

CHAPTER 504

REVISED IOWA NONPROFIT CORPORATION ACT

Referred to in §7D.15, 9H.1, 9H.4, 10B.1, 10B.4, 10B.7, 10D.1, 15.106B, 15.107, 15E.64, 84A.1C, 123.173A, 190C.6, 217.41, 225C.13, 303.3, 306.46, 331.427, 331.441, 357A.2, 357A.11, 357A.15, 357A.20, 357A.21, 357A.22A, 357A.23, 357A.24, 423.3, 423.4, 425.11, 476.1, 476.27, 480.3, 490.1701, 497.22, 498.24, 499.5, 499.5A, 499.49, 500.3, 501A.102, 501B.14, 504B.1, 504B.6, 504C.1, 509.1, 513C.10, 514.1, 514.2, 514.5, 514.19, 514.23, 515.1, 547.1, 558.72, 616.10, 633.63, 669.14, 716.6B, 717F7

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SUBCHAPTER I  
GENERAL PROVISIONS

PART 1  
SHORT TITLE AND APPLICATIONS

**504.101 Short title.**

This chapter shall be known and may be cited as the “*Revised Iowa Nonprofit Corporation Act*”.

2004 Acts, ch 1049, §1, 192

**504.102 Reservation of power to amend or repeal.**

The general assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

2004 Acts, ch 1049, §2, 192

**504.103 through 504.110** Reserved.

PART 2  
FILING DOCUMENTS

**504.111 Filing requirements.**

1. 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.

2. This chapter must require or permit filing the document in the office of the secretary of state.

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

4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. 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. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following:

a. The presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing a document shall sign it and state beneath or opposite the signature the person’s name and the capacity in which the person signs. The document may contain a corporate seal, an attestation, an acknowledgment, or a verification.

8. If the secretary of state has prescribed a mandatory form for a document under section 504.112, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically,

the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 504.503 and 504.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

2004 Acts, ch 1049, §3, 192; 2005 Acts, ch 19, §77

Referred to in §504.116

**504.112 Forms.**

1. The secretary of state may prescribe and furnish on request forms for an application for a certificate of existence, a foreign corporation’s application for a certificate of authority to transact business in this state, a foreign corporation’s application for a certificate of withdrawal, and the biennial report. If the secretary of state so requires, use of these forms is mandatory.

2. 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.

2004 Acts, ch 1049, §4, 192

Referred to in §504.111

**504.113 Filing, service, and copying fees.**

1. The secretary of state shall collect the following fees, as provided by the secretary of state, when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
a. Articles of incorporation .....	\$ ___
b. Application for use of indistinguishable name .....	\$ ___
c. Application for reserved name.....	\$ ___
d. Notice of transfer of reserved name.....	\$ ___
e. Application for registered name .....	\$ ___
f. Application for renewal of registered name .....	\$ ___
g. Corporation’s statement of change of registered agent or registered office or both.....	\$ ___
h. Agent’s statement of change of registered office for each affected corporation not to exceed a total of .....	\$ ___
i. Agent’s statement of resignation.....	No fee
j. Amendment of articles of incorporation.....	\$ ___
k. Restatement of articles of incorporation with amendments .....	\$ ___
l. Articles of merger .....	\$ ___
m. Articles of dissolution .....	\$ ___
n. Articles of revocation of dissolution.....	\$ ___
o. Certificate of administrative dissolution .....	\$ ___
p. Application for reinstatement following administrative dissolution.....	\$ ___
q. Certificate of reinstatement .....	No fee
r. Certificate of judicial dissolution.....	No fee
s. Application for certificate of authority .....	\$ ___

- t. Application for amended certificate of authority ..... \$ \_\_\_
- u. Application for certificate of withdrawal..... \$ \_\_\_
- v. Certificate of revocation of authority to transact business ..... No fee
- w. Biennial report ..... \$ \_\_\_
- x. Articles of correction..... \$ \_\_\_
- y. Application for certificate of existence or authorization..... \$ \_\_\_
- z. Any other document required or permitted to be filed by this chapter ..... \$ \_\_\_

2. The secretary of state shall collect a fee upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation.

2004 Acts, ch 1049, §5, 192

[SP] Authority to refund fees; 2012 Acts, ch 1131, §28; 2013 Acts, ch 135, §24, 52

[T] Section not amended; footnote revised

**504.114 Effective date of document.**

1. Except as provided in subsection 2 and section 504.115, a document is effective at the later of the following times:

- a. At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing.
- b. At the time specified in the document as its effective time on the date it is filed.

2. 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 shall not be later than the ninetieth day after the date filed.

2004 Acts, ch 1049, §6, 192

Referred to in §504.1613

**504.115 Correcting filed document.**

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one of the following:

- a. The document contains an inaccuracy.
- b. The document was defectively executed, attested, sealed, verified, or acknowledged.
- c. The electronic transmission was defective.

2. A document is corrected by doing both of the following:

- a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of the document to the articles.

(2) Specify the inaccuracy or defect to be corrected.

(3) Correct the incorrect statement or defective execution.

- b. By delivering the articles of correction to the secretary of state for filing.

3. 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.

2004 Acts, ch 1049, §7, 192; 2005 Acts, ch 3, §79

Referred to in §504.114

**504.116 Filing duty of secretary of state.**

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 504.111, the secretary of state shall file it.

2. The secretary of state files a document by recording the document as filed on the date and the time of receipt. After filing a document, except as provided in sections 504.504, 504.1510, and 504.1613, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

3. Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief, written explanation of the reason or reasons for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not do any of the following:

- a. Affect the validity or invalidity of the document in whole or in part.
- b. Relate to the correctness or incorrectness of information contained in the document.
- c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

2004 Acts, ch 1049, §8, 192

#### **504.117 Appeal from secretary of state's refusal to file document.**

1. 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 district court in the county where the corporation's principal office, or if there is none in this state, its registered office, is or will be located. 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.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

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

2004 Acts, ch 1049, §9, 192

#### **504.118 Evidentiary effect of copy of filed document.**

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

2004 Acts, ch 1049, §10, 192

#### **504.119 Certificate of existence.**

1. Any person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

2. The certificate of existence shall set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That the domestic corporation is duly incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business in this state.

c. That all fees have been paid.

d. That its most recent biennial report required by section 504.1613 has been delivered to the secretary of state.

e. That articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

2004 Acts, ch 1049, §11, 192



**504.120 Penalty for signing false document.**

1. A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

2004 Acts, ch 1049, §12, 192

**504.121 through 504.130** Reserved.

## PART 3

## SECRETARY OF STATE

**504.131 Powers.**

The secretary of state has all powers reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

2004 Acts, ch 1049, §13, 192

**504.132 Secretary of state — internet site.**

The secretary of state shall place on the secretary of state's internet site a link to a free internet site with completed internal revenue service forms 990 and 990EZ.

2008 Acts, ch 1184, §72

**504.133 through 504.140** Reserved.

## PART 4

## DEFINITIONS

**504.141 Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Approved by the members*" or "*approval by the members*" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum, or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

2. "*Articles of incorporation*" or "*articles*" includes amended and restated articles of incorporation and articles of merger.

3. "*Board*" or "*board of directors*" means the board of directors of a corporation except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 504.801.

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 a corporation irrespective of the name or names by which such rules are designated.

5. "*Class*" means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

6. "*Corporation*" means a public benefit, mutual benefit, or religious corporation.

7. "*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.

8. "*Deliver*" or "*delivery*" means any method of delivery used in conventional commercial

practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

9. “*Directors*” means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

10. “*Distribution*” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

11. “*Domestic corporation*” means a corporation.

12. “*Domestic unincorporated entity*” means an unincorporated entity whose internal affairs are governed by the laws of this state.

13. “*Effective date of notice*” is defined in section 504.142.

14. “*Electronic transmission*” or “*electronically transmitted*” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

15. “*Employee*” does not include an officer or director of a corporation who is not otherwise employed by the corporation.

16. “*Entity*” includes a domestic or foreign business corporation; domestic or foreign nonprofit corporation; domestic or foreign unincorporated entity; estate; trust; state; the United States; governmental subdivision; and foreign government.

17. “*File*”, “*filed*”, or “*filing*” means filed in the office of the secretary of state.

18. “*Foreign corporation*” means a corporation organized under laws other than the laws of this state which would be a nonprofit corporation if formed under the laws of this state.

19. “*Foreign unincorporated entity*” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

20. “*Governmental subdivision*” includes an authority, county, district, and municipality.

21. “*Includes*” denotes a partial definition.

22. “*Individual*” includes the estate of an incompetent individual.

23. “*Means*” denotes a complete definition.

24. “*Member*” means a person who on more than one occasion, pursuant to the provisions of a corporation’s articles or bylaws, has a right to vote for the election of a director or directors of a corporation, irrespective of how a member is defined in the articles or bylaws of the corporation. A person is not a member because of any of the following:

- a. The person’s rights as a delegate.
- b. The person’s rights to designate a director.
- c. The person’s rights as a director.

25. “*Membership*” refers to the rights and obligations a member or members have pursuant to a corporation’s articles, bylaws, and this chapter.

26. “*Mutual benefit corporation*” means a domestic or foreign corporation that is required to be a mutual benefit corporation pursuant to section 504.1705.

27. “*Notice*” is defined in section 504.142.

28. “*Organic law*” means a statute principally governing the internal affairs of a domestic or foreign business corporation, nonprofit corporation, or unincorporated entity.

29. “*Organic record*” means a public organic record or private organic record.

30. “*Person*” includes any individual or entity.

31. “*Principal office*” means the office in or out of this state so designated in the biennial report filed pursuant to section 504.1613 where the principal offices of a domestic or foreign corporation are located.

32. “*Private organic record*” means any record, other than a public organic record, if any, that determines the internal governance of an unincorporated entity. Where a private organic record has been amended or restated, “*private organic record*” means the private organic record as last amended or restated.

33. “*Proceeding*” includes a civil suit and criminal, administrative, or investigatory actions.

34. “*Public benefit corporation*” means a domestic or foreign corporation that is required to be a public benefit corporation pursuant to section 504.1705.

35. “*Public organic record*” means the record, if any, that is filed of public record, to create

an unincorporated entity. Where a public organic record has been amended or restated, “*public organic record*” means the public organic record as last amended or restated.

36. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

37. “*Record date*” means the date established under subchapter VI or VII on which a corporation determines the identity of its members for the purposes of this chapter.

38. “*Religious corporation*” means a domestic or foreign corporation that engages in religious activity as one of the corporation’s principal purposes.

39. “*Secretary*” means the corporate officer to whom the board of directors has delegated responsibility under section 504.841, subsection 2, for custody of the minutes of the directors’ and members’ meetings and for authenticating the records of the corporation.

40. “*Sign*” or “*signature*” includes a manual, facsimile, conformed, or electronic signature.

41. “*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.

42. *a.* “*Unincorporated entity*” means an organization or other legal entity that is not a corporation and that either has a separate legal existence or has the power to acquire an estate in real property in the entity’s own name. “*Unincorporated entity*” includes a general partnership, limited liability company, limited partnership, business or statutory trust, joint stock association, and unincorporated nonprofit association.

*b.* “*Unincorporated entity*” does not include a domestic or foreign business corporation, a nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government.

43. “*United States*” includes a district, authority, bureau, commission, department, and any other agency of the United States.

44. “*Vote*” includes authorization by written ballot and written consent.

45. “*Voting power*” means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not occurred at the time. When a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

2004 Acts, ch 1049, §14, 192; 2005 Acts, ch 19, §78; 2012 Acts, ch 1049, §1, 2

Referred to in §123.173A, 504.611

#### **504.142 Notice.**

1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

2. Subject to subsection 1, notice may be communicated in person, by mail, or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

3. Oral notice is effective when communicated if communicated in a comprehensible manner.

4. Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective according to one of the following:

*a.* Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member’s address shown in the corporation’s current record of members.

*b.* When electronically transmitted to the member in a manner authorized by the member.

5. Except as provided in subsection 4, written notice, if in a comprehensible form, is effective at the earliest of the following:

*a.* When received.

*b.* Five days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed.

c. 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.

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

6. 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.

7. A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute 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.

8. 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 biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

9. If section 504.705, subsection 2, 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.

2004 Acts, ch 1049, §15, 192; 2005 Acts, ch 19, §79, 80

Referred to in §504.141

**504.143 through 504.150** Reserved.

## PART 5

### JUDICIAL RELIEF

#### **504.151 Judicial relief.**

1. 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 district court 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 authorized, in such a manner as the court finds fair and equitable under the circumstances.

2. The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the 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.

3. An 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.

4. Whenever practical, an 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; provided, however, that 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.

5. A meeting or other method of obtaining the vote of members, delegates, or directors

conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

2004 Acts, ch 1049, §16, 192

**504.152 through 504.200** Reserved.

## SUBCHAPTER II

### ORGANIZATION

#### **504.201 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.

2004 Acts, ch 1049, §17, 192

Referred to in §15E.64

#### **504.202 Articles of incorporation.**

1. The articles of incorporation shall set forth all of the following:
  - a. A corporate name for the corporation that satisfies the requirements of section 504.401.
  - b. The address of the corporation's initial registered office and the name of its initial registered agent at that office.
  - c. The name and address of each incorporator.
  - d. Whether the corporation will have members. A corporation incorporated prior to January 1, 2005, may state whether it will have members in either the articles of incorporation or in the corporate bylaws.
  - e. For corporations incorporated after January 1, 2005, provisions not inconsistent with law regarding the distribution of assets on dissolution.
2. The articles of incorporation may set forth any of the following:
  - a. 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.
  - b. The names and addresses of the individuals who are to serve as the initial directors.
  - c. Provisions not inconsistent with law regarding all of the following:
    - (1) Managing and regulating the affairs of the corporation.
    - (2) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members.
    - (3) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.
  - d. (1) A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:
    - (a) The amount of a financial benefit received by a director to which the director is not entitled.
    - (b) An intentional infliction of harm on the corporation or its members.
    - (c) A violation of section 504.835.
    - (d) An intentional violation of criminal law.
  - (2) A provision set forth in the articles of incorporation pursuant to this paragraph shall not eliminate or limit the liability of a director for an act or omission that occurs prior to the date when the provision becomes effective. The absence of a provision eliminating or limiting the liability of a director pursuant to this paragraph shall not affect the applicability of section 504.901.
  - e. A provision permitting or requiring a corporation to indemnify a director for liability, as defined in section 504.851, subsection 5, to a person for any action taken, or any failure to take any action, as a director except liability for any of the following:

- (1) Receipt of a financial benefit to which the person is not entitled.
  - (2) Intentional infliction of harm on the corporation or its members.
  - (3) A violation of section 504.835.
  - (4) Intentional violation of criminal law.
- f. Any provision that under this chapter is required or permitted to be set forth in the bylaws.
3. An incorporator named in the articles must sign the articles.
  4. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

2004 Acts, ch 1049, §18, 192; 2005 Acts, ch 19, §81, 82; 2012 Acts, ch 1023, §157  
 Referred to in §504.832, 504.852, 504.854, 504.901

#### **504.203 Incorporation.**

1. Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

2. 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.

2004 Acts, ch 1049, §19, 192

#### **504.204 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.

2004 Acts, ch 1049, §20, 192

#### **504.205 Organization of corporation.**

1. After incorporation:

a. 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.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. 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.

3. An organizational meeting may be held in or out of this state in accordance with section 504.821.

2004 Acts, ch 1049, §21, 192

#### **504.206 Bylaws.**

1. The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

2. 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.

2004 Acts, ch 1049, §22, 192

#### **504.207 Emergency bylaws and powers.**

1. Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as described in subsection 4. 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 all of the following:

- a. How to call a meeting of the board.
  - b. Quorum requirements for the meeting.
  - c. Designation of additional or substitute directors.
2. 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.
  3. Corporate action taken in good faith in accordance with the emergency bylaws does both of the following:
    - a. Binds the corporation.
    - b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.
  4. 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.

2004 Acts, ch 1049, §23, 192

[P] See also §504.303

**504.208 through 504.300** Reserved.

### SUBCHAPTER III PURPOSES AND POWERS

#### **504.301 Purposes.**

1. 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.
2. 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 shall be subject to all limitations of the other statute.

2004 Acts, ch 1049, §24, 192

Referred to in §504.401

#### **504.302 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 all of the following powers:

1. Sue and be sued, complain, and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing, affixing, or in any other manner reproducing it.
3. 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. 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. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity.
7. Make contracts and guarantees, 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. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 504.833.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its activities, locate offices, and exercise the powers granted by this chapter in or out of this state.

11. Elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation.

12. 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. 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.

14. Impose dues, assessments, and admission and transfer fees upon its members.

15. Establish conditions for admission of members, admit members, and issue memberships.

16. Carry on a business.

17. Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

2004 Acts, ch 1049, §25, 192

#### **504.303 Emergency powers.**

1. In anticipation of or during an emergency as described in subsection 4, the board of directors of a corporation may do both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize an officer to do so.

2. During an emergency described in subsection 4, unless emergency bylaws provide otherwise, all of the following shall apply:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and such notice may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation does both of the following:

a. Binds the corporation.

b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. 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.

2004 Acts, ch 1049, §26, 192

[P] See also §504.207

#### **504.304 Ultra vires.**

1. Except as provided in subsection 2, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.

3. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee



or other legal representative, or in the case of a public benefit corporation, by the attorney general.

2004 Acts, ch 1049, §27, 192; 2004 Acts, ch 1175, §384

**504.305 through 504.400** Reserved.

## SUBCHAPTER IV

### NAMES

#### **504.401 Corporate name.**

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 504.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from:

a. The corporate name of any other nonprofit or business corporation incorporated or authorized to do business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.

(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.

(5) For a nonprofit corporation, this section or section 504.402, 504.403, or 504.1423.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable.

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

a. The other corporation consents to the use of the name in writing and submits an undertaking in a 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.

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

4. A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is being used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation submits documentation to the satisfaction of the secretary of state establishing any of the following conditions:

a. The user corporation has merged with the other corporation.

b. The user corporation has been formed by reorganization of the other corporation.

c. The user corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state, it shall deliver 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.

2004 Acts, ch 1049, §28, 192; 2004 Acts, ch 1049, §191; 2005 Acts, ch 19, §83, 84; 2006 Acts, ch 1089, §46; 2008 Acts, ch 1162, §145, 154, 155

Referred to in §488.108, 490.401, 504.202, 504.403, 504.1423, 504.1506

**504.402 Reserved name.**

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

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

2004 Acts, ch 1049, §29, 192

Referred to in §488.108, 490.401, 504.401, 504.403, 504.1506, 524.310

**504.403 Registered name.**

1. A foreign corporation may register its corporate name, or its corporate name with any change required by section 504.1506, if the name is distinguishable upon the records of the secretary of state from both of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.

(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.

(5) For a nonprofit corporation, this section or section 504.401, 504.402, or 504.1423.

2. A foreign corporation shall register its corporate name, or its corporate name with any change required by section 504.1506, by delivering to the secretary of state an application that does both of the following:

a. Sets forth its corporate name, or its corporate name with any change required by section 504.1506, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged.

b. Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

2004 Acts, ch 1049, §30, 192; 2004 Acts, ch 1049, §191; 2005 Acts, ch 19, §85; 2006 Acts, ch 1089, §47; 2008 Acts, ch 1162, §146, 154, 155

Referred to in §488.108, 490.401, 504.401, 504.1506, 524.310

**504.404 through 504.500 Reserved.**

SUBCHAPTER V  
OFFICE AND AGENT

**504.501 Registered office and registered agent.**

A corporation shall continuously maintain both of the following in this state:

1. A registered office with the same address as that of the registered agent.
2. A registered agent, who may be any of the following:
  - a. An individual who resides in this state and whose business office is identical with the registered office.
  - b. A domestic business or nonprofit corporation whose business office is identical to the registered office.
  - c. A foreign business or nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office.

2004 Acts, ch 1049, §31, 192

**504.502 Change of registered office or registered agent.**

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the corporation.
- b. If the current registered office is to be changed, the address of the new registered office.
- c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the change.
- d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If the address of a registered agent's business office is changed, the registered agent may change the 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 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it need be signed, either manually or in facsimile, only once by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

2004 Acts, ch 1049, §32, 192

Referred to in §504.1613

**504.503 Resignation of registered agent.**

1. a. A registered agent may resign as registered agent by signing and delivering to the secretary of state for filing a signed original statement of resignation. The statement may include a statement that the registered office is also discontinued.

b. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date the statement was filed.

2004 Acts, ch 1049, §33, 192; 2012 Acts, ch 1023, §157

Referred to in §504.111, 504.1613

**504.504 Service on corporation.**

1. A corporation’s registered agent is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 504.1613. Service is perfected under this subsection on the earliest of any of the following:

- a. The date the corporation receives the mail.
- b. The date shown on the return receipt, if signed on behalf of the corporation.
- c. Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation. A corporation may also be served in any other manner permitted by law.

2004 Acts, ch 1049, §34, 192  
 Referred to in §504.116, 504.1422, 504.1423, 504.1424

**504.505 through 504.600** Reserved.

SUBCHAPTER VI

MEMBERS AND MEMBERSHIPS

Referred to in §504.141

PART 1

ADMISSION OF MEMBERS

**504.601 Admission.**

- 1. The articles or bylaws may establish criteria or procedures for admission of members.
- 2. A person shall not be admitted as a member without the person’s consent or affirmative action evidencing consent.

2004 Acts, ch 1049, §35, 192

**504.602 Consideration.**

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

2004 Acts, ch 1049, §36, 192

**504.603 No requirement of members.**

A corporation is not required to have members.

2004 Acts, ch 1049, §37, 192

**504.604 through 504.610** Reserved.

PART 2

TYPES OF MEMBERSHIPS — MEMBERS’  
 RIGHTS AND OBLIGATIONS

**504.611 Differences in rights and obligations of members.**

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with

different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. A person that does not meet the qualifications for a member under section 504.141, subsection 24, and is identified as a member in the articles or bylaws of the corporation shall have only those rights set forth for such a member in the articles or bylaws of the corporation.

2004 Acts, ch 1049, §38, 192

**504.612 Transfers.**

1. Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation shall not transfer a membership or any right arising therefrom.

2. A member of a public benefit or religious corporation shall not transfer a membership or any right arising therefrom.

3. Where transfer rights have been provided, a restriction on them shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

2004 Acts, ch 1049, §39, 192

**504.613 Member's liability to third parties.**

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

2004 Acts, ch 1049, §40, 192

**504.614 Member's liability for dues, assessments, and fees.**

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

2004 Acts, ch 1049, §41, 192

**504.615 Creditor's action against member.**

1. A proceeding shall not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

2. All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection 1 to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

2004 Acts, ch 1049, §42, 192

**504.616 through 504.620** Reserved.

PART 3

RESIGNATION AND TERMINATION

**504.621 Resignation.**

1. A member may resign at any time.

2. The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

2004 Acts, ch 1049, §43, 192

**504.622 Termination, expulsion, or suspension.**

1. A membership in a public benefit or mutual benefit corporation may be terminated or

suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

2. To the extent the articles of incorporation or bylaws do not address the termination or suspension of a member, a member of a public benefit or mutual benefit corporation shall not be expelled or suspended, and a membership or memberships in such a corporation shall not be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

3. A procedure is fair and reasonable when either of the following occurs:

a. The articles or bylaws set forth a procedure which provides both of the following:

(1) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor.

(2) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place.

b. The procedure requires consideration of all relevant facts and circumstances surrounding the expulsion, suspension, or termination by a person or persons authorized to make a decision regarding the proposed expulsion, termination, or suspension.

4. Any written notice given by mail pursuant to this section must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

5. A proceeding challenging an expulsion, suspension, or termination, including a proceeding alleging defective notice, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

6. A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

2004 Acts, ch 1049, §44, 192; 2012 Acts, ch 1049, §3, 4

Referred to in §504.1032

#### **504.623 Purchase of memberships.**

1. A public benefit or religious corporation shall not purchase any of its memberships or any right arising therefrom.

2. A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment shall not be made in violation of subchapter XIII.

2004 Acts, ch 1049, §45, 192

**504.624 through 504.630** Reserved.

## PART 4

### DERIVATIVE PROCEEDINGS

#### **504.631 Derivative proceedings — definition.**

In this part, unless the context otherwise requires, “*derivative proceeding*” means a civil suit in the right of a domestic corporation or, to the extent provided in section 504.638, in the right of a foreign corporation.

2004 Acts, ch 1049, §46, 192

Referred to in §504.810

#### **504.632 Standing.**

A derivative proceeding may be brought by any of the following persons:

1. A member or members of the corporation representing five percent or more of the voting power of the corporation or by fifty members, whichever is less.

2. A director of the corporation.

2004 Acts, ch 1049, §47, 192

**504.633 Demand.**

A derivative proceeding shall not be commenced until both of the following have occurred:

1. A written demand has been made upon the corporation to take suitable action.
2. Ninety days have expired from the date the demand was made, unless the member or director has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

2004 Acts, ch 1049, §48, 192

Referred to in §504.810

**504.634 Stay of proceedings.**

If a corporation commences an inquiry into the allegations made in a demand or complaint, the court may stay any derivative proceeding for a period of time as the court deems appropriate.

2004 Acts, ch 1049, §49, 192

Referred to in §504.638, 504.810

**504.635 Dismissal.**

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 shall be made by one of the following:

a. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

b. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

3. None of the following shall by itself cause a director to be considered not independent for purposes of this section:

a. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

b. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

c. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. a. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member or director, the complaint shall allege with particularity facts establishing one of the following:

(1) That a majority of the board of directors did not consist of independent directors at the time the determination was made.

(2) That the requirements of subsection 1 have not been met.

b. All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

5. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

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

is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

2004 Acts, ch 1049, §50, 192; 2012 Acts, ch 1023, §157

Referred to in §504.810

**504.636 Discontinuance or settlement.**

A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of a corporation's member or class of members or director, the court shall direct that notice be given to the members or director affected.

2004 Acts, ch 1049, §51, 192

Referred to in §504.638, 504.810

**504.637 Payment of expenses.**

On termination of a derivative proceeding, the court may do either of the following:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation.

2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

2004 Acts, ch 1049, §52, 192

Referred to in §504.638, 504.810

**504.638 Applicability to foreign corporations.**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except that sections 504.634, 504.636, and 504.637 shall apply.

2004 Acts, ch 1049, §53, 192

Referred to in §504.631, 504.810

**504.639 and 504.640** Reserved.

PART 5

DELEGATES

**504.641 Delegates.**

1. A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

2. The articles or bylaws may set forth provisions relating to all of the following:

a. The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal.

b. Calling, noticing, holding, and conducting meetings of delegates.

c. Carrying on corporate activities during and between meetings of delegates.

2004 Acts, ch 1049, §54, 192

**504.642 through 504.700** Reserved.



SUBCHAPTER VII  
MEMBERS' MEETINGS AND VOTING

Referred to in §504.141

PART 1  
MEETINGS AND ACTION  
WITHOUT MEETINGS

**504.701 Annual and regular meetings.**

1. A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

2. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

3. Annual or regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

4. At the annual meeting all of the following shall occur:

a. The president and chief financial officer shall report on the activities and financial condition of the corporation.

b. The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

5. At regular meetings, the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

6. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

7. The articles of incorporation or bylaws may provide that an annual or regular meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

2004 Acts, ch 1049, §55, 192; 2012 Acts, ch 1049, §5

**504.702 Special meeting.**

1. A corporation with members shall hold a special meeting of members when either of the following occurs:

a. At the call of its board or the person or persons authorized to do so by the corporation's articles or bylaws.

b. Except as provided in the articles or bylaws of a corporation, if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection 1, paragraph "b", has been met.

3. If a notice for a special meeting demanded under subsection 1, paragraph "b", is not given pursuant to section 504.705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection

4, a person signing the demand may set the time and place of the meeting and give notice pursuant to section 504.705.

4. Special meetings of members may be held in or out of this state at a place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

5. Only those matters that are within the purpose described in the meeting notice required by section 504.705 may be considered at a special meeting of members.

6. The articles of incorporation or bylaws may provide that a special meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

2004 Acts, ch 1049, §56, 192; 2006 Acts, ch 1089, §48; 2012 Acts, ch 1049, §6  
Referred to in §504.703

#### **504.703 Court-ordered meeting.**

1. The district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, may summarily order a meeting to be held when any of the following occurs:

a. On application of any member or other person entitled to participate in an annual or regular meeting of the corporation, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of any member or other person entitled to participate in a regular meeting of the corporation, if a regular meeting was not held within forty days after the date it was required to be held.

c. On application of a member who signed a demand for a special meeting valid under section 504.702, or a person entitled to call a special meeting, if any of the following applies:

(1) The notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

2004 Acts, ch 1049, §57, 192

Referred to in §504.704

#### **504.704 Action by written consent.**

1. Unless limited or prohibited by the articles or bylaws of the corporation, action required or permitted by this chapter to be approved by the members of a corporation may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action.

2. If not otherwise determined under section 504.703 or 504.707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection 1.

3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.

4. Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

2004 Acts, ch 1049, §58, 192; 2005 Acts, ch 19, §86

**504.705 Notice of meeting.**

1. A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

2. Any notice which conforms to the requirements of subsection 3 is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection 3, paragraph “b”, must be given as provided in subsection 3.

3. Notice is fair and reasonable if all of the following occur:

a. The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not more than sixty days and not less than ten days, or if notice is mailed by other than first class or registered mail, not less than thirty days, before the date of the meeting.

b. The notice of an annual or regular meeting includes a description of any matter or matters which must be considered for approval by the members under sections 504.833, 504.859, 504.1003, 504.1022, 504.1104, 504.1202, and 504.1402.

c. The notice of a special meeting includes a description of the purpose for which the meeting is called.

4. Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 504.707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

5. When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and if the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

2004 Acts, ch 1049, §59, 192; 2005 Acts, ch 19, §87

Referred to in §504.142, 504.701, 504.702, 504.1003, 504.1022, 504.1103, 504.1202, 504.1402

**504.706 Waiver of notice.**

1. A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A member’s attendance at a meeting does all of the following:

a. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects to considering the matter when it is presented.

2004 Acts, ch 1049, §60, 192; 2005 Acts, ch 19, §88

**504.707 Record date — determining members entitled to notice and vote.**

1. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members’ meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a

record date. If a record date is not fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

2. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

3. The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If a record date is not fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

4. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of members occurs.

5. A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

6. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

2004 Acts, ch 1049, §61, 192

Referred to in §504.704, 504.705

#### **504.708 Action by written ballot.**

1. Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

2. A written ballot shall do both of the following:

a. Set forth each proposed action.

b. Provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. All solicitations for votes by written ballot shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of approvals necessary to approve each matter other than election of directors.

c. Specify the time by which a ballot must be received by the corporation in order to be counted.

5. Except as otherwise provided in the articles or bylaws, a written ballot shall not be revoked.

6. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission. An electronic transmission of a written ballot shall contain or be accompanied by information indicating that a member, a member's agent, or a member's attorney authorized the electronic transmission of the ballot.

2004 Acts, ch 1049, §62, 192

**504.709 Conduct of meetings.**

1. At each meeting of members, an individual shall preside as chair. The chair shall be appointed as follows:

a. As provided in the articles of incorporation or bylaws.

b. In the absence of a provision in the articles of incorporation or bylaws, by the board of directors.

c. In the absence of both a provision in the articles of incorporation or bylaws and an appointment of the chair by the board, by the members at the meeting.

2. Except as provided in the articles of incorporation or bylaws, the chair shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

3. Any rules adopted for, and the conduct of, the meeting shall be fair to the members.

4. The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls are closed, no ballots, proxies, or votes, or any otherwise permissible revocations or changes thereto may be accepted.

2012 Acts, ch 1049, §7

**504.710** Reserved.

## PART 2

## VOTING

**504.711 Members' list for meeting.**

1. After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of each member and number of votes each member is entitled to cast at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

2. Except as set forth in section 504.1602, subsection 6, the list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. Except as set forth in section 504.1602, subsection 6, a member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of section 504.1602, subsection 3, and section 504.1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

3. Except as set forth in section 504.1602, subsection 6, a corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

4. Except as set forth in section 504.1602, subsection 6, if a corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection 2, the district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying of the membership list at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees incurred to obtain the order.

5. Unless a written demand to inspect and copy a membership list has been made under

subsection 2 prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

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

2004 Acts, ch 1049, §63, 192

Referred to in §504.1602

#### **504.712 Voting entitlement generally.**

1. The right of the members of a corporation, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

2. Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, the persons' acts with respect to voting shall have the following effect:

a. If only one votes, such act binds all.

b. If more than one votes, the vote shall be divided on a pro rata basis.

2004 Acts, ch 1049, §64, 192

#### **504.713 Quorum requirements.**

1. Unless this chapter or the articles or bylaws of a corporation provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

2. A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

3. A bylaw amendment to increase the quorum required for any member action must be approved by the members.

4. Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

2004 Acts, ch 1049, §65, 192; 2005 Acts, ch 19, §89

Referred to in §504.701

#### **504.714 Voting requirements.**

1. Unless this chapter or the articles or bylaws of a corporation require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

2. A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

2004 Acts, ch 1049, §66, 192; 2005 Acts, ch 19, §90

#### **504.715 Proxies.**

1. Unless the articles or bylaws of a corporation prohibit or limit proxy voting, a member or the member's agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.

2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of an appointment form is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided for in the appointment. However, a proxy shall not be valid for more than three years from its date of execution.

3. An appointment of a proxy is revocable by the member.

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

5. Appointment of a proxy is revoked by the person appointing the proxy if either of the following occurs:

a. The person appointing the proxy attends any meeting and votes in person.

b. The person appointing the proxy signs and delivers or sends through electronic transmission to the secretary or other officer or agent authorized to tabulate proxy votes either a writing or electronic transmission stating that the appointment of the proxy is revoked or a subsequent appointment form.

6. Subject to section 504.718 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

2004 Acts, ch 1049, §67, 192

#### **504.716 Cumulative voting for directors.**

1. If the articles or bylaws of a corporation provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and casting the product for a single candidate or distributing the product among two or more candidates.

2. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 504.808 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected.

3. Members shall not cumulatively vote if the directors and members are identical.

2004 Acts, ch 1049, §68, 192

#### **504.717 Other methods of electing directors.**

A corporation may provide in its articles or bylaws for election of directors by members or delegates on the basis of chapter or other organizational unit, by region or other geographic unit, by preferential voting, or by any other reasonable method.

2004 Acts, ch 1049, §69, 192

#### **504.718 Corporation's acceptance of votes.**

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

2. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if any of the following is applicable:

a. The member is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an attorney in fact of the member, and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

d. In the case of a mutual benefit corporation:

(1) The name signed purports to be that of an administrator, executor, guardian, or

conservator representing the member, and if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(2) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

2004 Acts, ch 1049, §70, 192

Referred to in §504.715

#### **504.719 Inspectors of election.**

1. A corporation with members may appoint one or more inspectors to act at a meeting of members and to make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

2. The inspectors shall do all of the following:

- a. Ascertain the number of members and their voting power.
- b. Determine the members present at the meeting.
- c. Determine the validity of proxies and ballots.
- d. Count all votes.
- e. Determine the result of the voting.

3. An inspector may, but is not required to, be a director, member, officer, or employee of the corporation. A person who is a candidate for an office to be filled at the meeting shall not be an inspector at that meeting.

2012 Acts, ch 1049, §8; 2012 Acts, ch 1138, §71

**504.720** Reserved.

### PART 3

#### VOTING AGREEMENTS

#### **504.721 Voting agreements.**

1. Two or more members of a corporation may provide for the manner in which they will vote by signing an agreement for that purpose. For public benefit corporations, such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

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

2004 Acts, ch 1049, §71, 192

**504.722 through 504.800** Reserved.



SUBCHAPTER VIII  
DIRECTORS AND OFFICERS

Referred to in §504.1405

PART 1  
BOARD OF DIRECTORS

**504.801 Requirement for and duties of board.**

1. Each corporation must have a board of directors.
2. Except as otherwise provided in this chapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, and subject to the oversight of, its board of directors.
3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

2004 Acts, ch 1049, §72, 192; 2007 Acts, ch 126, §88; 2012 Acts, ch 1049, §9  
Referred to in §504.141, 504.826

**504.802 Qualifications of directors.**

All directors of a corporation must be individuals. The articles or bylaws may prescribe other qualifications for directors.

2004 Acts, ch 1049, §73, 192

**504.803 Number of directors.**

1. The board of directors of a corporation must consist of one or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.
2. The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.

2004 Acts, ch 1049, §74, 192

**504.804 Election, designation, and appointment of directors.**

1. If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

2. If a corporation does not have members, all the directors, except the initial directors, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors other than the initial directors shall be elected by the board.

2004 Acts, ch 1049, §75, 192

**504.805 Terms of directors generally.**

1. The articles or bylaws of a corporation must specify the terms of directors. Except for designated or appointed directors, and except as otherwise provided in the articles or bylaws, the terms of directors shall not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

2. A decrease in the number or term of directors does not shorten an incumbent director's term.

3. Except as provided in the articles or bylaws, both of the following apply:

a. The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members.

b. The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed, and qualifies, or until there is a decrease in the number of directors.

2004 Acts, ch 1049, §76, 192

#### **504.806 Staggered terms for directors.**

The articles or bylaws of a corporation may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of the several groups need not be uniform.

2004 Acts, ch 1049, §77, 192

#### **504.807 Resignation of directors.**

1. A director of a corporation may resign at any time by delivering written notice to the board of directors, its presiding officer, or the president or secretary.

2. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

2004 Acts, ch 1049, §78, 192

Referred to in §504.811

#### **504.808 Removal of directors elected by members or directors.**

1. The members of a corporation may remove one or more directors elected by the members without cause.

2. If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

3. Except as provided in subsection 9, a director may be removed under subsection 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

4. If cumulative voting is authorized, a director shall not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.

6. For the purpose of computing whether a director is protected from removal under subsections 2 through 4, it should be assumed that the votes against removal are cast in an election for the number of directors of the group to which the director to be removed belonged on the date of that director's election.

7. An entire board of directors may be removed under subsections 1 through 5.

8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the board.

9. If at the beginning of a director's term on the board the articles or bylaws provide that a director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office votes for the removal.

10. The articles or bylaws of a corporation may do both of the following:

a. Limit the application of this section.

*b.* Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

2004 Acts, ch 1049, §79, 192; 2006 Acts, ch 1089, §49

Referred to in §504.716

**504.809 Removal of designated or appointed directors.**

1. A designated director of a corporation may be removed by an amendment to the articles or bylaws deleting or changing the designation.

2. *a.* Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

*b.* The person removing the appointed director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.

*c.* A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

2004 Acts, ch 1049, §80, 192

**504.810 Removal of directors by judicial proceeding.**

1. The district court of the county where a corporation's principal office is located or if there is no principal office located in this state, where the registered office is located, may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation by a member or director if the court finds both of the following apply:

*a.* A director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation.

*b.* Upon consideration of the director's course of conduct and the inadequacy of other available remedies, the court determines that removal is in the best interest of the corporation.

2. A member or a director who proceeds by or in the right of a corporation pursuant to subsection 1 shall comply with all of the requirements of section 504.631 and sections 504.633 through 504.638.

3. The court, in addition to removing a director, may bar the director from serving on the board for a period of time prescribed by the court.

4. This section does not limit the equitable powers of the court to order other relief that the court determines is appropriate.

5. The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

2004 Acts, ch 1049, §81, 192; 2005 Acts, ch 19, §122, 126

**504.811 Vacancy on board.**

1. Unless the articles or bylaws of a corporation provide otherwise, and except as provided in subsections 2 and 3, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, any of the following may occur:

*a.* The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.

*b.* The board of directors may fill the vacancy.

*c.* If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

3. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy shall be filled by the board.

4. A vacancy that will occur at a specific later date by reason of a resignation effective at a

later date under section 504.807, subsection 2, or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

2004 Acts, ch 1049, §82, 192

**504.812 Compensation of directors.**

Unless the articles or bylaws of a corporation provide otherwise, a board of directors may fix the compensation of directors.

2004 Acts, ch 1049, §83, 192

**504.813 through 504.820** Reserved.

PART 2

MEETINGS AND ACTION  
OF THE BOARD

**504.821 Regular and special meetings.**

1. If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

2. A board of directors may hold regular or special meetings in or out of this state.

3. Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

2004 Acts, ch 1049, §84, 192

Referred to in §504.205, 504.826

**504.822 Action without meeting.**

1. Except to the extent the articles or bylaws of a corporation require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to the delivery to the corporation of unrevoked written consents signed by all of the directors.

3. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

2004 Acts, ch 1049, §85, 192; 2005 Acts, ch 19, §91

Referred to in §504.826

**504.823 Call and notice of meetings.**

1. Unless the articles or bylaws of a corporation, or subsection 3, provide otherwise, regular meetings of the board may be held without notice.

2. Unless the articles, bylaws, or subsection 3 provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

3. In corporations without members, any board action to remove a director or to approve a matter which would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 504.824.

4. Unless the articles or bylaws provide otherwise, the presiding officer of the board, the

president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

2004 Acts, ch 1049, §86, 192

Referred to in §504.826, 504.1002, 504.1021, 504.1103, 504.1202, 504.1401, 504.1402

#### **504.824 Waiver of notice.**

1. A director may at any time waive any notice required by this chapter, the articles, or bylaws. Except as provided in subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

2. A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected-to action.

2004 Acts, ch 1049, §87, 192; 2005 Acts, ch 19, §92

Referred to in §504.823, 504.826

#### **504.825 Quorum and voting.**

1. Except as otherwise provided in this chapter, or the articles or bylaws of a corporation, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. The articles or bylaws shall not authorize a quorum of fewer than one-third of the number of directors in office.

2. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or bylaws require the vote of a greater number of directors.

2004 Acts, ch 1049, §88, 192; 2005 Acts, ch 19, §93

Referred to in §504.826, 504.854

#### **504.826 Committees of the board.**

1. Unless prohibited or limited by the articles or bylaws of a corporation, the board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

2. The creation of a committee and appointment of members to it must be approved by the greater of either of the following:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles or bylaws to take action under section 504.825.

3. Sections 504.821 through 504.825, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 504.801.

5. A committee of the board shall not, however, do any of the following:

a. Authorize distributions.

b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.

c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.

d. Adopt, amend, or repeal the articles or bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 504.831.

7. A corporation may create or authorize the creation of one or more advisory committees whose members are not required to be directors. An advisory committee is not a committee of the board of directors and shall not exercise any powers of the board.

2004 Acts, ch 1049, §89, 192; 2012 Acts, ch 1049, §10

Referred to in §504.1601

**504.827 through 504.830** Reserved.

PART 3  
STANDARDS OF CONDUCT

**504.831 General standards for directors.**

1. Each member of the board of directors of a corporation, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

b. In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making functions or when devoting attention to their oversight functions, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph “a”, to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board’s functions that are delegable under applicable law.

4. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:

a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided by the officer or employee.

b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person’s professional or expert competence.

(2) Matters as to which the particular person merits confidence.

c. A committee of the board or advisory committee of which the director is not a member, as to matters within the committee’s or advisory committee’s jurisdiction, if the director reasonably believes the committee or advisory committee merits confidence.

d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

6. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

2004 Acts, ch 1049, §90, 192; 2007 Acts, ch 15, §1; 2012 Acts, ch 1049, §11

Referred to in §347.13, 504.826, 504.835

**504.832 Standards of liability for directors.**

1. A director shall not be liable to the corporation or its members for any decision to take or not to take action, or any failure to take any action, as director, unless the party asserting liability in a proceeding establishes both of the following:

a. That section 504.202, subsection 2, paragraph “d”, or section 504.901 or the protection afforded by section 504.833, if interposed as a bar to the proceeding by the director, does not preclude liability.

- b. That the challenged conduct consisted or was the result of one of the following:
- (1) Action not in good faith.
  - (2) A decision that satisfies one of the following:
    - (a) That the director did not reasonably believe to be in the best interests of the corporation.
    - (b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.
    - (3) A lack of objectivity due to the director's familial, financial, or business relationship with, or lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct which also meets both of the following criteria:
      - (a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.
      - (b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.
      - (4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor.
      - (5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.
2. a. A party seeking to hold a director liable for money damages shall also have the burden of establishing both of the following:
- (1) That harm to the corporation or its members has been suffered.
  - (2) The harm suffered was proximately caused by the director's challenged conduct.
- b. A party seeking to hold a director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever burden of persuasion that may be called for to establish that the payment sought is appropriate in the circumstances.
- c. A party seeking to hold a director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever burden of persuasion that may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
3. This section shall not do any of the following:
- a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 504.833, alter the burden of proving the fact or lack of fairness otherwise applicable.
  - b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of a transactional interest under section 504.833 or an unlawful distribution under section 504.835.
  - c. Affect any rights to which the corporation or a member may be entitled under another statute of this state or the United States.
- 2004 Acts, ch 1049, §91, 192; 2005 Acts, ch 19, §94, 95  
 Referred to in §504.843

**504.833 Director conflict of interest.**

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation on the basis of the director's interest in the transaction if the transaction was fair at the time it was entered into or is approved as provided in subsection 2.
2. A transaction in which a director of a corporation has a conflict of interest may be approved if either of the following occurs:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

3. For the purposes of this section, a director of the corporation has an indirect interest in a transaction under either of the following circumstances:

a. If another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction.

b. If another entity of which the director is a director, officer, or trustee is a party to the transaction.

4. For purposes of subsection 2, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 2, paragraph "a", if the transaction is otherwise approved as provided in subsection 2.

5. For purposes of subsection 2, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection 3, paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 2, paragraph "b". The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

6. The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

2004 Acts, ch 1049, §92, 192; 2005 Acts, ch 19, §96, 97

Referred to in §504.302, 504.705, 504.832, 504.836

#### **504.834 Loans to or guarantees for directors and officers.**

1. A corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.

2. The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

2004 Acts, ch 1049, §93, 192

#### **504.835 Liability for unlawful distributions.**

1. Unless a director complies with the applicable standards of conduct described in section 504.831, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:

a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 504.831.

b. Each person who received an unlawful distribution for the amount of the distribution



whether or not the person receiving the distribution knew it was made in violation of this chapter.

2004 Acts, ch 1049, §94, 192; 2005 Acts, ch 19, §98, 99

Referred to in §504.202, 504.832, 504.901

**504.836 Business opportunities.**

1. A director's taking advantage, directly or indirectly, of a business opportunity shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of a corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the business opportunity, the director brings the opportunity to the attention of the corporation and action is taken by the directors, a committee of the directors, or the members disclaiming the corporation's interest in the opportunity in compliance with the procedures set forth in section 504.833, as if the decision being made concerned a conflict of interest transaction.

2. In any proceeding seeking equitable relief or other remedy, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection 1 before taking advantage of the opportunity shall not create an inference that the opportunity should have first been presented to the corporation, or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation under the circumstances.

2012 Acts, ch 1049, §12

**504.837 through 504.840** Reserved.

PART 4

OFFICERS

**504.841 Required officers.**

1. Unless otherwise provided in the articles or bylaws of a corporation, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

2. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

3. The same individual may simultaneously hold more than one office in a corporation.

2004 Acts, ch 1049, §95, 192

Referred to in §504.141

**504.842 Duties and authority of officers.**

Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

2004 Acts, ch 1049, §96, 192

**504.843 Standards of conduct for officers.**

1. An officer, when performing in such capacity, shall act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

2. In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving the skills or expertise the officer reasonably believes are within the person's professional or expert competence, or as to which the particular person merits confidence.

d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

3. An officer shall not be liable as an officer to the corporation or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of sections 504.832 and 504.901 that have relevance.

2004 Acts, ch 1049, §97, 192

#### **504.844 Resignation and removal of officers.**

1. An officer of a corporation may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective time. If a resignation is made effective at a future time and the board or appointing officer accepts the future effective time, its board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

2. An officer may be removed at any time with or without cause by any of the following:

a. The board of directors.

b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.

c. Any other officer if authorized by the bylaws or the board of directors.

d. In this section, "*appointing officer*" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

2004 Acts, ch 1049, §98, 192

#### **504.845 Contract rights of officers.**

1. The appointment of an officer of a corporation does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

2004 Acts, ch 1049, §99, 192

#### **504.846 Officers' authority to execute documents.**

1. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 or by one officer in category 1 and one officer in category 2 as set out in subsection 2.

2. a. Category 1 officers include the presiding officer of the board and the president.

b. Category 2 officers include a vice president and the secretary, treasurer, and executive director.

2004 Acts, ch 1049, §100, 192

**504.847 through 504.850** Reserved.

PART 5  
INDEMNIFICATION

**504.851 Definitions.**

As used in this part, unless the context otherwise requires:

1. “*Corporation*” includes any domestic or foreign predecessor entity of a corporation in a merger.

2. “*Director*” or “*officer*” means an individual who is or was a director or officer of a corporation or an individual who, while a director or officer of a corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A “*director*” or “*officer*” is considered to be serving an employee benefit plan at the corporation’s request if the director’s or officer’s duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. “*Director*” or “*officer*” includes, unless the context otherwise requires, the estate or personal representative of a director or officer.

3. “*Disinterested director*” means a director who at the time of a vote referred to in section 504.854, subsection 3, or a vote or selection referred to in section 504.856, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director’s judgment when voting on the decision being made.

4. “*Expenses*” includes attorney fees.

5. “*Liability*” means the obligation to pay a judgment, settlement, penalty, or fine including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

6. “*Official capacity*” means either of the following:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an officer, as contemplated in section 504.857, the office in a corporation held by the officer. “*Official capacity*” does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

7. “*Party*” means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. “*Proceeding*” means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

2004 Acts, ch 1049, §101, 192; 2005 Acts, ch 19, §123, 126

Referred to in §504.202

**504.852 Permissible indemnification.**

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed either of the following:

(1) In the case of conduct in the individual’s official capacity, that the individual’s conduct was in the best interests of the corporation.

(2) In all other cases, that the individual’s conduct was at least not opposed to the best interests of the corporation.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

d. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "e".

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 504.855, subsection 1, paragraph "b", a corporation shall not indemnify a director under this section under either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

2004 Acts, ch 1049, §102, 192; 2005 Acts, ch 19, §100

Referred to in §504.854, 504.855, 504.856, 504.859, 504.1612

#### **504.853 Mandatory indemnification.**

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

2004 Acts, ch 1049, §103, 192

Referred to in §504.854, 504.855, 504.857, 504.1612

#### **504.854 Advance for expenses.**

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the corporation:

a. A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section 504.852 or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "d".

b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 504.853 and it is ultimately determined under section 504.855 or 504.856 that the director has not met the relevant standard of conduct described in section 504.852.

2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to one of the following:

a. By the board of directors as follows:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

(2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section 504.825, subsection 2, in which authorization directors who do not qualify as disinterested directors may participate.

*b.* By the members, but the director, who at the time does not qualify as a disinterested director, shall not vote as a member or on behalf of a member.

2004 Acts, ch 1049, §104, 192; 2004 Acts, ch 1175, §385

Referred to in §504.851, 504.855, 504.859, 504.1612

#### **504.855 Court-ordered indemnification.**

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice the court considers necessary, the court shall do one of the following:

*a.* Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 504.853.

*b.* Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 504.859, subsection 1.

*c.* Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To indemnify or advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 504.852, subsection 1, failed to comply with section 504.854, or was adjudged liable in a proceeding referred to in section 504.852, subsection 4, paragraph “*a*” or “*b*”, but if the director was adjudged so liable the director’s indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph “*a*”, or to indemnification or advance for expenses under subsection 1, paragraph “*b*”, it shall also order the corporation to pay the director’s reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph “*c*”, it may also order the corporation to pay the director’s reasonable expenses to obtain court-ordered indemnification or advance for expenses.

2004 Acts, ch 1049, §105, 192

Referred to in §504.852, 504.854, 504.857, 504.1612

#### **504.856 Determination and authorization of indemnification.**

1. A corporation shall not indemnify a director under section 504.852 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in section 504.852.

2. The determination shall be made by any of the following:

*a.* If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

*b.* By special legal counsel under one of the following circumstances:

(1) Selected in the manner prescribed in paragraph “*a*”.

(2) If there are fewer than two disinterested directors, selected by the board in which selection directors who do not qualify as disinterested directors may participate.

*c.* By the members of a corporation, but directors who are at the time parties to the proceeding shall not vote on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization

of indemnification shall be made by those entitled under subsection 2, paragraph “b”, to select special legal counsel.

2004 Acts, ch 1049, §106, 192; 2005 Acts, ch 19, §101

Referred to in §504.851, 504.854, 504.859

#### **504.857 Indemnification of officers.**

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because the person is an officer, according to all of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the members.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph “b”, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 504.853, and may apply to a court under section 504.855 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

2004 Acts, ch 1049, §107, 192; 2005 Acts, ch 19, §102

Referred to in §504.851

#### **504.858 Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual’s status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

2004 Acts, ch 1049, §108, 192

#### **504.859 Application of part.**

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 504.852 or advance funds to pay for or reimburse expenses in accordance with section 504.854. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 504.854, subsection 3, and in section 504.856, subsection 2 or 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 504.854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a

merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 504.1104.

3. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

2004 Acts, ch 1049, §109, 192

Referred to in §504.705, 504.855

**504.860 Exclusivity of part.**

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

2004 Acts, ch 1049, §110, 192

**504.861 through 504.900** Reserved.

## SUBCHAPTER IX

### PERSONAL LIABILITY

**504.901 Personal liability.**

1. Except as otherwise provided in this chapter, a director, officer, employee, or member of a corporation is not liable for the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity to any person for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:

- a. The amount of any financial benefit to which the person is not entitled.
- b. An intentional infliction of harm on the corporation or the members.
- c. A violation of section 504.835.
- d. An intentional violation of criminal law.

2. A provision set forth in the articles of incorporation eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, pursuant to section 504.202, subsection 2, paragraph "d", shall not affect the applicability of this section.

2004 Acts, ch 1049, §111, 192; 2005 Acts, ch 19, §103; 2006 Acts, ch 1089, §50

Referred to in §504.202, 504.832, 504.843

**504.902 through 504.1000** Reserved.

SUBCHAPTER X  
AMENDMENT OF ARTICLES OF  
INCORPORATION AND BYLAWS

PART 1  
ARTICLES OF INCORPORATION

**504.1001 Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

2004 Acts, ch 1049, §112, 192; 2006 Acts, ch 1089, §51

**504.1002 Amendment by directors.**

1. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without member approval for any of the following purposes:

a. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

b. To delete the names and addresses of the initial directors.

c. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

d. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.

e. To make any other change expressly permitted by this subchapter to be made by director action.

2. If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles 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.

2004 Acts, ch 1049, §113, 192; 2006 Acts, ch 1089, §52

Referred to in §504.1003

**504.1003 Amendment by directors and members.**

1. Unless this chapter, the articles or bylaws of a corporation, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3 require a greater vote or voting by class, or unless the articles or bylaws impose other requirements, an amendment to the corporation's articles must be approved by all of the following to be adopted:

a. The board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. Except as provided in section 504.1002, subsection 1, by the members by two-thirds of the votes cast by the members or a majority of the members' voting power that could be cast, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.



2. The members may condition the adoption of an amendment on receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the articles or board approval is required by subsection 1 to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment 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 amendment.

2004 Acts, ch 1049, §114, 192

Referred to in §504.705, 504.1006

#### **504.1004 Class voting by members on amendments.**

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles 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.

2. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of the memberships of that class.

f. Authorize a new class of memberships.

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

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the articles 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.

5. Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of the corporation, 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.

2004 Acts, ch 1049, §115, 192

Referred to in §504.1103

#### **504.1005 Articles of amendment.**

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation or bylaws, the corporation amending its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

1. The name of the corporation.

2. The text of each amendment adopted.

3. The date of each amendment's adoption.

4. If approval by members was not required, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that member approval was not required.

5. If approval by members was required, a statement that the amendment was duly approved by the members in the manner required by this chapter, the articles of incorporation, and bylaws.

6. If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1031, a statement that the approval was obtained.

2004 Acts, ch 1049, §116, 192; 2006 Acts, ch 1089, §53, 54

Referred to in §504.1006

#### **504.1006 Restated articles of incorporation.**

1. A corporation's board of directors may restate the corporation's articles of incorporation at any time with or without approval by members or any other person, to consolidate all amendments into a single document.

2. If the restated articles include one or more new amendments that require approval by the members or any other person, the amendments must be adopted as provided in section 504.1003.

3. If the restatement includes an amendment requiring approval pursuant to section 504.1031, the board must submit the restatement for such approval.

4. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate stating that the restated articles consolidate all amendments into a single document. If a new amendment is included in the restated articles, the corporation shall include the statement required in section 504.1005.

5. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

6. 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 4.

2004 Acts, ch 1049, §117, 192; 2006 Acts, ch 1089, §55

#### **504.1007 Amendment pursuant to judicial reorganization.**

1. A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 504.1031 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of law of the United States.

2. An individual or individuals designated by the court shall deliver to the secretary of state articles of amendment setting forth all of the following:

- a. The name of the corporation.
- b. The text of each amendment approved by the court.
- c. The date of the court's order or decree approving the articles of amendment.
- d. The title of the reorganization proceeding in which the order or decree was entered.
- e. A statement that the court had jurisdiction of the proceeding under federal statute.

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

2004 Acts, ch 1049, §118, 192; 2006 Acts, ch 1089, §56

#### **504.1008 Effect of amendment and restatement.**

An amendment to the 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. 2004 Acts, ch 1049, §119, 192; 2005 Acts, ch 19, §104; 2006 Acts, ch 1089, §57

**504.1009 through 504.1020** Reserved.

## PART 2

### BYLAWS

#### **504.1021 Amendment by directors.**

If a corporation has no members, 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 504.1031. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be given in accordance with section 504.823, subsection 3. The notice must also 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.

2004 Acts, ch 1049, §120, 192

#### **504.1022 Amendment by directors and members.**

1. Unless this chapter, the articles, bylaws, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3, require a greater vote or voting by class, or the articles or bylaws provide otherwise, an amendment to a corporation's bylaws must be approved by all of the following to be adopted:

a. By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the bylaws or board approval is required by subsection 1 to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment 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 amendment.

2004 Acts, ch 1049, §121, 192

Referred to in §504.705

#### **504.1023 Class voting by members on amendments.**

1. Unless the articles or bylaws of the corporation provide otherwise, 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.

2. Unless the articles or bylaws of the corporation provide otherwise, 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 do any of the following:

- a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.
- b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.
- c. Increase or decrease the number of memberships authorized for that class.
- d. Increase the number of memberships authorized for another class.
- e. Effect an exchange, reclassification, or termination of all or part of the memberships of that class.
- f. Authorize a new class of memberships.

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

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

5. Unless the articles or bylaws of the corporation provide otherwise, 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.

2004 Acts, ch 1049, §122, 192

Referred to in §504.1103

**504.1024 through 504.1030** Reserved.

### PART 3

#### ARTICLES OF INCORPORATION AND BYLAWS

##### **504.1031 Approval by third persons.**

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

2004 Acts, ch 1049, §123, 192

Referred to in §504.1002, 504.1003, 504.1005, 504.1006, 504.1007, 504.1021, 504.1022, 504.1103, 504.1202, 504.1402

##### **504.1032 Amendment terminating members or redeeming or canceling memberships.**

1. Unless the articles or bylaws provide otherwise, an amendment to the articles or bylaws of a public benefit or mutual benefit corporation which would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter and this section.

2. Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

3. After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment, if such 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 amendment to the members for their approval. In public benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the requesting members. In

mutual benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the corporation.

4. Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.

5. The provisions of section 504.622 shall not apply to any amendment meeting the requirements of this chapter and this section.

2004 Acts, ch 1049, §124, 192

**504.1033 through 504.1100** Reserved.

## SUBCHAPTER XI

### MERGER

#### **504.1101 Approval of plan of merger.**

1. Subject to the limitations set forth in section 504.1102, one or more nonprofit corporations may merge with or into any one or more business corporations or nonprofit corporations or unincorporated entities, if the plan of merger is approved as provided in section 504.1103.

2. The plan of merger shall set forth all of the following:

a. The name of each corporation or unincorporated entity planning to merge and the name of the surviving corporation or unincorporated entity into which each plans to merge.

b. The terms and conditions of the planned merger.

c. The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation or unincorporated entity.

d. If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or unincorporated entity or into cash or other property in whole or in part.

3. The plan of merger may set forth any of the following:

a. Any amendments to the articles of incorporation or bylaws of the surviving corporation or organic record of the surviving unincorporated entity to be effected by the planned merger.

b. Other provisions relating to the planned merger.

2004 Acts, ch 1049, §125, 192; 2005 Acts, ch 19, §105; 2012 Acts, ch 1049, §13 – 15; 2013 Acts, ch 90, §149

Referred to in §504.1106

[T] Subsection 2, paragraph a amended

#### **504.1102 Limitations on mergers by public benefit or religious corporations.**

1. Without the prior approval of the district court, a public benefit or religious corporation may merge only with one of the following:

a. A public benefit or religious corporation.

b. A foreign corporation which would qualify under this chapter as a public benefit or religious corporation.

c. A wholly owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

d. A business or mutual benefit corporation or an unincorporated entity, provided that all of the following apply where the public benefit or religious corporation is not the surviving entity in the merger:

(1) On or prior to 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 or religious corporation or the fair market value of the public benefit 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 504.1405, subsection 1, paragraphs “e” and “f”, had it dissolved.

(2) The business or mutual benefit corporation or unincorporated entity 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.

(3) 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 entity.

2. Without the prior approval of the district court in a proceeding in which a guardian ad litem has been appointed to represent the interests of the corporation, a member of a public benefit or religious corporation shall not receive or keep anything as a result of a merger other than a membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

2004 Acts, ch 1049, §126, 192; 2005 Acts, ch 19, §106; 2012 Acts, ch 1049, §16, 17

Referred to in §504.1101, 504.1106

### **504.1103 Action on plan by board, members, and third persons.**

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class, or the articles or bylaws impose other requirements, a plan of merger for a corporation must be approved by all of the following to be adopted:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, 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 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

3. The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

4. 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 504.705. The notice must also 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 which will be in effect immediately after the merger takes effect.

5. 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 which will be in effect immediately after the merger takes effect.

6. Voting 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 504.1004 or 504.1023. The plan must be 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.

7. 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.

2004 Acts, ch 1049, §127, 192  
 Referred to in §504.1101, 504.1104, 504.1106

#### **504.1104 Articles of merger.**

After a plan of merger is approved by the board of directors, and if required by section 504.1103, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth all of the following, as applicable:

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.
3. If approval by members was required, both of the following:
  - a. 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.
  - b. 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 of votes 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 504.1103, subsection 1, paragraph "c", a statement that the approval was obtained.

2004 Acts, ch 1049, §128, 192  
 Referred to in §504.705, 504.859, 504.1106

#### **504.1105 Effect of merger.**

When a merger takes effect, all of the following occur:

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 prior to the merger.
3. The surviving corporation has all the liabilities and obligations of each corporation party to the merger.
4. A proceeding pending against any 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.

2004 Acts, ch 1049, §129, 192

#### **504.1106 Merger with foreign corporation or foreign unincorporated entity.**

1. Except as provided in section 504.1102, one or more foreign business or nonprofit corporations or foreign unincorporated entities may merge with one or more domestic nonprofit corporations if all of the following conditions are met:

- a. The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated or foreign unincorporated entity is organized and each foreign corporation or foreign unincorporated entity complies with that law in effecting the merger.
- b. The foreign corporation or foreign unincorporated entity complies with section 504.1104 if it is the surviving corporation of the merger.

c. Each domestic nonprofit corporation complies with the applicable provisions of sections 504.1101 through 504.1103 and, if it is the surviving corporation of the merger, with section 504.1104.

2. Upon the merger taking effect, the surviving foreign business or nonprofit corporation, or foreign unincorporated entity, is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

2004 Acts, ch 1049, §130, 192; 2012 Acts, ch 1049, §18, 19

#### **504.1107 Bequests, devises, and gifts.**

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 which takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

2004 Acts, ch 1049, §131, 192

#### **504.1108 Conversion.**

A corporation organized under this chapter that is an insurance company may voluntarily elect to be organized as a mutual insurance company under chapter 490 or 491 pursuant to the procedures set forth in section 514.23.

2004 Acts, ch 1049, §132, 192

**504.1109 through 504.1200** Reserved.

## SUBCHAPTER XII

### SALE OF ASSETS

#### **504.1201 Sale of assets in regular course of activities and mortgage of assets.**

1. A corporation may, on the terms and conditions and for the consideration determined by the board of directors, do either of the following:

a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities.

b. 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.

2. Unless the articles require it, approval of the members or any other persons of a transaction described in subsection 1 is not required.

2004 Acts, ch 1049, §133, 192

#### **504.1202 Sale of assets other than in regular course of activities.**

1. 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 2.

2. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 4 require a greater vote or voting by a class or the articles or bylaws impose other requirements, the proposed transaction to be authorized must be approved by all of the following:

a. The board.

b. The members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

3. If the corporation does not have members, 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 504.823, subsection 3. The notice shall also 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.

4. The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

5. 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 504.705. The notice must also 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.

6. If the board is required 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.

7. 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.

2004 Acts, ch 1049, §134, 192

Referred to in §504.705

**504.1203 through 504.1300** Reserved.

## SUBCHAPTER XIII

### DISTRIBUTIONS

Referred to in §504.623

#### **504.1301 Prohibited distributions.**

Except as authorized by section 504.1302, a corporation shall not make any distributions.

2004 Acts, ch 1049, §135, 192

#### **504.1302 Authorized distributions.**

1. A mutual benefit corporation may purchase its memberships if, after the purchase is completed, both of the following apply:

a. The corporation will be able to pay its debts as they become due in the usual course of its activities.

b. The corporation's total assets will at least equal the sum of its total liabilities.

2. Corporations may make distributions upon dissolution in conformity with subchapter XIV.

2004 Acts, ch 1049, §136, 192

Referred to in §504.1301

**504.1303 through 504.1400** Reserved.

## SUBCHAPTER XIV

## DISSOLUTION

Referred to in §504.1302

## PART 1

## VOLUNTARY DISSOLUTION

**504.1401 Dissolution by incorporators or directors and third persons.**

1. A majority of the incorporators of a corporation that has no directors and no members or a majority of the directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering articles of dissolution to the secretary of state.

2. The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

3. The incorporators or directors 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.

2004 Acts, ch 1049, §137, 192

**504.1402 Dissolution by directors, members, and third persons.**

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class or the articles or bylaws impose other requirements, dissolution is authorized if it is approved by all of the following:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, 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 such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also 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.

3. The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

4. 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 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

5. If the board seeks to have the 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.

6. 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.

2004 Acts, ch 1049, §138, 192

Referred to in §504.705, 504.1403

**504.1403 Articles of dissolution.**

1. At any time after dissolution is authorized, a corporation may dissolve by delivering articles of dissolution to the secretary of state setting forth all of the following:

- a. The name of the corporation.
- b. The date dissolution was authorized.
- c. A statement that dissolution was approved by a sufficient vote of the board.
- d. 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.
- e. If approval by members was required, both of the following:

(1) 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.

(2) 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.

f. If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1402, subsection 1, paragraph "c", a statement that the approval was obtained.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

2004 Acts, ch 1049, §139, 192

Referred to in §504.1404

**504.1404 Revocation of dissolution.**

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. 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.

3. 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 all of the following:

- a. The name of the corporation.
- b. The effective date of the dissolution that was revoked.
- c. The date that the revocation of dissolution was authorized.
- d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization.

f. If member or third-person action was required to revoke the dissolution, the information required by section 504.1403, subsection 1, paragraphs "e" and "f".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. 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.

2004 Acts, ch 1049, §140, 192

**504.1405 Effect of dissolution.**

1. A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including all of the following:

- a. Preserving and protecting its assets and minimizing its liabilities.
- b. Discharging or making provision for discharging its liabilities and obligations.

- c. Disposing of its properties that will not be distributed in kind.
  - d. 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.
  - e. Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws.
  - f. If the corporation is a public benefit or religious corporation, and a provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to one or more persons described in section 501(c)(3) of the Internal Revenue Code, or 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.
  - g. If the corporation is a mutual benefit corporation and a provision has not 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, those persons whom the corporation holds itself out as benefiting or serving.
  - h. Doing every other act necessary to wind up and liquidate its assets and affairs.
2. Dissolution of a corporation does not do any of the following:
    - a. Transfer title to the corporation's property.
    - b. Subject its directors or officers to standards of conduct different from those prescribed in subchapter VIII.
    - c. 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.
    - d. Prevent commencement of a proceeding by or against the corporation in its corporate name.
    - e. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.
    - f. Terminate the authority of the registered agent.
- 2004 Acts, ch 1049, §141, 192  
 Referred to in §504.1102, 504.1422, 504.1434

#### **504.1406 Known claims against dissolved corporation.**

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:
  - a. Describe information that must be included in a claim.
  - b. Provide a mailing address where a claim may be sent.
  - c. State the deadline, which shall 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.
  - d. State that the claim will be barred if not received by the deadline.
3. A claim against the dissolved corporation is barred if either of the following occurs:
  - a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.
  - b. 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.
4. 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.

2004 Acts, ch 1049, §142, 192  
 Referred to in §504.1407, 504.1422, 504.1434

**504.1407 Unknown claims against dissolved corporation.**

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice must do all of the following:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located or, if none is located in this state, where its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, 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 five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 504.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section to the following extent, as applicable:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. 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 shall not exceed the total amount of assets distributed to the distributee.

2004 Acts, ch 1049, §143, 192

Referred to in §504.1422, 504.1434

**504.1408 through 504.1420** Reserved.

## PART 2

### ADMINISTRATIVE DISSOLUTION

**504.1421 Grounds for administrative dissolution.**

The secretary of state may commence a proceeding under section 504.1422 to administratively dissolve a corporation if any of the following occurs:

1. The corporation does not deliver its biennial report to the secretary of state, in a form that meets the requirements of section 504.1613, within sixty days after the report is due.

2. The corporation is without a registered agent or registered office in this state for sixty days or more.

3. The corporation does not notify the secretary of state within sixty days 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.

2004 Acts, ch 1049, §144, 192

Referred to in §504.1422

**504.1422 Procedure for and effect of administrative dissolution.**

1. Upon determining that one or more grounds exist under section 504.1421 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination under section 504.504.

2. 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 notice is perfected under section 504.504, the secretary of state may 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 of dissolution and serve a copy on the corporation under section 504.504.

3. A corporation that is administratively dissolved continues its corporate existence but shall not carry on any activities except those necessary to wind up and liquidate its affairs pursuant to section 504.1405 and notify its claimants pursuant to sections 504.1406 and 504.1407.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a corporation pursuant to this section appoints the secretary of state as the corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the corporation. Upon receipt of process, the secretary of state shall serve a copy of the process on the corporation as provided in section 504.504. This subsection does not preclude service on the corporation's registered agent, if any.

2004 Acts, ch 1049, §145, 192; 2004 Acts, ch 1175, §386

Referred to in §504.1421, 504.1423

#### **504.1423 Reinstatement following administrative dissolution.**

1. A corporation administratively dissolved under section 504.1422 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must state all of the following:

- a. The name of the corporation and the effective date of its administrative dissolution.
- b. That the ground or grounds for dissolution either did not exist or have been eliminated.
- c. If the application is received more than five years after the effective date of dissolution, state the corporation's name satisfies the requirements of section 504.401.
- d. The federal tax identification number of the corporation.

2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the corporation. If either department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. (1) If the secretary of state determines that the application contains the information required by subsection 1, that a delinquency or liability reported pursuant to paragraph "a" has been satisfied, and that all of the application 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 document, and deliver a copy to the corporation under section 504.504.

(2) If the corporate name in subsection 1, paragraph "c", is different from the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name. A corporation shall not relinquish the right to retain its corporate name if the reinstatement is effective within five years of the effective date of the corporation's dissolution.

3. 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.

2004 Acts, ch 1049, §146, 192; 2006 Acts, ch 1089, §58 – 60; 2010 Acts, ch 1040, §5

Referred to in §488.108, 490.401, 504.401, 504.403

#### **504.1424 Appeal from denial of reinstatement.**

1. The secretary of state, upon denying a corporation's application for reinstatement

following administrative dissolution, shall serve the corporation under section 504.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within ninety days after service of the notice of denial is perfected by petitioning 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 of reinstatement.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

2004 Acts, ch 1049, §147, 192

**504.1425 through 504.1430** Reserved.

### PART 3

#### JUDICIAL DISSOLUTION

##### **504.1431 Grounds for judicial dissolution.**

1. The district court may dissolve a corporation in any of the following ways:

a. In a proceeding brought by the attorney general, if any of the following is established:

(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.

b. Except as provided in the articles or bylaws of a religious corporation, in a proceeding brought 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 any of the following is established:

(1) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock.

(2) 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.

(3) 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.

(4) The corporate assets are being misapplied or wasted.

c. In a proceeding brought by a creditor, if either of the following is established:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment is returned unsatisfied, and the corporation is insolvent.

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

d. In a proceeding brought by the corporation to have its voluntary dissolution continued under court supervision.

2. Prior to dissolving a corporation, the court shall consider whether:

a. There are reasonable alternatives to dissolution.

b. Dissolution is in the public interest, if the corporation is a public benefit corporation.

c. Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

2004 Acts, ch 1049, §148, 192

Referred to in §504.1432, 504.1434

##### **504.1432 Procedure for judicial dissolution.**

1. Venue for a proceeding brought by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 504.1431

lies in the county where a corporation's principal office is located or, if none is located in this state, where its registered office is or was last located.

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

3. 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, or carry on the activities of the corporation until a full hearing can be held.

2004 Acts, ch 1049, §149, 192

#### **504.1433 Receivership or custodianship.**

1. 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.

2. 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.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended, including the following:

a. The receiver or custodian may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the receiver's or custodian'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. The receiver or custodian may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation, as applicable, in all courts of this state.

b. 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 its members and creditors.

4. 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.

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

2004 Acts, ch 1049, §150, 192

#### **504.1434 Decree of dissolution.**

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 504.1431 exist, the court 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.

2. After entering the decree of dissolution, the court shall direct the winding up of the corporation's affairs and liquidation of the corporation in accordance with section 504.1405 and the notification of its claimants in accordance with sections 504.1406 and 504.1407.

2004 Acts, ch 1049, §151, 192

Referred to in §602.8102(70)

**504.1435 through 504.1440** Reserved.



PART 4  
MISCELLANEOUS

**504.1441 Deposit with state treasurer.**

Assets of a dissolved corporation which should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash subject to known trust restrictions and deposited with the treasurer of state for safekeeping. However, in the treasurer of state's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the treasurer of state shall deliver to the creditor, member, or other person or to the representative of the creditor, member, or other person that amount or property.

2004 Acts, ch 1049, §152, 192

**504.1442 through 504.1500** Reserved.

SUBCHAPTER XV  
FOREIGN CORPORATIONS

PART 1  
CERTIFICATE OF AUTHORITY

**504.1501 Authority to transact business required.**

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

- a. Maintaining, defending, or settling any proceeding.
- b. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
- c. Maintaining bank accounts.
- d. Maintaining offices or agencies for the transfer, exchange, or registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.
- e. Selling through independent contractors.
- f. 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.
- g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.
- h. Securing or collecting debts or enforcing mortgages or security interests in property securing the debts.
- i. Owning, without more, real or personal property.
- j. 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.
- k. Transacting business in interstate commerce.

2004 Acts, ch 1049, §153, 192

**504.1502 Consequences of transacting business without authority.**

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. 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 shall 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.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until the court 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.

4. A foreign corporation is liable for a civil penalty of an amount not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, 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.

2004 Acts, ch 1049, §154, 192

#### **504.1503 Application for certificate of authority.**

1. 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 all of the following:

- a. 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 504.1506.
- b. The name of the state or country under whose law it is incorporated.
- c. The date of incorporation and period of duration.
- d. The address of its principal office.
- e. The address of its registered office in this state and the name of its registered agent at that office.
- f. The names and usual business or home addresses of its current directors and officers.
- g. Whether the foreign corporation has members.

2. The foreign corporation shall deliver the completed application to the secretary of state, and shall also deliver to the secretary of state 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 which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

2004 Acts, ch 1049, §155, 192

Referred to in §504.1504

#### **504.1504 Amended certificate of authority.**

1. A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes any of the following:

- a. Its corporate name.
- b. The period of its duration.
- c. The state or country of its incorporation.

2. The requirements of section 504.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

2004 Acts, ch 1049, §156, 192

Referred to in §504.1506

#### **504.1505 Effect of certificate of authority.**

1. 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.

2. A foreign corporation with a valid certificate of authority has the same rights and has the same 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.

3. 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.

2004 Acts, ch 1049, §157, 192

#### **504.1506 Corporate name of foreign corporation.**

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504.401, 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 the corporation's 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.

2. Except as authorized by subsections 3 and 4, the corporate name of a foreign corporation, including a fictitious name, must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved, registered, or protected as provided in section 490.402 or 490.403 or section 504.402 or 504.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

3. 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 either of the following applies:

a. The other corporation consents to the use in writing and submits an undertaking in a 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.

b. 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.

4. 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 has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. 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 504.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 504.401 and obtains an amended certificate of authority under section 504.1504.

2004 Acts, ch 1049, §158, 192; 2006 Acts, ch 1089, §61

Referred to in §504.403, 504.1503

#### **504.1507 Registered office and registered agent of foreign corporation.**

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state both of the following:

1. A registered office with the same address as that of its registered agent.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose office is identical to the registered office.

b. A domestic business or nonprofit corporation whose office is identical to the registered office.

c. A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

2004 Acts, ch 1049, §159, 192

**504.1508 Change of registered office or registered agent of foreign corporation.**

1. 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 all of the following that apply:

a. The name of its registered office or registered agent.

b. If the current registered office is to be changed, the address of its new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it.

d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If a registered agent changes the address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it must be signed either manually or in facsimile only by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its biennial report as provided in section 504.1613.

2004 Acts, ch 1049, §160, 192

Referred to in §504.1531

**504.1509 Resignation of registered agent of foreign corporation.**

1. a. The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing the original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

b. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed with the secretary of state.

2004 Acts, ch 1049, §161, 192; 2012 Acts, ch 1023, §157

Referred to in §504.111, 504.1531

**504.1510 Service on foreign corporation.**

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 504.1613 if any of the following conditions apply:

- a. The foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served.
  - b. The foreign corporation has withdrawn from transacting business in this state under section 504.1521.
  - c. The foreign corporation has had its certificate of authority revoked under section 504.1532.
3. Service is perfected under subsection 2 at the earliest of any of the following:
- a. The date the foreign corporation receives the mail.
  - b. The date shown on the return receipt, if signed on behalf of the foreign corporation.
  - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
4. This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. A foreign corporation may also be served in any other manner permitted by law.

2004 Acts, ch 1049, §162, 192

Referred to in §504.116, 504.1532, 504.1533

**504.1511 through 504.1520** Reserved.

## PART 2

### WITHDRAWAL

#### **504.1521 Withdrawal of foreign corporation.**

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.
2. 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 shall set forth all of the following:
- a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
  - b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.
  - c. 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.
  - d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".
3. 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 mailing address set forth in its application for withdrawal.

2004 Acts, ch 1049, §163, 192

Referred to in §504.1510

**504.1522 through 504.1530** Reserved.

## PART 3

### REVOCATION OF CERTIFICATE OF AUTHORITY

#### **504.1531 Grounds for revocation.**

1. The secretary of state may commence a proceeding under section 504.1532 to revoke

the certificate of authority of a foreign corporation authorized to transact business in this state if any of the following applies:

a. The foreign corporation does not deliver the biennial report to the secretary of state in a form that meets the requirements of section 504.1613 within sixty days after it is due.

b. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

c. The foreign corporation does not inform the secretary of state under section 504.1508 or 504.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days of the change, resignation, or discontinuance.

d. An incorporator, director, officer, or agent of the foreign corporation signed a document that such person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

e. 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.

2. The attorney general may commence a proceeding under section 504.1532 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

2004 Acts, ch 1049, §164, 192

Referred to in §504.1532

#### **504.1532 Procedure for and effect of revocation.**

1. The secretary of state, upon determining that one or more grounds exist under section 504.1531 for revocation of a certificate of authority, shall serve the foreign corporation with written notice of that determination under section 504.1510.

2. The attorney general, upon determining that one or more grounds exist under section 504.1531, subsection 2, for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under section 504.1510.

3. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within sixty days after service of the notice is perfected under section 504.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 504.1510.

4. 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.

5. The secretary of state's 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 biennial report 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.

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

2004 Acts, ch 1049, §165, 192

Referred to in §504.1510, 504.1531

**504.1533 Appeal from revocation.**

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after the service of the certificate of revocation is perfected under section 504.1510 by petitioning 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.

2. 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.

3. The court's final decision may be appealed as in other civil proceedings.  
2004 Acts, ch 1049, §166, 192

**504.1534 through 504.1600** Reserved.

SUBCHAPTER XVI  
RECORDS AND REPORTS

PART 1  
RECORDS

**504.1601 Corporate records.**

1. 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 504.826, subsection 4.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to vote.

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

5. A corporation shall keep a copy of all of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. 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.

d. The minutes of all meetings of members and records of all actions approved by the members for the past three years.

e. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 504.1611.

f. A list of the names and business or home addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 504.1613.  
2004 Acts, ch 1049, §167, 192

Referred to in §504.1602

**504.1602 Inspection of records by members.**

1. Subject to subsection 5, 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 504.1601, subsection 5, 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.

2. Subject to subsections 5 and 6, 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 3 and gives the corporation written notice at least ten business days before the date on which the member wishes to inspect and copy:

- a. Excerpts from any records required to be maintained under section 504.1601, subsection 1, to the extent not subject to inspection under subsection 1 of this section.
  - b. Accounting records of the corporation.
  - c. The membership list.
3. A member may inspect and copy the records identified in subsection 2 only if all of the following apply:
- a. The member's demand is made in good faith and for a proper purpose.
  - b. The member describes with reasonable particularity the purpose of the demand and the records the member desires to inspect.
  - c. The records are directly connected to the purpose described.
  - d. The board consents, if consent is required by section 504.1605.
4. This section does not affect either of the following:
- a. The right of a member to inspect records under section 504.711 or, if the member is in litigation with the corporation, to the same extent as any other litigant.
  - b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.
5. 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.
6. A corporation may, within ten business days after receiving a demand for inspection of a membership list under section 504.711 or subsection 2 of this section, respond to the demand with a written proposal offering a reasonable alternative to the demand for inspection that will achieve the purpose of the demand without providing access to or a copy of the membership list. A proposal offering an alternative that reasonably and in a timely manner accomplishes a proper purpose identified in a demand for inspection shall be considered to offer a reasonable alternative. A proposal for a reasonable alternative that has been accepted by the person making the demand for inspection shall cease to be considered a reasonable alternative if the terms of the proposal are not carried out by the corporation within a reasonable time after acceptance of the proposal. For the purposes of this subsection, a reasonable alternative may include, but is not limited to, a communication prepared by a member and mailed by the corporation at the expense of the member.

2004 Acts, ch 1049, §168, 192

Referred to in §504.711, 504.1603, 504.1604

#### **504.1603 Scope of inspection right.**

1. A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.
2. The right to copy records under section 504.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.
3. 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 shall not exceed the estimated cost of production or reproduction of the records.
4. The corporation may comply with a member's demand to inspect the record of members under section 504.1602, subsection 2, paragraph "c", by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

2004 Acts, ch 1049, §169, 192

#### **504.1604 Court-ordered inspection.**

1. If a corporation does not allow a member who complies with section 504.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office is located or, if none is located in this state, where 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.

2. If a corporation does not within a reasonable time allow a member to inspect and copy any other records, or propose a reasonable alternative to such inspection and copying, the member who complies with section 504.1602, subsections 2 and 3, may apply to the district court in the county where the corporation's principal office is located or, if none is located in this state, where 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.

3. If the court orders inspection and copying of the records demanded or other relief deemed appropriate by the court, it shall also order the corporation to pay the member's costs, including reasonable attorney 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.

4. If the court orders inspection and copying of the records demanded or other relief deemed appropriate by the court, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

2004 Acts, ch 1049, §170, 192

#### **504.1605 Limitations on use of corporate records.**

Without consent of the board, no corporate record may be obtained or used by any 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, corporate records, including without limitation a membership list or any part thereof, shall not be used for any of the following:

1. To solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.

2. For any commercial purpose.

3. For sale to or purchase by any person.

4. For any purpose that is detrimental to the interests of the corporation.

2004 Acts, ch 1049, §171, 192

Referred to in §504.711, 504.1602

#### **504.1606 Inspection of records by directors.**

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

2004 Acts, ch 1049, §172, 192

#### **504.1607 Exception to notice requirement.**

1. Whenever notice is required to be given under any provision of this chapter to any member, such notice shall not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual

meetings, have been sent to the member at the member's address as shown on the records of the corporation and have been returned as undeliverable.

2. If the member delivers to the corporation a written notice setting forth the member's then-current address, the requirement that notice be given to the member shall be reinstated. 2006 Acts, ch 1089, §62

**504.1608 through 504.1610** Reserved.

## PART 2 REPORTS

### **504.1611 Financial statements for members.**

1. Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member the corporation's 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 a statement of operations for that year.

2. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them.

2004 Acts, ch 1049, §173, 192  
Referred to in §504.1601

### **504.1612 Report of indemnification to members.**

If a corporation indemnifies or advances expenses to a director under section 504.852, 504.853, 504.854, or 504.855 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.

2004 Acts, ch 1049, §174, 192

### **504.1613 Biennial report for secretary of state.**

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report on a form prescribed and furnished by the secretary of state that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of the corporation's registered office and the name of the corporation's registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of the corporation's principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

e. Whether or not the corporation has members.

2. The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years.

4. a. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction.

b. A filing fee for the biennial report shall be determined by the secretary of state.

c. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 504.502 or 504.503. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 504.502 or 504.503 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 504.114, before returning the biennial report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2004 Acts, ch 1049, §175, 192

Referred to in §497.22, 498.24, 499.49, 504.116, 504.119, 504.141, 504.504, 504.1421, 504.1508, 504.1510, 504.1531, 504.1601

**504.1614 through 504.1700** Reserved.

## SUBCHAPTER XVII TRANSITION PROVISIONS

### **504.1701 Application to existing domestic corporations.**

1. A domestic corporation that is incorporated under chapter 504A, Code 2005, is subject to this chapter beginning on July 1, 2005.

2. Prior to July 1, 2005, only the following corporations are subject to the provisions of this chapter:

a. A corporation formed on or after January 1, 2005.

b. A corporation incorporated under chapter 504A, Code 2005, that voluntarily elects to be subject to the provisions of this chapter in accordance with the procedures set forth in subsection 3.

3. A corporation incorporated under chapter 504A, Code 2005, may voluntarily elect to be subject to the provisions of this chapter by doing all of the following:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation voluntarily elects to be subject to the provisions of this chapter.

b. The corporation shall deliver a copy of the amended or restated articles of incorporation to the secretary of state for filing and recording in the office of the secretary of state.

4. After the amended or restated articles of incorporation have been filed with the secretary of state all of the following shall occur:

a. The corporation shall be subject to all provisions of this chapter.

b. The secretary of state shall issue a certificate of filing of the corporation's amended or restated articles of incorporation indicating that the corporation has made a voluntary election to be subject to the provisions of this chapter and shall deliver the certificate to the corporation or to the corporation's representative.

c. The secretary of state shall not file the amended or restated articles of incorporation of a corporation pursuant to this subsection unless at the time of filing the corporation is validly organized under the chapter under which it is incorporated, and has filed all biennial reports that are required and paid all fees that are due in connection with such reports.

5. The voluntary election of a corporation to be subject to the provisions of this chapter that is made pursuant to this section does not affect any right accrued or established, or any liability or penalty incurred by the corporation pursuant to the chapter under which the corporation was organized prior to such voluntary election.

2004 Acts, ch 1049, §176, 192; 2005 Acts, ch 3, §80 – 82

**504.1702 Application to qualified foreign corporations.**

A foreign corporation authorized to transact business in this state prior to January 1, 2005, is subject to this chapter beginning on July 1, 2005, but is not required to obtain a new certificate of authority to transact business under this chapter.

2004 Acts, ch 1049, §177, 192

**504.1703 Savings provisions.**

1. Except as provided in subsection 2, the repeal of a statute by 2004 Acts, ch 1049, does not affect any of the following:

- a. The operation of the statute or any action taken under it before its repeal.
- b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.
- c. Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.
- d. 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.

2. If a penalty or punishment imposed for violation of a statute repealed by 2004 Acts, ch 1049, is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

2004 Acts, ch 1049, §178, 192

**504.1704 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 the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

2004 Acts, ch 1049, §179, 192

**504.1705 Public benefit, mutual benefit, and religious corporations.**

For the purposes of this chapter, each domestic corporation shall be deemed a public benefit, mutual benefit, or religious corporation as follows:

1. A corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is deemed to be the type of corporation designated by that statute.
2. A corporation that does not come within subsection 1 but is organized primarily or exclusively for religious purposes is a religious corporation.
3. A corporation that does not come within subsection 1 or 2 but which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.
4. A corporation that does not come within subsection 1, 2, or 3, but which is organized for a public or charitable purpose and which upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.
5. A corporation that does not come within subsection 1, 2, 3, or 4 is a mutual benefit corporation.

2004 Acts, ch 1049, §180, 192

Referred to in §504.141