manner and basis of converting the shares of each merging domestic or foreign business  
24 corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities,  
25 eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property,  
26 or any combination;

27 (e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public  
28 organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic  
29 or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any  
30 amendments to the survivor's articles of incorporation or other public organic record; and

1 (f) any other provisions required by the laws under which any party to the merger is organized or by  
2 which it is governed or by the articles of incorporation or organic rules of the party.

3 (5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision  
4 not prohibited by law.

5 (6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the  
6 plan in accordance with [section 3(11)].

7 (7) A plan of merger may be amended only with the consent of each party to the merger except as  
8 provided in the plan. A domestic party to a merger may approve an amendment to a plan:

9 (a) in the same manner as the plan was approved if the plan does not provide for the manner in which  
10 it may be amended; or

11 (b) in the manner provided in the plan, except that shareholders, members, or interest holders that were  
12 entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the  
13 plan that will change:

14 (i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares  
15 or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders,  
16 members, or interest holders of any party to the merger;

17 (ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic  
18 rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section  
19 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic  
20 or foreign nonprofit corporation, or unincorporated entity; or

21 (iii) any other terms or conditions of the plan if the change would adversely affect the shareholders,  
22 members, or interest holders in any material respect.

23

24 **NEW SECTION. Section 163. Share exchange.** (1) By complying with [sections 161 through 168]:

25 (a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of  
26 another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests  
27 of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations,  
28 rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant  
29 to a plan of share exchange; or

30 (b) all of the shares of one or more classes or series of shares of a domestic corporation may be

1 acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities,  
2 eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property,  
3 or any combination pursuant to a plan of share exchange.

4 (2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the  
5 share exchange is permitted by the organic law of that corporation or other entity.

6 (3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the  
7 approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange  
8 effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic  
9 eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share  
10 exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of  
11 the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange  
12 may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes  
13 of applying [sections 161 through 168]:

14 (a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules  
15 taken together are considered a domestic business corporation and its shareholders, shares, and articles of  
16 incorporation, respectively and vice versa, as the context may require; and

17 (b) if the business and affairs of the eligible entity are managed by a person or persons that are not  
18 identical to the members or interest holders, the person or persons are considered the board of directors.

19 (4) The plan of share exchange must include:

20 (a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible  
21 interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will  
22 acquire those shares or eligible interests;

23 (b) the terms and conditions of the share exchange;

24 (c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests  
25 in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share  
26 exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities  
27 or eligible interests, cash, other property, or any combination; and

28 (d) any other provisions required by the organic law governing the acquired entity or its articles of  
29 incorporation or organic rules.

30 (5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable

1 outside the plan in accordance with [section 3(11)].

2 (6) A plan of share exchange may be amended only with the consent of each party to the share  
3 exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

4 (a) in the same manner the plan was approved if the plan does not provide for the manner in which it  
5 may be amended; or

6 (b) in the manner provided in the plan, except that shareholders, members, or interest holders that were  
7 entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the  
8 plan that will change:

9 (i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares  
10 or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders,  
11 members, or interest holders of the acquired entity; or

12 (ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders,  
13 members, or interest holders in any material respect.

14  
15 **NEW SECTION. Section 164. Action on plan of merger or share exchange.** In the case of a  
16 domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger  
17 or share exchange must be adopted in the following manner:

18 (1) The plan of merger or share exchange must first be adopted by the board of directors.

19 (2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan  
20 of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or  
21 share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders  
22 approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their  
23 shares to the offeror in response to the offer unless:

24 (i) the board of directors makes a determination that because of conflicts of interest or other special  
25 circumstances it should not make such a recommendation; or

26 (ii) [section 110] applies.

27 (b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis  
28 for its determination.

29 (3) The board of directors may set conditions for the approval of the plan of merger or share exchange  
30 by the shareholders or for the effectiveness of the plan of merger or share exchange.

1           (4) If the plan of merger or share exchange is required to be approved by the shareholders and if the  
2 approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled  
3 to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state  
4 that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be  
5 accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or  
6 domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary  
7 of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the  
8 corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign  
9 corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied  
10 by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or  
11 eligible entity.

12           (5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of  
13 merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if  
14 any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange,  
15 the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group.  
16 The articles of incorporation may not provide a lower quorum for a voting group than shares representing a  
17 majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than  
18 is provided for in [section 75(3)].

19           (6) Subject to subsection (7), separate voting by voting groups is required:

20           (a) on a plan of merger, by each class or series of shares that:

21           (i) are to be converted under the plan of merger into shares, other securities, eligible interests,  
22 obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any  
23 combination; or

24           (ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed  
25 amendment to the articles of incorporation of a surviving corporation that requires action by separate voting  
26 groups under [section 152];

27           (b) on a plan of share exchange, by each class or series of shares included in the exchange, with each  
28 class or series constituting a separate voting group; and

29           (c) on a plan of merger or share exchange, if the voting group is entitled under the articles of  
30 incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

1 (7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in  
2 subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share  
3 exchange:

4 (a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

5 (b) will not effect a substantive business combination.

6 (8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders  
7 of a plan of merger is not required if:

8 (a) the corporation will survive the merger;

9 (b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

10 (c) each shareholder of the corporation whose shares were outstanding immediately before the effective  
11 date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and  
12 limitations, immediately after the effective date of the merger; and

13 (d) the issuance in the merger of shares or other securities convertible into or rights exercisable for  
14 shares does not require a vote under [section 51(6)].

15 (9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation  
16 would become subject to new interest holder liability, approval of the plan of merger or share exchange requires  
17 the signing in connection with the transaction, by each affected shareholder, of a separate written consent to  
18 become subject to the new interest holder liability unless, in the case of a shareholder that already has interest  
19 holder liability with respect to the domestic corporation:

20 (a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a  
21 different or the same domestic corporation in which the person is a shareholder; and

22 (b) the terms and conditions of the new interest holder liability are substantially identical to those of the  
23 existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

24 (10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of  
25 merger or share exchange is not required if:

26 (a) the plan of merger or share exchange expressly:

27 (i) permits or requires the merger or share exchange to be effected under this subsection (10); and

28 (ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger  
29 or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth  
30 in subsection (10)(f);

1 (b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party  
2 to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided  
3 in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this  
4 subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may  
5 exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the  
6 offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

7 (c) the offer discloses that the plan of merger or share exchange provides that the merger or share  
8 exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in  
9 subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be  
10 treated as set forth in subsection (10)(h);

11 (d) the offer remains open for at least 10 days;

12 (e) the offeror purchases all shares properly tendered in response to the offer and not properly  
13 withdrawn;

14 (f) the following shares are collectively entitled to cast at least the minimum number of votes on the  
15 merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168]  
16 and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and  
17 by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares  
18 entitled to vote on the approval were present and voted:

19 (i) shares purchased by the offeror in accordance with the offer;

20 (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary  
21 of any of them; and

22 (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror,  
23 any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible  
24 interests in the offeror, parent, or subsidiary;

25 (g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share  
26 exchange in which it acquires shares of, the corporation; and

27 (h) each outstanding share of each class or series of shares of the corporation that the offeror is offering  
28 to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted  
29 in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to  
30 receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to

1 be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered  
 2 in response to the offer, except that shares of the corporation that are owned by the corporation or that are  
 3 described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration  
 4 described in this subsection (10)(h).

5 (11) As used in subsection (10):

6 (a) "offer" means the offer referred to in subsection (10)(b);

7 (b) "offeror" means the person making the offer;

8 (c) "parent" of an entity means a person that owns directly, or indirectly through one or more wholly  
 9 owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

10 (d) shares tendered in response to the offer are considered to have been "purchased" in accordance  
 11 with the offer at the earliest time that:

12 (i) the offeror has irrevocably accepted those shares for payment; and

13 (ii) either:

14 (A) in the case of shares represented by certificates, the offeror or the offeror's designated depository  
 15 or other agent has physically received the certificates representing those shares; or

16 (B) in the case of shares without certificates, those shares have been transferred into the account of the  
 17 offeror or its designated depository or other agent or an agent's message relating to those shares has been  
 18 received by the offeror or its designated depository or other agent; and

19 (e) "wholly owned subsidiary" of a person means an entity of which or in which that person owns directly,  
 20 or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

21 (12) Unless the articles of incorporation provide otherwise:

22 (a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required  
 23 if the corporation is the acquiring entity in the share exchange; and

24 (b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

25  
 26 **NEW SECTION. Section 165. Merger between parent and subsidiary or between subsidiaries.** (1)

27 A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the  
 28 voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

29 (a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another  
 30 domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power

1 of each class and series of the outstanding shares or eligible interests that have voting power; or  
2 (b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case  
3 without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation  
4 or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise.  
5 [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this  
6 section do not need to be signed by the subsidiary.

7 (2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection  
8 (1), notify each of the subsidiary's shareholders that the merger has become effective. The notice must include:

9 (a) a copy of the plan of merger; or

10 (b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the  
11 surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be  
12 furnished, upon request and at no cost, to any shareholder of any party to the merger.

13 (3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic  
14 subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers  
15 generally.

16  
17 **NEW SECTION. Section 166. Articles of merger or share exchange.** (1) After a plan of merger has  
18 been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under  
19 [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the  
20 merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)].  
21 The articles must set forth:

22 (a) the name, jurisdiction of formation, and type of entity of each party to the merger;

23 (b) the name, jurisdiction of formation, and type of entity of the survivor;

24 (c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended  
25 or if a new domestic corporation is created as a result of the merger:

26 (i) the amendments to the survivor's articles of incorporation; or

27 (ii) the articles of incorporation of the new corporation;

28 (d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or  
29 if a new domestic eligible entity is created as a result of the merger:

30 (i) the amendments to the public organic record of the survivor; or

- 1 (ii) the public organic record of the new eligible entity;
- 2 (e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party  
3 to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate  
4 voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and  
5 the articles of incorporation;
- 6 (f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic  
7 corporation that is a party to the merger, a statement to that effect;
- 8 (g) as to each foreign corporation that is a party to the merger, a statement that the participation of the  
9 foreign corporation was duly authorized as required by its organic law;
- 10 (h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger  
11 was approved in accordance with its organic law or [section 162(3)]; and
- 12 (i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required  
13 to become a limited liability partnership, as an attachment.
- 14 (2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity  
15 has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be  
16 signed by the acquired entity and the acquiring entity. The articles must set forth:
- 17 (a) the name of the acquired entity;
- 18 (b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible  
19 entity that is the acquiring entity; and
- 20 (c) a statement that the plan of share exchange was duly approved by the acquired entity by:
- 21 (i) the required vote or consent of each class or series of shares or eligible interests included in the  
22 exchange; and
- 23 (ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote  
24 on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section  
25 163(3)].
- 26 (3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may  
27 contain any other provision not prohibited by law.
- 28 (4) The articles of merger or share exchange must be delivered to the secretary of state for filing and,  
29 subject to subsection (5), the merger or share exchange takes effect on the effective date determined in  
30 accordance with [section 6].

1 (5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created  
2 by the merger is the survivor, the merger itself becomes effective on the later of:

3 (a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become  
4 effective; or

5 (b) the date the articles of merger take effect.

6 (6) Articles of merger filed under this section may be combined with any filing required under the organic  
7 law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the  
8 requirements of both that organic law and this section.

9

10 **NEW SECTION. Section 167. Effect of merger or share exchange.** (1) When a merger becomes  
11 effective:

12 (a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the  
13 survivor continues or comes into existence, as the case may be;

14 (b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the  
15 merger, other than the survivor, ceases;

16 (c) all property owned by and every contract right possessed by each domestic or foreign corporation  
17 or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the  
18 survivor without transfer, reversion, or impairment;

19 (d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that  
20 is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

21 (e) the name of the survivor may be but need not be substituted in any pending proceeding for the name  
22 of any party to the merger whose separate existence ceased in the merger;

23 (f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the  
24 survivor are amended to the extent provided in the plan of merger;

25 (g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and  
26 is created by the merger become effective;

27 (h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible  
28 interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of  
29 the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other  
30 securities or eligible interests, cash, other property, or any combination are converted, and the former holders

1 of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights  
2 they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign  
3 corporation;

4 (i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and  
5 immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges,  
6 franchises, and immunities of the survivor; and

7 (j) if the survivor exists before the merger:

8 (i) all the property and contract rights of the survivor remain its property and contract rights without  
9 transfer, reversion, or impairment;

10 (ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

11 (iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights,  
12 privileges, franchises, and immunities.

13 (2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that  
14 are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other  
15 securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided  
16 to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under  
17 the organic law governing the acquired entity.

18 (3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic  
19 law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a  
20 merger or share exchange on interest holder liability is as follows:

21 (a) A person who becomes subject to new interest holder liability with respect to an entity as a result of  
22 a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that  
23 arise after the merger or share exchange becomes effective.

24 (b) If a person had interest holder liability with respect to a party to the merger or the acquired entity  
25 before the merger or share exchange becomes effective with respect to shares or eligible interests of the party  
26 or acquired entity:

27 (i) that were exchanged in the merger or share exchange;

28 (ii) that were cancelled in the merger; or

29 (iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the  
30 merger, the following provisions apply:

1 (A) The merger or share exchange does not discharge that prior interest holder liability with respect to  
2 any interest holder liabilities that arose before the merger or share exchange becomes effective.

3 (B) The provisions of the organic law governing any entity for which the person had that prior interest  
4 holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by  
5 subsection (3)(b)(i) as if the merger or share exchange had not occurred.

6 (C) The person has the rights of contribution from other persons that are provided by the organic law  
7 governing the entity for which the person had that prior interest holder liability with respect to any interest holder  
8 liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

9 (D) The person may not by reason of that prior interest holder liability have interest holder liability with  
10 respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

11 (c) If a person has interest holder liability both before and after a merger becomes effective with  
12 unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same  
13 shares or eligible interests before and after the merger becomes effective, the merger has no effect on that  
14 interest holder liability.

15 (d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the  
16 acquired entity that were not exchanged in the share exchange.

17 (4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor  
18 of the merger is considered to have:

19 (a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the  
20 rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights;  
21 and

22 (b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under  
23 [sections 171 through 183].

24 (5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation  
25 or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would  
26 have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger  
27 to wind up its affairs and does not constitute or cause its dissolution or termination.

28 (6) Property held for a charitable purpose under the laws of this state by a domestic or foreign  
29 corporation or eligible entity immediately before a merger becomes effective may not, as a result of the  
30 transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred

1 except and to the extent permitted by or pursuant to the laws of this state addressing cy prè or dealing with  
2 nondiversion of charitable assets.

3 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,  
4 subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that  
5 takes effect or remains payable after the merger inures to the survivor.

6 (8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property  
7 that is transferred to the survivor after a merger becomes effective.

8

9 **NEW SECTION. Section 168. Abandonment of merger or share exchange.** (1) After a plan of  
10 merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before  
11 articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business  
12 corporation that is a party to the plan without action by its shareholders in accordance with any procedures set  
13 forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner  
14 determined by the board of directors.

15 (2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share  
16 exchange have been delivered to the secretary of state for filing but before the merger or share exchange has  
17 become effective, a statement of abandonment signed by all the parties that signed the articles of merger or  
18 share exchange must be delivered to the secretary of state for filing before the articles of merger or share  
19 exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned  
20 and does not become effective. The statement of abandonment must contain:

21 (a) the name of each party to the merger or the names of the acquiring and acquired entities in a share  
22 exchange;

23 (b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

24 (c) a statement that the merger or share exchange has been abandoned in accordance with this section.

25

26 **NEW SECTION. Section 169. Disposition of assets not requiring shareholder approval.** No  
27 approval of the shareholders is required, unless the articles of incorporation provide otherwise:

28 (1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual  
29 and regular course of business;

30 (2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or

1 otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course  
2 of business;

3 (3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or  
4 other entities all of the shares or interests of which are owned by the corporation; or

5 (4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's  
6 shares.

7  
8 **NEW SECTION. Section 170. Shareholder approval of certain dispositions.** (1) A sale, lease,  
9 exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval  
10 of the corporation's shareholders if the disposition would leave the corporation without a significant continuing  
11 business activity. A corporation is conclusively held to have retained a significant continuing business activity if  
12 it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at  
13 least:

14 (a) 25% of total assets at the end of the most recently completed fiscal year; and

15 (b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing  
16 operations, in each case for the most recently completed fiscal year.

17 (2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first  
18 adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In  
19 submitting the disposition to the shareholders for approval, the board of directors shall recommend that the  
20 shareholders approve the disposition unless:

21 (i) the board of directors makes a determination that because of conflicts of interest or other special  
22 circumstances it should not make the recommendation; or

23 (ii) [section 110] applies.

24 (b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis  
25 for its determination.

26 (3) The board of directors may set conditions for the approval by the shareholders of a disposition or for  
27 the effectiveness of the disposition.

28 (4) If a disposition is required to be approved by the shareholders under subsection (1) and if the  
29 approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled  
30 to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must

1 state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a  
2 description of the disposition, including the terms and conditions of the disposition and the consideration to be  
3 received by the corporation.

4 (5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition  
5 requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series  
6 of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled  
7 to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum  
8 for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting  
9 group or a lesser vote for a voting group than is provided for in [section 75(3)].

10 (6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any  
11 time before the disposition has been consummated, it may be abandoned by the corporation without action by  
12 the shareholders, subject to any contractual rights of other parties to the disposition.

13 (7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed  
14 by this section.

15 (8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for  
16 the purposes of this section.

17  
18 **NEW SECTION. Section 171. Definitions -- appraisal rights.** For the purposes of [sections 171  
19 through 183], the following definitions apply:

20 (1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries controls, is  
21 controlled by or is under common control with another person or is a senior executive of another person. For  
22 purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

23 (2) "Beneficial owner" means any person who directly, or indirectly through any contract, arrangement,  
24 or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares.  
25 However, a member of a national securities exchange is not considered a beneficial owner of securities held  
26 directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from  
27 voting without instruction on contested matters or matters that may affect substantially the rights or privileges of  
28 the holders of the securities to be voted. When two or more persons agree to act together for the purpose of  
29 voting their shares of the corporation, each member of the group formed is held to have acquired beneficial  
30 ownership, as of the date of the agreement, of all shares having voting power of the corporation that are

1 beneficially owned by any member of the group.

2 (3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder  
3 demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

4 (4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power  
5 if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value  
6 equal to or less than that paid in connection with the corporate action.

7 (5) "Fair value" means the value of the corporation's shares determined:

8 (a) immediately before the effectiveness of the corporate action to which the shareholder objects;

9 (b) using customary and current valuation concepts and techniques generally employed for similar  
10 businesses in the context of the transaction requiring appraisal; and

11 (c) without discounting for lack of marketability or minority status except, if appropriate, for amendments  
12 to the articles of incorporation pursuant to [section 172(1)(d)].

13 (6) "Interest" means interest from the date the corporate action becomes effective until the date of  
14 payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

15 (7) "Interested person" means a person or an affiliate of a person who at any time during the 1-year  
16 period immediately preceding approval by the board of directors of the corporate action:

17 (a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner  
18 of excluded shares;

19 (b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the  
20 appointment or election of 25% or more of the directors to the board of directors of the corporation; or

21 (c) was a senior executive or director of the corporation or a senior executive of any affiliate of the  
22 corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other  
23 shareholders, other than:

24 (i) employment, consulting, retirement, or similar benefits established separately and not as part of or  
25 in contemplation of the corporate action;

26 (ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of  
27 the corporate action that are not more favorable than those existing before the corporate action or, if more  
28 favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section  
29 131]; or

30 (iii) in the case of a director of the corporation who will, in the corporate action, become a director or

1 governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on  
2 the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

3 (8) "Interested transaction" means a corporate action described in [section 172(1)], other than a merger  
4 pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation  
5 are being acquired or converted.

6 (9) "Preferred shares" means a class or series of shares whose holders have preference over any other  
7 class or series of shares with respect to distributions.

8 (10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer,  
9 and any individual in charge of a principal business unit or function.

10 (11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial  
11 owner.

12  
13 **NEW SECTION. Section 172. Right to appraisal.** (1) A shareholder is entitled to appraisal rights and  
14 to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate  
15 actions:

16 (a) consummation of a merger to which the corporation is a party if:

17 (i) shareholder approval is required for the merger by [section 164] or would be required but for the  
18 provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation  
19 with respect to shares of any class or series that remain outstanding after consummation of the merger; or

20 (ii) the corporation is a subsidiary and the merger is governed by [section 165];

21 (b) consummation of a share exchange to which the corporation is a party the shares of which will  
22 be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect  
23 to any class or series of shares of the corporation that is not acquired in the share exchange;

24 (c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote  
25 on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect  
26 to shares of any class or series if:

27 (i) under the terms of the corporate action approved by the shareholders, the corporation's net assets,  
28 in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are  
29 to be distributed to shareholders in cash:

30 (A) within 1 year after the shareholders' approval of the action; and

- 1 (B) in accordance with their respective interests determined at the time of distribution; and  
2 (ii) the disposition of assets is not an interested transaction;  
3 (d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces  
4 the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has  
5 the obligation or right to repurchase the fractional share created;  
6 (e) any other merger, share exchange, disposition of assets, or amendment to the articles of  
7 incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of  
8 the board of directors;  
9 (f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares  
10 in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all  
11 material respects, and represent at least the same percentage interest of the total voting rights of the outstanding  
12 shares of the foreign corporation, as the shares held by the shareholder before the domestication;  
13 (g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143];  
14 or  
15 (h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section  
16 143].  
17 (2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b),  
18 (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:  
19 (a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:  
20 (i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;  
21 (ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least \$20  
22 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior  
23 executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more  
24 than 10% of those shares; or  
25 (iii) issued by an open-end management investment company registered with the United States securities  
26 and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option  
27 of the holder at net asset value.  
28 (b) The applicability of subsection (2)(a) must be determined as of:  
29 (i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of  
30 shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant

1 to [section 164(10)], the date of the offer; or

2 (ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before  
3 the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as  
4 applicable.

5 (c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for  
6 the holders of any class or series of shares:

7 (i) who are required by the terms of the corporate action requiring appraisal rights to accept for those  
8 shares anything other than cash or shares of any class or any series of shares of any corporation, or any other  
9 proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the  
10 corporate action becomes effective; or

11 (ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash,  
12 shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved  
13 by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net  
14 assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189  
15 and 190]:

16 (A) within 1 year after the shareholders' approval of the action; and

17 (B) in accordance with their respective interests determined at the time of the distribution.

18 (d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1)  
19 for the holders of any class or series of shares where the corporate action is an interested transaction.

20 (3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or  
21 any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of  
22 preferred shares, except that:

23 (a) no limitation or elimination is effective if the class or series does not have the right to vote separately  
24 as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143]  
25 or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

26 (b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or  
27 eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the  
28 amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion,  
29 exchange, or other right existing immediately before the effective date of the amendment does not apply to any  
30 corporate action that becomes effective within 1 year after the effective date of the amendment if the action would

1 otherwise afford appraisal rights.

2

3 **NEW SECTION. Section 173. Assertion of rights -- nominees -- beneficial shareholders.** (1) A  
4 record shareholder may assert appraisal rights as to fewer than all the shares registered in the record  
5 shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record  
6 shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the  
7 voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial  
8 shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of  
9 a record shareholder who asserts appraisal rights for only part of the shares held of record in the record  
10 shareholder's name under this subsection must be determined as if the shares to which the record shareholder  
11 objects and the record shareholder's other shares were registered in the names of different record shareholders.

12 (2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares  
13 of any class or series held on behalf of the shareholder only if the shareholder:

14 (a) submits to the corporation the record shareholder's written consent to the assertion of the rights no  
15 later than the date referred to in [section 176(2)(b)(ii)]; and

16 (b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial  
17 shareholder or the voting trust beneficial owner.

18

19 **NEW SECTION. Section 174. Notice of appraisal rights.** (1) When any corporate action specified in  
20 [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval  
21 of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state  
22 that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171  
23 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171  
24 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise  
25 appraisal rights.

26 (2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders  
27 of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice  
28 must be sent within 10 days after the corporate action became effective and include the materials described in  
29 [section 176].

30 (3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the

1 shareholders pursuant to [section 64]:

2 (a) written notice that appraisal rights are, are not, or may be available must be sent to each record  
3 shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the  
4 corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a  
5 copy of [sections 171 through 183]; and

6 (b) written notice that appraisal rights are, are not, or may be available must be delivered together with  
7 the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the  
8 materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be  
9 available, must be accompanied by a copy of [sections 171 through 183].

10 (4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section  
11 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that  
12 appraisal rights are or may be available, and in subsection (2) must be accompanied by:

13 (a) financial statements of the corporation that issued the shares that may be subject to appraisal,  
14 consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of  
15 the notice, an income statement for that year, and a cash flow statement for that year, provided that if those  
16 financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial  
17 information; and

18 (b) the latest interim financial statements of the corporation, if any.

19 (5) The right to receive the information described in subsection (4) may be waived in writing by a  
20 shareholder before or after the corporate action.

21  
22 **NEW SECTION. Section 175. Notice of intent to demand payment -- consequences of voting or**

23 **consenting.** (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders'  
24 meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

25 (a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to  
26 demand payment if the proposed action is effected; and

27 (b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the  
28 proposed action.

29 (2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder  
30 who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor

1 of the proposed action with respect to that class or series of shares.

2 (3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to  
3 [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of  
4 shares:

5 (a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice  
6 of the shareholder's intent to demand payment if the proposed action is effected; and

7 (b) may not tender or cause or permit to be tendered any shares of that class or series in response to  
8 the offer.

9 (4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to  
10 payment under [sections 171 through 183].

11  
12 **NEW SECTION. Section 176. Appraisal notice and form.** (1) If a corporate action requiring appraisal  
13 rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form  
14 required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2),  
15 or (3)]. In the case of a merger under [section 165], the parent shall deliver an appraisal notice and form to all  
16 record shareholders who may be entitled to assert appraisal rights.

17 (2) The appraisal notice must be delivered no earlier than the date the corporate action specified in  
18 [section 172(1)] became effective and no later than 10 days after that date and must:

19 (a) supply a form that:

20 (i) specifies the first date of any announcement to shareholders made before the date the corporate  
21 action became effective of the principal terms of the proposed corporate action; and

22 (ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether  
23 beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

24 (iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or  
25 consent to the transaction as to the class or series of shares for which appraisal is sought;

26 (b) state:

27 (i) where the form must be sent and where certificates for certificated shares must be deposited and the  
28 date by which those certificates must be deposited, which may not be earlier than the date by which the  
29 corporation must receive the required form under subsection (2)(b)(ii);

30 (ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than

1 60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has  
 2 waived the right to demand appraisal with respect to the shares unless the form is received by the corporation  
 3 by the specified date;

4 (iii) the corporation's estimate of the fair value of the shares;

5 (iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10  
 6 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the  
 7 specified date and the total number of shares owned by them; and

8 (v) the date by which the notice to withdraw under [section 177] must be received, which must be within  
 9 20 days after the date specified in subsection (2)(b)(ii) of this section; and

10 (c) be accompanied by a copy of [sections 171 through 183].

11  
 12 **NEW SECTION. Section 177. Perfection of rights -- right to withdraw.** (1) A shareholder who  
 13 receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the  
 14 form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in  
 15 accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)].  
 16 In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares  
 17 acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to  
 18 [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the  
 19 shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that  
 20 shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses  
 21 all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

22 (2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal  
 23 rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the  
 24 appraisal notice pursuant to [section 176(2)(b)(v)]. A shareholder who fails to withdraw from the appraisal process  
 25 may not thereafter withdraw without the corporation's written consent.

26 (3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit  
 27 that shareholder's share certificates where required, each by the date set forth in the notice described in [section  
 28 176(2)], is not entitled to payment under [sections 171 through 183].

29  
 30 **NEW SECTION. Section 178. Payment.** (1) Except as provided in [section 179], within 30 days after



1 180] are considered to have accepted the corporation's offer.

2 (3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the  
3 corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who  
4 agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

5 (4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in  
6 cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in  
7 subsection (2)(e).

8  
9 **NEW SECTION. Section 180. Procedure if shareholder dissatisfied with payment or offer.** (1) A  
10 shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the  
11 corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that  
12 estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179]  
13 who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate  
14 of the fair value of the shares, plus interest.

15 (2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid  
16 the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving  
17 the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right  
18 to demand payment under this section and is entitled only to the payment made or offered pursuant to those  
19 respective sections.

20  
21 **NEW SECTION. Section 181. Judicial appraisal of shares -- court action.** (1) If a shareholder  
22 makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a  
23 proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value  
24 of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day  
25 period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180],  
26 plus interest.

27 (2) The corporation shall commence the proceeding in the district court of the county in which its principal  
28 office is located or, if its principal office is not located in this state, in the first judicial district.

29 (3) The corporation shall make all shareholders, regardless of whether they are residents of this state,  
30 whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties

1 must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by  
2 publication as provided by law.

3 (4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary  
4 and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend  
5 a decision on the question of fair value. The appraisers have the powers described in the order appointing them  
6 or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights  
7 as parties in other civil proceedings. There is no right to a jury trial.

8 (5) Each shareholder made a party to the proceeding is entitled to judgment:

9 (a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the  
10 amount paid by the corporation to the shareholder for the shares, plus interest; or

11 (b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to  
12 withhold payment under [section 179].

13  
14 **NEW SECTION. Section 182. Court costs -- expenses.** (1) The court in an appraisal proceeding  
15 commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable  
16 compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against  
17 the corporation, except that the court may assess court costs against all or some of the shareholders demanding  
18 appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily,  
19 vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

20 (2) The court in an appraisal proceeding may also assess the expenses of the respective parties in  
21 amounts the court finds equitable:

22 (a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds  
23 the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

24 (b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if  
25 the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith  
26 with respect to the rights provided by [sections 171 through 183].

27 (3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of  
28 substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against  
29 the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders  
30 who were benefited.

1 (4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180],  
2 any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover  
3 from the corporation all expenses of the suit.

4  
5 **NEW SECTION. Section 183. Other remedies limited.** (1) The legality of a proposed or completed  
6 corporate action described in [section 172(1)] may not be contested, and the corporate action may not be  
7 enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have  
8 approved the corporate action.

9 (2) Subsection (1) does not apply to a corporate action that:

10 (a) was not authorized and approved in accordance with the applicable provisions of:

11 (i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169  
12 and 170];

13 (ii) the articles of incorporation or bylaws; or

14 (iii) the resolution of the board of directors authorizing the corporate action;

15 (b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact  
16 necessary to make statements made, in light of the circumstances in which they were made, not misleading;

17 (c) is an interested transaction unless it has been recommended by the board of directors in the manner  
18 provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as  
19 if the interested transaction were a director's conflicting interest transaction; or

20 (d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

21 (i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom  
22 notice of the approval of the corporate action was not effective at least 10 days before the corporate action was  
23 effected; and

24 (ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the  
25 approval of the corporate action is effective as to the shareholder bringing the proceeding.

26  
27 **NEW SECTION. Section 184. Dissolution by incorporators or initial directors.** A majority of the  
28 incorporators or initial directors of a corporation that has not issued shares or has not commenced business may  
29 dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

30 (1) the name of the corporation;

- 1 (2) the date of its incorporation;
- 2 (3) either:
- 3 (i) that none of the corporation's shares has been issued; or
- 4 (ii) that the corporation has not commenced business;
- 5 (4) that no debt of the corporation remains unpaid;
- 6 (5) that the net assets of the corporation remaining after winding up have been distributed to the
- 7 shareholders if shares were issued; and
- 8 (6) that a majority of the incorporators or initial directors authorized the dissolution.

9

10 **NEW SECTION. Section 185. Dissolution by board of directors and shareholders.** (1) The board

11 of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing

12 the dissolution.

13 (2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In

14 submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that

15 the shareholders approve the dissolution unless:

16 (i) the board of directors determines that because of conflict of interest or other special circumstances

17 it should make no recommendation; or

18 (ii) [section 110] applies.

19 (b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders

20 of the basis for its determination.

21 (3) The board of directors may set conditions for the approval of the proposal for dissolution by

22 shareholders or for the effectiveness of the dissolution.

23 (4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each

24 shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to

25 be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to

26 consider dissolving the corporation.

27 (5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution

28 requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series

29 of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled

30 to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum

1 for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting  
2 group or a lesser vote for a voting group than is provided for in [section 75(3)].

3  
4 **NEW SECTION. Section 186. Articles of dissolution.** (1) At any time after dissolution is authorized,  
5 the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

6 (a) the name of the corporation;  
7 (b) the date that dissolution was authorized; and  
8 (c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly  
9 approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of  
10 incorporation.

11 (2) The articles of dissolution take effect on the effective date determined in accordance with [section  
12 6]. A corporation is dissolved on the effective date of its articles of dissolution.

13 (3) For purposes of [sections 184 through 192], "dissolved corporation" means a corporation whose  
14 articles of dissolution have become effective and includes a successor entity to which the remaining assets of  
15 the corporation are transferred subject to its liabilities for purposes of liquidation.

16  
17 **NEW SECTION. Section 187. Revocation of dissolution.** (1) A corporation may revoke its dissolution  
18 within 120 days after its effective date.

19 (2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless  
20 that authorization permitted revocation by action of the board of directors alone, in which event the board of  
21 directors may revoke the dissolution without shareholder action.

22 (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by  
23 delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles  
24 of dissolution, that set forth:

25 (a) the name of the corporation;  
26 (b) the effective date of the dissolution that was revoked;  
27 (c) the date that the revocation of dissolution was authorized;  
28 (d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that  
29 effect;  
30 (e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a

1 statement that revocation was permitted by action by the board of directors alone pursuant to that authorization;  
2 and

3 (f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly  
4 approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of  
5 incorporation.

6 (g) The articles of revocation of dissolution take effect on the effective date determined in accordance  
7 with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of  
8 dissolution.

9 (h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective  
10 date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

11  
12 **NEW SECTION. Section 188. Effect of dissolution.** (1) A corporation that has dissolved continues  
13 its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to  
14 wind up and liquidate its business and affairs, including:

- 15 (a) collecting its assets;  
16 (b) disposing of its properties that will not be distributed in kind to its shareholders;  
17 (c) discharging or making provision for discharging its liabilities;  
18 (d) making distributions of its remaining assets among its shareholders according to their interests; and  
19 (e) doing every other act necessary to wind up and liquidate its business and affairs.

20 (2) Dissolution of a corporation does not:

- 21 (a) transfer title to the corporation's property;  
22 (b) prevent transfer of its shares or securities;  
23 (c) subject its directors or officers to standards of conduct different from those prescribed in [sections  
24 93 through 133];  
25 (d) change:  
26 (i) quorum or voting requirements for its board of directors or shareholders;  
27 (ii) provisions for selection, resignation, or removal of its directors or officers or both; or  
28 (iii) provisions for amending its bylaws;  
29 (e) prevent commencement of a proceeding by or against the corporation in its corporate name;  
30 (f) abate or suspend a proceeding pending by or against the corporation on the effective date of

1 dissolution; or

2 (g) terminate the authority of the registered agent of the corporation.

3 (3) A distribution in liquidation under this section may be made only by a dissolved corporation. For  
4 purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors  
5 may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be  
6 retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a  
7 distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

8

9 **NEW SECTION. Section 189. Known claims against dissolved corporation.** (1) A dissolved  
10 corporation may dispose of the known claims against it by notifying its known claimants in writing of the  
11 dissolution at any time after its effective date.

12 (2) The written notice must:

13 (a) describe information that must be included in a claim;

14 (b) provide a mailing address where a claim may be sent;

15 (c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which  
16 the dissolved corporation must receive the claim; and

17 (d) state that the claim will be barred if not received by the deadline.

18 (3) A claim against the dissolved corporation is barred:

19 (a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the  
20 dissolved corporation by the deadline; or

21 (b) if a claimant whose claim was rejected by the dissolved corporation does not commence a  
22 proceeding to enforce the claim within 90 days after the rejection notice is effective.

23 (4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an  
24 event occurring after the effective date of dissolution.

25

26 **NEW SECTION. Section 190. Other claims against dissolved corporations.** (1) A dissolved  
27 corporation may publish notice of its dissolution and request that persons with claims against the dissolved  
28 corporation present them in accordance with the notice.

29 (2) The notice must:

30 (a) be:

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

3 (ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation's website;

4 (b) describe the information that must be included in a claim and provide a mailing address where the  
5 claim may be sent; and

6 (c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the  
7 claim is commenced within 3 years after the publication of the notice.

8 (3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each  
9 of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against  
10 the dissolved corporation within 3 years after the first publication date of the notice:

11 (a) a claimant who was not given written notice under [section 189];

12 (b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the  
13 corporation;

14 (c) a claimant whose claim is contingent or based on an event occurring after the effective date of  
15 dissolution.

16 (4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

17 (a) against the dissolved corporation to the extent of its undistributed assets; or

18 (b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a  
19 shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the  
20 corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability  
21 for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

22  
23 **NEW SECTION. Section 191. Court proceedings.** (1) A dissolved corporation that has published a  
24 notice under [section 190] may file an application with the district court of the county where its principal office is  
25 located or, if its principal office is not located in this state, of the first judicial district for a determination of the  
26 amount and form of security to be provided for payment of claims that are contingent or have not been made  
27 known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution  
28 but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the  
29 effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be  
30 barred under [section 190(3)].

1           (2) Within 10 days after the filing of the application, notice of the proceeding must be given by the  
2 dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records  
3 of the dissolved corporation.

4           (3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown  
5 in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all  
6 reasonable expert witness fees, must be paid by the dissolved corporation.

7           (4) Provision by the dissolved corporation for security in the amount and the form ordered by the court  
8 under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent,  
9 have not been made known to the dissolved corporation, or are based on an event occurring after the effective  
10 date of dissolution, and those claims may not be enforced against a shareholder who received assets in  
11 liquidation.

12

13           NEW SECTION. Section 192. Director duties. (1) Directors shall cause the dissolved corporation to  
14 discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets  
15 to shareholders after payment of or provision for claims.

16           (2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191]  
17 may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are  
18 barred or satisfied under [sections 189 through 191].

19

20           NEW SECTION. Section 193. Grounds for administrative dissolution. The secretary of state may  
21 commence a proceeding under [section 194] to dissolve a corporation administratively if:

22           (1) the corporation does not pay within 60 days after they are due any fees, ~~taxes~~, interest, or penalties  
23 imposed by [sections 1 through 221] or other laws of this state;

24           (2) the corporation does not deliver its annual report to the secretary of state within ~~60~~ 120 days after  
25 it is due;

26           (3) the corporation is without a registered agent or registered office in this state for 60 days or more;

27           (4) the secretary of state has not been notified within 60 days that the corporation's registered agent or  
28 registered office has been changed, that its registered agent has resigned, or that its registered office has been  
29 discontinued; or

30           (5) the corporation's period of duration stated in its articles of incorporation expires.

1  
 2           **NEW SECTION. Section 194. Procedure for and effect of administrative dissolution.** (1) ~~If the~~  
 3 ~~secretary of state determines that~~ ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY OF STATE SHALL  
 4 COMPILE A LIST OF CORPORATIONS FOR WHICH one or more grounds exist under [section 193] for dissolving a  
 5 corporation, AND the secretary of state shall serve the corporation with written notice of the determination under  
 6 [section 45].

7           (2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds  
 8 for dissolution have been rectified within 90 days following the delivery or publication of notice:

9           (a) the secretary of state will dissolve the corporation; and

10           (b) the corporations will forfeit its right to carry on business within the state.

11           (3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable  
 12 satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within  
 13 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing  
 14 a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary  
 15 of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

16           (4) A corporation administratively dissolved continues its corporate existence but may not carry on any  
 17 business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify  
 18 claimants under [sections 189 and 190].

19           (5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

20  
 21           **NEW SECTION. Section 195. Reinstatement following administrative dissolution.** (1) A corporation  
 22 administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years  
 23 after the effective date of dissolution. The application must:

24           (a) state the name of the corporation and the effective date of its administrative dissolution;

25           (b) state that the ground or grounds for dissolution either did not exist or have been eliminated; AND

26           (c) state that the corporation's name satisfies the requirements of [section 39]; ~~and~~

27 ~~—— (d) contain a certificate from the department of revenue reciting that all taxes imposed pursuant to Title~~  
 28 ~~15 have been paid.~~

29           (2) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION FOR REINSTATEMENT:

30           (A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE

1 15 HAVE BEEN PAID;

2 (B) A FILING FEE, WHICH MUST BE SET AND DEPOSITED BY THE SECRETARY OF STATE IN ACCORDANCE WITH  
3 2-15-405; AND

4 (C) ALL ANNUAL REPORTS NOT YET FILED WITH THE SECRETARY OF STATE AND RELATED FEES AND PENALTIES.

5 ~~(2)~~(3) If the secretary of state determines that the application contains the information, DOCUMENTS, AND  
6 FEES required by ~~subsection (1)~~ SUBSECTIONS (1) AND (2) and that the information ~~is~~ DOCUMENTS, AND FEES ARE  
7 COMPLETE AND correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate  
8 of reinstatement that recites the determination and the effective date of reinstatement, file the original of the  
9 certificate, and serve a copy on the corporation under [section 45].

10 ~~(3)~~(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of  
11 the administrative dissolution, and the corporation resumes carrying on its business as if the administrative  
12 dissolution had never occurred.

13

14 NEW SECTION. Section 196. Appeal from denial of reinstatement. (1) If the secretary of state denies  
15 a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve  
16 the corporation under [section 45] with a written notice that explains the reason or reasons for denial.

17 (2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district  
18 within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court  
19 to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution,  
20 the corporation's application for reinstatement, and the secretary of state's notice of denial.

21 (3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may  
22 take other action the court considers appropriate.

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

24

25 NEW SECTION. Section 197. Grounds for judicial dissolution. (1) The district court of the county  
26 where a corporation's principal office is located or, if its principal office is not located in this state, of the first  
27 judicial district may dissolve a corporation:

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

29 (i) the corporation obtained its articles of incorporation through fraud; or

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

1 (b) in a proceeding by a shareholder if it is established that:

2 (i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable  
3 to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business  
4 and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because  
5 of the deadlock;

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

8 (iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least  
9 two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

10 (iv) the corporate assets are being misapplied or wasted;

11 (c) in a proceeding by a creditor if it is established that:

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

14 (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation  
15 is insolvent;

16 (d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision;  
17 or

18 (e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within  
19 a reasonable time to liquidate and distribute its assets and dissolve.

20 (2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the  
21 proceeding, has a class or series of shares that is:

22 (a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

23 (b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a  
24 market value of at least \$20 million exclusive of the value of shares held by the corporation's subsidiaries, senior  
25 executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of  
26 the shares.

27 (3) For the purposes of this section:

28 (a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and  
29 an unrestricted voting trust beneficial owner; and

30 (b) the term "shareholder" in subsection (2) means a record shareholder, a beneficial shareholder, and

1 a voting trust beneficial owner.

2

3 **NEW SECTION. Section 198. Procedure for judicial dissolution.** (1) Venue for a proceeding by the  
4 attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the  
5 corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district.

6 (2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless  
7 relief is sought against them individually.

8 (3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver  
9 or custodian during the proceeding with all powers and duties the court directs, take other action required to  
10 preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing  
11 can be held.

12 (4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section  
13 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the  
14 shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares  
15 under [section 201] and accompanied by a copy of [section 201].

16

17 **NEW SECTION. Section 199. Receivership or custodianship.** (1) Unless an election to purchase has  
18 been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one  
19 or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the  
20 corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons  
21 designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian  
22 has jurisdiction over the corporation and all of its property wherever located.

23 (2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a  
24 receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business  
25 in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount  
26 the court directs.

27 (3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order,  
28 which may be amended from time to time. Among other powers:

29 (i) the receiver:

30 (A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private

1 sale; and

2 (B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this  
3 state;

4 (ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of  
5 directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders  
6 and creditors.

7 (b) The receiver or custodian has other powers and duties as the court may provide in the appointing  
8 order, which may be amended from time to time.

9 (4) The court during a receivership may redesignate the receiver a custodian and during a custodianship  
10 may redesignate the custodian a receiver.

11 (5) The court from time to time during the receivership or custodianship may order compensation paid  
12 and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from  
13 the sale of the assets.

14  
15 **NEW SECTION. Section 200. Decree of dissolution.** (1) If after a hearing the court determines that  
16 one or more grounds for judicial dissolution described in [section 197] exist, it may enter a decree dissolving the  
17 corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified  
18 copy of the decree to the secretary of state for filing.

19 (2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the  
20 corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance  
21 with [sections 189 and 190].

22  
23 **NEW SECTION. Section 201. Election to purchase in lieu of dissolution.** (1) Unless the transfer is  
24 altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among  
25 shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may  
26 elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning  
27 shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is  
28 irrevocable unless the court determines that it is equitable to set aside or modify the election.

29 (2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days  
30 after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow.

1 If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the  
2 filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and  
3 number of shares owned by the petitioner and the name of and number of shares owned by each electing  
4 shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance  
5 with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase  
6 no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or  
7 notice of their intention to participate in the election to purchase become parties to the proceeding and shall  
8 participate in the purchase in proportion to their ownership of shares as of the date the first election was filed  
9 unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or  
10 one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the  
11 petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be  
12 equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance,  
13 settlement, sale, or other disposition.

14 (3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and  
15 terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the  
16 petitioner's shares on the terms and conditions agreed to by the parties.

17 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon  
18 application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the  
19 petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or  
20 another date the court finds appropriate under the circumstances.

21 (5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase  
22 on terms and conditions the court finds appropriate, which may include payment of the purchase price in  
23 installments when necessary in the interests of equity, provision for security to ensure payment of the purchase  
24 price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the  
25 allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series  
26 of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different  
27 classes or series as far as practicable and may direct that holders of a specific class or classes or series may not  
28 participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be  
29 equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was  
30 arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning

1 shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to  
2 the petitioning shareholder.

3 (6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the  
4 corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a  
5 shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which  
6 is enforceable in the same manner as any other judgment.

7 (7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the  
8 order becomes final.

9 (8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award  
10 of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

11  
12 **NEW SECTION. Section 202. Deposit with state treasurer.** Assets of a dissolved corporation that  
13 should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not  
14 competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate  
15 state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of  
16 entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person  
17 or the person's representative that amount.

18  
19 **NEW SECTION. Section 203. Foreign corporations -- governing law.** (1) The law of the jurisdiction  
20 of formation of a foreign corporation governs:

- 21 (a) the internal affairs of the foreign corporation; and  
22 (b) the interest holder liability of its shareholders.

23 (2) A foreign corporation is not precluded from registering to do business in this state because of any  
24 difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

25 (3) Registration of a foreign corporation to do business in this state does not permit the foreign  
26 corporation to engage in any business or affairs or exercise any power that a domestic corporation may not  
27 engage in or exercise in this state.

28  
29 **NEW SECTION. Section 204. Registration to do business in this state.** (1) A foreign corporation may  
30 not do business in this state until it registers with the secretary of state under [sections 203 through 214].





1 corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through  
2 221].

3 (4) A FOREIGN CORPORATION IS TRANSACTING BUSINESS WITHIN THE MEANING OF SUBSECTION (1) IF IT ENTERS  
4 INTO A CONTRACT, INCLUDING A CONTRACT ENTERED INTO PURSUANT TO TITLE 18, WITH THE STATE OF MONTANA, AN  
5 AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE AND MUST REGISTER TO DO BUSINESS UNDER  
6 [SECTIONS 203 THROUGH 214] BEFORE ENTERING INTO THE CONTRACT. THIS SUBSECTION DOES NOT APPLY TO  
7 CONTRACTS FOR GOODS FULLY PREPARED OR SERVICES FULLY PERFORMED OUT OF STATE FOR DELIVERY OR USE IN THIS  
8 STATE.

9  
10 NEW SECTION. Section 208. Noncomplying name of foreign corporation. (1) A foreign corporation  
11 whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the  
12 purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign  
13 registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212]  
14 setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection  
15 need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do  
16 business in this state with an alternate name, a foreign corporation shall do business in this state under:

- 17 (a) the alternate name;  
18 (b) the foreign corporation's name, with the addition of its jurisdiction of formation; or  
19 (c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

20 (2) If a registered foreign corporation changes its name after registration to a name that does not comply  
21 with [section 39], it may not do business in this state until it complies with subsection (1) of this section by  
22 amending its registration statement to adopt an alternate name that complies with [section 39].

23  
24 NEW SECTION. Section 209. Withdrawal of registration of registered foreign corporation. (1) A  
25 registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the  
26 secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

- 27 (a) the name of the foreign corporation and its jurisdiction of formation;  
28 (b) that the foreign corporation is not doing business in this state and that it withdraws its registration to  
29 do business in this state;  
30 (c) that the foreign corporation revokes the authority of its registered agent in this state;

1 (d) an address to which process on the foreign corporation may be sent by the secretary of state under  
2 [section 45(3)];

3 (e) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate  
4 by the department of revenue to be attached to the application to the effect that the department is satisfied from  
5 the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the  
6 corporation from liability for any taxes, penalties, or interest due the state of Montana.

7 (f) additional information that may be necessary or appropriate to enable the secretary of state to  
8 determine and assess any unpaid fees or taxes payable by the foreign corporation.

9 (2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding  
10 based on a cause of action arising during the time the entity was registered to do business in this state may be  
11 made as provided in [section 45].

12

13 **NEW SECTION. Section 210. Withdrawal upon domestication or conversion to certain domestic**  
14 **entities.** A registered foreign corporation that domesticates to a domestic business corporation or converts to  
15 a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership  
16 is considered to have withdrawn its registration on the effective date of that event.

17

18 **NEW SECTION. Section 211. Withdrawal upon dissolution or conversion to nonfiling entities.** (1)  
19 A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or  
20 foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a  
21 statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic  
22 or foreign nonfiling entity and must state:

23 (a) in the case of a foreign corporation that has completed winding up:

24 (i) its name and jurisdiction of formation;

25 (ii) that the foreign corporation withdraws its registration to do business in this state and revokes the  
26 authority of its registered agent to accept service on its behalf;

27 (iii) an address to which process on the foreign corporation may be sent by the secretary of state under  
28 [section 45(3)];

29 (iv) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate  
30 by the department of revenue to be attached to the application to the effect that the department is satisfied from









- 1 (d) the record of shareholders maintained in accordance with [section 215(4)].
- 2 (3) A shareholder may inspect and copy the records described in subsection (2) only if:
- 3 (a) the shareholder's demand is made in good faith and for a proper purpose;
- 4 (b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the
- 5 records the shareholder desires to inspect; and
- 6 (c) the records are directly connected with the shareholder's purpose.
- 7 (4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of
- 8 records described in subsection (2).
- 9 (5) For any meeting of shareholders for which the record date for determining shareholders entitled to
- 10 vote at the meeting is different from the record date for notice of the meeting, any person who becomes a
- 11 shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is
- 12 entitled to obtain from the corporation upon request the notice and any other information provided by the
- 13 corporation to shareholders in connection with the meeting unless the corporation has made the information
- 14 generally available to shareholders by posting it on its website or by other generally recognized means. Failure
- 15 of a corporation to provide this information does not affect the validity of action taken at the meeting.
- 16 (6) The right of inspection granted by this section may not be abolished or limited by a corporation's
- 17 articles of incorporation or bylaws.
- 18 (7) This section does not affect:
- 19 (a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation
- 20 with the corporation, to the same extent as any other litigant; or
- 21 (b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate
- 22 records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of
- 23 production of records described in subsection (2) of this section at the request of a shareholder, the shareholder
- 24 has met the requirements of subsection (3) of this section.
- 25 (8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder,
- 26 and an unrestricted voting trust beneficial owner.

27

28 **NEW SECTION. Section 217. Scope of inspection right.** (1) A shareholder may appoint an agent or

29 attorney to exercise the shareholder's inspection and copying rights under [section 216].

30 (2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records



1 board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2 (2) The district court of the county where the corporation's principal office is located or, if its principal  
3 office is not located in this state, of the first judicial district may order inspection and copying of the books,  
4 records, and documents at the corporation's expense upon application of a director who has been refused  
5 inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The  
6 court shall dispose of an application under this subsection on an expedited basis.

7 (3) If an order is issued, the court may include provisions protecting the corporation from undue burden  
8 or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a  
9 manner that would violate a duty to the corporation and may also order the corporation to reimburse the director  
10 for the director's expenses incurred in connection with the application.

11  
12 **NEW SECTION. Section 220. Financial statements for shareholders.** (1) Upon the written request  
13 of a shareholder, a corporation shall deliver or make available to the requesting shareholder by posting on its  
14 website or by other generally recognized means annual financial statements for the most recent fiscal year of the  
15 corporation for which annual financial statements have been prepared. If financial statements have been prepared  
16 for the corporation on the basis of generally accepted accounting principles for the specified period, the  
17 corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual  
18 financial statements to be delivered or made available to the requesting shareholder are audited or otherwise  
19 reported on by a public accountant, the report must also be delivered or made available to the requesting  
20 shareholder.

21 (2) A corporation shall deliver or make available and provide written notice of availability of the financial  
22 statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a  
23 written request to the corporation.

24 (3) A corporation may fulfill its responsibilities under this section by delivering the specified financial  
25 statements or otherwise making them available in any manner permitted by the applicable rules and regulations  
26 of the United States securities and exchange commission.

27 (4) Notwithstanding the provisions of subsections (1) through (3):

28 (a) as a condition to delivering or making available financial statements to a requesting shareholder, the  
29 corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use,  
30 and distribution of the financial statements; and

1 (b) the corporation may, if it reasonably determines that the shareholder's request is not made in good  
2 faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

3 (5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant  
4 to this section in accordance with subsection (2) within 5 business days of delivery of the request to the  
5 corporation:

6 (a) The requesting shareholder may apply to the district court of the county where the corporation's  
7 principal office is located or, if its principal office is not located in this state, of the first judicial district for an order  
8 requiring delivery of or access to the requested financial statements. The court shall dispose of an application  
9 under this subsection on an expedited basis.

10 (b) If the court orders delivery of or access to the requested financial statements, it may impose  
11 reasonable restrictions on their confidentiality, use, or distribution.

12 (c) In a proceeding under this section, if the corporation has declined to deliver or make available  
13 financial statements because the shareholder had been unwilling to agree to restrictions proposed by the  
14 corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden  
15 of demonstrating that the restrictions proposed by the corporation were reasonable.

16 (d) In a proceeding under this section, if the corporation has declined to deliver or make available  
17 financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had  
18 reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

19 (e) If the court orders delivery of or access to the requested financial statements, it shall order the  
20 corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that  
21 it had refused delivery or access to the requested financial statements because the shareholder had refused to  
22 agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the  
23 corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper  
24 purpose.

25  
26 **NEW SECTION. Section 221. Annual report for secretary of state.** (1) Each domestic corporation  
27 shall deliver to the secretary of state for filing an annual report that sets forth:

28 (a) the name of the corporation;

29 (b) the street and mailing address of its registered office and the name of its registered agent at that  
30 office in this state;

- 1 (c) the street and mailing address of its principal office;  
2 (d) the names and business addresses of its directors and principal officers;  
3 (e) a brief description of the nature of its business;  
4 (f) the total number of authorized shares, itemized by class and series, if any, within each class; and  
5 (g) the total number of issued and outstanding shares, itemized by class and series, if any, within each  
6 class.

7 (2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state  
8 for filing an annual report that sets forth:

9 (a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate  
10 name as required by [section 208];

11 (b) the foreign corporation's jurisdiction of formation;

12 (c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the  
13 foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that  
14 jurisdiction, the street and mailing addresses of that office;

15 (d) the street and mailing addresses of the foreign corporation's registered office in this state and the  
16 name of its registered agent at that office;

17 (e) the names and business addresses of its directors and principal officers; and

18 (f) a brief description of the nature of its business conducted in this state.

19 (3) Information in the annual report must be current as of the date the annual report is signed on behalf  
20 of the corporation.

21 (4) The first annual report must be delivered to the secretary of state between January 1 and April 15  
22 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation  
23 was registered to do business. Subsequent annual reports must be delivered to the secretary of state between  
24 January 1 and April 15 of subsequent years.

25 (5) If an annual report does not contain the information required by this section, the secretary of state  
26 shall promptly notify the reporting domestic or foreign corporation in writing ~~and return the report to it for~~  
27 ~~correction. If the report is corrected to contain the information required by this section and delivered to the~~  
28 ~~secretary of state within 30 days after the notice from the secretary of state becomes effective as determined in~~  
29 ~~accordance with [section 15], it is considered timely filed. THE CORRECTED REPORT MUST BE FILED BY APRIL 15 TO~~  
30 BE CONSIDERED TIMELY FILED.

1  
2           **Section 222.** Section 10-4-101, MCA, is amended to read:

3           **"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
4 definitions apply:

5           (1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and  
6 associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the  
7 transmission of emergency communications:

8           (a) from persons requesting emergency services to a primary public safety answering point and  
9 communications systems for the direct dispatch, relay, and transfer of emergency communications; and

10           (b) to or from a public safety answering point to or from emergency service units.

11           (2) "Access line" means a voice service of a provider of exchange access services, a wireless provider,  
12 or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to  
13 contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service  
14 has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1  
15 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate  
16 access line.

17           (3) "Commercial mobile radio service" means:

18           (a) a mobile service that is:

19           (i) provided for profit with the intent of receiving compensation or monetary gain;

20           (ii) an interconnected service; and

21           (iii) available to the public or to classes of eligible users so as to be effectively available to a substantial  
22 portion of the public; or

23           (b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

24           (4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

25           (5) "Emergency communications" means any form of communication requesting any type of emergency  
26 services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video  
27 communications, as well as transmission of any text message or analog digital data.

28           (6) "Emergency services" means services provided by a public or private safety agency, including law  
29 enforcement, firefighting, ambulance or medical services, and civil defense services.

30           (7) "Exchange access services" means:

1 (a) telephone exchange access lines or channels that provide local access from the premises of a  
2 subscriber in this state to the local telecommunications network to effect the transfer of information; and

3 (b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service  
4 provided in connection with the services described in subsection (7)(a).

5 (8) "Interconnected voice over IP service" means a service that:

6 (a) enables real-time, two-way voice communications;

7 (b) requires a broadband connection from a user's location;

8 (c) requires IP-compatible customer premises equipment; and

9 (d) permits users generally to receive calls that originate on the public switched telephone network and  
10 to terminate calls to the public switched telephone network.

11 (9) "IP" means internet protocol, or the method by which data are sent on the internet, or a  
12 communications protocol for computers connected to a network, especially the internet.

13 (10) "Local government" has the meaning provided in 7-11-1002.

14 (11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational  
15 policies and procedures that:

16 (a) provides standardized interfaces from call and message services;

17 (b) processes all types of emergency calls, including nonvoice or multimedia messages;

18 (c) acquires and integrates additional data useful to emergency communications;

19 (d) delivers the emergency communications or messages, or both, and data to the appropriate public  
20 safety answering point and other appropriate emergency entities;

21 (e) supports data and communications needs for coordinated incident response and management; and

22 (f) provides a secure environment for emergency communications.

23 (12) "Originating service provider" means an entity that provides capability for a retail customer to initiate  
24 emergency communications.

25 (13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing  
26 within the jurisdictional boundary of a county according to the most recent decennial census compiled by the  
27 United States bureau of the census.

28 (14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire,  
29 ambulance, or medical services.

30 (15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider

1 of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides  
2 access lines.

3 (16) "Public safety agency" means a functional division of a local government or the state that dispatches  
4 or provides law enforcement, firefighting, or emergency medical services or other emergency services.

5 (17) "Public safety answering point" means a communications facility operated on a 24-hour basis that  
6 first receives emergency communications from persons requesting emergency services and that may, as  
7 appropriate, directly dispatch emergency services or transfer or relay the emergency communications to  
8 appropriate public safety agencies.

9 (18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone  
10 request for emergency services, notes the pertinent information from the caller and relays the information to the  
11 appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an  
12 emergency unit.

13 (19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider  
14 for commercial mobile radio services.

15 (20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone  
16 request for emergency services, directly transfers the request to an appropriate public safety agency or other  
17 emergency services provider.

18 (21) "Wireless provider" means an entity, ~~as defined in 35-1-113,~~ that is authorized by the federal  
19 communications commission to provide facilities-based commercial mobile radio service within this state."  
20

21 **Section 223.** Section 15-31-103, MCA, is amended to read:

22 **"15-31-103. Research and development firms exempt from taxation -- application.** (1) A research  
23 and development firm organized to engage in business in the state of Montana for the first time is not subject to  
24 any of the taxes imposed by this chapter on net income earned from research and development activities during  
25 its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means  
26 a research and development firm's taxable year for federal income tax purposes.

27 (2) (a) To be considered a research and development firm, the chief executive officer of the firm or the  
28 officer's agent shall file with the department of revenue an application for treatment as a research and  
29 development firm.

30 (b) The application must be made on a form to be provided by the department. The form must include,

1 at a minimum:

2 (i) the name and address of each officer of the research and development firm;

3 (ii) the name of the research and development firm as required for the purpose of incorporation in

4 ~~35-1-216~~;

5 (iii) the information required by 35-7-105(1);

6 (iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~;

7 and

8 (v) other information the department requires to effectively administer the provisions of this section.

9 (c) The application must be filed with the department before the end of the first calendar quarter during  
10 which the research and development firm engages in business in Montana.

11 (3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time  
12 allowed under subsection (2)(c), the department shall designate the applicant as a research and development  
13 firm for the purposes of this section.

14 (4) Failure by an applicant to provide information required by the department under subsection (2)(b)  
15 or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c)  
16 automatically disqualifies the applicant from being designated and treated as a research and development firm  
17 for the purposes of this section.

18 (5) The director of the department may grant an extension of time for an applicant to file an application  
19 for treatment as a research and development firm, provided the extension is given in writing and the extension  
20 does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

21 (6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion,  
22 exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research  
23 and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion,  
24 exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research  
25 and development firm extends to net operating loss carryback and net operating loss carryforward provisions  
26 allowed under this chapter."

27

28 **Section 224.** Section 15-31-552, MCA, is amended to read:

29 **"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates**  
30 **furnished.** (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ Title 35, upon request

1 of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that  
2 the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request  
3 for dissolution or withdrawal.

4 (2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance  
5 certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through  
6 and including the corporation's final year of existence in Montana."

7

8 **Section 225.** Section 20-5-320, MCA, is amended to read:

9 **"20-5-320. Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school  
10 in a Montana school district that is outside of the child's district of residence or a public school in a district of  
11 another state or province that is adjacent to the county of the child's residence, subject to discretionary approval  
12 by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the  
13 child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged  
14 for transportation.

15 (2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the  
16 provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes  
17 to attend. The application must be made on an out-of-district attendance agreement form supplied by the district  
18 and developed by the superintendent of public instruction.

19 (b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs  
20 incurred for transporting the child under Title 20, chapter 10.

21 (c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the  
22 district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity  
23 and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,  
24 any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

25 (ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of  
26 residence.

27 (3) An out-of-district attendance agreement approved under this section requires that the parent or  
28 guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district  
29 of residence and the district of choice approve the agreement.

30 (4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not

1 required.

2 (5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement  
3 consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance  
4 agreements.

5 (6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the  
6 result of an appeal must authorize the child named in the agreement to enroll in and attend the school named  
7 in the agreement for the designated school year.

8 (7) The trustees of the district where the child wishes to attend have the discretion to approve any  
9 attendance agreement.

10 (8) This section does not preclude the trustees of a district from approving an attendance agreement for  
11 educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8  
12 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and  
13 transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the  
14 out-of-district agreement.

15 (9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child,  
16 at personal expense, to any school of a district other than the resident district when the trustees of the district of  
17 choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the  
18 tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the  
19 amount that the parent or guardian of the child paid in district property taxes during the immediately preceding  
20 school fiscal year for the benefit and support of the district in which the child will attend school.

21 (b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic  
22 corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree  
23 of consanguinity or by marriage to the sixth degree of affinity.

24 (c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection  
25 (9)(a) is determined in the following manner:

26 (i) determine the percentage of the total shares of the corporation held by the shareholder parent or  
27 parents or guardian;

28 (ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation,  
29 parent, or guardian for the benefit and support of the district in which the child will attend school.

30 (d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid

1 as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

2 (10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as  
3 provided in Title 72, chapter 5, part 2."

4

5 **Section 226.** Section 30-13-202, MCA, is amended to read:

6 **"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure --**  
7 **rulemaking authority.** (1) When an application for registration or amendment to the registration of an assumed  
8 business name contains an assumed business name that is the same as or not distinguishable on the record from  
9 an assumed business name already registered or from any corporate name, limited partnership name, limited  
10 liability company name, limited liability partnership name, trademark, or service mark registered or reserved with  
11 the secretary of state, the secretary of state may not register the assumed business name for which application  
12 is made.

13 (2) An applicant for an assumed business name may not use a business name identifier that incorrectly  
14 states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it  
15 is.

16 (3) A person doing business in this state may contest the registration of an assumed business name by  
17 following the procedures set forth in ~~35-1-310~~ [section 39].

18 (4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties  
19 to the secretary of state."

20

21 **Section 227.** Section 32-1-112, MCA, is amended to read:

22 **"32-1-112. Applicability of corporation law.** (1) Except as provided in subsection (2), the provisions  
23 of ~~Title 35, chapter 1, [sections 1 through 221]~~ apply to banks unless a section in this title or a rule or order issued  
24 under this chapter is inconsistent with ~~Title 35, chapter 1 [sections 1 through 221]~~.

25 (2) The provisions of [sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216]  
26 ~~35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35,~~  
27 ~~chapter 1, part 10,~~ do not apply to banks."

28

29 **Section 228.** Section 32-1-301, MCA, is amended to read:

30 **"32-1-301. Organization and incorporation -- articles of incorporation.** (1) A person desiring to

1 organize a banking corporation shall make and file articles of incorporation with the department and, upon  
2 approval by the department, may file the articles with the secretary of state as provided in ~~Title 35, chapter 4~~  
3 [sections 1 through 221]. The articles of incorporation must set forth:

- 4 (a) the information required by ~~35-1-216(4)~~ [section 28(1)];
- 5 (b) the name of the city or town and county in which the principal office of the corporation is to be located;
- 6 (c) the names and places of residence of the initial shareholders and the number of shares subscribed  
7 by each;
- 8 (d) the number of the board of directors and the names of those agreed upon for the first year; and
- 9 (e) the purpose for which the banking corporation is formed, which may be set forth by the use of the  
10 general terms defined in this chapter, with reference to each line of business in which the proposed corporation  
11 desires to engage.

12 (2) In addition to provisions required in subsection (1), the articles of incorporation may also contain  
13 provisions set forth in ~~35-1-216(2)~~ [section 28(2)].

14 (3) A banking corporation may not adopt or use the name of any other banking corporation or  
15 association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

16 (4) A banking corporation may not be organized or incorporated until the articles of incorporation have  
17 been submitted to and have been approved by the department and until it has obtained a certificate from the  
18 board authorizing the proposed corporation to transact the business specified in the articles of incorporation within  
19 this state.

20 (5) A banking corporation may not amend or restate its articles of incorporation until its articles of  
21 amendment or articles of restatement have been submitted to and have been approved by the department and  
22 until it has obtained approval from the department authorizing the proposed amendment or restatement.

23 (6) For banks organized before October 1, 1993, articles of agreement are considered articles of  
24 incorporation."

25

26 **Section 229.** Section 32-1-339, MCA, is amended to read:

27 **"32-1-339. Right of examination by stockholder.** A stockholder of a bank incorporated under the laws  
28 of this state who is not a director may not inspect the books and records of the bank showing its transactions with  
29 a customer. A stockholder may inspect the books and records of the bank as provided in ~~Title 35, chapter 1, part~~  
30 ~~44~~ [sections 215 through 221]."

1

2           **Section 230.** Section 32-1-422, MCA, is amended to read:

3           **"32-1-422. Restriction on investment in corporate stock -- rulemaking authority.** (1) Except as  
4 provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or  
5 surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital  
6 stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the  
7 bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss  
8 must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim  
9 of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the  
10 bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an  
11 investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this  
12 section shall forfeit to the state twice the nominal amount of the stock.

13           (2) A bank may acquire and hold for its own account:

14           (a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely  
15 for the purpose of providing services to banks;

16           (b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount;  
17 and

18           (c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are  
19 limited to those allowed by law for a bank.

20           (3) A bank may invest any amount up to the limit established by the department of its unimpaired capital  
21 and surplus in shares of stock of:

22           (a) the federal national mortgage association;

23           (b) the federal home loan mortgage corporation;

24           (c) the federal agricultural mortgage corporation; and

25           (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health,  
26 transit, educational, environmental, or similar needs of the nation when the department determines that the  
27 investment is in the public interest.

28           (4) A bank may, upon written application and approval of the department, make an investment in an  
29 amount permitted by the department by rule so long as the investment serves primarily to promote the public  
30 welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing,

1 and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined  
 2 in ~~35-1-113~~; that makes investments for similar public welfare purposes.

3 (5) The department shall adopt rules to implement this section. The rules pertaining to the investments  
 4 allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided  
 5 for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller  
 6 of the currency."

7

8 **Section 231.** Section 33-3-103, MCA, is amended to read:

9 **"33-3-103. Applicability of general corporation statutes.** (1) The applicable laws of this state as to  
 10 domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers  
 11 except where in conflict with the express provisions of this code and the reasonable implications of such  
 12 provisions.

13 (2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935~~ [sections 184 through 188]  
 14 apply to the voluntary dissolution of a domestic insurer."

15

16 **Section 232.** Section 33-3-215, MCA, is amended to read:

17 **"33-3-215. Mutualization of stock insurer.** (1) A stock insurer other than a title insurer may become  
 18 a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

19 (2) The commissioner shall not approve any plan, procedure, or mutualization unless:

20 (a) it is equitable to stockholders and policyholders;

21 (b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding  
 22 capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such  
 23 plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the  
 24 commissioner;

25 (c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group  
 26 policies and whose policies have been in force for more than 1 year;

27 (d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess  
 28 of the fair market value thereof as determined by competent disinterested appraisers;

29 (e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same  
 30 manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8,~~ [sections 171

1 through 183] as to rights of nonconsenting stockholders, with respect to consolidation or merger of private  
2 corporations;

3 (f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such  
4 mutualization will be deemed effective; and

5 (g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its  
6 policyholders and to enable it to continue successfully in business in the states in which it is then authorized to  
7 transact insurance and for the kinds of insurance included in its certificates of authority in such states.

8 (3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or  
9 reorganization of an insurer under chapter 2, part 13."

10

11 **Section 233.** Section 33-3-601, MCA, is amended to read:

12 **"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution.** (1) At least 60 days  
13 before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under  
14 ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-934~~ [section 184], the insurer ~~must~~ shall file the plan  
15 for dissolution with the commissioner. The commissioner may require the submission of additional information  
16 to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the  
17 shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the  
18 adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless,  
19 after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of  
20 dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~Title 35,~~  
21 ~~chapter 1, part 9, except that 35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required by  
22 ~~35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed  
23 with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must  
24 instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the  
25 commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

26 (2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the  
27 board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for  
28 dissolution with the commissioner. The commissioner may require the submission of additional information to  
29 establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or  
30 members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the

1 resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing,  
 2 the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the  
 3 commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7,  
 4 except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the  
 5 secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed  
 6 by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve  
 7 the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33,  
 8 chapter 2, part 13."

9

10 **Section 234.** Section 33-3-602, MCA, is amended to read:

11 **"33-3-602. Conversion to involuntary liquidation.** An insurer may at any time during liquidation under  
 12 ~~Title 35, chapter 1, part 9, or Title 35, chapter 2, part 7, or [sections 184 through 202]~~ apply to the commissioner  
 13 to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the  
 14 commissioner shall apply to the court for liquidation under 33-2-1341."

15

16 **Section 235.** Section 33-3-603, MCA, is amended to read:

17 **"33-3-603. Revocation of voluntary dissolution.** If an insurer revokes the voluntary dissolution  
 18 proceedings under ~~35-1-934 or 35-2-724~~ or [section 187], the insurer shall file a copy of the revocation of  
 19 voluntary dissolution proceedings with the commissioner."

20

21 **Section 236.** Section 33-11-103, MCA, is amended to read:

22 **"33-11-103. Chartering -- licensing -- plan of operation.** (1) A risk retention group seeking to be  
 23 chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance  
 24 laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and  
 25 requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent  
 26 that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering  
 27 insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of  
 28 operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines  
 29 of liability insurance.

30 (2) At the time of filing its application for charter, the risk retention group shall provide to the

1 commissioner in summary form the following information:

2 (a) the identity of the initial members of the risk retention group;

3 (b) the identity of those individuals who organized the risk retention group or who will provide  
4 administrative services or otherwise influence or control the activities of the risk retention group;

5 (c) the amount and nature of initial capitalization;

6 (d) the coverages to be afforded; and

7 (e) the states in which the risk retention group intends to operate.

8 (3) Upon receipt of the information required under subsection (2), the commissioner shall forward the  
9 information to the national association of insurance commissioners. Providing this information to the national  
10 association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of  
11 this chapter.

12 (4) All risk retention groups chartered in this state shall file with the department and the national  
13 association of insurance commissioners an annual statement in a form prescribed by the national association of  
14 insurance commissioners, including electronically if required by the commissioner, and completed in accordance  
15 with instructions provided by the national association of insurance commissioners and the national association  
16 of insurance commissioners' accounting practices and procedures manual.

17 (5) All risk retention groups must be in compliance with the governance standards contained within this  
18 section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at  
19 the time of licensure.

20 (6) (a) The board of directors of the risk retention group must consist of a majority of independent  
21 directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding  
22 independence of operation and governance as are imposed on the risk retention group's board of directors under  
23 these standards. The board of directors shall affirmatively determine that a director has no material relationship  
24 with the risk retention group for that director to be considered independent.

25 (b) Each risk retention group shall disclose the determinations of independence to the commissioner  
26 annually.

27 (c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct  
28 or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner  
29 and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be  
30 independent.

1 (ii) A person described in subsection (6)(c)(i) is not considered independent and has a material  
2 relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's  
3 immediate family, or any business with which the person is affiliated:

4 (A) has received in any 12-month period from the risk retention group, including a consultant or a service  
5 provider to the risk retention group, compensation or payment of any item of value that accounts for either 5%  
6 of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's  
7 surplus, whichever is greater;

8 (B) has a relationship of employment or affiliation in a professional capacity or has had a relationship  
9 of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention  
10 group; or

11 (C) has a relationship or has had a relationship within 1 year with a related entity by which a director or  
12 an immediate family member of the director is employed as an executive officer. This condition includes any of  
13 the risk retention group's present executives serving on the related company's board of directors.

14 (7) (a) A material service provider contract with a risk retention group or its renewal:

15 (i) may not exceed 5 years;

16 (ii) requires the approval of a majority of the risk retention group's independent directors; and

17 (iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the  
18 risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is  
19 greater.

20 (b) The entire board of directors may terminate any service provider contract at any time for cause after  
21 providing adequate notice as defined in the contract.

22 (c) The board may not enter a service provider contract with a person who has a material relationship  
23 with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner  
24 at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

25 (8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that  
26 requires the board to:

27 (a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

28 (b) develop a set of governance standards applicable to the risk retention group;

29 (c) oversee the evaluation of the risk retention group's management, including but not limited to the  
30 performance of the captive manager, managing general underwriter, or any other party that is responsible for

1 underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of  
2 financial statements;

3 (d) review and approve the amount to be paid for all material service providers; and

4 (e) review and approve at least annually:

5 (i) the risk retention group's goals and objectives relevant to the compensation of officers and service  
6 providers;

7 (ii) the officers' and service providers' performance in light of those goals and objectives; and

8 (iii) the continued engagement of the officers and material service providers.

9 (9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee  
10 composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent  
11 board member may participate in the activities of the audit committee but may not be a member of the audit  
12 committee.

13 (b) The entire board of directors shall serve as the audit committee if the board chooses not to designate  
14 a separate audit committee.

15 (10) An audit committee shall approve a written charter that defines the committee's purpose, which at  
16 a minimum must be to:

17 (a) assist board oversight of:

18 (i) the integrity of the financial statements;

19 (ii) the board's compliance with legal and regulatory requirements; and

20 (iii) the qualifications, independence, and performance of the independent auditor and actuary;

21 (b) discuss the annual audited financial statements and quarterly financial statements with management;

22 (c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss  
23 its quarterly financial statements with its independent auditor;

24 (d) discuss policies with respect to risk assessment and risk management;

25 (e) meet separately and periodically, either directly or through a designated representative of the  
26 committee, with management and independent auditors;

27 (f) review with the independent auditor any audit problems or difficulties and management's response;

28 (g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees  
29 of the independent auditor;

30 (h) require the external auditor to rotate the lead or coordinating audit partner having primary

1 responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit  
2 so that neither individual performs audit services for more than 5 consecutive fiscal years; and

3 (i) report regularly to the board of directors.

4 (11)(a) The board of directors shall adopt and disclose standards that make information available through  
5 electronic or other means and shall provide that information upon request.

6 (b) For the purposes of this subsection (11), the information must include:

7 (i) the process by which the directors are elected by the owner or the insureds;

8 (ii) qualification standards, responsibilities, and compensation for directors;

9 (iii) director access to management and, as necessary and appropriate, to independent advisors;

10 (iv) director orientation and continuing education;

11 (v) management succession policies and procedures; and

12 (vi) annual board performance evaluation policies and procedures.

13 (12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for  
14 directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must  
15 be voted on by a majority of the independent directors.

16 (b) The code must address:

17 (i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ director's conflicting interest  
18 transactions as defined in [section 129];

19 (ii) confidentiality;

20 (iii) fair dealing;

21 (iv) protection and proper use of risk retention group assets;

22 (v) compliance with all applicable laws, rules, and regulations; and

23 (vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk  
24 retention group.

25 (13) The captive manager, president, or chief executive officer of the risk retention group shall promptly  
26 notify the commissioners in writing as soon as that person is aware of any material noncompliance with any  
27 standard provided for in this section."  
28

29 **Section 237.** Section 33-12-104, MCA, is amended to read:

30 **"33-12-104. Authorization of investments by board of directors.** (1) An insurer's board of directors

1 shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that  
2 specifies guidelines as to the quality, maturity, and diversification of investments and that contains other  
3 specifications including investment strategies intended to ensure that the investments and investment practices  
4 are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

5 (2) The board of directors is ultimately responsible for investment decisions and shall review, at least  
6 annually, whether all investments acquired and held under this chapter have been made in accordance with  
7 delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the  
8 board charged with the responsibility to direct its investments.

9 (3) An insurer's board of directors or committee of the board of directors shall:

10 (a) on no less than a quarterly basis and more often if considered appropriate, receive and review a  
11 summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged  
12 in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with  
13 its written plan; and

14 (b) on no less than an annual basis and more often if considered appropriate, review and revise, as  
15 appropriate, the written plan.

16 (4) In discharging its duties under this section, the board of directors may require that records of any  
17 authorizations or approvals, other documentation as the board may require, and reports of any action taken under  
18 authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the  
19 board of directors.

20 (5) If an insurer does not have a board of directors, all references to the board of directors in this chapter  
21 are considered to be references to the governing body of the insurer having authority equivalent to that of a board  
22 of directors.

23 (6) In discharging their duties under this section, the directors of an insurer shall perform their duties as  
24 provided in ~~35-1-418~~ section 111."

25

26 **Section 238.** Section 33-17-211, MCA, is amended to read:

27 **"33-17-211. General qualifications -- application for license.** (1) An individual applying for a license  
28 shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or  
29 revocation of the license that statements made in the application are true, correct, and complete to the best of  
30 the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the

1 individual:

2 (a) is 18 years of age or older;

3 (b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in  
4 33-17-1001;

5 (c) has paid the license fees stated in 33-2-708;

6 (d) has successfully passed the examinations for each kind of insurance for which the individual has  
7 applied within 12 months of application;

8 (e) is a resident of this state or of another state that grants similar privileges to residents of this state.

9 Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

10 (f) is competent, trustworthy, and of good reputation;

11 (g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the  
12 applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the  
13 applicant's operations as an insurance producer;

14 (h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

15 (i) is not a funeral director, undertaker, or mortician operating in this or any other state;

16 (ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating  
17 in this or any other state; or

18 (iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician  
19 operating in this or any other state; and

20 (i) has completed a background examination pursuant to 33-17-220.

21 (2) A resident or nonresident business entity acting as an insurance producer is required to obtain an  
22 insurance producer's license. Application must be made in a form approved by the commissioner. To approve  
23 the application, the commissioner shall verify that:

24 (a) the business entity has paid the appropriate fee; and

25 (b) the business entity has designated an individual licensed insurance producer who is responsible for  
26 the business entity's compliance with the insurance laws of this state.

27 (3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license  
28 in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

29 (a) the person meets the requirements listed in subsection (1);

30 (b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction

1 with the person's license. A licensed person shall promptly notify the commissioner of each change relating to  
2 an individual listed in the license.

3 (c) the person has designated a licensed officer to be responsible for the person's compliance with the  
4 insurance laws and rules of this state;

5 (d) each member, employee, officer, director, or stockholder of a business entity who is acting as an  
6 insurance producer in this state has obtained a license;

7 (e) (i) with respect to a business entity, the transaction of insurance business is within the purposes  
8 stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

9 (ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority~~  
10 registration under ~~35-4-1312~~ [section 11] or filed articles of incorporation under ~~35-4-220~~ [section 29].

11 (4) (a) The commissioner may license as a resident insurance producer an association of licensed  
12 Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other  
13 than insurance.

14 (b) The license must be used solely for the purpose of enabling the association to place, as a resident  
15 insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public  
16 agencies, bodies, and institutions and to receive the customary commission for the placement.

17 (c) The president and secretary of the association shall apply for the license in the name of the  
18 association, and the commissioner shall issue the license to the association in the association's name alone.

19 (d) The fee for the license is the same as that required by 33-2-708(1)(a).

20 (e) The commissioner may, after a hearing with notice to the association, revoke the license if the  
21 commissioner finds that continuation of the license is not in the public interest or that a ground listed in  
22 33-17-1001 exists.

23 (5) An insurance producer using an assumed business name shall register the name with the  
24 commissioner before using the name."  
25

26 **Section 239.** Section 33-31-201, MCA, is amended to read:

27 **"33-31-201. Establishment of health maintenance organizations.** (1) Notwithstanding any law of this  
28 state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish  
29 and operate a health maintenance organization in compliance with this chapter. A person may not establish or  
30 operate a health maintenance organization in this state except as authorized by a subsisting certificate of

1 authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first  
2 ~~obtains from registers with~~ the secretary of state ~~a certificate of authority~~ to transact business in this state as a  
3 foreign corporation under ~~35-4-1028~~ [section 204].

4 (2) Each application of a health maintenance organization, whether separately licensed or not, for a  
5 certificate of authority must:

6 (a) be verified by an officer or authorized representative of the applicant;

7 (b) be in a form prescribed by the commissioner;

8 (c) contain:

9 (i) the applicant's name;

10 (ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

11 (iii) the date of organization or incorporation;

12 (iv) the form of organization, including whether the providers affiliated with the health maintenance  
13 organization will be salaried employees or group or individual contractors;

14 (v) the state or country of domicile; and

15 (vi) any additional information that the commissioner may reasonably require; and

16 (d) set forth the following information or be accompanied by the following documents, as applicable:

17 (i) a copy of the applicant's organizational documents, such as its corporate charters or articles of  
18 incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents,  
19 and all amendments to those documents, certified by the public officer with whom the originals were filed in the  
20 state or country of domicile;

21 (ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the  
22 applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

23 (iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the  
24 applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or  
25 other governing board or committee, the principal officers in the case of a corporation, and the partners or  
26 members in the case of a partnership or association;

27 (iv) a copy of any contract made or to be made between:

28 (A) any provider and the applicant; or

29 (B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers  
30 executing a standard contract and a copy of the contract instead of copies of each executed contract.

1 (v) the extent to which any of the following will be included in provider contracts and the form of any  
2 provisions that:

3 (A) limit a provider's ability to seek reimbursement for basic health care services or health care services  
4 from an enrollee;

5 (B) permit or require a provider to assume a financial risk in the health maintenance organization,  
6 including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the  
7 earnings or losses; and

8 (C) govern amending or terminating an agreement with a provider;

9 (vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If  
10 the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's  
11 most recent certified financial statement satisfies this requirement unless the commissioner directs that additional  
12 or more recent financial information is required for the proper administration of this chapter.

13 (vii) a description of the proposed method of marketing, a financial plan that includes a projection of  
14 operating results anticipated until the organization has had net income for at least 1 year, and a statement as to  
15 the sources of working capital as well as any other source of funding;

16 (viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing  
17 the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the  
18 applicant's attorney to receive service of legal process issued against it in this state;

19 (ix) a statement reasonably describing the geographic service area or areas to be served, by county,  
20 including:

21 (A) a chart showing the number of primary and specialty care providers, with locations and service areas  
22 by county;

23 (B) the method of handling emergency care, with the location of each emergency care facility; and

24 (C) the method of handling out-of-area services;

25 (x) a description of the way in which the health maintenance organization provides services to enrollees  
26 in each geographic service area, including the extent to which a provider under contract with the health  
27 maintenance organization provides primary care to those enrollees;

28 (xi) a description of the complaint procedures to be used as required under 33-31-303;

29 (xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in  
30 matters of policy and operation under 33-31-222;

1 (xiii) a summary of the way in which administrative services will be provided, including the size and  
2 qualifications of the administrative staff and the projected cost of administration in relation to premium income.  
3 If the health maintenance organization delegates management authority for a major corporate function to a  
4 person outside the organization, the health maintenance organization shall include a copy of the contract in its  
5 application for a certificate of authority. Contracts for delegated management authority must be filed with the  
6 commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive  
7 the health maintenance organization of its right to confidentiality of any proprietary information, and the  
8 commissioner may not disclose that proprietary information to any other person. All contracts must include:

- 9 (A) the services to be provided;  
10 (B) the standards of performance for the manager;  
11 (C) the method of payment, including any provisions for the administrator to participate in the profits or  
12 losses of the plan;  
13 (D) the duration of the contract; and  
14 (E) any provisions for modifying, terminating, or renewing the contract.

15 (xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding  
16 company system or any other guaranties that are intended to ensure the financial success of the plan, including  
17 hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

18 (xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the  
19 renewability of all contracts to be written;

20 (xvi) evidence that it can meet the requirement of 33-31-216(10); and

21 (xvii) any other information that the commissioner may reasonably require to make the determinations  
22 required in 33-31-202.

23 (3) Each health maintenance organization shall file each substantial change, alteration, or amendment  
24 to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date,  
25 including changes in articles of incorporation and bylaws, organization type, geographic service area, provider  
26 contracts, provider availability, plan administration, financial projections and guaranties, and any other change  
27 that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove  
28 any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable  
29 rules exempting from the filing requirements of this subsection those items that the commissioner considers  
30 unnecessary.

1           (4) An applicant or a health maintenance organization holding a certificate of authority shall file with the  
2 commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health  
3 maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must  
4 remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified  
5 mail to the commissioner.

6           (5) Each health maintenance organization shall maintain, at its administrative office and make available  
7 to the commissioner upon request executed copies of all provider contracts.

8           (6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation  
9 operating a health maintenance organization as a plan from the filing requirements of this section if information  
10 requested in the application has been submitted to the commissioner under other laws and rules administered  
11 by the commissioner.

12           (7) (a) The commissioner may waive the requirements of this section for a PACE organization that has  
13 entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

14           (b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver  
15 application must be filed and approved annually. The annual renewal process must be completed by June 30 of  
16 each year.

17           (c) The factors that the commissioner may take into account when granting a waiver include but are not  
18 limited to the financial condition of the PACE organization, any consumer complaints against the PACE  
19 organization, and the length of time the PACE organization has been in business.

20           (d) The PACE organization shall submit an audited financial statement for the organization as a whole  
21 and a financial statement for the PACE program specifically with the initial waiver application and annually on  
22 June 30. The commissioner may request additional information necessary to evaluate the waiver request.

23           (e) The waiver automatically expires if the certification of the PACE organization by the centers for  
24 medicare and medicaid services or the department of public health and human services expires or is terminated.

25           (f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and  
26 medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE  
27 organization.

28           (8) (a) (i) The commissioner may waive the requirements of this section for an accountable care  
29 organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jii, an  
30 accountable care organization shall demonstrate compliance with the program requirements in a manner

1 determined by the commissioner.

2 (ii) The commissioner shall follow the medicare shared savings program structure in developing  
3 compliance criteria needed for obtaining a waiver.

4 (b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver  
5 application must be filed and approved every 3 years. The renewal process must be completed by June 30 of  
6 every third year.

7 (c) The factors that the commissioner may take into account when granting a waiver include but are not  
8 limited to the financial condition of the accountable care organization, any consumer complaints against the  
9 organization, and the length of time the organization has been in business.

10 (d) The accountable care organization shall submit an audited financial statement for the organization  
11 as a whole and a financial statement for the accountable care organization program specifically with the initial  
12 waiver application and annually by June 30. The commissioner may request additional information necessary to  
13 evaluate the waiver request.

14 (e) The waiver automatically expires if certification of the accountable care organization under the  
15 medicare shared savings program or the department of public health and human services expires or is  
16 terminated."

17

18 **Section 240.** Section 35-1-1403, MCA, is amended to read:

19 **"35-1-1403. Purpose.** (1) The purpose of a benefit corporation is to create general public benefit. This  
20 purpose is in addition to and may be a limitation on the corporation's purpose under ~~35-1-114~~ [section 35] and  
21 any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with  
22 subsection (2).

23 (2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of  
24 incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit  
25 corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits  
26 as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this  
27 subsection does not limit the obligation of a benefit corporation to create general public benefit.

28 (3) The creation of general public benefit and one or more specific public benefits as provided in  
29 subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

30 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the

1 identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is  
2 effective only if the amendment is adopted by at least the minimum status vote."

3

4 **Section 241.** Section 35-1-1406, MCA, is amended to read:

5 **"35-1-1406. Benefit corporation governance -- liability.** (1) A director of a public benefit corporation  
6 shall:

7 (a) perform the duties of a director in good faith and in a manner the director believes to be in the best  
8 interests of the benefit corporation; and

9 (b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct  
10 under similar circumstances.

11 (2) In discharging their respective duties and in considering the best interests of the benefit corporation,  
12 the board of directors, committees of the board, and individual directors of a benefit corporation:

13 (a) shall consider the impacts of every action or proposed action on:

14 (i) the shareholders of the benefit corporation;

15 (ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

16 (iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit  
17 purpose or any specific public benefit purpose of the benefit corporation;

18 (iv) community and societal considerations, including those of a community in which offices or facilities  
19 of the benefit corporation or its subsidiaries or suppliers are located;

20 (v) the local and global environment;

21 (vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue  
22 to the benefit corporation from its long-term plans and the possibility that the interests may be best served by  
23 retaining control of the benefit corporation rather than selling or transferring control to another person; and

24 (vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific  
25 public benefit purpose;

26 (b) may consider:

27 (i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person  
28 seeking to acquire control of the benefit corporation; and

29 (ii) any other pertinent factors or the interests of any other person or group; and

30 (c) are not required to give priority to any particular factor or the interests of any particular person or

1 group referred to in this subsection (2) over any other factor or the interests of any other person or group unless  
 2 the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the  
 3 articles of incorporation.

4 (3) In performing the duties of a director, a director may rely on information, opinions, reports, or  
 5 statements, including financial statements and other financial data, in each case prepared or presented by:

6 (a) one or more officers or employees of the benefit corporation whom the director believes to be reliable  
 7 and competent in the matters presented;

8 (b) counsel, independent accountants, or other persons as to matters that the director believes to be  
 9 within those persons' professional or expert competence; or

10 (c) a committee of the board on which the director does not serve if the director believes the committee  
 11 merits confidence and if the director acts in good faith and without knowledge that would cause the director's  
 12 confidence in the committee to be unwarranted.

13 (4) A person who performs the duties of a director in accordance with this part is not liable for monetary  
 14 damages for any alleged failure:

15 (a) to discharge the person's obligations as a director; or

16 (b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

17 (5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages  
 18 may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in  
 19 ~~35-1-216(2)(d)~~ [section 28(2)(d)].

20 (6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose  
 21 or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

22

23 **Section 242.** Section 35-1-1407, MCA, is amended to read:

24 **"35-1-1407. Conversion to benefit corporation.** (1) A corporation may become a benefit corporation  
 25 under this part by amending the corporation's articles of incorporation to include a statement that the corporation  
 26 is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If  
 27 the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair  
 28 market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

29 (2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity  
 30 in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving

1 corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation  
2 of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that  
3 the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by  
4 the newly formed corporation or other entity by at least the minimum status vote.

5 (3) If any other entity is a party to a merger reorganization and the surviving corporation in the  
6 reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved  
7 by the other entity by at least the minimum status vote.

8 (4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit  
9 corporation, the conversion is effective only if the conversion is approved by the other entity by at least the  
10 minimum status vote."

11

12 **Section 243.** Section 35-1-1408, MCA, is amended to read:

13 **"35-1-1408. Termination -- reorganization -- other actions affecting benefit corporation.** (1) A  
14 benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by  
15 deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits  
16 required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum  
17 status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to  
18 purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

19 (2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit  
20 corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status  
21 vote.

22 (3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only  
23 if the conversion is approved by at least the minimum status vote.

24 (4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the  
25 assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the  
26 benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a  
27 transaction described in this subsection is not in the usual and ordinary course of business and is approved, a  
28 shareholder of the corporation may require the corporation to purchase at fair market value the shares owned  
29 by the shareholder as provided in ~~35-1-827~~ [section 172]."

30

1           **Section 244.** Section 35-2-826, MCA, is amended to read:

2           **"35-2-826. Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation  
3 does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of  
4 authority to transact business in this state, may use a fictitious name to transact business in this state if:

5           (a) its real name is unavailable; and

6           (b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified  
7 by its secretary, adopting the fictitious name.

8           (2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of  
9 a foreign corporation must be distinguishable in the records of the secretary of state from:

10           (a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact  
11 business in this state;

12           (b) a corporate name reserved or registered under ~~35-1-309, 35-1-311, 35-2-306, or 35-2-307~~, [section  
13 40], or [section 41];

14           (c) the fictitious name of another foreign business or nonprofit corporation authorized to transact  
15 business in this state;

16           (d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period  
17 of 120 days after the effective date of dissolution; and

18           (e) any assumed business name, limited partnership name, limited liability company name, trademark,  
19 or service mark registered or reserved with the secretary of state.

20           (3) A foreign corporation may apply to the secretary of state for authorization to use in this state the  
21 name of another corporation, incorporated or authorized to transact business in this state, that is not  
22 distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall  
23 authorize use of the name applied for if:

24           (a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory  
25 to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of  
26 state from the name of the applying corporation; or

27           (b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of  
28 competent jurisdiction establishing the applicant's right to use the name applied for in this state.

29           (4) A foreign corporation may use in this state the name, including the fictitious name, of another  
30 domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is

1 incorporated or authorized to transact business in this state and the foreign corporation:

2 (a) has merged with the other corporation;

3 (b) has been formed by reorganization of the other corporation; or

4 (c) has acquired all or substantially all of the assets, including the corporate name, of the other  
5 corporation.

6 (5) If a foreign corporation authorized to transact business in this state changes its corporate name to  
7 one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the  
8 changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate  
9 of authority under 35-2-823."

10

11 **Section 245.** Section 35-4-503, MCA, is amended to read:

12 **"35-4-503. Involuntary dissolution.** A professional corporation may be dissolved involuntarily as  
13 provided in ~~Title 35, chapter 6~~ [sections 193 through 196]."

14

15 **Section 246.** Section 35-5-201, MCA, is amended to read:

16 **"35-5-201. Creating instrument -- filing -- consent of foreign business trust to laws and service**  
17 **of process.** (1) Any business trust seeking to transact business in this state shall file with the secretary of state:

18 (a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was  
19 created and all amendments or a true copy certified by a trustee of the trust before an official authorized to  
20 administer oaths or by a public official of another state, territory, tribe, or country in whose office an executed copy  
21 is on file. The true copy must be verified within 60 days before it is filed with the secretary of state.

22 (b) a verified list of the names, residences, and post-office addresses of its trustees;

23 (c) an affidavit setting forth its assumed business name, if any.

24 (2) A foreign business trust shall file a verified application in the office of the secretary of state as  
25 provided in the case of foreign corporations under ~~35-4-1028~~ [section 205] and shall file a copy of its articles,  
26 declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of  
27 the county clerk of the county where its principal office or place of business in this state will be located. The  
28 foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has  
29 consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has  
30 consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that

1 service of process may be made upon some person, a citizen of this state whose principal place of business is  
2 designated in the certificate. Service of process, when made upon the agent, is valid service on the business  
3 trust."

4

5 **Section 247.** Section 35-6-101, MCA, is amended to read:

6 **"35-6-101. Applicability to corporations presently in default.** (1) The secretary of state may initiate  
7 procedures consistent with this chapter to dissolve nonprofit corporations organized under Title 35, chapters 2  
8 and 3 that have been in default prior to July 1, 1977.

9 (2) Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections  
10 1 through 221] is governed by [sections 193 through 196].

11 (3) As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized  
12 under Title 35, chapters 4 and 9, or [sections 1 through 221]."

13

14 **Section 248.** Section 35-6-102, MCA, is amended to read:

15 **"35-6-102. Involuntary dissolution -- grounds.** (1) Any domestic corporation organized under Title 35,  
16 chapters 2 and 3, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of  
17 state when:

18 (a) the corporation has failed to file its annual report within the time required by law or failed to remit any  
19 fees required by law;

20 (b) the corporation procured its certificate of incorporation through fraud;

21 (c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or  
22 abuses have continued after a written notice specifying the manner in which the corporation has exceeded or  
23 abused the authority has been received by the registered agent of the corporation from the secretary of state;

24 (d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

25 (e) the corporation has failed for 60 days after change of its registered agent to file in the office of the  
26 secretary of state a statement of the change.

27 (2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the  
28 corporation only when that fact is established by an order of the district court. In addition to other persons  
29 authorized by law, the secretary of state or the attorney general may maintain an action in the district court to  
30 implement the provisions of this section."

1

2           **Section 249.** Section 35-6-104, MCA, is amended to read:

3           **"35-6-104. Involuntary dissolution -- procedure.** (1) On or before September 1 of each year, the  
4 secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty,  
5 or costs remaining unpaid.

6           (2) The secretary of state shall give notice to the defaulting corporations by:

7           (a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer;

8           or

9           (b) publication of a general notice to all Montana corporations once a month for 3 consecutive months  
10 in a newspaper of general circulation in Lewis and Clark County.

11           (3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state  
12 that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the  
13 delivery or publication of notice:

14           (a) the secretary of state will dissolve defaulting corporations;

15           (b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana;

16           and

17           (c) defaulting corporations will forfeit their rights to carry on business within the state.

18           (4) After 90 days following delivery or publication of each notice, the secretary of state may, by order,  
19 dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and  
20 complete list containing the names of all corporations that have been so dissolved. The secretary of state shall  
21 immediately give notice to the dissolved corporation as specified in subsection (2).

22           (5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must  
23 be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or 35-2-729, whichever is~~  
24 ~~appropriate~~, is applicable to liquidate the property and assets if necessary."

25

26           **Section 250.** Section 35-6-201, MCA, is amended to read:

27           **"35-6-201. Reinstatement of dissolved corporation -- fee.** (1) The secretary of state may:

28           (a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

29           (b) restore to the corporation its right to carry on business in this state and to exercise all its corporate  
30 privileges and immunities.

1 (2) A corporation applying for reinstatement shall submit to the secretary of state the application,  
2 executed by a person who was an officer or director at the time of dissolution, setting forth:

3 (a) the name of the corporation;

4 (b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through~~  
5 ~~35-1-943 or~~ 35-2-726 and 35-2-727;

6 (c) a statement that not less than a majority of its directors have authorized the application for  
7 reinstatement; and

8 (d) if its corporate name has been legally acquired by another corporation prior to its application for  
9 reinstatement, the corporate name under which the corporation desires to be reinstated.

10 (3) The corporation shall submit with its application for reinstatement:

11 (a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have  
12 been paid;

13 (b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405;  
14 and

15 (c) all annual reports not yet filed with the secretary of state.

16 (4) When all requirements are met and the secretary of state reinstates the corporation to its former  
17 rights, the secretary of state shall:

18 (a) conform and file in the secretary of state's office reports, statements, and other instruments submitted  
19 for reinstatement;

20 (b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement  
21 authorizing it to transact business; and

22 (c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

23 (5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."  
24

25 **Section 251.** Section 35-8-103, MCA, is amended to read:

26 **"35-8-103. Name.** (1) (a) The name of each limited liability company as set forth in its articles of  
27 organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.",  
28 "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated  
29 as "co."

30 (b) The name of a limited liability company as set forth in its articles of organization may not contain

1 business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability  
2 company is a business other than a limited liability company.

3 (2) A limited liability company name must be distinguishable on the records of the secretary of state from:

4 (a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability  
5 company organized or reserved under the laws of this state;

6 (b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited  
7 partnership, or foreign limited liability company registered or qualified to do business in this state;

8 (c) any assumed business name, limited partnership name, trademark, service mark, or other name  
9 registered or reserved with the secretary of state; and

10 (d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days  
11 after the effective date of its dissolution.

12 (3) The use of the name of a limited liability company by another limited liability company or limited  
13 partnership is governed by ~~35-1-308~~ section 39.

14 (4) Contests over names registered under this section are governed by ~~35-1-310~~ section 39."

15

16 **Section 252.** Section 35-9-103, MCA, is amended to read:

17 **"35-9-103. Definition and election of statutory close corporation status.** (1) A statutory close  
18 corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory  
19 close corporation.

20 (2) A corporation having 25 or fewer shareholders may become a statutory close corporation by  
21 amending its articles of incorporation to include the statement required by subsection (1). The amendment must  
22 be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation,  
23 voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment  
24 is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights  
25 under ~~35-1-826 through 35-1-839~~ sections 171 through 183."

26

27 **Section 253.** Section 35-9-201, MCA, is amended to read:

28 **"35-9-201. Notice of statutory close corporation status on issued shares.** (1) The following  
29 statement must appear conspicuously on each share certificate issued by a statutory close corporation:

30 The rights of shareholders in a statutory close corporation may differ materially from the rights of

1 shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements,  
2 and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by  
3 a shareholder on written request to the corporation.

4 (2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall  
5 send to the shareholders a written notice containing the information required by subsection (1).

6 (3) The notice required by this section satisfies all requirements of ~~35-4-628~~ section 57 and of this  
7 chapter that notice of share transfer restrictions be given.

8 (4) A person claiming an interest in shares of a statutory close corporation that has complied with the  
9 notice requirement of this section is bound by the documents referred to in the notice. A person claiming an  
10 interest in shares of a statutory close corporation that has not complied with the notice requirement of this section  
11 is bound by any documents of which the person or another person through whom the person claims has  
12 knowledge or notice.

13 (5) A corporation shall provide to any shareholder upon the shareholder's written request and without  
14 charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in  
15 articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."  
16

17 **Section 254.** Section 35-9-202, MCA, is amended to read:

18 **"35-9-202. Share transfer prohibition.** (1) An interest in shares of a statutory close corporation may  
19 not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by  
20 the articles of incorporation or under 35-9-203.

21 (2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a  
22 transfer:

23 (a) to the corporation or to any other holder of the same class or series of shares;

24 (b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are  
25 members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse,  
26 parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant,  
27 and brothers and sisters;

28 (c) that has been approved in writing by all of the holders of the corporation's shares having general  
29 voting rights;

30 (d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the

- 1 result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;
- 2 (e) by merger or share exchange under ~~Title 35, chapter 1, part 8, [sections 161 through 168]~~ or an
- 3 exchange of existing shares for other shares of a different class or series in the corporation;
- 4 (f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by
- 5 the pledgor; and
- 6 (g) made after termination of the corporation's status as a statutory close corporation."

7

8 **Section 255.** Section 35-9-205, MCA, is amended to read:

9 **"35-9-205. Compulsory purchase of shares after death of shareholder.** (1) Sections 35-9-206

10 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of

11 incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may

12 require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares

13 or to be dissolved.

14 (2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or

15 referred to in the articles of incorporation.

16 (3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208

17 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of

18 the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups,

19 whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the

20 amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none,

21 by all of the incorporators.

22 (4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206

23 through 35-9-208 is entitled to ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through

24 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under

25 these sections to have the shareholder's shares purchased.

26 (5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206

27 through 35-9-208 by a signed writing.

28 (6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase

29 of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the

30 shareholder has independently of 35-9-206 through 35-9-208."

1

2           **Section 256.** Section 35-9-302, MCA, is amended to read:

3           **"35-9-302. Elimination of board of directors.** (1) A statutory close corporation may operate without

4 a board of directors if its articles of incorporation contain a statement to that effect.

5           (2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

6           (a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

7           (b) if no shares have been issued, by all the subscribers for shares, if any; or

8           (c) if there are no subscribers, by all the incorporators.

9           (3) While a corporation is operating without a board of directors as authorized by subsection (1):

10           (a) all corporate powers must be exercised by or under the authority of and the business and affairs of

11 the corporation managed under the direction of the shareholders;

12           (b) unless the articles of incorporation provide otherwise:

13           (i) action requiring director approval or both director and shareholder approval is authorized if approved

14 by the shareholders; and

15           (ii) action requiring a majority or greater percentage vote of the board of directors is authorized if

16 approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

17           (c) a shareholder is not liable for the shareholder's act or omission, even though a director would be,

18 unless the shareholder was entitled to vote on the action;

19           (d) a requirement by a state or the United States that a document delivered for filing contain a statement

20 that specified action has been taken by the board of directors is satisfied by a statement that the corporation is

21 a statutory close corporation without a board of directors and that the action was approved by the shareholders;

22 and

23           (e) the shareholders may by resolution appoint one or more shareholders to sign documents as

24 designated directors.

25           (4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must

26 be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation,

27 voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment

28 must also specify the number, names, and addresses of the corporation's directors or describe who will perform

29 the duties of a board under ~~35-1-416~~ [section 93]."

30

1           **Section 257.** Section 35-9-303, MCA, is amended to read:

2           **"35-9-303. Bylaws.** (1) A statutory close corporation need not adopt bylaws if provisions required by law  
3 to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement  
4 authorized by 35-9-301.

5           (2) If a corporation does not have bylaws when its statutory close corporation status terminates under  
6 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

7

8           **Section 258.** Section 35-9-402, MCA, is amended to read:

9           **"35-9-402. Termination of statutory close corporation status.** (1) A statutory close corporation may  
10 terminate its statutory close corporation status by amending its articles of incorporation to delete the statement  
11 that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board  
12 of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors  
13 from its articles of incorporation.

14           (2) An amendment terminating statutory close corporation status must be approved by the holders of  
15 at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting  
16 groups, whether or not the holders are otherwise entitled to vote on amendments.

17           (3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who  
18 voted against the amendment is entitled to assert ~~dissenters'~~ appraisal rights under ~~35-1-826 through 35-1-839~~  
19 [sections 171 through 183]."

20

21           **Section 259.** Section 35-9-404, MCA, is amended to read:

22           **"35-9-404. Shareholder option to dissolve corporation.** (1) The articles of incorporation of a statutory  
23 close corporation may authorize one or more shareholders, or the holders of a specified number or percentage  
24 of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event  
25 or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent  
26 to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall  
27 begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through~~  
28 ~~35-1-935~~ [sections 184 through 188].

29           (2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation  
30 to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders

1 of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been  
2 issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

3

4 **Section 260.** Section 35-9-501, MCA, is amended to read:

5 **"35-9-501. Court action to protect shareholders.** (1) Subject to satisfying the conditions of subsections  
6 (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief  
7 described in 35-9-502 through 35-9-504 if:

8 (a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that  
9 is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as  
10 shareholder, director, or officer of the corporation;

11 (b) the directors or those in control of the corporation are deadlocked in the management of the  
12 corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will  
13 suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the  
14 advantage of the shareholders generally because of the deadlock; or

15 (c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section  
16 197].

17 (2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county  
18 where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark  
19 County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

20 (3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters,  
21 the shareholder may not commence a proceeding under this section with respect to the matters until the  
22 shareholder has exhausted the nonjudicial remedy.

23 (4) If a shareholder has ~~dissenters'~~ appraisal rights under this chapter or ~~35-1-826 through 35-1-839~~  
24 [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a  
25 proceeding under this section before the shareholder is required to give notice of the intent to demand payment  
26 under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

27 (5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under  
28 this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or  
29 remedy the shareholder may have."

30

1           **Section 261.** Section 35-9-504, MCA, is amended to read:

2           **"35-9-504. Extraordinary relief -- dissolution.** (1) The court may dissolve the corporation if it finds:

3           (a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

4           (b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in  
5           dispute.

6           (2) In determining whether to dissolve the corporation, the court shall consider among other relevant  
7           evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation  
8           has accumulated earnings or current operating profits."

9

10          **Section 262.** Section 35-15-201, MCA, is amended to read:

11          **"35-15-201. Incorporation.** (1) Whenever two or more persons desire to incorporate as a cooperative  
12          association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of  
13          commodities for consumption or in the borrowing or lending of money among members for industrial purposes,  
14          the persons shall prepare a statement to that effect that also sets forth:

15               (a) the name of the proposed cooperative association;

16               (b) its capital stock;

17               (c) its location;

18               (d) the duration of the association; and

19               (e) the particular branch or branches of industry that the association intends to carry out.

20          (2) In addition to the items required in subsection (1), the statement of incorporation may also contain  
21          provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

22          (3) The statement, accompanied by the required filing fee, set and deposited in accordance with  
23          2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association.  
24          After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association  
25          a license as commissioners to open books for subscription to the capital stock of the association at a time and  
26          place that the persons forming the association may determine."

27

28          **Section 263.** Section 35-16-202, MCA, is amended to read:

29          **"35-16-202. Petition for incorporation -- contents and filing -- bond.** (1) ~~Such~~ The persons desiring  
30          to incorporate must shall prepare, sign, acknowledge, and file a petition with the clerk of the district court of the



- 1           (c) the place where its principal business will be transacted;
- 2           (d) the term for which it is to exist, which may be perpetual;
- 3           (e) the number of its directors or trustees and the names and residences of those who are appointed
- 4 for the first 3 months and until their successors are elected and qualified;
- 5           (f) if organized without capital stock, whether the property rights and interest of each member are equal
- 6 or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which
- 7 the property rights and interests, respectively, of each member must be determined and fixed. The association
- 8 has the power to admit new members who must be entitled to share in the property of the association with the
- 9 old members, in accordance with the general rules;
- 10          (g) the designation of classes of members, if more than one;
- 11          (h) the number and par value of shares of each authorized class of stock and, if more than one class
- 12 is authorized:
- 13           (i) the designation, preferences, limitations, and relative rights of each class;
- 14           (ii) which classes of stock are membership stock;
- 15           (iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be
- 16 fixed by the board; and
- 17           (iv) any reservation of a right to acquire or recall any stock.
- 18          (2) In addition to provisions required in subsection (1), the articles of incorporation may also contain
- 19 provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].
- 20          (3) The articles must be subscribed by the incorporators and must be filed in accordance with the
- 21 provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified
- 22 copies must be accepted as prima facie evidence of the facts contained in the articles and of the due
- 23 incorporation of the association."

24

25           **Section 265.** Section 35-18-203, MCA, is amended to read:

26           **"35-18-203. Articles of incorporation.** (1) The articles of incorporation of a cooperative must state in

27 the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the

28 incorporators, and must state:

29           (a) the name of the cooperative;

30           (b) the address of its principal office;





- 1 (4) The period for repayment of loans may not exceed 30 years.
- 2 (5) The interest rate at which loans may be made under this part must be sufficient to:
- 3 (a) cover the bond debt service for a loan; and
- 4 (b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.
- 5 (6) A loan made under this part may not be used for the cost of operation and maintenance of a project."
- 6

7 NEW SECTION. **Section 269. Repealer.** The following sections of the Montana Code Annotated are  
8 repealed:

- 9 35-1-112. Short title.
- 10 35-1-113. Definitions.
- 11 35-1-114. Purposes.
- 12 35-1-115. General powers.
- 13 35-1-116. Notice.
- 14 35-1-117. Ultra vires.
- 15 35-1-118. Reservation of power to amend or repeal.
- 16 35-1-119. Liability of and to ostensible corporations.
- 17 35-1-215. Incorporators.
- 18 35-1-216. Articles of incorporation.
- 19 35-1-217. Filing requirements.
- 20 35-1-218. Facsimile filing -- requirements -- liability.
- 21 35-1-219. Effective time and date of document.
- 22 35-1-220. Incorporation.
- 23 35-1-221. Correcting filed document.
- 24 35-1-222. Organization of corporation.
- 25 35-1-225. Authority to amend.
- 26 35-1-226. Amendment by board of directors.
- 27 35-1-227. Amendment by board of directors and shareholders.
- 28 35-1-228. Voting on amendments by voting groups.
- 29 35-1-229. Amendment before issuance of shares.
- 30 35-1-230. Articles of amendment.

- 1 35-1-231. Restated articles of incorporation.
- 2 35-1-232. Amendment pursuant to reorganization.
- 3 35-1-233. Effect of amendment.
- 4 35-1-234. Bylaw amendment by board of directors or shareholders.
- 5 35-1-235. Extension of duration of corporation.
- 6 35-1-236. Bylaws.
- 7 35-1-237. Emergency bylaws.
- 8 35-1-238. Bylaw increasing quorum or voting requirement for shareholders.
- 9 35-1-239. Bylaw increasing quorum or voting requirement for directors.
- 10 35-1-308. Corporate name.
- 11 35-1-309. Reserved name.
- 12 35-1-310. Contest of registration of name -- penalty.
- 13 35-1-311. Registered name of foreign corporation.
- 14 35-1-416. Requirement for and duties of board of directors.
- 15 35-1-417. Qualifications of directors.
- 16 35-1-418. General standards for directors.
- 17 35-1-419. Number and election of directors.
- 18 35-1-420. Election of directors by certain classes of shareholders.
- 19 35-1-421. Terms of directors generally.
- 20 35-1-422. Staggered terms for directors.
- 21 35-1-423. Resignation of directors.
- 22 35-1-424. Removal of directors.
- 23 35-1-425. Removal of directors by judicial proceeding.
- 24 35-1-426. Vacancy on board.
- 25 35-1-427. Compensation of directors.
- 26 35-1-428. Penalty for signing false document.
- 27 35-1-431. Meetings.
- 28 35-1-432. Action without meeting.
- 29 35-1-433. Notice of meeting.
- 30 35-1-434. Waiver of notice.

- 1 35-1-435. Quorum -- voting.
- 2 35-1-439. Committees.
- 3 35-1-441. Required officers.
- 4 35-1-442. Duties of officers.
- 5 35-1-443. Standards of conduct for officers.
- 6 35-1-444. Resignation and removal of officers.
- 7 35-1-445. Contract rights of officers.
- 8 35-1-451. Definitions.
- 9 35-1-452. Authority to indemnify.
- 10 35-1-453. Mandatory indemnification.
- 11 35-1-454. Advance for expenses.
- 12 35-1-455. Court-ordered indemnification.
- 13 35-1-456. Determination and authorization of indemnification.
- 14 35-1-457. Indemnification of officers, employees, and agents.
- 15 35-1-458. Insurance.
- 16 35-1-459. Application.
- 17 35-1-461. Definitions.
- 18 35-1-462. Judicial action.
- 19 35-1-463. Directors' action.
- 20 35-1-464. Shareholders' action.
- 21 35-1-516. Annual meeting.
- 22 35-1-517. Special meeting.
- 23 35-1-518. Court-ordered meeting.
- 24 35-1-519. Action without meeting.
- 25 35-1-520. Notice of meeting.
- 26 35-1-521. Waiver of notice.
- 27 35-1-522. Record date.
- 28 35-1-523. Shareholders' list for meeting.
- 29 35-1-524. Voting entitlement of shares.
- 30 35-1-525. Proxies.

- 1 35-1-526. Shares held by nominees.
- 2 35-1-527. Corporation's acceptance of votes.
- 3 35-1-528. Quorum and voting requirements for voting groups.
- 4 35-1-529. Action by single and multiple voting groups.
- 5 35-1-530. Greater quorum or voting requirements.
- 6 35-1-531. Voting for directors -- cumulative voting.
- 7 35-1-532. Voting trusts.
- 8 35-1-533. Voting agreements.
- 9 35-1-534. Liability of shareholders.
- 10 35-1-535. Shareholders' preemptive rights.
- 11 35-1-541. Definitions.
- 12 35-1-542. Standing.
- 13 35-1-543. Demand.
- 14 35-1-544. Stay of proceedings.
- 15 35-1-545. Dismissal.
- 16 35-1-546. Discontinuance or settlement -- notice.
- 17 35-1-547. Payment of expenses.
- 18 35-1-548. Applicability to foreign corporations.
- 19 35-1-550. Number of shareholders.
- 20 35-1-618. Authorized shares.
- 21 35-1-619. Terms of class or series determined by board of directors.
- 22 35-1-620. Issued and outstanding shares.
- 23 35-1-621. Fractional shares.
- 24 35-1-622. Subscription for shares before incorporation.
- 25 35-1-623. Issuance of shares.
- 26 35-1-624. Share dividends.
- 27 35-1-625. Share options.
- 28 35-1-626. Form and content of certificates.
- 29 35-1-627. Shares without certificates.
- 30 35-1-628. Restriction on transfer or registration of transfer of shares and other securities.

- 1 35-1-629. Expense of issue.
- 2 35-1-630. Corporation's acquisition of its own shares.
- 3 35-1-712. Distributions to shareholders.
- 4 35-1-713. Liability for unlawful distributions.
- 5 35-1-813. Merger.
- 6 35-1-814. Share exchange.
- 7 35-1-815. Action on plan.
- 8 35-1-816. Articles of merger or share exchange.
- 9 35-1-817. Effect of merger or share exchange.
- 10 35-1-818. Merger of subsidiary.
- 11 35-1-819. Merger or share exchange with foreign corporation.
- 12 35-1-820. Shareholder agreements.
- 13 35-1-822. Sale of assets in regular course of business -- mortgage of assets.
- 14 35-1-823. Sale of assets other than in regular course of business.
- 15 35-1-826. Definitions.
- 16 35-1-827. Right to dissent.
- 17 35-1-828. Dissent by nominees and beneficial owners.
- 18 35-1-829. Notice of dissenters' rights.
- 19 35-1-830. Notice of intent to demand payment.
- 20 35-1-831. Dissenters' notice.
- 21 35-1-832. Duty to demand payment.
- 22 35-1-833. Share restrictions.
- 23 35-1-834. Payment.
- 24 35-1-835. Failure to take action.
- 25 35-1-836. After-acquired shares.
- 26 35-1-837. Procedure if shareholder dissatisfied with payment or offer.
- 27 35-1-838. Court action.
- 28 35-1-839. Court costs and attorney fees.
- 29 35-1-931. Dissolution by incorporators or initial directors.
- 30 35-1-932. Dissolution by board of directors and shareholders.

- 1 35-1-933. Articles of dissolution.
- 2 35-1-934. Revocation of dissolution.
- 3 35-1-935. Effect of dissolution.
- 4 35-1-936. Known claims against dissolved corporation.
- 5 35-1-937. Unknown claims against dissolved corporation.
- 6 35-1-938. Grounds for judicial dissolution.
- 7 35-1-939. Discretion of court to grant relief other than dissolution.
- 8 35-1-940. Procedure for judicial dissolution.
- 9 35-1-941. Receivership or custodianship.
- 10 35-1-942. Decree of dissolution.
- 11 35-1-943. Deposit with state treasurer.
- 12 35-1-944. State dissolution or withdrawal certificate.
- 13 35-1-1026. Authority to transact business required.
- 14 35-1-1027. Consequences of transacting business without authority.
- 15 35-1-1028. Application for certificate of authority.
- 16 35-1-1029. Amended certificate of authority.
- 17 35-1-1030. Effect of certificate of authority.
- 18 35-1-1031. Corporate name of foreign corporation.
- 19 35-1-1037. Withdrawal of foreign corporation.
- 20 35-1-1038. Grounds for revocation.
- 21 35-1-1039. Procedure for and effect of revocation.
- 22 35-1-1040. Appeal from revocation.
- 23 35-1-1104. Annual report for secretary of state.
- 24 35-1-1106. Corporate records.
- 25 35-1-1107. Inspection of records by shareholders.
- 26 35-1-1108. Scope of inspection right.
- 27 35-1-1109. Court-ordered inspection.
- 28 35-1-1110. Financial statement for shareholders.
- 29 35-1-1111. Other reports to shareholders.
- 30 35-1-1206. Fees for filing, copying, and services.

- 1 35-1-1307. Secretary of state -- powers -- rulemaking.  
 2 35-1-1308. Forms.  
 3 35-1-1309. Filing duty of secretary of state.  
 4 35-1-1310. Appeal from secretary of state's refusal to file document.  
 5 35-1-1311. Evidentiary effect of copy of filed document.  
 6 35-1-1312. Certificate of existence or authority.  
 7 35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

8

9        **NEW SECTION. Section 270. Transition -- application to existing domestic corporations.** [Sections  
 10 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221]  
 11 that were incorporated under any general statute of this state providing for incorporation of corporations for profit  
 12 if power to amend or repeal the statute under which the corporation was incorporated was reserved.

13

14        **NEW SECTION. Section 271. Codification instruction.** (1) [Sections 1 through 26] are intended to  
 15 be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1,  
 16 apply to [sections 1 through 26].

17        (2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part  
 18 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

19        (3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part  
 20 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

21        (4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part  
 22 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

23        (5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part  
 24 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

25        (6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part  
 26 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

27        (7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part  
 28 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

29        (8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part  
 30 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

1 (9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part  
2 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

3 (10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14,  
4 part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

5 (11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14,  
6 part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

7 (12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14,  
8 part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

9 (13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14,  
10 part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

11 (14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14,  
12 part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

13 (15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14,  
14 part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

15 (16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14,  
16 part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].  
17

18 **NEW SECTION. Section 272. Saving clause.** (1) Except as to procedural provisions, [sections 1  
19 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections  
20 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced,  
21 as if [sections 1 through 221] had not become effective.

22 (2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the  
23 penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].  
24

25 **NEW SECTION. Section 273. Severability.** If a part of [sections 1 through 221] is invalid, all valid parts  
26 that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] is invalid in one or  
27 more of its applications, the part remains in effect in all valid applications that are severable from the invalid  
28 applications.

29  
30 **NEW SECTION. SECTION 274. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JUNE 1, 2020.

