

# South Carolina Legislature

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## South Carolina Code of Laws Unannotated

### Title 33 - Corporations, Partnerships and Associations

#### CHAPTER 31

#### South Carolina Nonprofit Corporation Act

#### ARTICLE 1

#### General Provisions

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

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

HISTORY: 1994 Act No. 384, Section 1.

##### Editor's Note

1994 Act No. 384, Section 11, provides as follows:

"SECTION 11. The analysis lines preceding the code sections are for identification only and are not considered part of the Code sections. The Official Comments and the South Carolina Reporter's Notes which are included after each section are included for analytical and information purposes only and must not be considered part of the sections themselves."

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be in a medium and form as permitted by the Secretary of State.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;

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

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

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

(1) the corporate seal;

(2) an attestation by the Secretary or an assistant secretary; or

(3) an acknowledgement, verification, or proof.

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

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

HISTORY: Former Section 33-31-120 [1962 Code Section 12-760; 1952 Code Section 12-760; 1942 Code Section 1226; 1932 Code Section 1226; Cr. C. '22 Section 114; Cr. C. '12 Section 258; Cr. C. '02 Section 198; 1900 (23) 390]; 1994 Act No. 384, Section 1; 2005 Act No. 101, Section 2, eff. June 1, 2005.

##### Effect of Amendment

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

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

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

(1) an application for a certificate of existence;

(2) a foreign corporation's application for a certificate of authority to transact business in South Carolina;

(3) a foreign corporation's application for a certificate of withdrawal; and

(4) the notice of change of principal office. If the Secretary of State so requires, use of these forms is mandatory.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) Articles of incorporation \$25.00 (2) Application for use of indistinguishable name \$10.00 (3) Application for reserved name \$10.00 (4) Notice of transfer of reserved name \$ 3.00 (5) Application for registered name \$10.00 (6) Application for renewal of registered name \$10.00 (7) Corporation's statement of change of registered agent or registered office or both \$10.00 (8) Agent's statement of change of registered office for each affected corporation \$ 2.00 (9) Agent's statement of resignation \$ 3.00 (10) Amendment of articles of incorporation \$10.00 (11) Restatement of articles of incorporation with amendments \$10.00 (12) Articles of merger \$10.00 (13) Articles of dissolution \$10.00 (14) Articles of revocation of dissolution \$10.00 (15) Certificate of administrative dissolution No Fee (16) Application for reinstatement following administrative dissolution \$25.00 (17) Certificate of reinstatement No Fee (18) Certificate of judicial dissolution No Fee (19) Application for certificate of authority \$10.00 (20) Application for amended certificate of authority \$10.00 (21) Application for certificate of withdrawal \$10.00 (22) Certificate of revocation of authority to transact business No Fee (23) Notice of change of principle office \$10.00 (24) Articles of correction \$10.00 (25) Application for certificate of existence or authorization \$10.00 (26) Notification by existing corporation \$10.00 (27) Irrevocable election to be governed \$25.00 (28) Any other document required or permitted to be filed by this chapter \$10.00

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

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

(1) for copying, one dollar for the first page and fifty cents for each additional page; and

(2) two dollars for the certificate.

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) at the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or

(2) at the time specified in the document as its effective time on the date it is filed.

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) contains an incorrect statement; or

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

(b) A document is corrected:

(1) by preparing articles of correction that:

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: Former Section 33-31-130 [1962 Code Section 12-761; 1952 Code Section 12-761; 1942 Code Section 8164; 1932 Code Section 8164; Civ. C. '22 Section 4350; Civ. C. '12 Section 2868; Civ. C. '02 Section 1908; 1900 (23) 390; 1924 (33) 983]; 1994 Act No. 384, Section 1.

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

Unless the context otherwise requires;

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

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

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

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

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

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

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

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

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

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

(9) "Deliver" includes mail.

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

- (11) "Distribution" means the direct or indirect transfer of assets or any part of the income or profit of a corporation to its members, directors, or officers. The term does not include:
- (a) the payment of compensation in a reasonable amount to its members, directors, or officers for services rendered;
  - (b) conferring benefits on its members in conformity with its purposes; or
  - (c) repayment of debt obligations in the normal and ordinary course of conducting activities.
- (12) "Domestic corporation" means a corporation.
- (13) "Effective date of notice" is defined in Section 33-31-141.
- (14) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.
- (15) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.
- (16) "File", "filed", or "filing" means filed in the office of the Secretary of State.
- (17) "Foreign corporation" means a corporation organized under a law other than the law of this State which would be a nonprofit corporation if formed under the laws of this State.
- (18) "Governmental subdivision" includes authority, county, district, and municipality.
- (19) "Includes" denotes a partial definition.
- (20) "Individual" includes the estate of an incompetent individual.
- (21) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any future federal tax code or succeeding statute of like tenor and effect, and any reference to a section of the Internal Revenue Code also shall mean the corresponding section of any future federal tax code.
- (22) "Means" denotes a complete definition.
- (23)(a) "Member" means a person entitled, pursuant to a domestic or foreign corporation's articles or bylaws, without regard to what a person is called in the articles or bylaws, to vote on more than one occasion for the election of a director or directors or any other matter which under the terms of this chapter requires approval by the members.
- (b) A person is not a member by virtue of any of the following:
- (A) any rights the person has as a delegate;
  - (B) any rights the person has to designate or appoint a director or directors; or
  - (C) any rights the person has as a director.
- (24) "Membership" refers to the rights and obligations a member has pursuant to a corporation's articles, bylaws, and this chapter.
- (25) "Mutual benefit corporation" means a domestic corporation which either is formed as a mutual benefit corporation pursuant to Sections 33-31-201 through 33-31-207, is designated a mutual benefit corporation by a statute, or does not come within the definition of public benefit or religious corporation.
- (26) "Notice" is defined in Section 33-31-141.
- (27) "Person" includes any individual or entity.
- (28) "Principal office" means the office, in or out of this State, so designated in the articles of incorporation, application for certificate of authority, or in a notice of change of principal office filed pursuant to either Section 33-31-505 or 33-31-1515 where the principal office of a domestic or foreign corporation is located.
- (29) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- (30) "Public benefit corporation" means a domestic corporation which is formed as a public benefit corporation pursuant to Sections 33-31-201 through 33-31-207 or is required to be a public benefit corporation pursuant to Section 33-31-1707.
- (31) "Record date" means the date established under Sections 33-31-601 through 33-31-640 or Sections 33-31-701 through 33-31-730 on which a corporation determines the identity of its members and their membership rights for the purposes of this chapter. The determinations must be made as of the time of close of transactions on the record date unless another time for doing so is specified at the time the record date is fixed.
- (32) "Religious corporation" means a domestic corporation which is formed as a religious corporation pursuant to Sections 33-31-201 through 33-31-207 or is required to be a religious corporation pursuant to Section 33-31-1707.
- (33) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 33-31-840(b) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.
- (34) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory, and insular possession, and their agencies and governmental subdivisions of the United States.
- (35) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- (36) "Vote" includes authorization by written ballot and written consent.
- (37) "Voting power" means the total number of votes entitled to be cast on the issue at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event which has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

HISTORY: Former Section 33-31-140 [1962 Code Section 12-762; 1952 Code Section 12-762; 1942 Code Section 8165; 1932 Code Section 8165; Civ. C. '22 Section 4351; Civ. C. '12 Section 2869; Civ. C. '02 Section 1909; 1900 (23) 390]; 1994 Act No. 384, Section 1.

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

- (a) Notice may be oral or written.
- (b) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile transmission (FAX), or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communications.
- (c) Oral notice is permissible if reasonable under the circumstances and is effective when communicated if communicated in a comprehensible manner. Oral notice also

includes notice through broadcast transmission.

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

(1) when received;

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1, eff May 10, 1994; Former Section 33-31-150 [1962 Code Section 12-763; 1952 Code Section 12-763; 1942 Code Section 8163; 1932 Code Section 8163; Civ. C. '22 Section 4349; Civ. C. '12 Section 2867; Civ. C. '02 Section 1907; 1900 (23) 390] Repealed by 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

**Effect of Amendment**

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

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

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

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

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

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

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

HISTORY: 1995 Act No. 14, Section 1.

**Editor's Note**

Section 33-31-10 referenced in (A) is a statute that no longer exists.

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

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

(b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

ARTICLE 2

Incorporation

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

(a) The articles of incorporation must set forth:

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

(2) one of the following statements:

- (i) This corporation is a public benefit corporation.
  - (ii) This corporation is a mutual benefit corporation.
  - (iii) This corporation is a religious corporation;
  - (3) the street address of the corporation's initial registered office with zip code and the name of its initial registered agent at that office;
  - (4) the name, address, and zip code of each incorporator;
  - (5) whether or not the corporation will have members;
  - (6) provisions not inconsistent with law regarding the distribution of assets on dissolution; and
  - (7) the address, including zip code, of the proposed principal office for the corporation which may be either within or outside South Carolina.
- (b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:
- (1) for any breach of the director's duty of loyalty to the corporation or its members;
  - (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
  - (3) for any transaction from which a director derived an improper personal benefit; or
  - (4) under Sections 33-31-831 through 33-31-833.

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

- (c) The articles of incorporation may set forth:
- (1) the purpose for which the corporation is organized which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (2) the names, addresses, and zip codes of the individuals who are to serve as the initial directors;
  - (3) provisions not inconsistent with law regarding:
    - (i) managing and regulating the affairs of the corporation;
    - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members; and
    - (iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
  - (4) any provision that under this chapter is required or permitted to be set forth in the bylaws.
- (d) Each incorporator and director named in the articles must sign the articles.
- (e) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

HISTORY: 1994 Act No. 384, Section 1.

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

- (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.
- (b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

- (a) After incorporation:
- (1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
  - (2) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at a call of a majority of the incorporators:
    - (i) to elect directors and complete the organization of the corporation; or
    - (ii) to elect a board of directors who shall complete the organization of the corporation.
- (b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.
- (c) An organizational meeting may be held in or out of this State in accordance with Section 33-31-821.

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

### ARTICLE 3

#### Purposes

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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







































- (c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.
- (d) If the board seeks to have the restatement approved by the members at the membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with Section 33-31-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.
- (e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or other change it would make in the articles.
- (f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under Section 33-31-1003.
- (g) If the restatement includes an amendment requiring approval pursuant to Section 33-31-1030, the board must submit the restatement for such approval.
- (h) A corporation restating its articles shall deliver to the Secretary of State articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:
- (1) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or
  - (2) if the restatement contains an amendment to the articles requiring approval by the members, the information required by Section 33-31-1005; and
  - (3) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to Section 33-31-1030, a statement that the approval was obtained.
- (i) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.
- (j) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (h).
- (k) If the restatement provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the restatement if not contained in the restatement itself must be included in the restated articles.
- (l) Restated articles of incorporation shall include all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to the names and addresses of the incorporators or the initial or present registered office or agent.

HISTORY: 1994 Act No. 384, Section 1.

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

- (a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to Section 33-31-1030 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by Section 33-31-202.
- (b) A corporation's articles may be amended in a proceeding brought by the Attorney General in the court of common pleas for Richland County to correct the statement in the articles of incorporation with regard to whether the corporation is a public benefit or mutual benefit corporation or, subject to the provisions of Section 33-31-180, a religious corporation.
- (c) Any individual designated by the court shall deliver to the Secretary of State articles of amendment setting forth:
- (1) the name of the corporation;
  - (2) the text of each amendment approved by the court;
  - (3) the date of the court's order or decree approving the articles of amendment;
  - (4) the title of the reorganization proceeding in which the order or decree was entered; and
  - (5) a statement that the court had jurisdiction of the proceeding under federal statute.
- (d) Subsection (a) does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

- (a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:
- (1) the articles of incorporation or this chapter reserves this power exclusively to the members in whole or part or requires the consent of someone pursuant to Section 33-31-1030; or
  - (2) the members in adopting, amending, or repealing a particular bylaw provide expressly that the board of directors may not adopt, amend, or repeal that bylaw or any bylaw on that subject.
- (b) A corporation's members may amend or repeal the corporation's bylaws even though the bylaws also may be amended or repealed by its board of directors.

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

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

HISTORY: 1994 Act No. 384, Section 1, eff May 10, 1994.

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

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

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

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

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

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

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

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

(6) authorize a new class of memberships.

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

## ARTICLE 11

### Merger

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

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

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

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

(3) a partnership, domestic or foreign; or

(4) a limited partnership, domestic or foreign.

(b) The plan of merger must include:

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

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

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

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

(c) The plan of merger may set forth:

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

(2) other provisions relating to the planned merger.

HISTORY: 1994 Act No. 384, Section 1; 2004 Act No. 221, Section 25.

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

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

(1) a public benefit or religious corporation;

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

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

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) by the board;

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

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

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

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

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

corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

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

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) the plan of merger;

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

When a merger takes effect:

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

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

(1) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

HISTORY: 1994 Act No. 384, Section 1.

## ARTICLE 12

### Sale and Distribution of Assets

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

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

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

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

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

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

(1) by the board;

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

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

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

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

(e) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(f) A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

HISTORY: 1994 Act No. 384, Section 1.

## ARTICLE 13

### Prohibited Distributions

**SECTION 33-31-1301.** Prohibited distributions.

Except as authorized by Section 33-31-1302, a corporation may not make any distributions.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1302.** Authorized distributions.

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) the corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with Sections 33-31-1401 through 33-31-1440 of this chapter.

(c) The board of directors may base a determination that a distribution is not prohibited under subsection (a) either on financial statements prepared on the basis of accounting practices and principals that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

HISTORY: 1994 Act No. 384, Section 1.

## ARTICLE 14

### Dissolution

**SECTION 33-31-1401.** Dissolution by incorporators.

(a) The incorporators of a corporation that has no members and that does not yet have initial directors, upon written consents signed by a majority of the incorporators, or through a vote of a majority of the incorporators at a meeting of the incorporators, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(b) The incorporators in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1402.** Dissolution by directors, members, and third persons.

(a) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, dissolution is authorized if it is approved:

- (1) by the board;
- (2) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) in writing by any person whose approval is required by a provision of the articles authorized by Section 33-31-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members or has no members entitled to vote on dissolution, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with Section 33-31-822(c). The notice also must state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 33-31-705. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

(f) Before the Secretary of State may accept for filing articles of dissolution of an existing nonprofit organization executed by a person authorized by this section to take such action either in his own right under appropriate authority or on behalf of the board or other entity or group, the Secretary of State shall require this person to attach an affidavit to the filing when the person under oath subject to a penalty of perjury certifies that he holds the requisite authority to take such action.

HISTORY: 1994 Act No. 384, Section 1; 2010 Act No. 220, Section 1, eff June 8, 2010.

**Effect of Amendment**

The 2010 amendment added subsection (f) relating to an affidavit of authority to file articles of dissolution.

**SECTION 33-31-1403.** Notices to the Attorney General.

(a) A nonprofit organization shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution. The nonprofit organization shall submit to the Secretary of State copies of all documents provided to the Attorney General at the time of the filing of the articles of dissolution.

(b) No assets may be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the Attorney General or until the Attorney General has consented in writing to the dissolution, or indicated in writing that he will take no action in respect to the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

HISTORY: 1994 Act No. 384, Section 1; 2010 Act No. 220, Section 2, eff June 8, 2010.

**Effect of Amendment**

The 2010 amendment rewrote subsection (a).

**SECTION 33-31-1404.** Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) a statement that dissolution was approved by a sufficient vote of the board, or incorporators if dissolution is pursuant to Section 33-31-1401;
- (4) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (5) if approval by members was required:

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

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

(6) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to Section 33-31-1402(a)(3), a statement that the approval was obtained; and

(7) if the corporation is a public benefit or religious corporation, that the notice to the Attorney General required by Section 33-31-1403(a) has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1405.** Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) the name of the corporation;
- (2) the effective date of the dissolution that was revoked;

- (3) the date that the revocation of dissolution was authorized;
  - (4) if the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
  - (5) if the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (6) if member or third person action was required to revoke the dissolution, the information required by Section 33-31-1404(a)(5) and (6).
- (d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1406.** Effect of dissolution.

- (a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:
- (1) preserving and protecting its assets and minimizing its liabilities;
  - (2) discharging or making provision for discharging its liabilities and obligations;
  - (3) disposing of its properties that will not be distributed in kind;
  - (4) returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
  - (5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
  - (6) if the corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:
    - (i) to one or more entities described in Section 501(c)(3) of the Internal Revenue Code, to the United States, to a state, or to a political subdivision of the United States or a state, for a public purpose, or pursuant to court order to another organization to be used in such manner as in the judgment of the court will accomplish the general purposes for which the dissolved corporation was organized, for one or more exempt purposes; or
    - (ii) if the dissolved corporation is not described in Section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations or to one or more of the entities described in (i) above;
  - (7) if the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
  - (8) doing every other act necessary to wind up and liquidate its assets and affairs.
- (b) Dissolution of a corporation does not:
- (1) transfer title to the corporation's property;
  - (2) subject its directors or officers to standards of conduct different from those prescribed in Sections 33-31-801 through 33-31-858;
  - (3) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
  - (4) prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (6) terminate the authority of the registered agent.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1407.** Known claims against dissolved corporation.

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
- (1) describe information that must be included in a claim;
  - (2) provide a mailing address where a claim may be sent;
  - (3) state the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
  - (4) state that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved corporation is barred:
- (1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
  - (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice and the rejection notice stated that a proceeding to enforce the claim must be commenced within ninety days.
- (d) For purposes of this section 'claim' does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1408.** Unknown claims against dissolved corporation.

- (a) A dissolved corporation also may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
- (b) The notice must:

- (1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this State, its registered office, is or was last located;
- (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after publication of the notice.
- (c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:
- (1) a claimant who did not receive written notice under Section 33-31-1407;
- (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on; and
- (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim may be enforced under this section:
- (1) against the dissolved corporation, to the extent of its undistributed assets; or
- (2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1420.** Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under Section 33-31-1421 to administratively dissolve a corporation if the:

- (1) corporation does not deliver a report of change of principal office when due;
- (2) corporation is without a registered agent or registered office in this State;
- (3) corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (4) corporation's period of duration, if any, stated in its articles of incorporation expires; or
- (5) corporation has been adjudicated bankrupt pursuant to Chapter 7 of the United States Bankruptcy Code.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1421.** Procedure for and effect of administrative dissolution.

- (a) Upon determining that one or more grounds exist under Section 33-31-1420(a) for dissolving a corporation, the Secretary of State may serve the corporation with written notice of that determination under Section 33-31-504, and in the case of a public benefit corporation shall also notify the Attorney General in writing.
- (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty days after service of the notice is perfected under Section 33-31-504, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 33-31-504, and in the case of a public benefit or religious corporation shall notify the Attorney General in writing.
- (c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 33-31-1406 and notify its claimants under Sections 33-31-1407 and 33-31-1408.
- (d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1422.** Reinstatement following administrative dissolution.

- (a) A corporation administratively dissolved under Section 33-31-1421 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:
- (1) recite the name of the corporation and the effective date of its administrative dissolution;
- (2) state that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) state that the corporation's name satisfies the requirements of Section 33-31-401.
- (b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 33-31-504.
- (c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1423.** Appeal from denial of reinstatement.

- (a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office with a written notice that explains the reason or reasons for denial.
- (b) The corporation may appeal the denial of reinstatement to the court of common pleas for Richland County within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as in other civil proceedings.

HISTORY: 1994 Act No. 384, Section 1.



**SECTION 33-31-1430.** Grounds for judicial dissolution.

(a) The court of common pleas may dissolve a corporation:

(1) in a proceeding by the Attorney General if it is established that:

- (i) the corporation obtained its articles of incorporation through fraud;
- (ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;
- (iii) the corporation is a public benefit corporation and the assets are being misapplied or wasted;
- (iv) the corporation is a public benefit corporation and it is no longer able to carry out its purposes;
- (v) the corporation has improperly solicited money or has fraudulently used the money solicited; or
- (vi) has carried on, conducted, or transacted its business or affairs in a persistently fraudulent or illegal manner.

The enumeration of these grounds for dissolution, (i) through (vi), shall not exclude actions or special proceedings by the Attorney General or other state official for the dissolution of a corporation for other causes as provided in this chapter or in any other statute of this State;

(2) except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

- (i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to break the deadlock;
- (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent, or unfairly prejudicial either to the corporation or to any member, whether in his capacity as a member, director, or officer of the corporation;
- (iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;
- (iv) the corporate assets are being misapplied or wasted;
- (v) the corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;
- (vi) the corporation has abandoned its business and has failed within a reasonable time to dissolve, to liquidate its affairs, or to distribute its remaining property among its members; or
- (vii) the corporation's period of duration stated in its articles of incorporation has expired;

(3) in a proceeding by a creditor if it is established that:

- (i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
  - (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;
- (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Before dissolving a corporation the court shall consider whether:

- (1) there are reasonable alternatives to dissolution;
- (2) dissolution is in the public interest, if the corporation is a public benefit corporation; and
- (3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

The court may order any other form of relief which it deems proper in the circumstances.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1431.** Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the county where the corporation's principal office is located, and if the corporation has failed to maintain a principal office or failed to report any change of the office, in the court of common pleas for Richland County. Venue for a proceeding brought by any other party named in Section 33-31-1430 lies in the county where a corporation's principal office or, if none in this State, its registered office is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the Attorney General who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1432.** Receivership or custodianship.

(a) A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation authorized to transact business in this State as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

(1) the receiver may:

- (i) dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; however, the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and
- (ii) sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this State;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of

the corporation in the best interests of the corporation, its members, and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The court during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1433.** Decree of dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 33-31-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, or may order any other form of relief which it deems proper in the circumstances, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging a fee.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with Section 33-31-1406 and the notification of its claimants in accordance with Sections 33-31-1407 and 33-31-1408.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1440.** Deposit with Department of Revenue and Taxation.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, must be reduced to cash subject to known trust restrictions and deposited with the Department of Revenue or other appropriate state official for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. However, in the Department of Revenue or other appropriate officials discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the department or the appropriate state official shall pay him or his representative that amount.

HISTORY: 1994 Act No. 384, Section 1.

ARTICLE 15

Foreign Corporations

**SECTION 33-31-1501.** Authority to transact business required.

(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) maintaining, defending, or settling any proceeding;

(2) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages and security interests or any other rights in property securing the debts;

(9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(11) transacting business in interstate commerce;

(12) soliciting those contributions as are defined in Section 33-55-20(3) or any succeeding statute of like tenor and effect.

(c) The list of activities in subsection (b) is not exhaustive.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1502.** Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this State without a certificate of authority may not maintain a proceeding in a court in this State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of ten dollars for each day it transacts business in this State without a certificate of authority, but not to exceed a total of one thousand dollars. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1503.** Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of Section 33-31-1506;

- (2) the name of the state or country under whose law it is incorporated;
  - (3) the date of incorporation and period of duration;
  - (4) the street address, including zip code, of its principal office;
  - (5) the street address, including zip code, of its proposed registered office in this State and the name of its proposed registered agent at that office;
  - (6) the names and usual business addresses, including zip codes, of its current directors and officers;
  - (7) whether the foreign corporation has members; and
  - (8) whether the corporation, if it had been incorporated in this State, would be a public benefit, mutual benefit or religious corporation.
- (b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated within sixty days of the date that it is filed in this State.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1504.** Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) its corporate name;
- (2) the period of its duration; or
- (3) the state or country of its incorporation.

(b) The requirements of Section 33-31-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1505.** Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject, however, to the right of the State to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same, but no greater rights, and enjoys the same, but no greater privileges, as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1506.** Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 33-31-401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this State, may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

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

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this State the name of another corporation, incorporated or authorized to transact business in this State, that is not distinguishable upon the records of the Secretary of State from the name applied for. The Secretary of State shall authorize use of the name applied for if:

- (1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
- (2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

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

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation; or
- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of Section 33-31-401, it may not transact business in this State under the changed name until it adopts a name satisfying the requirements of Section 33-31-401 and obtains an amended certificate of authority under Section 33-31-1504.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1507.** Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this State must continuously maintain in this State:

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

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1508.** Change of registered office or registered agent of foreign corporation.

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

- (1) the name of the corporation;
- (2) the street address of its current registered office;
- (3) if the current registered office is to be changed, the street address of its new registered office;
- (4) the name of its current registered agent;
- (5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1509.** Resignation of registered agent of foreign corporation.

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

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

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

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1510.** Service on foreign corporations.

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

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1515.** Notice of change of principal office.

If a foreign corporation changes the location of its principal office, then within thirty days of the date of the change the corporation shall file a notice of change of principal office with the Secretary of State. The notice of change shall set forth:

- (1) the name of the corporation; and
- (2) the current street address, with zip code, of the corporation's principal office and the address of the former principal office.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1520.** Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

- (1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) that it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this State;
- (4) a mailing address to which the Secretary of State may mail a copy of any process served on him under item (3); and
- (5) a commitment to notify the Secretary of State during the six years following the delivery of the certificate of withdrawal of any change in the mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the post office address set forth in its application for withdrawal.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1530.** Grounds for revoking a foreign corporation's authority to transact business in this State.

(a) The Secretary of State may commence a proceeding under Section 33-31-1531(a) to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) the foreign corporation does not deliver a notice of change of principal office when due;
- (2) the foreign corporation is without a registered agent or registered office in this State;
- (3) the foreign corporation does not inform the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (4) the corporation's period of duration, if any, stated in its articles of incorporation expires;
- (5) the Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger; or,
- (6) that the corporation has been adjudicated bankrupt pursuant to Chapter 7 of the United States Bankruptcy Code.

(b) The Richland County Court of Common Pleas under Section 33-31-1531(b) may revoke the certificate of authority of a foreign corporation authorized to transact business in this State in a proceeding by the Attorney General if it is established that:

- (1) the corporation obtained its articles of incorporation through fraud;
- (2) the corporation has continued to exceed or abuse the authority conferred upon it by law;
- (3) the corporation is a public benefit corporation and the assets are being misapplied or wasted;
- (4) the corporation is a public benefit corporation and it is no longer able to carry out its purposes;
- (5) the corporation has improperly solicited money or has fraudulently used the money solicited; or,
- (6) the corporation has carried on, conducted, or transacted its business or affairs in a persistently fraudulent or illegal manner.

The enumeration of the grounds in items (1) through (6) revoking the authority shall not exclude actions or special proceedings by the Attorney General or other state official for revoking the authority of a foreign nonprofit corporation for other causes as provided in this chapter or in any other statute of this State.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1531.** Procedure and effect of revocation.

(a) Upon determining that one or more grounds exist under Section 33-31-1530(a) to revoke a certificate of authority of a foreign nonprofit corporation, the Secretary of State may serve the foreign corporation with written notice of that determination pursuant to Section 33-31-1510.

If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground for revocation determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under Section 33-31-1510, the Secretary of State shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 33-31-1510 and, in the case of a public benefit corporation, shall notify the Attorney General in writing.

(b) If the court of Common Pleas of Richland County determines that one or more grounds for revoking the foreign nonprofit's authority to transact business as described in Section 33-31-1530(b) exists, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging any fee.

Before revoking the foreign nonprofit corporation's authority to transact business in this State, the court shall consider whether:

- (1) there are reasonable alternatives to revoking the authority;
- (2) revoking the authority is in the public interest, if the corporation is a public benefit corporation; and,
- (3) revoking the authority is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

The court of common pleas of Richland County may order any other form of relief which it deems proper in the circumstances.

(c) The authority of a foreign corporation to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's or Richland County Court of Common Pleas revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent notice of change of principal office or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1532.** Appeal from revocation.

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Richland County Court of Common Pleas within thirty days after the service of the certificate of revocation was received. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

HISTORY: 1994 Act No. 384, Section 1.

ARTICLE 16

Records and Reports

Subarticle A.

Records

**SECTION 33-31-1601.** Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 33-31-825(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

- (4) the minutes of all meetings of members and records of all actions approved by the members for the past three years;
- (5) all written communications to members generally within the past three years, including the financial statements furnished for the past three years under Section 33-31-1620;
- (6) a list of the names and business or home addresses of its current directors and officers; and
- (7) its most recent report of each type required to be filed by it with the Secretary of State under this chapter.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1602.** Inspection of records by members.

(a) Subject to subsection (e) and Section 33-31-1603(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in Section 33-31-1601(e) if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) excerpts from any records required to be maintained under Section 33-31-1601(a), to the extent not subject to inspection under Section 33-31-1602(a);

(2) accounting records of the corporation; and

(3) subject to Section 33-31-1605, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

(1) the member's demand is made in good faith and for a proper purpose;

(2) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) the records are directly connected with this purpose.

(d) This section does not affect:

(1) the right of a member to inspect records under Section 33-31-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1603.** Scope of inspection rights.

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under Section 33-31-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under Section 33-31-1602(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1604.** Court-ordered inspection.

(a) If a corporation does not allow a member who complies with Section 33-31-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the county where the corporation's principal office in this State, or, if none in this State, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 33-31-1602(b) and (c) may apply to the circuit court in the county where the corporation's principal office in this State, or if none in this State, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it also shall order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1605.** Limitations on use of membership list.

Without consent of the board, a membership list or any part of a membership list may not be obtained or used by a person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part of the list may not be:

(1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) used for any commercial purpose; or

(3) sold to or purchased by any person.

HISTORY: 1994 Act No. 384, Section 1.

Subarticle B.

Reports

**SECTION 33-31-1620.** Financial statements for members.

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member or the Attorney General shall furnish the demanding party its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements also must be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1621.** Report of indemnification to members.

If a corporation indemnifies or advances expenses to a director under Section 33-31-851, 33-31-852, 33-31-853, or 33-31-854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

HISTORY: 1994 Act No. 384, Section 1.

ARTICLE 17

Miscellaneous

**SECTION 33-31-1701.** Application to Existing Domestic Corporations.

(a) This chapter applies to all domestic corporations which on this chapter's effective date were governed by Title 33, Chapter 31 of the 1976 Code.

(b) This chapter applies to each domestic corporation in existence on its effective date, organized other than under Title 33, Chapter 31, Code of Laws of South Carolina, 1976, upon such corporation's filing with the Secretary of State an irrevocable election to be governed by the provisions of this chapter. The irrevocable election shall contain all the information required by, and may include any other matter permitted by, Section 33-31-202 (except that information required by subsection (a)(4), relating to the incorporators, is not required). The irrevocable election shall be signed by the presiding officer of its board (or other governing body), its president, by another of its officers, or any other person, regardless of designation, whose functions are those of, or equivalent to such officer.

(c) This chapter applies to all domestic corporations resulting from the merger of any corporation with a corporation organized under this chapter, when the latter is designated as the surviving corporation.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1702.** Application to Qualified Foreign Corporations.

A foreign corporation authorized to transact business in this State on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1703.** Saving Provisions.

(a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(5) any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1704.** Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1705.** Effective Date.

As used in this chapter, the term "this chapter's effective date" or any similar variation means the effective date of the act which revised the provisions of Chapter 31 of Title 33 to enact the South Carolina Nonprofit Corporation Act of 1994.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1706.** Public Benefit, Mutual Benefit, and Religious Corporations.

(a) On the effective date of this chapter, each domestic corporation that is or becomes subject to this chapter shall be designated as a public benefit, mutual benefit, or religious corporation as follows:

(1) any corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by statute;

(2) any corporation that does not come within subsection (1) but is organized primarily or exclusively for religious purposes is a religious corporation;

(3) any corporation that does not come within subsection (1) or (2) but that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor provision, is a public benefit corporation;

(4) any corporation that does not come within subsection (1), (2) or (3), but that is organized for a public or charitable purpose and that upon dissolution must distribute its

assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code or any successor provision, is a public benefit corporation; and

(5) any corporation that does not come within subsection (1), (2), (3), or (4) is a mutual benefit corporation.

(b) In any filing with the Secretary of State, an existing corporation may elect designation as a public benefit, mutual benefit, or religious corporation.

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1707.** Existing domestic and foreign corporations required to file "Notification by Existing Corporation" form.

(a) All domestic corporations in existence on May 10, 1994 which are governed by this chapter, and all foreign nonprofit corporations authorized to transact business in this State on May 10, 1994 which do not then have on file with the Secretary of State either a current registered office or a current registered agent at that office shall file on or before January 2, 1996, "Notification by Existing Corporation" form. Such form shall designate:

(1) the name of the corporation;

(2) the street address of the registered office in this State with zip code; and,

(3) the name of the registered agent whose office address shall be identical with the registered office.

(b) If any domestic or foreign corporation fails to make the filing required by subsection (a) on or before January 2, 1996, it is considered as of January 2, 1996, to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State. Service of process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause copies to be forwarded by certified mail addressed to the corporation at (1) the headquarters or principal office of the domestic corporation designated upon its declaration and petition for incorporation or application for qualification of a foreign corporation, (2) the last address of the domestic or foreign corporation known to the plaintiff, and (3) with respect to a foreign corporation, any registered office in the jurisdiction of incorporation (which address shall be as provided to the Secretary of State by the plaintiff). All costs of mailing shall be paid by the plaintiff and the Secretary of State may charge a fee of twenty dollars for the service.

(c) All domestic corporations in existence on May 10, 1994 which are governed by this chapter, and all foreign nonprofit corporations authorized to transact business in this State on May 10, 1994 whose headquarters or principal office as listed upon its declaration and petition for incorporation as a domestic nonprofit corporation or application for certificate of authority to transact business as a foreign nonprofit corporation which is no longer the location of the corporation's principal office shall file (1) a Notice of Change of Principal Office as is required by Section 33-31-505 or Section 33-31-1515, or (2) may designate upon the notice filed pursuant to subsection (a) the current street address along with the zip code of the corporation's principal office and the address of the former principal office (which filing shall serve as a Notification of Change of Principal Office). Any such domestic corporation may also elect a designation as a public benefit, mutual benefit, or religious corporation as is provided in Section 33-31-1706(b).

HISTORY: 1994 Act No. 384, Section 1.

**SECTION 33-31-1708.** Provisions not applicable.

Other sections of this chapter notwithstanding, cooperative nonprofit membership corporations organized under or transacting business pursuant to Chapter 49 of this title, telephone cooperatives organized under or transacting business pursuant to Chapter 45 or any other provision of law in this title, and corporations not-for-profit organized under and operating pursuant to Chapter 36 of this title are not subject to the provisions of this chapter and no provision of this chapter repeals or amends any provision of Chapter 49 of this title, or any provision of Chapter 45 of this title or any other provision of law in this title relating to telephone cooperatives, or any provisions of Chapter 36 of this title.

HISTORY: 1994 Act No. 384, Section 1; 2000 Act No. 404, Section 4.

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