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Place On Calendar

Withdrawn
3/28/04

HOUSE FILE 2453
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 664)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the revised Iowa nonprofit corporation Act and
2 providing penalties and effective and applicability dates.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUBCHAPTER I
GENERAL PROVISIONS

PART 1

SHORT TITLE AND APPLICATIONS

Section 1. NEW SECTION. 504.101A SHORT TITLE.

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

Sec. 2. NEW SECTION. 504.101B 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.

PART 2

FILING DOCUMENTS

Sec. 3. NEW SECTION. 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 subchapter. 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:

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

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

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

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

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

17 9. The document must be delivered to the office of the
18 secretary of state for filing. Delivery may be made by
19 electronic transmission if and to the extent permitted by the
20 secretary of state. If it is filed in typewritten or printed
21 form and not transmitted electronically, the secretary of
22 state may require one exact or conformed copy to be delivered
23 with the document, except as provided in sections 504A.503 and
24 504.1509.

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

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

32 Sec. 4. NEW SECTION. 504.112 FORMS.

33 1. The secretary of state may prescribe and furnish on
34 request, forms for an application for a certificate of
35 existence, a foreign corporation's application for a

1 certificate of authority to transact business in this state, a
 2 foreign corporation's application for a certificate of
 3 withdrawal, and the biennial report. If the secretary of
 4 state so requires, use of these forms is mandatory.

5 2. The secretary of state may prescribe and furnish on
 6 request forms for other documents required or permitted to be
 7 filed by this chapter but their use is not mandatory.

8 Sec. 5. NEW SECTION. 504.113 FILING, SERVICE, AND
 9 COPYING FEES.

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

14 DOCUMENT	FEE
15 a. Articles of incorporation	\$ _____
16 b. Application for use of indistinguishable 17 name	\$ _____
18 c. Application for reserved name	\$ _____
19 d. Notice of transfer of reserved name	\$ _____
20 e. Application for registered name	\$ _____
21 f. Application for renewal of registered name ...	\$ _____
22 g. Corporation's statement of change of 23 registered agent or registered office or both	\$ _____
24 h. Agent's statement of change of registered 25 office for each affected corporation not to 26 exceed a total of _____	\$ _____
27 i. Agent's statement of resignation	no fee
28 j. Amendment of articles of incorporation	\$ _____
29 k. Restatement of articles of incorporation 30 with amendments	\$ _____
31 l. Articles of merger	\$ _____
32 m. Articles of dissolution	\$ _____
33 n. Articles of revocation of dissolution	\$ _____
34 o. Certificate of administrative dissolution	\$ _____
35 p. Application for reinstatement following	

- 1 administrative dissolution \$ _____
- 2 q. Certificate of reinstatement no fee
- 3 r. Certificate of judicial dissolution no fee
- 4 s. Application for certificate of authority \$ _____
- 5 t. Application for amended certificate of
- 6 authority \$ _____
- 7 u. Application for certificate of withdrawal \$ _____
- 8 v. Certificate of revocation of authority
- 9 to transact business no fee
- 10 w. Biennial report \$ _____
- 11 x. Articles of correction \$ _____
- 12 y. Application for certificate of existence
- 13 or authorization \$ _____
- 14 z. Any other document required or permitted
- 15 to be filed by this Act \$ _____

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

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

24 Sec. 6. NEW SECTION. 504.114 EFFECTIVE DATE OF DOCUMENT.

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

27 a. At the date and time of filing, as evidenced by such
 28 means as the secretary of state may use for the purpose of
 29 recording the date and time of filing.

30 b. At the time specified in the document as its effective
 31 time on the date it is filed.

32 2. A document may specify a delayed effective time and
 33 date, and if it does so the document becomes effective at the
 34 time and date specified. If a delayed effective date but no
 35 time is specified, the document is effective at the close of

1 business on that date. A delayed effective date for a
2 document shall not be later than the ninetieth day after the
3 date filed.

4 Sec. 7. NEW SECTION. 504.115 CORRECTING FILED DOCUMENT.

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

8 a. The document contains an inaccuracy.

9 b. The document was defectively executed, attested,
10 sealed, verified, or acknowledged.

11 c. The electronic transmission was defective.

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

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

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

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

18 (3) Correct the incorrect statement or defective
19 execution.

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

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

27 Sec. 8. NEW SECTION. 504.116 FILING DUTY OF SECRETARY OF
28 STATE.

29 1. If a document delivered to the office of the secretary
30 of state for filing satisfies the requirements of section
31 504.111, the secretary of state shall file it.

32 2. The secretary of state files a document by recording
33 the document as filed on the date and the time of receipt.

34 After filing a document, except as provided in sections
35 504.503 and 504.1510, the secretary of state shall deliver to

1 the domestic or foreign corporation or its representative a
2 copy of the document with an acknowledgment of the date and
3 time of filing.

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

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

11 a. Affect the validity or invalidity of the document in
12 whole or in part.

13 b. Relate to the correctness or incorrectness of
14 information contained in the document.

15 c. Create a presumption that the document is valid or
16 invalid or that information contained in the document is
17 correct or incorrect.

18 Sec. 9. NEW SECTION. 504.117 APPEAL FROM SECRETARY OF
19 STATE'S REFUSAL TO FILE DOCUMENT.

20 1. If the secretary of state refuses to file a document
21 delivered for filing to the secretary of state's office, the
22 domestic or foreign corporation may appeal the refusal to the
23 district court in the county where the corporation's principal
24 office, or if there is none in this state, its registered
25 office, is or will be located. The appeal is commenced by
26 petitioning the court to compel filing the document and by
27 attaching to the petition the document and the secretary of
28 state's explanation of the refusal to file.

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

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

34 Sec. 10. NEW SECTION. 504.118 EVIDENTIARY EFFECT OF COPY
35 OF FILED DOCUMENT.

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

5 Sec. 11. NEW SECTION. 504.119 CERTIFICATE OF EXISTENCE.

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

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

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

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

18 c. That all fees, taxes, and penalties owed to this state
19 have been paid, if payment is reflected in the records of the
20 secretary of state and nonpayment affects the good standing of
21 the domestic or foreign corporation.

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

24 e. That articles of dissolution have not been filed.

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

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

31 Sec. 12. NEW SECTION. 504.120 PENALTY FOR SIGNING FALSE
32 DOCUMENT.

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

1 filing.

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

4 PART 3

5 SECRETARY OF STATE

6 Sec. 13. NEW SECTION. 504.131 POWERS.

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

10 PART 4

11 DEFINITIONS

12 Sec. 14. NEW SECTION. 504.141 CHAPTER DEFINITIONS.

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

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

26 2. "Articles of incorporation" or "articles" includes
27 amended and restated articles of incorporation and articles of
28 merger.

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

33 4. "Bylaws" means the code or codes of rules other than
34 the articles adopted pursuant to this chapter for the
35 regulation or management of the affairs of a corporation

1 irrespective of the name or names by which such rules are
2 designated.

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

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

10 7. "Delegates" means those persons elected or appointed to
11 vote in a representative assembly for the election of a
12 director or directors or on other matters.

13 8. "Deliver" or "delivery" means any method of delivery
14 used in conventional commercial practice, including delivery
15 in person, by mail, commercial delivery, and electronic
16 transmission.

17 9. "Directors" means individuals, designated in the
18 articles or bylaws or elected by the incorporators, and their
19 successors and individuals elected or appointed by any other
20 name or title to act as members of the board.

21 10. "Distribution" means the payment of a dividend or any
22 part of the income or profit of a corporation to its members,
23 directors, or officers.

24 11. "Domestic corporation" means a corporation.

25 12. "Effective date of notice" is defined in section
26 504.142.

27 13. "Electronic transmission" or "electronically
28 transmitted" means any process of communication not directly
29 involving the physical transfer of paper that is suitable for
30 the retention, retrieval, and reproduction of information by
31 the recipient.

32 14. "Employee" does not include an officer or director of
33 a corporation who is not otherwise employed by the
34 corporation.

35 15. "Entity" includes a corporation and foreign

1 corporation; business corporation and foreign business
2 corporation; limited liability company and foreign limited
3 liability company; profit and nonprofit unincorporated
4 association; corporation sole; business trust, estate,
5 partnership, trust, and two or more persons having a joint or
6 common economic interest; and state, the United States, and
7 foreign government.

8 16. "File", "filed", or "filing" means filed in the office
9 of the secretary of state.

10 17. "Foreign corporation" means a corporation organized
11 under laws other than the laws of this state which would be a
12 nonprofit corporation if formed under the laws of this state.

13 18. "Governmental subdivision" includes an authority,
14 county, district, and municipality.

15 19. "Includes" denotes a partial definition.

16 20. "Individual" includes the estate of an incompetent
17 individual.

18 21. "Means" denotes a complete definition.

19 22. "Member" means a person who on more than one occasion,
20 pursuant to the provisions of a corporation's articles or
21 bylaws, has a right to vote for the election of a director or
22 directors of a corporation, irrespective of how a member is
23 defined in the articles or bylaws of the corporation. A
24 person is not a member because of any of the following:

25 a. The person's rights as a delegate.

26 b. The person's rights to designate a director.

27 c. The person's rights as a director.

28 23. "Membership" refers to the rights and obligations a
29 member or members have pursuant to a corporation's articles,
30 bylaws, and this chapter.

31 24. "Mutual benefit corporation" means a domestic or
32 foreign corporation that is required to be a mutual benefit
33 corporation pursuant to section 504.1705.

34 25. "Notice" is defined in section 504.142.

35 26. "Person" includes any individual or entity.

1 27. "Principal office" means the office in or out of this
2 state so designated in the biennial report filed pursuant to
3 section 504.1613 where the principal offices of a domestic or
4 foreign corporation are located.

5 28. "Proceeding" includes a civil suit and criminal,
6 administrative, or investigatory actions.

7 29. "Public benefit corporation" means a domestic or
8 foreign corporation that is required to be a public benefit
9 corporation pursuant to section 504.1705.

10 30. "Record date" means the date established under
11 subchapter 6 or 7 on which a corporation determines the
12 identity of its members for the purposes of this subchapter.

13 31. "Religious corporation" means a domestic or foreign
14 corporation, that engages in religious activity as one of the
15 corporation's principal purposes.

16 32. "Secretary" means the corporate officer to whom the
17 board of directors has delegated responsibility under section
18 504.841, subsection 2, for custody of the minutes of the
19 directors' and members' meetings and for authenticating the
20 records of the corporation.

21 33. "Sign" or "signature" includes a manual, facsimile,
22 conformed, or electronic signature.

23 34. "State", when referring to a part of the United
24 States, includes a state and commonwealth and their agencies
25 and governmental subdivisions, and a territory and insular
26 possession and their agencies and governmental subdivisions of
27 the United States.

28 35. "United States" includes a district, authority,
29 bureau, commission, department, and any other agency of the
30 United States.

31 36. "Vote" includes authorization by written ballot and
32 written consent.

33 37. "Voting power" means the total number of votes
34 entitled to be cast for the election of directors at the time
35 the determination of voting power is made, excluding a vote

1 that is contingent upon the happening of a condition or event
2 that has not occurred at the time. When a class is entitled
3 to vote as a class for directors, the determination of voting
4 power of the class shall be based on the percentage of the
5 number of directors the class is entitled to elect out of the
6 total number of authorized directors.

7 Sec. 15. NEW SECTION. 504.142 NOTICE.

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

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

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

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

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

26 b. When electronically transmitted to the shareholder in a
27 manner authorized by the shareholder.

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

31 a. When received.

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

35 c. On the date shown on the return receipt, if sent by

1 registered or certified mail, return receipt requested, and
2 the receipt is signed by or on behalf of the addressee.

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

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

9 7. A written notice or report delivered as part of a
10 newsletter, magazine, or other publication regularly sent to
11 members shall constitute a written notice or report if
12 addressed or delivered to the member's address shown in the
13 corporation's current list of members, or in the case of
14 members who are residents of the same household and who have
15 the same address in the corporation's current list of members,
16 if addressed or delivered to one of such members, at the
17 address appearing on the current list of members.

18 8. Written notice is correctly addressed to a domestic or
19 foreign corporation authorized to transact business in this
20 state, other than in its capacity as a member, if addressed to
21 its registered agent or to its secretary at its principal
22 office shown in its most recent biennial report or, in the
23 case of a foreign corporation that has not yet delivered an
24 annual report, in its application for a certificate of
25 authority.

26 9. If section 504.705, subsection 2, or any other
27 provision of this chapter prescribes notice requirements for
28 particular circumstances, those requirements govern. If
29 articles or bylaws prescribe notice requirements not
30 inconsistent with this section or other provisions of this
31 chapter, those requirements govern.

32 PART 5

33 JUDICIAL RELIEF

34 Sec. 16. NEW SECTION. 504.151 JUDICIAL RELIEF.

35 1. If for any reason it is impractical or impossible for a

1 corporation to call or conduct a meeting of its members,
2 delegates, or directors, or otherwise obtain their consent, in
3 the manner prescribed by its articles, bylaws, or this
4 chapter, then upon petition of a director, officer, delegate,
5 member, or the attorney general, the district court may order
6 that such a meeting be called or that a written ballot or
7 other form of obtaining the vote of members, delegates, or
8 directors be authorized, in such a manner as the court finds
9 fair and equitable under the circumstances.

10 2. The court shall, in an order issued pursuant to this
11 section, provide for a method of notice reasonably designed to
12 give actual notice to all persons who would be entitled to
13 notice of a meeting held pursuant to the articles, bylaws, and
14 this chapter, whether or not the method results in actual
15 notice to all such persons or conforms to the notice
16 requirements that would otherwise apply. In a proceeding
17 under this section, the court may determine who the members or
18 directors are.

19 3. An order issued pursuant to this section may dispense
20 with any requirement relating to the holding of or voting at
21 meetings or obtaining votes, including any requirement as to
22 quorums or as to the number or percentage of votes needed for
23 approval, that would otherwise be imposed by the articles,
24 bylaws, or this chapter.

25 4. Whenever practical, an order issued pursuant to this
26 section shall limit the subject matter of meetings or other
27 forms of consent authorized to items, including amendments to
28 the articles or bylaws, the resolution of which will or may
29 enable the corporation to continue managing its affairs
30 without further resort to this section; provided, however,
31 that an order under this section may also authorize the
32 obtaining of whatever votes and approvals are necessary for
33 the dissolution, merger, or sale of assets.

34 5. A meeting or other method of obtaining the vote of
35 members, delegates, or directors conducted pursuant to an

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

6 SUBCHAPTER II
7 ORGANIZATION

8 Sec. 17. NEW SECTION. 504.201 INCORPORATORS.

9 One or more persons may act as the incorporator or
10 incorporators of a corporation by delivering articles of
11 incorporation to the secretary of state for filing.

12 Sec. 18. NEW SECTION. 504.202 ARTICLES OF INCORPORATION.

13 1. The articles of incorporation shall set forth all of
14 the following:

15 a. A corporate name for the corporation that satisfies the
16 requirements of section 504.401.

17 b. The address of the corporation's initial registered
18 office and the name of its initial registered agent at that
19 office.

20 c. The name and address of each incorporator.

21 d. Whether the corporation will have members. A
22 corporation incorporated prior to January 1, 2005, may state
23 whether it will have members in either the articles of
24 incorporation or in the corporate bylaws.

25 e. For corporations incorporated after January 1, 2005,
26 provisions not inconsistent with law regarding the
27 distribution of assets on dissolution.

28 2. The articles of incorporation may set forth any of the
29 following:

30 a. The purpose for which the corporation is organized,
31 which may be, either alone or in combination with other
32 purposes, the transaction of any lawful activity.

33 b. The names and addresses of the individuals who are to
34 serve as the initial directors.

35 c. Provisions not inconsistent with law regarding all of

1 the following:

2 (1) Managing and regulating the affairs of the
3 corporation.

4 (2) Defining, limiting, and regulating the powers of the
5 corporation, its board of directors, and members, or any class
6 of members.

7 (3) The characteristics, qualifications, rights,
8 limitations, and obligations attaching to each or any class of
9 members.

10 d. A provision eliminating or limiting the liability of a
11 director to the corporation or its members for money damages
12 for any action taken, or any failure to take any action, as a
13 director, except liability for any of the following:

14 (1) The amount of a financial benefit received by a
15 director to which the director is not entitled.

16 (2) An intentional infliction of harm on the corporation
17 or its members.

18 (3) A violation of section 504.834.

19 (4) An intentional violation of criminal law.

20 A provision set forth in the articles of incorporation
21 pursuant to this paragraph shall not eliminate or limit the
22 liability of a director for an act or omission that occurs
23 prior to the date when the provision becomes effective. The
24 absence of a provision eliminating or limiting the liability
25 of a director pursuant to this paragraph shall not affect the
26 applicability of section 504.901.

27 e. A provision permitting or requiring a corporation to
28 indemnify a director for liability, as defined in section
29 504.851, subsection 5, to a person for any action taken, or
30 any failure to take any action, as a director except liability
31 for any of the following:

32 (1) Receipt of a financial benefit to which the person is
33 not entitled.

34 (2) Intentional infliction of harm on the corporation or
35 its members.

1 (3) A violation of section 504.834.

2 (4) Intentional violation of criminal law.

3 f. Any provision that under this chapter is required or
4 permitted to be set forth in the bylaws.

5 3. Each incorporator named in the articles must sign the
6 articles.

7 4. The articles of incorporation need not set forth any of
8 the corporate powers enumerated in this chapter.

9 Sec. 19. NEW SECTION. 504.203 INCORPORATION.

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

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

18 Sec. 20. NEW SECTION. 504.204 LIABILITY FOR
19 PREINCORPORATION TRANSACTIONS.

20 All persons purporting to act as or on behalf of a
21 corporation, knowing there was no incorporation under this
22 chapter, are jointly and severally liable for all liabilities
23 created while so acting.

24 Sec. 21. NEW SECTION. 504.205 ORGANIZATION OF
25 CORPORATION.

26 1. After incorporation:

27 a. If initial directors are named in the articles of
28 incorporation, the initial directors shall hold an
29 organizational meeting, at the call of a majority of the
30 directors, to complete the organization of the corporation by
31 appointing officers, adopting bylaws, and carrying on any
32 other business brought before the meeting.

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

1 one of the following:

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

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

6 2. Action required or permitted by this chapter to be
7 taken by incorporators at an organizational meeting may be
8 taken without a meeting if the action taken is evidenced by
9 one or more written consents describing the action taken and
10 signed by each incorporator.

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

13 Sec. 22. NEW SECTION. 504.206 BYLAWS.

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

16 2. The bylaws may contain any provision for regulating and
17 managing the affairs of the corporation that is not
18 inconsistent with law or the articles of incorporation.

19 Sec. 23. NEW SECTION. 504.207 EMERGENCY BYLAWS AND
20 POWERS.

21 1. Unless the articles provide otherwise the directors of
22 a corporation may adopt, amend, or repeal bylaws to be
23 effective only in an emergency as described in subsection 4.
24 The emergency bylaws, which are subject to amendment or repeal
25 by the members, may provide special procedures necessary for
26 managing the corporation during the emergency, including all
27 of the following:

28 a. How to call a meeting of the board.

29 b. Quorum requirements for the meeting.

30 c. Designation of additional or substitute directors.

31 2. All provisions of the regular bylaws consistent with
32 the emergency bylaws remain effective during the emergency.
33 The emergency bylaws are not effective after the emergency
34 ends.

35 3. Corporate action taken in good faith in accordance with

1 the emergency bylaws does both of the following:

2 a. Binds the corporation.

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

5 4. An emergency exists for purposes of this section if a
6 quorum of the corporation's directors cannot readily be
7 assembled because of some catastrophic event.

8 SUBCHAPTER III

9 PURPOSES AND POWERS

10 Sec. 24. NEW SECTION. 504.301 PURPOSES.

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

14 2. A corporation engaging in an activity that is subject
15 to regulation under another statute of this state may
16 incorporate under this chapter only if incorporation under
17 this chapter is not prohibited by the other statute. The
18 corporation shall be subject to all limitations of the other
19 statute.

20 Sec. 25. NEW SECTION. 504.302 GENERAL POWERS.

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

26 1. Sue and be sued, complain, and defend in its corporate
27 name.

28 2. Have a corporate seal, which may be altered at will,
29 and to use it, or a facsimile of it, by impressing, affixing,
30 or in any other manner reproducing it.

31 3. Make and amend bylaws not inconsistent with its
32 articles of incorporation or with the laws of this state, for
33 regulating and managing the affairs of the corporation.

34 4. Purchase, receive, lease, or otherwise acquire, and
35 own, hold, improve, use, and otherwise deal with real or

1 personal property, or any legal or equitable interest in
2 property, wherever located.

3 5. Sell, convey, mortgage, pledge, lease, exchange, and
4 otherwise dispose of all or any part of its property.

5 6. Purchase, receive, subscribe for, or otherwise acquire,
6 own, hold, vote, use, sell, mortgage, lend, pledge, or
7 otherwise dispose of, and deal in and with, shares or other
8 interests in, or obligations of, any entity.

9 7. Make contracts and guarantees, incur liabilities,
10 borrow money, issue notes, bonds, and other obligations, and
11 secure any of its obligations by mortgage or pledge of any of
12 its property, franchises, or income.

13 8. Lend money, invest and reinvest its funds, and receive
14 and hold real and personal property as security for repayment,
15 except as limited by section 504.833.

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

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

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

23 12. Pay pensions and establish pension plans, pension
24 trusts, and other benefit and incentive plans for any or all
25 of its current or former directors, officers, employees, and
26 agents.

27 13. Make donations not inconsistent with law for the
28 public welfare or for charitable, religious, scientific, or
29 educational purposes and for other purposes that further the
30 corporate interest.

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

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

35 16. Carry on a business.

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

4 Sec. 26. NEW SECTION. 504.303 EMERGENCY POWERS.

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

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

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

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

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

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

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

28 a. Binds the corporation.

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

31 4. An emergency exists for purposes of this section if a
32 quorum of the corporation's directors cannot readily be
33 assembled because of some catastrophic event.

34 Sec. 27. NEW SECTION. 504.304 ULTRA VIRES.

35 1. Except as provided in subsection 2, the validity of

1 corporate action may not be challenged on the ground that the
2 corporation lacks or lacked power to act.

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

8 3. A corporation's power to act may be challenged in a
9 proceeding against an incumbent or former director, officer,
10 employee, or agent of the corporation. The proceeding may be
11 brought by a director, the corporation, directly,
12 derivatively, or through a receiver, a trustee or other legal
13 representative, or in the case of a public benefit
14 corporation, by the attorney general.

15 SUBCHAPTER IV

16 NAMES

17 Sec. 28. NEW SECTION. 504.401 CORPORATE NAME.

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

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

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

28 b. A corporate name reserved or registered under section
29 490.402, 490.403, 504.402, or 504.403.

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

33 3. A corporation may apply to the secretary of state for
34 authorization to use a name that is not distinguishable upon
35 the secretary of state's records from one or more of the names

1 described in subsection 2. The secretary of state shall
2 authorize use of the name applied for if either of the
3 following applies:

4 a. The other corporation consents to the use of the name
5 in writing and submits an undertaking in a form satisfactory
6 to the secretary of state to change its name to a name that is
7 distinguishable upon the records of the secretary of state
8 from the name of the applying corporation.

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

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

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

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

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

27 5. This subchapter does not control the use of fictitious
28 names; however, if a corporation or a foreign corporation uses
29 a fictitious name in this state it shall deliver to the
30 secretary of state for filing a copy of the resolution of its
31 board of directors, certified by its secretary, adopting the
32 fictitious name.

33 Sec. 29. NEW SECTION. 504.402 RESERVED NAME.

34 1. A person may reserve the exclusive use of a corporate
35 name, including a fictitious name for a foreign corporation

1 whose corporate name is not available by delivering an
2 application to the secretary of state for filing. Upon
3 finding that the corporate name applied for is available, the
4 secretary of state shall reserve the name for the applicant's
5 exclusive use for a nonrenewable one hundred twenty-day
6 period.

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

11 Sec. 30. NEW SECTION. 504.403 REGISTERED NAME.

12 1. A foreign corporation may register its corporate name,
13 or its corporate name with any change required by section
14 504.1506, if the name is distinguishable upon the records of
15 the secretary of state from both of the following:

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

19 b. A corporate name reserved under section 490.402,
20 490.403, or 504.402, or registered under this section.

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

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

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

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

34 4. A foreign corporation whose registration is effective
35 may renew it for successive years by delivering to the

1 secretary of state for filing a renewal application which
2 complies with the requirements of subsection 2, between
3 October 1 and December 31 of the preceding year. The renewal
4 application renews the registration for the following calendar
5 year.

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

15 SUBCHAPTER V

16 OFFICE AND AGENT

17 Sec. 31. NEW SECTION. 504.501 REGISTERED OFFICE AND
18 REGISTERED AGENT.

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

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

31 Sec. 32. NEW SECTION. 504.502 CHANGE OF REGISTERED
32 OFFICE OR REGISTERED AGENT.

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

1 following:

2 a. The name of the corporation.

3 b. If the current registered office is to be changed, the
4 address of the new registered office.

5 c. If the current registered agent is to be changed, the
6 name of the new registered agent and the new agent's written
7 consent, either on the statement or attached to it, to the
8 change.

9 d. That after the change or changes are made, the
10 addresses of its registered office and the office of its
11 registered agent will be identical.

12 2. If the address of a registered agent's business office
13 is changed, the registered agent may change the address of the
14 registered office of any corporation for which the registered
15 agent is the registered agent by notifying the corporation in
16 writing of the change and by signing, either manually or in
17 facsimile, and delivering to the secretary of state for
18 filing, a statement that complies with the requirements of
19 subsection 1 and recites that the corporation has been
20 notified of the change.

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

31 Sec. 33. NEW SECTION. 504.503 RESIGNATION OF REGISTERED
32 AGENT.

33 1. A registered agent may resign as registered agent by
34 signing and delivering to the secretary of state for filing a
35 signed original statement of resignation. The statement may

1 include a statement that the registered office is also
2 discontinued.

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

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

12 Sec. 34. NEW SECTION. 504.504 SERVICE ON CORPORATION.

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

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

23 a. The date the corporation receives the mail.

24 b. The date shown on the return receipt, if signed on
25 behalf of the corporation.

26 c. Five days after its deposit in the United States mail,
27 if mailed and correctly addressed with first class postage
28 affixed.

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

33

SUBCHAPTER VI

34

MEMBERS AND MEMBERSHIPS

35

PART 1

1 on them shall not be binding with respect to a member holding
2 a membership issued prior to the adoption of the restriction
3 unless the restriction is approved by the members and the
4 affected member.

5 Sec. 40. NEW SECTION. 504.613 MEMBER'S LIABILITY TO
6 THIRD PARTIES.

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

10 Sec. 41. NEW SECTION. 504.614 MEMBER'S LIABILITY FOR
11 DUES, ASSESSMENTS, AND FEES.

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

17 Sec. 42. NEW SECTION. 504.615 CREDITOR'S ACTION AGAINST
18 MEMBER.

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

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

31

PART 3

32

RESIGNATION AND TERMINATION

33

Sec. 43. NEW SECTION. 504.621 RESIGNATION.

34

1. A member may resign at any time.

35

2. The resignation of a member does not relieve the member

1 from any obligations the member may have to the corporation as
2 a result of obligations incurred or commitments made prior to
3 resignation.

4 Sec. 44. NEW SECTION. 504.622 TERMINATION, EXPULSION, OR
5 SUSPENSION.

6 1. A member of a public benefit or mutual benefit
7 corporation shall not be expelled or suspended, and a
8 membership or memberships in such a corporation shall not be
9 terminated or suspended except pursuant to a procedure which
10 is fair and reasonable and is carried out in good faith.

11 2. A procedure is fair and reasonable when either of the
12 following occurs:

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

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

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

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

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

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

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

5 Sec. 45. NEW SECTION. 504.623 PURCHASE OF MEMBERSHIPS.

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

9 2. A mutual benefit corporation may purchase the
10 membership of a member who resigns or whose membership is
11 terminated for the amount and pursuant to the conditions set
12 forth in or authorized by its articles or bylaws. A payment
13 shall not be made in violation of subchapter 13.

14 PART 4

15 DERIVATIVE PROCEEDINGS

16 Sec. 46. NEW SECTION. 504.631 DERIVATIVE PROCEEDINGS --
17 DEFINITION.

18 In this part, unless the context otherwise requires,
19 "derivative proceeding" means a civil suit in the right of a
20 domestic corporation or, to the extent provided in section
21 504.638, in the right of a foreign corporation.

22 Sec. 47. NEW SECTION. 504.632 STANDING.

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

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

28 2. A director of the corporation.

29 Sec. 48. NEW SECTION. 504.633 DEMAND.

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

32 1. A written demand has been made upon the corporation to
33 take suitable action.

34 2. Ninety days have expired from the date the demand was
35 made, unless the member or director has earlier been notified

1 that the demand has been rejected by the corporation or unless
2 irreparable injury to the corporation would result by waiting
3 for the expiration of the ninety-day period.

4 Sec. 49. NEW SECTION. 504.634 STAY OF PROCEEDINGS.

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

9 Sec. 50. NEW SECTION. 504.635 DISMISSAL.

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

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

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

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

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

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

35 b. The naming of the director as a defendant in the

1 derivative proceeding or as a person against whom action is
2 demanded.

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

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

10 a. That a majority of the board of directors did not
11 consist of independent directors at the time the determination
12 was made.

13 b. That the requirements of subsection 1 have not been
14 met.

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

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

28 6. The court may appoint a panel of one or more
29 independent persons upon motion by the corporation to make a
30 determination whether the maintenance of the derivative
31 proceeding is in the best interests of the corporation. In
32 such case, the plaintiff shall have the burden of proving that
33 the requirements of subsection 1 have not been met.

34 Sec. 51. NEW SECTION. 504.636 DISCONTINUANCE OR
35 SETTLEMENT.

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

7 Sec. 52. NEW SECTION. 504.637 PAYMENT OF EXPENSES.

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

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

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

19 Sec. 53. NEW SECTION. 504.638 APPLICABILITY TO FOREIGN
20 CORPORATIONS.

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

26 PART 5

27 DELEGATES

28 Sec. 54. NEW SECTION. 504.641 DELEGATES.

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

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

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

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

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

5 SUBCHAPTER VII

6 MEMBERS' MEETINGS AND VOTING

7 PART 1

8 MEETINGS AND ACTION WITHOUT MEETINGS

9 Sec. 55. NEW SECTION. 504.701 ANNUAL AND REGULAR
10 MEETINGS.

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

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

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

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

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

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

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

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

34 Sec. 56. NEW SECTION. 504.702 SPECIAL MEETING.

35 1. A corporation with members shall hold a special meeting

1 of members when either of the following occurs:

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

4 b. Except as provided in the articles or bylaws of a
5 religious corporation, if the holders of at least five percent
6 of the voting power of any corporation sign, date, and deliver
7 to any corporate officer one or more written demands for the
8 meeting describing the purpose for which it is to be held.

9 Unless otherwise provided in the articles of incorporation, a
10 written demand for a special meeting may be revoked by a
11 writing to that effect received by the corporation prior to
12 the receipt by the corporation of demands sufficient in number
13 to require the holding of a special meeting.

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

19 3. If a notice for a special meeting demanded under
20 subsection 1, paragraph "b", is not given pursuant to section
21 504.705 within thirty days after the date the written demand
22 or demands are delivered to a corporate officer, regardless of
23 the requirements of subsection 4, a person signing the demand
24 may set the time and place of the meeting and give notice
25 pursuant to section 504.705.

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

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

34 Sec. 57. NEW SECTION. 504.703 COURT-ORDERED MEETING.

35 1. The district court of the county where a corporation's

1 principal office is located or, if none is located in this
2 state, where its registered office is located, may summarily
3 order a meeting to be held when any of the following occurs:

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

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

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

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

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

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

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

33 Sec. 58. NEW SECTION. 504.704 ACTION BY WRITTEN CONSENT.

34 1. Unless limited or prohibited by the articles or bylaws
35 of the corporation, action required or permitted by this

1 subchapter to be approved by the members of a corporation may
2 be approved without a meeting of members if the action is
3 approved by members holding at least eighty percent of the
4 voting power. The action must be evidenced by one or more
5 written consents describing the action taken, signed by those
6 members representing at least eighty percent of the voting
7 power, and delivered to the corporation for inclusion in the
8 minutes or filing with the corporate records. A written
9 consent may be revoked by a writing to that effect received by
10 the corporation prior to the receipt by the corporation of
11 unrevoked written consents sufficient in number to take
12 corporation action.

13 2. If not otherwise determined under section 504.703 or
14 504.707, the record date for determining members entitled to
15 take action without a meeting is the date the first member
16 signs the consent under subsection 1.

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

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

25 Sec. 59. NEW SECTION. 504.705 NOTICE OF MEETING.

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

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

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

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

7 b. The notice of an annual or regular meeting includes a
8 description of any matter or matters which must be considered
9 for approval by the members under sections 504.833, 504.857,
10 504.1003, 504.1022, 504.1104, 504.1202, 504.1401, and
11 504.1402.

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

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

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

30 Sec. 60. NEW SECTION. 504.706 WAIVER OF NOTICE.

31 1. A member may waive any notice required by this
32 subchapter, the articles, or bylaws before or after the date
33 and time stated in the notice. The waiver must be in writing,
34 be signed by the member entitled to the notice, and be
35 delivered to the corporation for inclusion in the minutes or

1 filing with the corporate records.

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

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

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

12 Sec. 61. NEW SECTION. 504.707 RECORD DATE -- DETERMINING
13 MEMBERS ENTITLED TO NOTICE AND VOTE.

14 1. The bylaws of a corporation may fix or provide the
15 manner of fixing a date as the record date for determining the
16 members entitled to notice of a members' meeting. If the
17 bylaws do not fix or provide for fixing such a record date,
18 the board may fix a future date as such a record date. If a
19 record date is not fixed, members at the close of business on
20 the business day preceding the day on which notice is given,
21 or if notice is waived, at the close of business on the
22 business day preceding the day on which the meeting is held
23 are entitled to notice of the meeting.

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

32 3. The bylaws may fix or provide the manner for
33 determining a date as the record date for the purpose of
34 determining the members entitled to exercise any rights in
35 respect of any other lawful action. If the bylaws do not fix

1 or provide for fixing such a record date, the board may fix in
2 advance such a record date. If a record date is not fixed,
3 members at the close of business on the day on which the board
4 adopts the resolution relating thereto, or the sixtieth day
5 prior to the date of such other action, whichever is later,
6 are entitled to exercise such rights.

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

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

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

22 Sec. 62. NEW SECTION. 504.708 ACTION BY WRITTEN BALLOT.

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

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

29 a. Set forth each proposed action.

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

32 3. Approval by written ballot pursuant to this section
33 shall be valid only when the number of votes cast by ballot
34 equals or exceeds the quorum required to be present at a
35 meeting authorizing the action, and the number of approvals

1 equals or exceeds the number of votes that would be required
2 to approve the matter at a meeting at which the total number
3 of votes cast was the same as the number of votes cast by
4 ballot.

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

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

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

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

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

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

21 PART 2

22 VOTING

23 Sec. 63. NEW SECTION. 504.711 MEMBERS' LIST FOR MEETING.

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

34 2. Except as set forth in section 504.1602, subsection 6,
35 the list of members must be available for inspection by any

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

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

18 4. Except as set forth in section 504.1602, subsection 6,
19 if a corporation refuses to allow a member, a member's agent,
20 or a member's attorney to inspect the list of members before
21 or at the meeting or copy the list as permitted by subsection
22 2, the district court of the county where a corporation's
23 principal office is located or, if none is located in this
24 state, where its registered office is located, on application
25 of the member, may summarily order the inspection or copying
26 of the membership list at the corporation's expense, may
27 postpone the meeting for which the list was prepared until the
28 inspection or copying is complete, and may order the
29 corporation to pay the member's costs, including reasonable
30 attorney fees incurred to obtain the order.

31 5. Unless a written demand to inspect and copy a
32 membership list has been made under subsection 2 prior to the
33 membership meeting and a corporation improperly refuses to
34 comply with the demand, refusal or failure to comply with this
35 section does not affect the validity of action taken at the

1 meeting.

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

5 Sec. 64. NEW SECTION. 504.712 VOTING ENTITLEMENT
6 GENERALLY.

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

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

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

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

21 Sec. 65. NEW SECTION. 504.713 QUORUM REQUIREMENTS.

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

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

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

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

1 Sec. 66. NEW SECTION. 504.714 VOTING REQUIREMENTS.

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

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

11 Sec. 67. NEW SECTION. 504.715 PROXIES.

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

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

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

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

35 5. Appointment of a proxy is revoked by the person

1 appointing the proxy if either of the following occurs:

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

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

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

15 Sec. 68. NEW SECTION. 504.716 CUMULATIVE VOTING FOR
16 DIRECTORS.

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

23 2. A director elected by cumulative voting may be removed
24 by the members without cause if the requirements of section
25 504.808 are met unless the votes cast against removal, or not
26 consenting in writing to such removal, would be sufficient to
27 elect such director if voted cumulatively at an election at
28 which the same total number of votes were cast or, if such
29 action is taken by written ballot, all memberships entitled to
30 vote were voted, and the entire number of directors authorized
31 at the time of the director's most recent election were then
32 being elected.

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

35 Sec. 69. NEW SECTION. 504.717 OTHER METHODS OF ELECTING

1 DIRECTORS.

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

7 Sec. 70. NEW SECTION. 504.718 CORPORATION'S ACCEPTANCE
8 OF VOTES.

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

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

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

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

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

31 d. In the case of a mutual benefit corporation:

32 (1) The name signed purports to be that of an
33 administrator, executor, guardian, or conservator representing
34 the member and, if the corporation requests, evidence of
35 fiduciary status acceptable to the corporation has been

1 presented with respect to the vote, consent, waiver, or proxy
2 appointment.

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

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

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

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

23 PART 3

24 VOTING AGREEMENTS

25 Sec. 71. NEW SECTION. 504.721 VOTING AGREEMENTS.

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

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

33 SUBCHAPTER VIII

34 DIRECTORS AND OFFICERS

35 PART 1

1 BOARD OF DIRECTORS

2 Sec. 72. NEW SECTION. 504.801 REQUIREMENT FOR AND DUTIES
3 OF BOARD.

4 1. Each corporation must have a board of directors.

5 2. Except as otherwise provided in this subchapter or
6 subsection 3, all corporate powers shall be exercised by or
7 under the authority of, and the affairs of the corporation
8 managed under the direction of, its board.

9 3. The articles of incorporation may authorize a person or
10 persons to exercise some or all of the powers which would
11 otherwise be exercised by a board. To the extent so
12 authorized, any such person or persons shall have the duties
13 and responsibilities of the directors, and the directors shall
14 be relieved to that extent from such duties and
15 responsibilities.

16 Sec. 73. NEW SECTION. 504.802 QUALIFICATIONS OF
17 DIRECTORS.

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

21 Sec. 74. NEW SECTION. 504.803 NUMBER OF DIRECTORS.

22 1. The board of directors of a corporation must consist of
23 one or more individuals, with the number specified in or fixed
24 in accordance with the articles or bylaws.

25 2. The number of directors may be increased or decreased
26 from time to time by amendment to or in the manner prescribed
27 in the articles or bylaws.

28 Sec. 75. NEW SECTION. 504.804 ELECTION, DESIGNATION, AND
29 APPOINTMENT OF DIRECTORS.

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

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

7 Sec. 76. NEW SECTION. 504.805 TERMS OF DIRECTORS
8 GENERALLY.

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

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

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

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

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

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

30 Sec. 77. NEW SECTION. 504.806 STAGGERED TERMS FOR
31 DIRECTORS.

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

1 Sec. 78. NEW SECTION. 504.807 RESIGNATION OF DIRECTORS.

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

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

11 Sec. 79. NEW SECTION. 504.808 REMOVAL OF DIRECTORS
12 ELECTED BY MEMBERS OR DIRECTORS.

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

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

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

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

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

34 6. For the purpose of computing whether a director is
35 protected from removal under subsections 2 through 4, it

1 should be assumed that the votes against removal are cast in
2 an election for the number of directors of the group to which
3 the director to be removed belonged on the date of that
4 director's election.

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

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

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

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

- 22 a. Limit the application of this section.
- 23 b. Set forth the vote and procedures by which the board or
- 24 any person may remove with or without cause a director elected
- 25 by the members or the board.

26 Sec. 80. NEW SECTION. 504.809 REMOVAL OF DESIGNATED OR
27 APPOINTED DIRECTORS.

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

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

34 b. The person removing the appointed director shall do so
35 by giving written notice of the removal to the director and

1 either the presiding officer of the board or the corporation's
2 president or secretary.

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

6 Sec. 81. NEW SECTION. 504.810 REMOVAL OF DIRECTORS BY
7 JUDICIAL PROCEEDING.

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

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

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

23 2. A member or a director who proceeds by or in the right
24 of a corporation pursuant to subsection 1 shall comply with
25 all of the requirements of section 504.631 and sections
26 504.633 through 504.638.

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

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

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

35 Sec. 82. NEW SECTION. 504.811 VACANCY ON BOARD.

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

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

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

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

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

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

24 4. A vacancy that will occur at a specific later date by
25 reason of a resignation effective at a later date under
26 section 504.807, subsection 2, or otherwise, may be filled
27 before the vacancy occurs, but the new director shall not take
28 office until the vacancy occurs.

29 Sec. 83. NEW SECTION. 504.812 COMPENSATION OF DIRECTORS.

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

33 PART 2

34 MEETINGS AND ACTION OF THE BOARD

35 Sec. 84. NEW SECTION. 504.821 REGULAR AND SPECIAL

1 MEETINGS.

2 1. If the time and place of a directors' meeting is fixed
3 by the bylaws or the board, the meeting is a regular meeting.

4 All other meetings are special meetings.

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

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

14 Sec. 85. NEW SECTION. 504.822 ACTION WITHOUT MEETING.

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

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

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

32 Sec. 86. NEW SECTION. 504.823 CALL AND NOTICE OF
33 MEETINGS.

34 1. Unless the articles or bylaws of a corporation, or
35 subsection 3, provide otherwise, regular meetings of the board

1 may be held without notice.

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

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

13 4. Unless the articles or bylaws provide otherwise, the
14 presiding officer of the board, the president, or twenty
15 percent of the directors then in office may call and give
16 notice of a meeting of the board.

17 Sec. 87. NEW SECTION. 504.824 WAIVER OF NOTICE.

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

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

29 Sec. 88. NEW SECTION. 504.825 QUORUM AND VOTING.

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

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

5 Sec. 89. NEW SECTION. 504.826 COMMITTEES OF THE BOARD.

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

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

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

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

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

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

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

27 a. Authorize distributions.

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

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

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

34 6. The creation of, delegation of authority to, or action
35 by a committee does not alone constitute compliance by a

1 director with the standards of conduct described in section
2 504.831.

3 PART 3

4 STANDARDS OF CONDUCT

5 Sec. 90. NEW SECTION. 504.831 GENERAL STANDARDS FOR
6 DIRECTORS.

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

- 10 a. In good faith.
- 11 b. In a manner the director reasonably believes to be in
12 the best interests of the corporation.

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

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

25 4. In discharging board or committee duties, a director is
26 entitled to rely on information, opinions, reports, or
27 statements, including financial statements and other financial
28 data, if prepared or presented by any of the persons specified
29 in subsection 5.

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

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

1 employee.

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

5 (1) Matters within the particular person's professional or
6 expert competence.

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

9 c. A committee of the board of which the director is not a
10 member, as to matters within its jurisdiction, if the director
11 reasonably believes the committee merits confidence.

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

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

23 Sec. 91. NEW SECTION. 504.832 STANDARDS OF LIABILITY FOR
24 DIRECTORS.

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

30 a. That section 504.901 or the protection afforded by
31 section 504.831, if interposed as a bar to the proceeding by
32 the director, does not preclude liability.

33 b. That the challenged conduct consisted or was the result
34 of one of the following:

35 (1) Action not in good faith.

1 (2) A decision that satisfies one of the following:

2 (a) That the director did not reasonably believe to be in
3 the best interests of the corporation.

4 (b) As to which the director was not informed to an extent
5 the director reasonably believed appropriate in the
6 circumstances.

7 (3) A lack of objectivity due to the director's familial,
8 financial, or business relationship with, or lack of
9 independence due to the director's domination or control by,
10 another person having a material interest in the challenged
11 conduct which also meets both of the following criteria:

12 (a) Which relationship or which domination or control
13 could reasonably be expected to have affected the director's
14 judgment respecting the challenged conduct in a manner adverse
15 to the corporation.

16 (b) After a reasonable expectation to such effect has been
17 established, the director shall not have established that the
18 challenged conduct was reasonably believed by the director to
19 be in the best interests of the corporation.

20 (4) A sustained failure of the director to devote
21 attention to ongoing oversight of the business and affairs of
22 the corporation, or a failure to devote timely attention, by
23 making, or causing to be made, appropriate inquiry, when
24 particular facts and circumstances of significant concern
25 materialize that would alert a reasonably attentive director
26 to the need therefor.

27 (5) Receipt of a financial benefit to which the director
28 was not entitled or any other breach of the director's duties
29 to deal fairly with the corporation and its members that is
30 actionable under applicable law.

31 2. a. A party seeking to hold a director liable for money
32 damages shall also have the burden of establishing both of the
33 following:

34 (1) That harm to the corporation or its members has been
35 suffered.

1 (2) The harm suffered was proximately caused by the
2 director's challenged conduct.

3 b. A party seeking to hold a director liable for other
4 money payment under a legal remedy, such as compensation for
5 the unauthorized use of corporate assets, shall also have
6 whatever burden of persuasion that may be called for to
7 establish that the payment sought is appropriate in the
8 circumstances.

9 c. A party seeking to hold a director liable for other
10 money payment under an equitable remedy, such as profit
11 recovery by or disgorgement to the corporation, shall also
12 have whatever burden of persuasion that may be called for to
13 establish that the equitable remedy sought is appropriate in
14 the circumstances.

15 3. This section shall not do any of the following:

16 a. In any instance where fairness is at issue, such as
17 consideration of the fairness of a transaction to the
18 corporation under section 504.833, alter the burden of proving
19 the fact or lack of fairness otherwise applicable.

20 b. Alter the fact or lack of liability of a director under
21 another section of this chapter, such as the provisions
22 governing the consequences of a transactional interest under
23 section 504.833 or an unlawful distribution under section
24 504.835.

25 c. Affect any rights to which the corporation or a
26 shareholder may be entitled under another statute of this
27 state or the United States.

28 Sec. 92. NEW SECTION. 504.833 DIRECTOR CONFLICT OF
29 INTEREST.

30 1. A conflict of interest transaction is a transaction
31 with the corporation in which a director of the corporation
32 has a direct or indirect interest. A conflict of interest
33 transaction is not voidable by the corporation on the basis of
34 the director's interest in the transaction if the transaction
35 was fair at the time it was entered into or is approved as

1 provided in subsection 2.

2 2. A transaction in which a director of a mutual benefit
3 corporation has a conflict of interest may be approved if
4 either of the following occurs:

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

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

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

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

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

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

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

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

20 Sec. 93. NEW SECTION. 504.834 LOANS TO OR GUARANTEES FOR
21 DIRECTORS AND OFFICERS.

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

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

27 Sec. 94. NEW SECTION. 504.835 LIABILITY FOR UNLAWFUL
28 DISTRIBUTIONS.

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

35 2. A director held liable for an unlawful distribution

1 under subsection 1 is entitled to contribution from both of
2 the following:

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

6 b. Each person who received an unlawful distribution for
7 the amount of the distribution whether or not the person
8 receiving the distribution knew it was made in violation of
9 this subchapter.

10 PART 4

11 OFFICERS

12 Sec. 95. NEW SECTION. 504.841 REQUIRED OFFICERS.

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

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

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

25 Sec. 96. NEW SECTION. 504.842 DUTIES AND AUTHORITY OF
26 OFFICERS.

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

33 Sec. 97. NEW SECTION. 504.843 STANDARDS OF CONDUCT FOR
34 OFFICERS.

35 1. An officer, when performing in such capacity, shall act

1 in conformity with all of the following:

2 a. In good faith.

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

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

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

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

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

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

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

30 3. An officer shall not be liable as an officer to the
31 corporation or its members for any decision to take or not to
32 take action, or any failure to take any action, if the duties
33 of the officer are performed in compliance with this section.
34 Whether an officer who does not comply with this section shall
35 have liability will depend in such instance on applicable law,

1 including those principles of sections 504.832 and 504.901
2 that have relevance.

3 Sec. 98. NEW SECTION. 504.844 RESIGNATION AND REMOVAL OF
4 OFFICERS.

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

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

16 a. The board of directors.

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

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

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

24 Sec. 99. NEW SECTION. 504.845 CONTRACT RIGHTS OF
25 OFFICERS.

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

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

32 Sec. 100. NEW SECTION. 504.846 OFFICERS' AUTHORITY TO
33 EXECUTE DOCUMENTS.

34 1. A contract or other instrument in writing executed or
35 entered into between a corporation and any other person is not

1 invalidated as to the corporation by any lack of authority of
2 the signing officers in the absence of actual knowledge on the
3 part of the other person that the signing officers had no
4 authority to execute the contract or other instrument if it is
5 signed by any two officers in category 1 or by one officer in
6 category 1 and one officer in category 2 as set out in
7 subsection 2.

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

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

12 PART 5

13 INDEMNIFICATION

14 Sec. 101. NEW SECTION. 504.851 DEFINITIONS.

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

17 1. "Corporation" includes any domestic or foreign
18 predecessor entity of a corporation in a merger.

19 2. "Director" or "officer" means an individual who is or
20 was a director or officer of a corporation or an individual
21 who, while a director or officer of a corporation, is or was
22 serving at the corporation's request as a director, officer,
23 partner, trustee, employee, or agent of another foreign or
24 domestic business or nonprofit corporation, partnership, joint
25 venture, trust, employee benefit plan, or other entity. A
26 "director" or "officer" is considered to be serving an
27 employee benefit plan at the corporation's request if the
28 director's or officer's duties to the corporation also impose
29 duties on, or otherwise involve services by, the director or
30 officer to the plan or to participants in or beneficiaries of
31 the plan. "Director" or "officer" includes, unless the
32 context otherwise requires, the estate or personal
33 representative of a director or officer.

34 3. "Disinterested director" means a director who at the
35 time of a vote referred to in section 504.854, subsection 3,

1 or a vote or selection referred to in section 504.856,
2 subsection 2 or 3, is not either of the following:

- 3 a. A party to the proceeding.
- 4 b. An individual having a familial, financial,
- 5 professional, or employment relationship with the director
- 6 whose indemnification or advance for expenses is the subject
- 7 of the decision being made, which relationship would, in the
- 8 circumstances, reasonably be expected to exert an influence on
- 9 the director's judgment when voting on the decision being
- 10 made.

11 4. "Expenses" includes attorney fees.

12 5. "Liability" means the obligation to pay a judgment,
13 settlement, penalty, or fine including an excise tax assessed
14 with respect to an employee benefit plan, or reasonable
15 expenses actually incurred with respect to a proceeding.

16 6. "Official capacity" means either of the following:

- 17 a. When used with respect to a director, the office of
- 18 director in a corporation.
- 19 b. When used with respect to an officer, as contemplated
- 20 in section 504.857, the office in a corporation held by the
- 21 officer. "Official capacity" does not include service for any
- 22 other foreign or domestic business or nonprofit corporation or
- 23 any partnership joint venture, trust, employee benefit plan,
- 24 or other entity.

25 7. "Party" means an individual who was, is, or is
26 threatened to be made a defendant or respondent in a
27 proceeding.

28 8. "Proceeding" means any threatened, pending, or
29 completed action, suit, or proceeding whether civil, criminal,
30 administrative, or investigative and whether formal or
31 informal.

32 Sec. 102. NEW SECTION. 504.852 PERMISSIBLE
33 INDEMNIFICATION.

34 1. Except as otherwise provided in this section, a
35 corporation may indemnify an individual who is a party to a

1 proceeding because the individual is a director, against
2 liability incurred in the proceeding if all of the following
3 apply:

4 a. The individual acted in good faith.

5 b. The individual reasonably believed either of the
6 following:

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

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

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

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

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

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

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

33 a. In connection with a proceeding by or in the right of
34 the corporation, except for reasonable expenses incurred in
35 the relevant standard of conduct under subsection 1.

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

6 Sec. 103. NEW SECTION. 504.853 MANDATORY
7 INDEMNIFICATION.

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

14 Sec. 104. NEW SECTION. 504.854 ADVANCE FOR EXPENSES.

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

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

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

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

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

3 a. By the board of directors as follows:

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

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

14 b. By the members, but the director who, at the time does
15 not qualify as a disinterested director, may not vote as a
16 member or on behalf of a member.

17 Sec. 105. NEW SECTION. 504.855 COURT-ORDERED
18 INDEMNIFICATION.

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

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

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

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

35 (1) To indemnify the director.

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

9 2. If the court determines that the director is entitled
10 to indemnification under subsection 1, paragraph "a", or to
11 indemnification or advance for expenses under subsection 1,
12 paragraph "b", it shall also order the corporation to pay the
13 director's reasonable expenses incurred in connection with
14 obtaining court-ordered indemnification or advance for
15 expenses. If the court determines that the director is
16 entitled to indemnification or advance for expenses under
17 subsection 1, paragraph "c", it may also order the corporation
18 to pay the director's reasonable expenses to obtain court-
19 ordered indemnification or advance for expenses.

20 Sec. 106. NEW SECTION. 504.856 DETERMINATION AND
21 AUTHORIZATION OF INDEMNIFICATION.

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

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

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

35 b. By special legal counsel under one of the following

1 circumstances:

2 (1) Selected in the manner prescribed in paragraph "a".

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

6 c. By the members of a mutual benefit corporation, but
7 directors who are at the time parties to the proceeding shall
8 not vote on the determination.

9 3. Authorization of indemnification shall be made in the
10 same manner as the determination that indemnification is
11 permissible, except that if there are fewer than two
12 disinterested directors or if the determination is made by
13 special legal counsel, authorization of indemnification shall
14 be made by those entitled under subsection 2, paragraph "c",
15 to select special legal counsel.

16 Sec. 107. NEW SECTION. 504.857 INDEMNIFICATION OF
17 OFFICERS.

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

22 a. To the same extent as to a director.

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

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

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

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

34 (b) An intentional infliction of harm on the corporation
35 or the shareholders.

1 (c) An intentional violation of criminal law.

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

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

13 Sec. 108. NEW SECTION. 504.858 INSURANCE.

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

26 Sec. 109. NEW SECTION. 504.859 APPLICATION OF PART.

27 1. A corporation may, by a provision in its articles of
28 incorporation or bylaws or in a resolution adopted or a
29 contract approved by its board of directors or members,
30 obligate itself in advance of the act or omission giving rise
31 to a proceeding to provide indemnification in accordance with
32 section 504.852 or advance funds to pay for or reimburse
33 expenses in accordance with section 504.854. Any such
34 obligatory provision shall be deemed to satisfy the
35 requirements for authorization referred to in section 504.854,

1 subsection 3, and in section 504.856, subsection 2 or 3. Any
2 such provision that obligates the corporation to provide
3 indemnification to the fullest extent permitted by law shall
4 be deemed to obligate the corporation to advance funds to pay
5 for or reimburse expenses in accordance with section 504.854
6 to the fullest extent permitted by law, unless the provision
7 specifically provides otherwise.

8 2. Any provision pursuant to subsection 1 shall not
9 obligate the corporation to indemnify or advance expenses to a
10 director of a predecessor of the corporation, pertaining to
11 conduct with respect to the predecessor, unless otherwise
12 specifically provided. Any provision for indemnification or
13 advance for expenses in the articles of incorporation, bylaws,
14 or a resolution of the board of directors or members of a
15 predecessor of the corporation in a merger or in a contract to
16 which the predecessor is a party, existing at the time the
17 merger takes effect, shall be governed by section 504.1104.

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

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

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

29 Sec. 110. NEW SECTION. 504.860 EXCLUSIVITY OF PART.

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

33 SUBCHAPTER IX
34 PERSONAL LIABILITY

35 Sec. 111. NEW SECTION. 504.901 PERSONAL LIABILITY.

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

8 1. The amount of any financial benefit to which the person
9 is not entitled.

10 2. An intentional infliction of harm on the corporation or
11 the members.

12 3. A violation of section 504.834.

13 4. An intentional violation of criminal law.

14 SUBCHAPTER X

15 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

16 PART 1

17 ARTICLES OF INCORPORATION

18 Sec. 112. NEW SECTION. 504.1001 AUTHORITY TO AMEND.

19 A corporation may amend its articles of incorporation at
20 any time to add or change a provision that is required or
21 permitted in the articles or to delete a provision not
22 required in the articles. Whether a provision is required or
23 permitted in the articles is determined as of the effective
24 date of the amendment.

25 Sec. 113. NEW SECTION. 504.1002 AMENDMENT BY DIRECTORS.

26 1. Unless the articles provide otherwise, a corporation's
27 board of directors may adopt one or more amendments to the
28 corporation's articles without member approval to do any of
29 the following:

30 a. Extend the duration of the corporation if it was
31 incorporated at a time when limited duration was required by
32 law.

33 b. Delete the names and addresses of the initial
34 directors.

35 c. Delete the name and address of the initial registered

1 agent or registered office, if a statement of change is on
2 file with the secretary of state.

3 d. Change the corporate name by substituting the word
4 "corporation", "incorporated", "company", "limited", or the
5 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
6 word or abbreviation in the name, or by adding, deleting, or
7 changing a geographical attribution to the name.

8 e. Make any other change expressly permitted by this
9 subchapter to be made by director action.

10 2. If a corporation has no members, its incorporators,
11 until directors have been chosen, and thereafter its board of
12 directors, may adopt one or more amendments to the
13 corporation's articles subject to any approval required
14 pursuant to section 504.1031. The corporation shall provide
15 notice of any meeting at which an amendment is to be voted
16 upon. The notice shall be in accordance with section 504.823,
17 subsection 3. The notice must also state that the purpose, or
18 one of the purposes, of the meeting is to consider a proposed
19 amendment to the articles and contain or be accompanied by a
20 copy or summary of the amendment or state the general nature
21 of the amendment. The amendment must be approved by a
22 majority of the directors in office at the time the amendment
23 is adopted.

24 Sec. 114. NEW SECTION. 504.1003 AMENDMENT BY DIRECTORS
25 AND MEMBERS.

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

33 a. The board if the corporation is a public benefit or
34 religious corporation and the amendment does not relate to the
35 number of directors, the composition of the board, the term of

1 office of directors, or the method or way in which directors
2 are elected or selected.

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

7 c. In writing by any person or persons whose approval is
8 required by a provision of the articles authorized by section
9 504.1031.

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

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

18 4. If the board or the members seek to have the amendment
19 approved by the members at a membership meeting, the
20 corporation shall give notice to its members of the proposed
21 membership meeting in writing in accordance with section
22 504.705. The notice must state that the purpose, or one of
23 the purposes, of the meeting is to consider the proposed
24 amendment and contain or be accompanied by a copy or summary
25 of the amendment.

26 5. If the board or the members seek to have the amendment
27 approved by the members by written consent or written ballot,
28 the material soliciting the approval shall contain or be
29 accompanied by a copy or summary of the amendment.

30 Sec. 115. NEW SECTION. 504.1004 CLASS VOTING BY MEMBERS
31 ON AMENDMENTS.

32 1. Unless the articles or bylaws of the corporation
33 provide otherwise, the members of a class in a public benefit
34 corporation are entitled to vote as a class on a proposed
35 amendment to the articles if the amendment would change the

1 rights of that class as to voting in a manner different than
2 such amendment affects another class or members of another
3 class.

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

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

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

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

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

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

25 f. Authorize a new class of memberships.

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

30 4. Unless the articles or bylaws of the corporation
31 provide otherwise, if a class is to be divided into two or
32 more classes as a result of an amendment to the articles of a
33 public benefit or mutual benefit corporation, the amendment
34 must be approved by the members of each class that would be
35 created by the amendment.

1 5. Except as provided in the articles or bylaws of a
2 religious corporation, if a class vote is required to approve
3 an amendment to the articles of the corporation, the amendment
4 must be approved by the members of the class by two-thirds of
5 the votes cast by the class or a majority of the voting power
6 of the class, whichever is less.

7 Sec. 116. NEW SECTION. 504.1005 ARTICLES OF AMENDMENT.

8 A corporation amending its articles shall deliver to the
9 secretary of state articles of amendment setting forth:

- 10 1. The name of the corporation.
- 11 2. The text of each amendment adopted.
- 12 3. The date of each amendment's adoption.
- 13 4. If approval by members was not required, a statement to
14 that effect and a statement that the amendment was approved by
15 a sufficient vote of the board of directors or incorporators.
- 16 5. If approval by members was required, both of the
17 following:
 - 18 a. The designation, number of memberships outstanding,
19 number of votes entitled to be cast by each class entitled to
20 vote separately on the amendment, and number of votes of each
21 class indisputably voting on the amendment.
 - 22 b. Either the total number of votes cast for and against
23 the amendment by each class entitled to vote separately on the
24 amendment or the total number of undisputed votes cast for the
25 amendment by each class and a statement that the number of
26 votes cast for the amendment by each class was sufficient for
27 approval by that class.
- 28 6. If approval of the amendment by some person or persons
29 other than the members, the board, or the incorporators is
30 required pursuant to section 504.1031, a statement that the
31 approval was obtained.

32 Sec. 117. NEW SECTION. 504.1006 RESTATED ARTICLES OF
33 INCORPORATION.

34 1. A corporation's board of directors may restate the
35 corporation's articles of incorporation at any time with or

1 without approval by members or any other person.

2 2. The restatement may include one or more amendments to
3 the articles. If the restatement includes an amendment
4 requiring approval by the members or any other person, it must
5 be adopted as provided in section 504.1003.

6 3. If the restatement includes an amendment requiring
7 approval by members, the board must submit the restatement to
8 the members for their approval.

9 4. If the board seeks to have the restatement approved by
10 the members at a membership meeting, the corporation shall
11 notify each of its members of the proposed membership meeting
12 in writing in accordance with section 504.705. The notice
13 must also state that the purpose, or one of the purposes, of
14 the meeting is to consider the proposed restatement and must
15 contain or be accompanied by a copy or summary of the
16 restatement that identifies any amendments or other changes
17 the restatement would make in the articles.

18 5. If the board seeks to have the restatement approved by
19 the members by written ballot or written consent, the material
20 soliciting the approval shall contain or be accompanied by a
21 copy or summary of the restatement that identifies any
22 amendments or other changes the restatement would make in the
23 articles.

24 6. A restatement requiring approval by the members must be
25 approved by the same vote as an amendment to articles under
26 section 504.1003.

27 7. If the restatement includes an amendment requiring
28 approval pursuant to section 504.1031, the board must submit
29 the restatement for such approval.

30 8. A corporation restating its articles shall deliver to
31 the secretary of state articles of restatement setting forth
32 the name of the corporation and the text of the restated
33 articles of incorporation together with a certificate setting
34 forth all of the following:

35 a. Whether the restatement contains an amendment to the

1 articles requiring approval by the members or any other person
2 other than the board of directors and, if it does not, that
3 the board of directors adopted the restatement.

4 b. If the restatement contains an amendment to the
5 articles requiring approval by the members, the information
6 required by section 504.1005.

7 c. If the restatement contains an amendment to the
8 articles requiring approval by a person whose approval is
9 required pursuant to section 504.1031, a statement that such
10 approval was obtained.

11 9. Duly adopted restated articles of incorporation
12 supersede the original articles of incorporation and all
13 amendments to the original articles.

14 10. The secretary of state may certify restated articles
15 of incorporation as the articles of incorporation currently in
16 effect without including the certificate information required
17 by subsection 8.

18 Sec. 118. NEW SECTION. 504.1007 AMENDMENT PURSUANT TO
19 JUDICIAL REORGANIZATION.

20 1. A corporation's articles may be amended without board
21 approval or approval by the members or approval required
22 pursuant to section 504.1031 to carry out a plan of
23 reorganization ordered or decreed by a court of competent
24 jurisdiction under federal statute if the articles after
25 amendment contain only provisions required or permitted by
26 section 504.202.

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

30 a. The name of the corporation.

31 b. The text of each amendment approved by the court.

32 c. The date of the court's order or decree approving the
33 articles of amendment.

34 d. The title of the reorganization proceeding in which the
35 order or decree was entered.

1 e. A statement that the court had jurisdiction of the
2 proceeding under federal statute.

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

7 Sec. 119. NEW SECTION. 504.1008 EFFECT OF AMENDMENT AND
8 RESTATEMENT.

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

18 PART 2

19 BYLAWS

20 Sec. 120. NEW SECTION. 504.1021 AMENDMENT BY DIRECTORS.

21 If a corporation has no members, its incorporators, until
22 directors have been chosen, and thereafter its board of
23 directors, may adopt one or more amendments to the
24 corporation's bylaws subject to any approval required pursuant
25 to section 504.1031. The corporation shall provide notice of
26 any meeting of directors at which an amendment is to be
27 approved. The notice must be given in accordance with section
28 504.823, subsection 3. The notice must also state that the
29 purpose, or one of the purposes, of the meeting is to consider
30 a proposed amendment to the bylaws and contain or be
31 accompanied by a copy or summary of the amendment or state the
32 general nature of the amendment. The amendment must be
33 approved by a majority of the directors in office at the time
34 the amendment is adopted.

35 Sec. 121. NEW SECTION. 504.1022 AMENDMENT BY DIRECTORS

1 AND MEMBERS.

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

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

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

15 c. In writing by any person or persons whose approval is
16 required by a provision of the articles authorized by section
17 504.1031.

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

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

26 4. If the board or the members seek to have the amendment
27 approved by the members at a membership meeting, the
28 corporation shall give notice to its members of the proposed
29 membership meeting in writing in accordance with section
30 504.705. The notice must also state that the purpose, or one
31 of the purposes, of the meeting is to consider the proposed
32 amendment and contain or be accompanied by a copy or summary
33 of the amendment.

34 5. If the board or the members seek to have the amendment
35 approved by the members by written consent or written ballot,

1 the material soliciting the approval shall contain or be
2 accompanied by a copy or summary of the amendment.

3 Sec. 122. NEW SECTION. 504.1023 CLASS VOTING BY MEMBERS
4 ON AMENDMENTS.

5 1. Unless the articles or bylaws of the corporation
6 provide otherwise, the members of a class in a public benefit
7 corporation are entitled to vote as a class on a proposed
8 amendment to the bylaws if the amendment would change the
9 rights of that class as to voting in a manner different than
10 such amendment affects another class or members of another
11 class.

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

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

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

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

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

31 e. Effect an exchange, reclassification, or termination of
32 all or part of the memberships of that class.

33 f. Authorize a new class of memberships.

34 3. The members of a class of a religious corporation are
35 entitled to vote as a class on a proposed amendment to the

1 bylaws only if a class vote is provided for in the articles or
2 bylaws.

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

8 5. Unless the articles or bylaws of the corporation
9 provide otherwise, if a class vote is required to approve an
10 amendment to the bylaws, the amendment must be approved by the
11 members of the class by two-thirds of the votes cast by the
12 class or a majority of the voting power of the class,
13 whichever is less.

14 PART 3

15 ARTICLES OF INCORPORATION AND BYLAWS

16 Sec. 123. NEW SECTION. 504.1031 APPROVAL BY THIRD
17 PERSONS.

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

24 Sec. 124. NEW SECTION. 504.1032 AMENDMENT TERMINATING
25 MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS.

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

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

1 3. After adopting a resolution proposing such an
2 amendment, the notice to members proposing such amendment
3 shall include one statement of up to five hundred words
4 opposing the proposed amendment, if such statement is
5 submitted by any five members or members having three percent
6 or more of the voting power, whichever is less, not later than
7 twenty days after the board has voted to submit such amendment
8 to the members for their approval. In public benefit
9 corporations, the production and mailing costs of the
10 statement opposing the proposed amendment shall be paid by the
11 requesting members. In mutual benefit corporations, the
12 production and mailing costs of the statement opposing the
13 proposed amendment shall be paid by the corporation.

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

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

19 SUBCHAPTER XI

20 MERGER

21 Sec. 125. NEW SECTION. 504.1101 APPROVAL OF PLAN OF
22 MERGER.

23 1. Subject to the limitations set forth in section
24 504.1102, one or more nonprofit corporations may merge with or
25 into any one or more corporations or nonprofit corporations or
26 limited liability companies, if the plan of merger is approved
27 as provided in section 504.1103.

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

30 a. The name of each corporation or limited liability
31 company planning to merge and the name of the surviving
32 corporation into which each plans to merge.

33 b. The terms and conditions of the planned merger.

34 c. The manner and basis, if any, of converting the
35 memberships of each public benefit or religious corporation

1 into memberships of the surviving corporation or limited
2 liability company.

3 d. If the merger involves a mutual benefit corporation,
4 the manner and basis, if any, of converting memberships of
5 each merging corporation into memberships, obligations, or
6 securities of the surviving or any other corporation or
7 limited liability company or into cash or other property in
8 whole or in part.

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

10 a. Any amendments to the articles of incorporation or
11 bylaws of the surviving corporation or limited liability
12 company to be effected by the planned merger.

13 b. Other provisions relating to the planned merger.

14 Sec. 126. NEW SECTION. 504.1102 LIMITATIONS ON MERGERS
15 BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS.

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

19 a. A public benefit or religious corporation.

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

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

26 d. A business or mutual benefit corporation or limited
27 liability company, provided that all of the following apply:

28 (1) On or prior to the effective date of the merger,
29 assets with a value equal to the greater of the fair market
30 value of the net tangible and intangible assets, including
31 goodwill, of the public benefit or religious corporation or
32 the fair market value of the public benefit or religious
33 corporation if it were to be operated as a business concern
34 are transferred or conveyed to one or more persons who would
35 have received its assets under section 504.1406, subsection 1,

1 paragraphs "e" and "f", had it dissolved.

2 (2) The business or mutual benefit corporation or limited
3 liability company shall return, transfer, or convey any assets
4 held by it upon condition requiring return, transfer, or
5 conveyance, which condition occurs by reason of the merger, in
6 accordance with such condition.

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

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

20 Sec. 127. NEW SECTION. 504.1103 ACTION ON PLAN BY BOARD,
21 MEMBERS, AND THIRD PERSONS.

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

28 a. The board.

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

31 c. In writing by any person or persons whose approval is
32 required by a provision of the articles authorized by section
33 504.1031 for an amendment to the articles or bylaws.

34 2. If the corporation does not have members, the merger
35 must be approved by a majority of the directors in office at

1 the time the merger is approved. In addition, the corporation
2 shall provide notice of any directors' meeting at which such
3 approval is to be obtained in accordance with section 504.823,
4 subsection 3. The notice must also state that the purpose, or
5 one of the purposes, of the meeting is to consider the
6 proposed merger.

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

11 4. If the board seeks to have the plan approved by the
12 members at a membership meeting, the corporation shall give
13 notice to its members of the proposed membership meeting in
14 accordance with section 504.705. The notice must also state
15 that the purpose, or one of the purposes, of the meeting is to
16 consider the plan of merger and contain or be accompanied by a
17 copy or summary of the plan. The copy or summary of the plan
18 for members of the surviving corporation shall include any
19 provision that, if contained in a proposed amendment to the
20 articles of incorporation or bylaws, would entitle members to
21 vote on the provision. The copy or summary of the plan for
22 members of the disappearing corporation shall include a copy
23 or summary of the articles and bylaws which will be in effect
24 immediately after the merger takes effect.

25 5. If the board seeks to have the plan approved by the
26 members by written consent or written ballot, the material
27 soliciting the approval shall contain or be accompanied by a
28 copy or summary of the plan. The copy or summary of the plan
29 for members of the surviving corporation shall include any
30 provision that, if contained in a proposed amendment to the
31 articles of incorporation or bylaws, would entitle members to
32 vote on the provision. The copy or summary of the plan for
33 members of the disappearing corporation shall include a copy
34 or summary of the articles and bylaws which will be in effect
35 immediately after the merger takes effect.

1 6. Voting by a class of members is required on a plan of
2 merger if the plan contains a provision that, if contained in
3 a proposed amendment to articles of incorporation or bylaws,
4 would entitle the class of members to vote as a class on the
5 proposed amendment under section 504.1004 or 504.1023. The
6 plan must be approved by a class of members by two-thirds of
7 the votes cast by the class or a majority of the voting power
8 of the class, whichever is less.

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

16 Sec. 128. NEW SECTION. 504.1104 ARTICLES OF MERGER.

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

22 1. The plan of merger.

23 2. If approval of members was not required, a statement to
24 that effect and a statement that the plan was approved by a
25 sufficient vote of the board of directors.

26 3. If approval by members was required, both of the
27 following:

28 a. The designation, number of memberships outstanding,
29 number of votes entitled to be cast by each class entitled to
30 vote separately on the plan, and number of votes of each class
31 indisputably voting on the plan.

32 b. Either the total number of votes cast for and against
33 the plan by each class entitled to vote separately on the plan
34 or the total number of undisputed votes cast for the plan by
35 each class and a statement that the number of votes cast for

1 the plan by each class was sufficient for approval by that
2 class.

3 4. If approval of the plan by some person or persons other
4 than the members of the board is required pursuant to section
5 504.1103, subsection 1, paragraph "c", a statement that the
6 approval was obtained.

7 Sec. 129. NEW SECTION. 504.1105 EFFECT OF MERGER.

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

9 1. Every other corporation party to the merger merges into
10 the surviving corporation and the separate existence of every
11 corporation except the surviving corporation ceases.

12 2. The title to all real estate and other property owned
13 by each corporation party to the merger is vested in the
14 surviving corporation without reversion or impairment subject
15 to any and all conditions to which the property was subject
16 prior to the merger.

17 3. The surviving corporation has all the liabilities and
18 obligations of each corporation party to the merger.

19 4. A proceeding pending against any corporation party to
20 the merger may be continued as if the merger did not occur or
21 the surviving corporation may be substituted in the proceeding
22 for the corporation whose existence ceased.

23 5. The articles of incorporation and bylaws of the
24 surviving corporation are amended to the extent provided in
25 the plan of merger.

26 Sec. 130. NEW SECTION. 504.1106 MERGER WITH FOREIGN
27 CORPORATION.

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

32 a. The merger is permitted by the law of the state or
33 country under whose law each foreign corporation is
34 incorporated and each foreign corporation complies with that
35 law in effecting the merger.

1 b. The foreign corporation complies with section 504.1104
2 if it is the surviving corporation of the merger.

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

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

11 Sec. 131. NEW SECTION. 504.1107 BEQUESTS, DEVISES, AND
12 GIFTS.

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

19 Sec. 132. NEW SECTION. 504.1108 CONVERSION.

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

24 SUBCHAPTER XII

25 SALE OF ASSETS

26 Sec. 133. NEW SECTION. 504.1201 SALE OF ASSETS IN
27 REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS.

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

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

34 b. Mortgage, pledge, dedicate to the repayment of
35 indebtedness, whether with or without recourse, or otherwise

1 encumber any or all of its property whether or not in the
2 usual and regular course of its activities.

3 2. Unless the articles require it, approval of the members
4 or any other persons of a transaction described in subsection
5 1 is not required.

6 Sec. 134. NEW SECTION. 504.1202 SALE OF ASSETS OTHER
7 THAN IN REGULAR COURSE OF ACTIVITIES.

8 1. A corporation may sell, lease, exchange, or otherwise
9 dispose of all, or substantially all, of its property, with or
10 without the goodwill, other than in the usual and regular
11 course of its activities on the terms and conditions and for
12 the consideration determined by the corporation's board if the
13 proposed transaction is authorized by subsection 2.

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

19 a. The board.

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

22 c. In writing by any person or persons whose approval is
23 required by a provision of the articles authorized by section
24 504.1031 for an amendment to the articles or bylaws.

25 3. If the corporation does not have members, the
26 transaction must be approved by a vote of a majority of the
27 directors in office at the time the transaction is approved.
28 In addition, the corporation shall provide notice of any
29 directors' meeting at which such approval is to be obtained in
30 accordance with section 504.823, subsection 3. The notice
31 shall also state that the purpose, or one of the purposes, of
32 the meeting is to consider the sale, lease, exchange, or other
33 disposition of all, or substantially all, of the property or
34 assets of the corporation and contain or be accompanied by a
35 copy or summary of a description of the transaction.

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

5 5. If the corporation seeks to have the transaction
6 approved by the members at a membership meeting, the
7 corporation shall give notice to its members of the proposed
8 membership meeting in accordance with section 504.705. The
9 notice must also state that the purpose, or one of the
10 purposes, of the meeting is to consider the sale, lease,
11 exchange, or other disposition of all, or substantially all,
12 of the property or assets of the corporation and contain or be
13 accompanied by a copy or summary of a description of the
14 transaction.

15 6. If the board is required to have the transaction
16 approved by the members by written consent or written ballot,
17 the material soliciting the approval shall contain or be
18 accompanied by a copy or summary of a description of the
19 transaction.

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

27 SUBCHAPTER XIII

28 DISTRIBUTIONS

29 Sec. 135. NEW SECTION. 504.1301 PROHIBITED
30 DISTRIBUTIONS.

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

33 Sec. 136. NEW SECTION. 504.1302 AUTHORIZED
34 DISTRIBUTIONS.

35 1. A mutual benefit corporation may purchase its

1 memberships if after the purchase is completed, both of the
2 following apply:

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

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

7 2. Corporations may make distributions upon dissolution in
8 conformity with subchapter 14.

9 SUBCHAPTER XIV

10 DISSOLUTION

11 PART 1

12 VOLUNTARY DISSOLUTION

13 Sec. 137. NEW SECTION. 504.1401 DISSOLUTION BY
14 INCORPORATORS OR DIRECTORS AND THIRD PERSONS.

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

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

26 3. The incorporators or directors in approving dissolution
27 shall adopt a plan of dissolution indicating to whom the
28 assets owned or held by the corporation will be distributed
29 after all creditors have been paid.

30 Sec. 138. NEW SECTION. 504.1402 DISSOLUTION BY
31 DIRECTORS, MEMBERS, AND THIRD PERSONS.

32 1. Unless this chapter, the articles, bylaws, or the board
33 of directors or members acting pursuant to subsection 3
34 require a greater vote or voting by class or the articles or
35 bylaws impose other requirements, dissolution is authorized if

1 it is approved by all of the following:

2 a. The board.

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

5 c. In writing by any person or persons whose approval is
6 required by a provision of the articles authorized by section
7 504.1031 for an amendment to the articles or bylaws.

8 2. If the corporation does not have members, dissolution
9 must be approved by a vote of a majority of the directors in
10 office at the time the transaction is approved. In addition,
11 the corporation shall provide notice of any directors' meeting
12 at which such approval is to be obtained in accordance with
13 section 504.823, subsection 3. The notice must also state
14 that the purpose, or one of the purposes, of the meeting is to
15 consider dissolution of the corporation and contain or be
16 accompanied by a copy or summary of the plan of dissolution.

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

21 4. If the board seeks to have dissolution approved by the
22 members at a membership meeting, the corporation shall give
23 notice to its members of the proposed membership meeting in
24 accordance with section 504.705. The notice must also state
25 that the purpose, or one of the purposes, of the meeting is to
26 consider dissolving the corporation and must contain or be
27 accompanied by a copy or summary of the plan of dissolution.

28 5. If the board seeks to have the dissolution approved by
29 the members by written consent or written ballot, the material
30 soliciting the approval shall contain or be accompanied by a
31 copy or summary of the plan of dissolution.

32 6. The plan of dissolution shall indicate to whom the
33 assets owned or held by the corporation will be distributed
34 after all creditors have been paid.

35 Sec. 139. NEW SECTION. 504.1404 ARTICLES OF DISSOLUTION.

1 1. At any time after dissolution is authorized, a
2 corporation may dissolve by delivering articles of dissolution
3 to the secretary of state setting forth all of the following:

- 4 a. The name of the corporation.
- 5 b. The date dissolution was authorized.
- 6 c. A statement that dissolution was approved by a
7 sufficient vote of the board.

8 d. If approval of members was not required, a statement to
9 that effect and a statement that dissolution was approved by a
10 sufficient vote of the board of directors or incorporators.

11 e. If approval by members was required, both of the
12 following:

13 (1) The designation, number of memberships outstanding,
14 number of votes entitled to be cast by each class entitled to
15 vote separately on dissolution, and number of votes of each
16 class indisputably voting on dissolution.

17 (2) Either the total number of votes cast for and against
18 dissolution by each class entitled to vote separately on
19 dissolution or the total number of undisputed votes cast for
20 dissolution by each class and a statement that the number cast
21 for dissolution by each class was sufficient for approval by
22 that class.

23 f. If approval of dissolution by some person or persons
24 other than the members, the board, or the incorporators is
25 required pursuant to section 504.1402, subsection 1, paragraph
26 "c", a statement that the approval was obtained.

27 2. A corporation is dissolved upon the effective date of
28 its articles of dissolution.

29 Sec. 140. NEW SECTION. 504.1405 REVOCATION OF
30 DISSOLUTION.

31 1. A corporation may revoke its dissolution within one
32 hundred twenty days of its effective date.

33 2. Revocation of dissolution must be authorized in the
34 same manner as the dissolution was authorized unless that
35 authorization permitted revocation by action of the board of

1 directors alone, in which event the board of directors may
2 revoke the dissolution without action by the members or any
3 other person.

4 3. After the revocation of dissolution is authorized, the
5 corporation may revoke the dissolution by delivering to the
6 secretary of state for filing, articles of revocation of
7 dissolution, together with a copy of its articles of
8 dissolution, that set forth all of the following:

- 9 a. The name of the corporation.
- 10 b. The effective date of the dissolution that was revoked.
- 11 c. The date that the revocation of dissolution was
12 authorized.
- 13 d. If the corporation's board of directors or
14 incorporators revoked the dissolution, a statement to that
15 effect.
- 16 e. If the corporation's board of directors revoked a
17 dissolution authorized by the members alone or in conjunction
18 with another person or persons, a statement that revocation
19 was permitted by action of the board of directors alone
20 pursuant to that authorization.
- 21 f. If member or third person action was required to revoke
22 the dissolution, the information required by section 504.1404,
23 subsection 1, paragraphs "e" and "f".

24 4. Revocation of dissolution is effective upon the
25 effective date of the articles of revocation of dissolution.

26 5. When the revocation of dissolution is effective, it
27 relates back to and takes effect as of the effective date of
28 the dissolution and the corporation resumes carrying on its
29 activities as if dissolution had never occurred.

30 Sec. 141. NEW SECTION. 504.1406 EFFECT OF DISSOLUTION.

31 1. A dissolved corporation continues its corporate
32 existence but shall not carry on any activities except those
33 appropriate to wind up and liquidate its affairs, including
34 all of the following:

- 35 a. Preserving and protecting its assets and minimizing its

1 liabilities.

2 b. Discharging or making provision for discharging its
3 liabilities and obligations.

4 c. Disposing of its properties that will not be
5 distributed in kind.

6 d. Returning, transferring, or conveying assets held by
7 the corporation upon a condition requiring return, transfer,
8 or conveyance, which condition occurs by reason of the
9 dissolution, in accordance with such condition.

10 e. Transferring, subject to any contractual or legal
11 requirements, its assets as provided in or authorized by its
12 articles of incorporation or bylaws.

13 f. If the corporation is a public benefit or religious
14 corporation, and a provision has not been made in its articles
15 or bylaws for distribution of assets on dissolution,
16 transferring, subject to any contractual or legal requirement,
17 its assets to one or more persons described in section
18 501(c)(3) of the Internal Revenue Code, or if the dissolved
19 corporation is not described in section 501(c)(3) of the
20 Internal Revenue Code, to one or more public benefit or
21 religious corporations.

22 g. If the corporation is a mutual benefit corporation and
23 a provision has not been made in its articles or bylaws for
24 distribution of assets on dissolution, transferring its assets
25 to its members or, if it has no members, those persons whom
26 the corporation holds itself out as benefiting or serving.

27 h. Doing every other act necessary to wind up and
28 liquidate its assets and affairs.

29 2. Dissolution of a corporation does not do any of the
30 following:

31 a. Transfer title to the corporation's property.

32 b. Subject its directors or officers to standards of
33 conduct different from those prescribed in subchapter 8.

34 c. Change quorum or voting requirements for its board or
35 members; change provisions for selection, resignation, or

1 removal of its directors or officers or both; or change
2 provisions for amending its bylaws.

3 d. Prevent commencement of a proceeding by or against the
4 corporation in its corporate name.

5 e. Abate or suspend a proceeding pending by or against the
6 corporation on the effective date of dissolution.

7 f. Terminate the authority of the registered agent.

8 Sec. 142. NEW SECTION. 504.1407 KNOWN CLAIMS AGAINST
9 DISSOLVED CORPORATION.

10 1. A dissolved corporation may dispose of the known claims
11 against it by following the procedure described in this
12 section.

13 2. The dissolved corporation shall notify its known
14 claimants in writing of the dissolution at any time after the
15 effective date of the dissolution. The written notice must do
16 all of the following:

17 a. Describe information that must be included in a claim.

18 b. Provide a mailing address where a claim may be sent.

19 c. State the deadline, which shall not be fewer than one
20 hundred twenty days from the effective date of the written
21 notice, by which the dissolved corporation must receive the
22 claim.

23 d. State that the claim will be barred if not received by
24 the deadline.

25 3. A claim against the dissolved corporation is barred if
26 either of the following occurs:

27 a. A claimant who was given written notice under
28 subsection 2 does not deliver the claim to the dissolved
29 corporation by the deadline.

30 b. A claimant whose claim was rejected by the dissolved
31 corporation does not commence a proceeding to enforce the
32 claim within ninety days from the effective date of the
33 rejection notice.

34 4. For purposes of this section, "claim" does not include
35 a contingent liability or a claim based on an event occurring

1 after the effective date of dissolution.

2 Sec. 143. NEW SECTION. 504.1408 UNKNOWN CLAIMS AGAINST
3 DISSOLVED CORPORATION.

4 1. A dissolved corporation may also publish notice of its
5 dissolution and request that persons with claims against the
6 corporation present them in accordance with the notice.

7 2. The notice must do all of the following:

8 a. Be published one time in a newspaper of general
9 circulation in the county where the dissolved corporation's
10 principal office is located, or, if none is located in this
11 state, where its registered office is or was last located.

12 b. Describe the information that must be included in a
13 claim and provide a mailing address where the claim may be
14 sent.

15 c. State that a claim against the corporation will be
16 barred unless a proceeding to enforce the claim is commenced
17 within five years after publication of the notice.

18 3. If the dissolved corporation publishes a newspaper
19 notice in accordance with subsection 2, the claim of each of
20 the following claimants is barred unless the claimant
21 commences a proceeding to enforce the claim against the
22 dissolved corporation within five years after the publication
23 date of the newspaper notice:

24 a. A claimant who did not receive written notice under
25 section 504.1407.

26 b. A claimant whose claim was timely sent to the dissolved
27 corporation but not acted on.

28 c. A claimant whose claim is contingent or based on an
29 event occurring after the effective date of dissolution.

30 4. A claim may be enforced under this section to the
31 following extent, as applicable:

32 a. Against the dissolved corporation, to the extent of its
33 undistributed assets.

34 b. If the assets have been distributed in liquidation,
35 against any person, other than a creditor of the corporation,

1 to whom the corporation distributed its property to the extent
2 of the distributee's pro rata share of the claim or the
3 corporate assets distributed to such person in liquidation,
4 whichever is less, but the distributee's total liability for
5 all claims under this section shall not exceed the total
6 amount of assets distributed to the distributee.

7 PART 2

8 ADMINISTRATIVE DISSOLUTION

9 Sec. 144. NEW SECTION. 504.1421 GROUNDS FOR
10 ADMINISTRATIVE DISSOLUTION.

11 The secretary of state may commence a proceeding under
12 section 504.1422 to administratively dissolve a corporation if
13 any of the following occurs:

14 1. The corporation does not deliver its biennial report to
15 the secretary of state, in a form that meets the requirements
16 of section 504.1613, within sixty days after the report is
17 due.

18 2. The corporation is without a registered agent or
19 registered office in this state for sixty days or more.

20 3. The corporation does not notify the secretary of state
21 within sixty days that its registered agent or registered
22 office has been changed, that its registered agent has
23 resigned, or that its registered office has been discontinued.

24 4. The corporation's period of duration, if any, stated in
25 its articles of incorporation expires.

26 Sec. 145. NEW SECTION. 504.1422 PROCEDURE FOR AND EFFECT
27 OF ADMINISTRATIVE DISSOLUTION.

28 1. Upon determining that one or more grounds exist under
29 section 504.1421 for dissolving a corporation, the secretary
30 of state shall serve the corporation with written notice of
31 that determination under section 504.504.

32 2. If the corporation does not correct each ground for
33 dissolution or demonstrate to the reasonable satisfaction of
34 the secretary of state that each ground determined by the
35 secretary of state does not exist within at least sixty days

1 after service of notice is perfected under section 504.504,
2 the secretary of state may administratively dissolve the
3 corporation by signing a certificate of dissolution that
4 recites the ground or grounds for dissolution and its
5 effective date. The secretary of state shall file the
6 original of the certificate of dissolution and serve a copy on
7 the corporation under section 504.504.

8 3. A corporation that is administratively dissolved
9 continues its corporate existence but may not carry on any
10 activities except those necessary to wind up and liquidate its
11 affairs pursuant to section 504.1406 and notify its claimants
12 pursuant to sections 504.1407 and 504.1408.

13 4. The administrative dissolution of a corporation does
14 not terminate the authority of its registered agent.

15 5. The secretary of state's administrative dissolution of
16 a corporation pursuant to this section appoints the secretary
17 of state as the corporation's agent for service of process in
18 any proceeding based on a cause of action which arose during
19 the time the corporation was authorized to transact business
20 in this state. Service of process on the secretary of state
21 under this subsection is service on the corporation. Upon
22 receipt of process, the secretary of state shall serve a copy
23 of the process on the corporation as provided in section
24 504.504. This subsection does not preclude service on the
25 corporation's registered agent, if any.

26 Sec. 146. NEW SECTION. 504.1423 REINSTATEMENT FOLLOWING
27 ADMINISTRATIVE DISSOLUTION.

28 1. A corporation administratively dissolved under section
29 504.1422 may apply to the secretary of state for reinstatement
30 within two years after the effective date of dissolution. The
31 application must state all of the following:

32 a. The name of the corporation and the effective date of
33 its administrative dissolution.

34 b. That the ground or grounds for dissolution either did
35 not exist or have been eliminated.

1 c. That the corporation's name satisfies the requirements
2 of section 504.401.

3 d. The federal tax identification number of the
4 corporation.

5 2. a. The secretary of state shall refer the federal tax
6 identification number contained in the application for
7 reinstatement to the department of revenue and finance. The
8 department of revenue and finance shall report to the
9 secretary of state the tax status of the corporation. If the
10 department reports to the secretary of state that a filing
11 delinquency or liability exists against the corporation, the
12 secretary of state shall not cancel the certificate of
13 dissolution until the filing delinquency or liability is
14 satisfied.

15 b. If the secretary of state determines that the
16 application contains the information required by subsection 1,
17 that a delinquency or liability reported pursuant to paragraph
18 "a" has been satisfied, and that all of the application
19 information is correct, the secretary of state shall cancel
20 the certificate of dissolution and prepare a certificate of
21 reinstatement reciting that determination and the effective
22 date of reinstatement, file the original of the certificate,
23 and serve a copy on the corporation under section 504.504. If
24 the corporate name in subsection 1, paragraph "c", is
25 different from the corporate name in subsection 1, paragraph
26 "a", the certificate of reinstatement shall constitute an
27 amendment to the articles of incorporation insofar as it
28 pertains to the corporate name.

29 3. When reinstatement is effective, it relates back to and
30 takes effect as of the effective date of the administrative
31 dissolution and the corporation shall resume carrying on its
32 activities as if the administrative dissolution had never
33 occurred.

34 Sec. 147. NEW SECTION. 504.1424 APPEAL FROM DENIAL OF
35 REINSTATEMENT.

1 1. The secretary of state, upon denying a corporation's
2 application for reinstatement following administrative
3 dissolution, shall serve the corporation under section 504.504
4 with a written notice that explains the reason or reasons for
5 denial.

6 2. The corporation may appeal the denial of reinstatement
7 to the district court within ninety days after service of the
8 notice of denial is perfected by petitioning to set aside the
9 dissolution and attaching to the petition copies of the
10 secretary of state's certificate of dissolution, the
11 corporation's application for reinstatement, and the secretary
12 of state's notice of denial of reinstatement.

13 3. The court may summarily order the secretary of state to
14 reinstate the dissolved corporation or may take other action
15 the court considers appropriate.

16 4. The court's final decision may be appealed as in other
17 civil proceedings.

18 PART 3

19 JUDICIAL DISSOLUTION

20 Sec. 148. NEW SECTION. 504.1431 GROUNDS FOR JUDICIAL
21 DISSOLUTION.

22 1. The district court may dissolve a corporation in any of
23 the following ways:

24 a. In a proceeding brought by the attorney general, if any
25 of the following is established:

26 (1) The corporation obtained its articles of incorporation
27 through fraud.

28 (2) The corporation has continued to exceed or abuse the
29 authority conferred upon it by law.

30 b. Except as provided in the articles or bylaws of a
31 religious corporation, in a proceeding brought by fifty
32 members or members holding five percent of the voting power,
33 whichever is less, or by a director or any person specified in
34 the articles, if any of the following is established:

35 (1) The directors are deadlocked in the management of the

1 corporate affairs, and the members, if any, are unable to
2 break the deadlock.

3 (2) The directors or those in control of the corporation
4 have acted, are acting, or will act in a manner that is
5 illegal, oppressive, or fraudulent.

6 (3) The members are deadlocked in voting power and have
7 failed, for a period that includes at least two consecutive
8 annual meeting dates, to elect successors to directors whose
9 terms have, or would otherwise have, expired.

10 (4) The corporate assets are being misapplied or wasted.

11 c. In a proceeding brought by a creditor, if either of the
12 following is established:

13 (1) The creditor's claim has been reduced to judgment, the
14 execution on the judgment is returned unsatisfied, and the
15 corporation is insolvent.

16 (2) The corporation has admitted in writing that the
17 creditor's claim is due and owing and the corporation is
18 insolvent.

19 d. In a proceeding brought by the corporation to have its
20 voluntary dissolution continued under court supervision.

21 2. Prior to dissolving a corporation, the court shall
22 consider whether:

23 a. There are reasonable alternatives to dissolution.

24 b. Dissolution is in the public interest, if the
25 corporation is a public benefit corporation.

26 c. Dissolution is the best way of protecting the interests
27 of members, if the corporation is a mutual benefit
28 corporation.

29 Sec. 149. NEW SECTION. 504.1432 PROCEDURE FOR JUDICIAL
30 DISSOLUTION.

31 1. Venue for a proceeding brought by the attorney general
32 to dissolve a corporation lies in Polk county. Venue for a
33 proceeding brought by any other party named in section
34 504.1431 lies in the county where a corporation's principal
35 office is located or, if none is located in this state, where

1 its registered office is or was last located.

2 2. It is not necessary to make directors or members
3 parties to a proceeding to dissolve a corporation unless
4 relief is sought against them individually.

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

11 Sec. 150. NEW SECTION. 504.1433 RECEIVERSHIP OR
12 CUSTODIANSHIP.

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

22 2. The court may appoint an individual, or a domestic or
23 foreign business or nonprofit corporation authorized to
24 transact business in this state as a receiver or custodian.
25 The court may require the receiver or custodian to post bond,
26 with or without sureties, in an amount the court directs.

27 3. The court shall describe the powers and duties of the
28 receiver or custodian in its appointing order, which may be
29 amended including the following:

30 a. The receiver or custodian may dispose of all or any
31 part of the assets of the corporation wherever located, at a
32 public or private sale, if authorized by the court. However,
33 the receiver's or custodian's power to dispose of the assets
34 of the corporation is subject to any trust and other
35 restrictions that would be applicable to the corporation. The

1 receiver or custodian may sue and defend in the receiver's or
2 custodian's name as receiver or custodian of the corporation,
3 as applicable, in all courts of this state.

4 b. The custodian may exercise all of the powers of the
5 corporation, through or in place of its board of directors or
6 officers, to the extent necessary to manage the affairs of the
7 corporation in the best interests of its members and
8 creditors.

9 4. The court during a receivership may redesignate the
10 receiver a custodian, and during a custodianship may
11 redesignate the custodian a receiver, if doing so is in the
12 best interests of the corporation, its members, and creditors.

13 5. The court during the receivership or custodianship may
14 order compensation paid and expense disbursements or
15 reimbursements made to the receiver or custodian and to the
16 receiver's or custodian's attorney from the assets of the
17 corporation or proceeds from the sale of the assets.

18 Sec. 151. NEW SECTION. 504.1434 DECREE OF DISSOLUTION.

19 1. If after a hearing the court determines that one or
20 more grounds for judicial dissolution described in section
21 504.1431 exist, the court may enter a decree dissolving the
22 corporation and specifying the effective date of the
23 dissolution, and the clerk of the court shall deliver a
24 certified copy of the decree to the secretary of state, who
25 shall file it.

26 2. After entering the decree of dissolution, the court
27 shall direct the winding up of the corporation's affairs and
28 liquidation of the corporation in accordance with section
29 504.1406 and the notification of its claimants in accordance
30 with sections 504.1407 and 504.1408.

31 PART 4

32 MISCELLANEOUS

33 Sec. 152. NEW SECTION. 504.1441 DEPOSIT WITH STATE
34 TREASURER.

35 Assets of a dissolved corporation which should be

1 transferred to a creditor, claimant, or member of the
2 corporation who cannot be found or who is not competent to
3 receive them shall be reduced to cash subject to known trust
4 restrictions and deposited with the treasurer of state for
5 safekeeping. However, in the treasurer of state's discretion,
6 property may be received and held in kind. When the creditor,
7 claimant, or member furnishes satisfactory proof of
8 entitlement to the amount deposited or property held in kind,
9 the treasurer of state shall deliver to the creditor, member,
10 or other person or to the representative of the creditor,
11 member, or other person that amount or property.

12 SUBCHAPTER XV

13 FOREIGN CORPORATIONS

14 PART 1

15 CERTIFICATE OF AUTHORITY

16 Sec. 153. NEW SECTION. 504.1501 AUTHORITY TO TRANSACT
17 BUSINESS REQUIRED.

18 1. A foreign corporation shall not transact business in
19 this state until it obtains a certificate of authority from
20 the secretary of state.

21 2. The following activities, among others, do not
22 constitute transacting business within the meaning of
23 subsection 1:

24 a. Maintaining, defending, or settling any proceeding.

25 b. Holding meetings of the board of directors or members
26 or carrying on other activities concerning internal corporate
27 affairs.

28 c. Maintaining bank accounts.

29 d. Maintaining offices or agencies for the transfer,
30 exchange, or registration of memberships or securities or
31 maintaining trustees or depositaries with respect to those
32 securities.

33 e. Selling through independent contractors.

34 f. Soliciting or obtaining orders, whether by mail or
35 through employees or agents or otherwise, if the orders

1 require acceptance outside this state before they become
2 contracts.

3 g. Creating or acquiring indebtedness, mortgages, or
4 security interests in real or personal property.

5 h. Securing or collecting debts or enforcing mortgages or
6 security interests in property securing the debts.

7 i. Owning, without more, real or personal property.

8 j. Conducting an isolated transaction that is completed
9 within thirty days and that is not one in the course of
10 repeated transactions of a like nature.

11 k. Transacting business in interstate commerce.

12 Sec. 154. NEW SECTION. 504.1502 CONSEQUENCES OF
13 TRANSACTING BUSINESS WITHOUT AUTHORITY.

14 1. A foreign corporation transacting business in this
15 state without a certificate of authority shall not maintain a
16 proceeding in any court in this state until it obtains a
17 certificate of authority.

18 2. The successor to a foreign corporation that transacted
19 business in this state without a certificate of authority and
20 the assignee of a cause of action arising out of that business
21 shall not maintain a proceeding on that cause of action in any
22 court in this state until the foreign corporation or its
23 successor obtains a certificate of authority.

24 3. A court may stay a proceeding commenced by a foreign
25 corporation, its successor, or assignee until the court
26 determines whether the foreign corporation or its successor
27 requires a certificate of authority. If it so determines, the
28 court may further stay the proceeding until the foreign
29 corporation or its successor obtains the certificate.

30 4. A foreign corporation is liable for a civil penalty of
31 an amount not to exceed a total of one thousand dollars if it
32 transacts business in this state without a certificate of
33 authority. The attorney general may collect all penalties due
34 under this subsection.

35 5. Notwithstanding subsections 1 and 2, the failure of a

1 foreign corporation to obtain a certificate of authority does
2 not impair the validity of its corporate acts or prevent it
3 from defending any proceeding in this state.

4 Sec. 155. NEW SECTION. 504.1503 APPLICATION FOR
5 CERTIFICATE OF AUTHORITY.

6 1. A foreign corporation may apply for a certificate of
7 authority to transact business in this state by delivering an
8 application to the secretary of state. The application must
9 set forth all of the following:

10 a. The name of the foreign corporation or, if its name is
11 unavailable for use in this state, a corporate name that
12 satisfies the requirements of section 504.1506.

13 b. The name of the state or country under whose law it is
14 incorporated.

15 c. The date of incorporation and period of duration.

16 d. The address of its principal office.

17 e. The address of its registered office in this state and
18 the name of its registered agent at that office.

19 f. The names and usual business or home addresses of its
20 current directors and officers.

21 g. Whether the foreign corporation has members.

22 2. The foreign corporation shall deliver the completed
23 application to the secretary of state, and shall also deliver
24 to the secretary of state a certificate of existence or a
25 document of similar import duly authenticated by the secretary
26 of state or other official having custody of corporate records
27 in the state or country under whose law it is incorporated
28 which is dated no earlier than ninety days prior to the date
29 the application is filed with the secretary of state.

30 Sec. 156. NEW SECTION. 504.1504 AMENDED CERTIFICATE OF
31 AUTHORITY.

32 1. A foreign corporation authorized to transact business
33 in this state shall obtain an amended certificate of authority
34 from the secretary of state if it changes any of the
35 following:

- 1 a. Its corporate name.
- 2 b. The period of its duration.
- 3 c. The state or country of its incorporation.
- 4 2. The requirements of section 504.1503 for obtaining an
- 5 original certificate of authority apply to obtaining an
- 6 amended certificate under this section.

7 Sec. 157. NEW SECTION. 504.1505 EFFECT OF CERTIFICATE OF

8 AUTHORITY.

9 1. A certificate of authority authorizes the foreign

10 corporation to which it is issued to transact business in this

11 state subject, however, to the right of the state to revoke

12 the certificate as provided in this chapter.

13 2. A foreign corporation with a valid certificate of

14 authority has the same rights and has the same privileges as

15 and, except as otherwise provided by this chapter, is subject

16 to the same duties, restrictions, penalties, and liabilities

17 now or later imposed on a domestic corporation of like

18 character.

19 3. This chapter does not authorize this state to regulate

20 the organization or internal affairs of a foreign corporation

21 authorized to transact business in this state.

22 Sec. 158. NEW SECTION. 504.1506 CORPORATE NAME OF

23 FOREIGN CORPORATION.

24 1. If the corporate name of a foreign corporation does not

25 satisfy the requirements of section 504.401, the foreign

26 corporation, to obtain or maintain a certificate of authority

27 to transact business in this state, may use a fictitious name

28 to transact business in this state if the corporation's real

29 name is unavailable and it delivers to the secretary of state

30 for filing a copy of the resolution of its board of directors,

31 certified by its secretary, adopting the fictitious name.

32 2. Except as authorized by subsections 3 and 4, the

33 corporate name of a foreign corporation, including a

34 fictitious name, must be distinguishable upon the records of

35 the secretary of state from all of the following:

1 a. The corporate name of a nonprofit or business
2 corporation incorporated or authorized to transact business in
3 this state.

4 b. A corporate name reserved or registered under section
5 504.402 or 504.403 or section 490.402 or 490.403.

6 c. The fictitious name of another foreign business or
7 nonprofit corporation authorized to transact business in this
8 state.

9 3. A foreign corporation may apply to the secretary of
10 state for authorization to use in this state the name of
11 another corporation incorporated or authorized to transact
12 business in this state that is not distinguishable upon the
13 records of the secretary of state from the name applied for.
14 The secretary of state shall authorize use of the name applied
15 for if either of the following applies:

16 a. The other corporation consents to the use in writing
17 and submits an undertaking in a form satisfactory to the
18 secretary of state to change its name to a name that is
19 distinguishable upon the records of the secretary of state
20 from the name of the applying corporation.

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

25 4. A foreign corporation may use in this state the name,
26 including the fictitious name, of another domestic or foreign
27 business or nonprofit corporation that is used in this state
28 if the other corporation is incorporated or authorized to
29 transact business in this state and the foreign corporation
30 has filed documentation satisfactory to the secretary of state
31 of the occurrence of any of the following:

32 a. The foreign corporation has merged with the other
33 corporation.

34 b. The foreign corporation has been formed by
35 reorganization of the other corporation.

1 c. The foreign corporation has acquired all or
2 substantially all of the assets, including the corporate name,
3 of the other corporation.

4 5. If a foreign corporation authorized to transact
5 business in this state changes its corporate name to one that
6 does not satisfy the requirements of section 504.401, it shall
7 not transact business in this state under the changed name
8 until it adopts a name satisfying the requirements of section
9 504.401 and obtains an amended certificate of authority under
10 section 504.1504.

11 Sec. 159. NEW SECTION. 504.1507 REGISTERED OFFICE AND
12 REGISTERED AGENT OF FOREIGN CORPORATION.

13 Each foreign corporation authorized to transact business in
14 this state shall continuously maintain in this state both of
15 the following:

16 1. A registered office with the same address as that of
17 its registered agent.

18 2. A registered agent, who may be any of the following:

19 a. An individual who resides in this state and whose
20 office is identical to the registered office.

21 b. A domestic business or nonprofit corporation whose
22 office is identical to the registered office.

23 c. A foreign business or nonprofit corporation authorized
24 to transact business in this state whose office is identical
25 to the registered office.

26 Sec. 160. NEW SECTION. 504.1508 CHANGE OF REGISTERED
27 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

28 1. A foreign corporation authorized to transact business
29 in this state may change its registered office or registered
30 agent by delivering to the secretary of state for filing a
31 statement of change that sets forth all of the following that
32 apply:

33 a. The name of its registered office or registered agent.

34 b. If the current registered office is to be changed, the
35 address of its new registered office.

1 c. If the current registered agent is to be changed, the
2 name of its new registered agent and the new agent's written
3 consent to the appointment, either on the statement or
4 attached to it.

5 d. That after the change or changes are made, the
6 addresses of its registered office and the office of its
7 registered agent will be identical.

8 2. If a registered agent changes the address of its
9 business office, the agent may change the address of the
10 registered office of any foreign corporation for which the
11 agent is the registered agent by notifying the corporation in
12 writing of the change and signing either manually or in
13 facsimile and delivering to the secretary of state for filing
14 a statement of change that complies with the requirements of
15 subsection 1 and recites that the corporation has been
16 notified of the change.

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

27 4. A corporation may also change its registered office or
28 registered agent in its biennial report as provided in section
29 504.1613.

30 Sec. 161. NEW SECTION. 504.1509 RESIGNATION OF
31 REGISTERED AGENT OF FOREIGN CORPORATION.

32 1. The registered agent of a foreign corporation may
33 resign as agent by signing and delivering to the secretary of
34 state for filing the original statement of resignation. The
35 statement of resignation may include a statement that the

1 registered office is also discontinued.

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

8 2. The agency appointment is terminated, and the
9 registered office discontinued if so provided, on the date on
10 which the statement is filed with the secretary of state.

11 Sec. 162. NEW SECTION. 504.1510 SERVICE ON FOREIGN
12 CORPORATION.

13 1. The registered agent of a foreign corporation
14 authorized to transact business in this state is the
15 corporation's agent for service of process, notice, or demand
16 required or permitted by law to be served on the foreign
17 corporation.

18 2. A foreign corporation may be served by registered or
19 certified mail, return receipt requested, addressed to the
20 secretary of the foreign corporation at its principal office
21 shown in its application for a certificate of authority or in
22 its most recent biennial report filed under section 504.1613
23 if any of the following conditions apply:

24 a. The foreign corporation has no registered agent or its
25 registered agent cannot with reasonable diligence be served.

26 b. The foreign corporation has withdrawn from transacting
27 business in this state under section 504.1521.

28 c. The foreign corporation has had its certificate of
29 authority revoked under section 504.1532.

30 3. Service is perfected under subsection 2 at the earliest
31 of any of the following:

32 a. The date the foreign corporation receives the mail.

33 b. The date shown on the return receipt, if signed on
34 behalf of the foreign corporation.

35 c. Five days after its deposit in the United States mail,

1 as evidenced by the postmark, if mailed postpaid and correctly
2 addressed.

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

7 PART 2

8 WITHDRAWAL

9 Sec. 163. NEW SECTION. 504.1521 WITHDRAWAL OF FOREIGN
10 CORPORATION.

11 1. A foreign corporation authorized to transact business
12 in this state shall not withdraw from this state until it
13 obtains a certificate of withdrawal from the secretary of
14 state.

15 2. A foreign corporation authorized to transact business
16 in this state may apply for a certificate of withdrawal by
17 delivering an application to the secretary of state for
18 filing. The application shall set forth all of the following:

19 a. The name of the foreign corporation and the name of the
20 state or country under whose law it is incorporated.

21 b. That it is not transacting business in this state and
22 that it surrenders its authority to transact business in this
23 state.

24 c. That it revokes the authority of its registered agent
25 to accept service on its behalf and appoints the secretary of
26 state as its agent for service of process in any proceeding
27 based on a cause of action arising during the time it was
28 authorized to do business in this state.

29 d. A mailing address to which the secretary of state may
30 mail a copy of any process served on the secretary of state
31 under paragraph "c".

32 3. After the withdrawal of the corporation is effective,
33 service of process on the secretary of state under this
34 section is service on the foreign corporation. Upon receipt
35 of process, the secretary of state shall mail a copy of the

1 process to the foreign corporation at the mailing address set
2 forth in its application for withdrawal.

3

PART 3

4

REVOCATION OF CERTIFICATE OF AUTHORITY

5

Sec. 164. NEW SECTION. 504.1531 GROUNDS FOR REVOCATION.

6

1. The secretary of state may commence a proceeding under
7 section 504.1532 to revoke the certificate of authority of a
8 foreign corporation authorized to transact business in this
9 state if any of the following applies:

10

a. The foreign corporation does not deliver the biennial
11 report to the secretary of state in a form that meets the
12 requirements of section 504.1613 within sixty days after it is
13 due.

14

b. The foreign corporation is without a registered agent
15 or registered office in this state for sixty days or more.

16

c. The foreign corporation does not inform the secretary
17 of state under section 504.1508 or 504.1509 that its
18 registered agent or registered office has changed, that its
19 registered agent has resigned, or that its registered office
20 has been discontinued within ninety days of the change,
21 resignation, or discontinuance.

22

d. An incorporator, director, officer, or agent of the
23 foreign corporation signed a document that such person knew
24 was false in any material respect with intent that the
25 document be delivered to the secretary of state for filing.

26

e. The secretary of state receives a duly authenticated
27 certificate from the secretary of state or other official
28 having custody of corporate records in the state or country
29 under whose law the foreign corporation is incorporated,
30 stating that it has been dissolved or disappeared as the
31 result of a merger.

32

2. The attorney general may commence a proceeding under
33 section 504.1532 to revoke the certificate of authority of a
34 foreign corporation authorized to transact business in this
35 state if the corporation has continued to exceed or abuse the

1 authority conferred upon it by law.

2 Sec. 165. NEW SECTION. 504.1532 PROCEDURE FOR AND EFFECT
3 OF REVOCATION.

4 1. The secretary of state, upon determining that one or
5 more grounds exist under section 504.1531 for revocation of a
6 certificate of authority, shall serve the foreign corporation
7 with written notice of that determination under section
8 504.1510.

9 2. The attorney general, upon determining that one or more
10 grounds exist under section 504.1531, subsection 2, for
11 revocation of a certificate of authority, shall request the
12 secretary of state to serve, and the secretary of state shall
13 serve, the foreign corporation with written notice of that
14 determination under section 504.1510.

15 3. If the foreign corporation does not correct each ground
16 for revocation or demonstrate to the reasonable satisfaction
17 of the secretary of state or attorney general that each ground
18 for revocation determined by the secretary of state or
19 attorney general does not exist within sixty days after
20 service of the notice is perfected under section 504.1510, the
21 secretary of state may revoke the foreign corporation's
22 certificate of authority by signing a certificate of
23 revocation that recites the ground or grounds for revocation
24 and its effective date. The secretary of state shall file the
25 original of the certificate and serve a copy on the foreign
26 corporation under section 504.1510.

27 4. The authority of a foreign corporation to transact
28 business in this state ceases on the date shown on the
29 certificate revoking its certificate of authority.

30 5. The secretary of state's revocation of a foreign
31 corporation's certificate of authority appoints the secretary
32 of state the foreign corporation's agent for service of
33 process in any proceeding based on a cause of action that
34 arose during the time the foreign corporation was authorized
35 to transact business in this state. Service of process on the

1 secretary of state under this subsection is service on the
2 foreign corporation. Upon receipt of process, the secretary
3 of state shall mail a copy of the process to the secretary of
4 the foreign corporation at its principal office shown in its
5 most recent biennial report or in any subsequent
6 communications received from the corporation stating the
7 current mailing address of its principal office, or, if none
8 are on file, in its application for a certificate of
9 authority.

10 6. Revocation of a foreign corporation's certificate of
11 authority does not terminate the authority of the registered
12 agent of the corporation.

13 Sec. 166. NEW SECTION. 504.1533 APPEAL FROM REVOCATION.

14 1. A foreign corporation may appeal the secretary of
15 state's revocation of its certificate of authority to the
16 district court within thirty days after the service of the
17 certificate of revocation is perfected under section 504.1510
18 by petitioning to set aside the revocation and attaching to
19 the petition copies of its certificate of authority and the
20 secretary of state's certificate of revocation.

21 2. The court may summarily order the secretary of state to
22 reinstate the certificate of authority or may take any other
23 action the court considers appropriate.

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

26 SUBCHAPTER XVI

27 RECORDS AND REPORTS

28 PART 1

29 RECORDS

30 Sec. 167. NEW SECTION. 504.1601 CORPORATE RECORDS.

31 1. A corporation shall keep as permanent records minutes
32 of all meetings of its members and board of directors, a
33 record of all actions taken by the members or directors
34 without a meeting, and a record of all actions taken by
35 committees of the board of directors as authorized by section

1 504.826, subsection 4.

2 2. A corporation shall maintain appropriate accounting
3 records.

4 3. A corporation or its agent shall maintain a record of
5 its members in a form that permits preparation of a list of
6 the names and addresses of all members, in alphabetical order
7 by class, showing the number of votes each member is entitled
8 to vote.

9 4. A corporation shall maintain its records in written
10 form or in another form capable of conversion into written
11 form within a reasonable time.

12 5. A corporation shall keep a copy of all of the following
13 records:

14 a. Its articles or restated articles of incorporation and
15 all amendments to them currently in effect.

16 b. Its bylaws or restated bylaws and all amendments to
17 them currently in effect.

18 c. Resolutions adopted by its board of directors relating
19 to the characteristics, qualifications, rights, limitations,
20 and obligations of members or any class or category of
21 members.

22 d. The minutes of all meetings of members and records of
23 all actions approved by the members for the past three years.

24 e. All written communications to members generally within
25 the past three years, including the financial statements
26 furnished for the past three years under section 504.1611.

27 f. A list of the names and business or home addresses of
28 its current directors and officers.

29 g. Its most recent biennial report delivered to the
30 secretary of state under section 504.1613.

31 Sec. 168. NEW SECTION. 504.1602 INSPECTION OF RECORDS BY
32 MEMBERS.

33 1. Subject to subsection 5, a member is entitled to
34 inspect and copy, at a reasonable time and location specified
35 by the corporation, any of the records of the corporation

1 described in section 504.1601, subsection 5, if the member
2 gives the corporation written notice or a written demand at
3 least five business days before the date on which the member
4 wishes to inspect and copy.

5 2. Subject to subsection 5 and 6, a member is entitled to
6 inspect and copy, at a reasonable time and reasonable location
7 specified by the corporation, any of the following records of
8 the corporation if the member meets the requirements of
9 subsection 3 and gives the corporation written notice at least
10 ten business days before the date on which the member wishes
11 to inspect and copy:

12 a. Excerpts from any records required to be maintained
13 under section 504.1601, subsection 1, to the extent not
14 subject to inspection under section 504.1602, subsection 1.

15 b. Accounting records of the corporation.

16 c. The membership list.

17 3. A member may inspect and copy the records identified in
18 subsection 2 only if all of the following apply:

19 a. The member's demand is made in good faith and for a
20 proper purpose.

21 b. The member describes with reasonable particularity the
22 purpose of the demand and the records the member desires to
23 inspect.

24 c. The records are directly connected to the purpose
25 described.

26 d. The board consents, if consent is required by section
27 504.1605.

28 4. This section does not affect either of the following:

29 a. The right of a member to inspect records under section
30 504.711 or, if the member is in litigation with the
31 corporation, to the same extent as any other litigant.

32 b. The power of a court, independently of this chapter, to
33 compel the production of corporate records for examination.

34 5. The articles or bylaws of a religious corporation may
35 limit or abolish the right of a member under this section to

1 inspect and copy any corporate record.

2 6. A corporation may, within ten business days after
3 receiving a demand for inspection of a membership list under
4 section 504.711 or subsection 2 of this section, respond to
5 the demand with a written proposal offering a reasonable
6 alternative to the demand for inspection that will achieve the
7 purpose of the demand without providing access to or a copy of
8 the membership list. A proposal offering an alternative that
9 reasonably and in a timely manner accomplishes a proper
10 purpose identified in a demand for inspection shall be
11 considered to offer a reasonable alternative. A proposal for
12 a reasonable alternative that has been accepted by the person
13 making the demand for inspection shall cease to be considered
14 a reasonable alternative if the terms of the proposal are not
15 carried out by the corporation within a reasonable time after
16 acceptance of the proposal. For the purposes of this
17 subsection, a reasonable alternative may include, but is not
18 limited to, a communication prepared by a member and mailed by
19 the corporation at the expense of the member.

20 Sec. 169. NEW SECTION. 504.1603 SCOPE OF INSPECTION
21 RIGHT.

22 1. A member's agent or attorney has the same inspection
23 and copying rights as the member the agent or attorney
24 represents.

25 2. The right to copy records under section 504.1602
26 includes, if reasonable, the right to receive copies made by
27 photographic, xerographic, or other means.

28 3. The corporation may impose a reasonable charge,
29 covering the costs of labor and material, for copies of any
30 documents provided to the member. The charge shall not exceed
31 the estimated cost of production or reproduction of the
32 records.

33 4. The corporation may comply with a member's demand to
34 inspect the record of members under section 504.1602,
35 subsection 2, paragraph "c", by providing the member with a

1 list of its members that was compiled no earlier than the date
2 of the member's demand.

3 Sec. 170. NEW SECTION. 504.1604 COURT-ORDERED
4 INSPECTION.

5 1. If a corporation does not allow a member who complies
6 with section 504.1602, subsection 1, to inspect and copy any
7 records required by that subsection to be available for
8 inspection, the district court in the county where the
9 corporation's principal office is located or, if none is
10 located in this state, where its registered office is located,
11 may summarily order inspection and copying of the records
12 demanded at the corporation's expense upon application of the
13 member.

14 2. If a corporation does not within a reasonable time
15 allow a member to inspect and copy any other records, or
16 propose a reasonable alternative to such inspection and
17 copying, the member who complies with section 504.1602,
18 subsections 2 and 3, may apply to the district court in the
19 county where the corporation's principal office is located or,
20 if none is located in this state, where its registered office
21 is located, for an order to permit inspection and copying of
22 the records demanded. The court shall dispose of an
23 application under this subsection on an expedited basis.

24 3. If the court orders inspection and copying of the
25 records demanded or other relief deemed appropriate by the
26 court, it shall also order the corporation to pay the member's
27 costs, including reasonable attorney fees incurred, to obtain
28 the order unless the corporation proves that it refused
29 inspection in good faith because it had a reasonable basis for
30 doubt about the right of the member to inspect the records
31 demanded.

32 4. If the court orders inspection and copying of the
33 records demanded or other relief deemed appropriate by the
34 court, it may impose reasonable restrictions on the use or
35 distribution of the records by the demanding member.

1 Sec. 171. NEW SECTION. 504.1605 LIMITATIONS ON USE OF
2 CORPORATE RECORDS.

3 Without consent of the board, no corporate record may be
4 obtained or used by any person for any purpose unrelated to a
5 member's interest as a member. Without limiting the
6 generality of the foregoing, without the consent of the board,
7 corporate records including, without limitation, a membership
8 list or any part thereof, shall not be used for any of the
9 following:

- 10 1. To solicit money or property unless such money or
11 property will be used solely to solicit the votes of the
12 members in an election to be held by the corporation.
- 13 2. For any commercial purpose.
- 14 3. For sale to or purchase by any person.
- 15 4. For any purpose that is detrimental to the interests of
16 the corporation.

17 Sec. 172. NEW SECTION. 504.1606 INSPECTION OF RECORDS BY
18 DIRECTORS.

19 1. A director of a corporation is entitled to inspect and
20 copy the books, records, and documents of the corporation at
21 any reasonable time to the extent reasonably related to the
22 performance of the director's duties as a director, including
23 duties as a member of a committee, but not for any other
24 purpose or in any manner that would violate any duty to the
25 corporation.

26 2. The district court of the county where the
27 corporation's principal office, or if none in this state, its
28 registered office, is located may order inspection and copying
29 of the books, records, and documents at the corporation's
30 expense, upon application of a director who has been refused
31 such inspection rights, unless the corporation establishes
32 that the director is not entitled to such inspection rights.
33 The court shall dispose of an application under this
34 subsection on an expedited basis.

35 3. If an order is issued, the court may include provisions

1 protecting the corporation from undue burden or expense, and
2 prohibiting the director from using information obtained upon
3 exercise of the inspection rights in a manner that would
4 violate a duty to the corporation, and may also order the
5 corporation to reimburse the director for the director's
6 costs, including reasonable counsel fees, incurred in
7 connection with the application.

8 PART 2
9 REPORTS

10 Sec. 173. NEW SECTION. 504.1611 FINANCIAL STATEMENTS FOR
11 MEMBERS.

12 1. Except as provided in the articles or bylaws of a
13 religious corporation, a corporation upon written demand from
14 a member shall furnish that member the corporation's latest
15 annual financial statements, which may be consolidated or
16 combined statements of the corporation and one or more of its
17 subsidiaries or affiliates, as appropriate, that include a
18 balance sheet as of the end of the fiscal year and a statement
19 of operations for that year.

20 2. If annual financial statements are reported upon by a
21 public accountant, the accountant's report must accompany
22 them.

23 Sec. 174. NEW SECTION. 504.1612 REPORT OF
24 INDEMNIFICATION TO MEMBERS.

25 If a corporation indemnifies or advances expenses to a
26 director under section 504.852, 504.853, 504.854, or 504.855
27 in connection with a proceeding by or in the right of the
28 corporation, the corporation shall report the indemnification
29 or advance in writing to the members with or before the notice
30 of the next meeting of members.

31 Sec. 175. NEW SECTION. 504.1613 BIENNIAL REPORT FOR
32 SECRETARY OF STATE.

33 1. Each domestic corporation, and each foreign corporation
34 authorized to transact business in this state, shall deliver
35 to the secretary of state for filing a biennial report on a

1 form prescribed and furnished by the secretary of state that
2 sets forth all of the following:

3 a. The name of the corporation and the state or country
4 under whose law it is incorporated.

5 b. The address of the corporation's registered office and
6 the name of the corporation's registered agent at that office
7 in this state, together with the consent of any new registered
8 agent.

9 c. The address of the corporation's principal office.

10 d. The names and addresses of the president, secretary,
11 treasurer, and one member of the board of directors.

12 e. A brief description of the nature of the corporation's
13 activities.

14 f. Whether or not the corporation has members.

15 2. The information in the biennial report must be current
16 on the date the biennial report is executed on behalf of the
17 corporation.

18 3. The first biennial report shall be delivered to the
19 secretary of state between January 1 and April 1 of the first
20 odd-numbered year following the calendar year in which a
21 domestic corporation was incorporated or a foreign corporation
22 was authorized to transact business. Subsequent biennial
23 reports must be delivered to the secretary of state between
24 January 1 and April 1 of the following odd-numbered calendar
25 years.

26 4. a. If a biennial report does not contain the
27 information required by this section, the secretary of state
28 shall promptly notify the reporting domestic or foreign
29 corporation in writing and return the report to the
30 corporation for correction.

31 b. A filing fee for the biennial report shall be
32 determined by the secretary of state.

33 c. For purposes of this section, each biennial report
34 shall contain information related to the two-year period
35 immediately preceding the calendar year in which the report is

1 filed.

2 5. The secretary of state may provide for the change of
3 registered office or registered agent on the form prescribed
4 by the secretary of state for the biennial report, provided
5 that the form contains the information required in section
6 504.502 or 504.508. If the secretary of state determines that
7 a biennial report does not contain the information required by
8 this section but otherwise meets the requirements of section
9 504.502 or 504.508 for the purpose of changing the registered
10 office or registered agent, the secretary of state shall file
11 the statement of change of registered office or registered
12 agent, effective as provided in section 504.114, before
13 returning the biennial report to the corporation as provided
14 in this section. A statement of change of registered office
15 or agent pursuant to this subsection shall be executed by a
16 person authorized to execute the biennial report.

17 SUBCHAPTER XVII

18 TRANSITION PROVISIONS

19 Sec. 176. NEW SECTION. 504.1701 APPLICATION TO EXISTING
20 DOMESTIC CORPORATIONS.

21 1. A domestic corporation that is incorporated under
22 chapter 504A is subject to this chapter beginning on July 1,
23 2005.

24 2. Prior to July 1, 2005, only the following corporations
25 are subject to the provisions of this chapter:

26 a. A corporation formed on or after January 1, 2005.

27 b. A corporation incorporated under chapter 504A, that
28 voluntarily elects to be subject to the provisions of this
29 chapter, in accordance with the procedures set forth in
30 subsection 3.

31 3. A corporation incorporated under chapter 504A may
32 voluntarily elect to be subject to the provisions of this
33 chapter by doing all of the following:

34 a. The corporation shall amend or restate its articles of
35 incorporation to indicate that the corporation voluntarily

1 elects to be subject to the provisions of this chapter.

2 b. The corporation shall deliver a copy of the amended or
3 restated articles of incorporation to the secretary of state
4 for filing and recording in the office of the secretary of
5 state.

6 4. After the amended or restated articles of incorporation
7 have been filed with the secretary of state all of the
8 following shall occur:

9 a. The corporation shall be subject to all provisions of
10 this chapter.

11 b. The secretary of state shall issue a certificate of
12 filing of the corporation's amended or restated articles of
13 incorporation indicating that the corporation has made a
14 voluntary election to be subject to the provisions of this
15 chapter and shall deliver the certificate to the corporation
16 or to the corporation's representative.

17 c. The secretary of state shall not file the amended or
18 restated articles of incorporation of a corporation pursuant
19 to this subsection unless at the time of filing the
20 corporation is validly organized under the chapter under which
21 it is incorporated, and has filed all biennial reports that
22 are required and paid all fees that are due in connection with
23 such reports.

24 5. The voluntary election of a corporation to be subject
25 to the provisions of this chapter that is made pursuant to
26 this section does not affect any right accrued or established,
27 or any liability or penalty incurred by the corporation
28 pursuant to the chapter under which the corporation was
29 organized prior to such voluntary election.

30 Sec. 177. NEW SECTION. 504.1702 APPLICATION TO QUALIFIED
31 FOREIGN CORPORATIONS.

32 A foreign corporation authorized to transact business in
33 this state prior to January 1, 2005, is subject to this
34 chapter beginning on July 1, 2005, but is not required to
35 obtain a new certificate of authority to transact business

1 under this chapter.

2 Sec. 178. NEW SECTION. 504.1703 SAVINGS PROVISIONS.

3 1. Except as provided in subsection 2, the repeal of a
4 statute by this Act does not affect any of the following:

5 a. The operation of the statute or any action taken under
6 it before its repeal.

7 b. Any ratification, right, remedy, privilege, obligation,
8 or liability acquired, accrued, or incurred under the statute
9 before its repeal.

10 c. Any violation of the statute or any penalty,
11 forfeiture, or punishment incurred because of the violation,
12 before its repeal.

13 d. Any proceeding, reorganization, or dissolution
14 commenced under the statute before its repeal, and the
15 proceeding, reorganization, or dissolution may be completed in
16 accordance with the statute as if it had not been repealed.

17 2. If a penalty or punishment imposed for violation of a
18 statute repealed by this Act is reduced by this chapter, the
19 penalty or punishment, if not already imposed, shall be
20 imposed in accordance with this chapter.

21 Sec. 179. NEW SECTION. 504.1704 SEVERABILITY.

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

28 Sec. 180. NEW SECTION. 504.1705 PUBLIC BENEFIT, MUTUAL
29 BENEFIT, AND RELIGIOUS CORPORATIONS.

30 Each domestic corporation shall be designated a public
31 benefit, mutual benefit, or religious corporation as follows:

32 1. A corporation designated by statute as a public benefit
33 corporation, a mutual benefit corporation, or a religious
34 corporation is deemed to be the type of corporation designated
35 by that statute.

1 2. A corporation that does not come within subsection 1
2 but is organized primarily or exclusively for religious
3 purposes is a religious corporation.

4 3. A corporation that does not come within subsection 1 or
5 2 but which is recognized as exempt under section 501(c)(3) of
6 the Internal Revenue Code, or any successor section, is a
7 public benefit corporation.

8 4. A corporation that does not come within subsection 1,
9 2, or 3, but which is organized for a public or charitable
10 purpose and which upon dissolution must distribute its assets
11 to a public benefit corporation, the United States, a state,
12 or a person recognized as exempt under section 501(c)(3) of
13 the Internal Revenue Code, or any successor section, is a
14 public benefit corporation.

15 5. A corporation that does not come within subsection 1,
16 2, 3, or 4 is a mutual benefit corporation.

17 Sec. 181. Section 15E.64, subsection 2, unnumbered
18 paragraph 1, Code 2003, is amended to read as follows:

19 To facilitate the organization of an Iowa capital
20 investment corporation, both of the following persons shall
21 serve as incorporators as provided in section 504.201 or
22 504A.28, as applicable:

23 Sec. 182. Section 230A.12, unnumbered paragraph 1, Code
24 Supplement 2003, is amended to read as follows:

25 Each community mental health center established or
26 continued in operation pursuant to section 230A.3, shall be
27 organized under the Iowa nonprofit corporation Act appearing
28 as chapter 504A, Code and Code Supplement 2003, except that a
29 community mental health center organized after January 1,
30 2005, and a community mental health center continued in
31 operation after July 1, 2005, shall be organized under the
32 revised Iowa nonprofit corporation Act appearing as chapter
33 504, and except that a community mental health center
34 organized under former chapter 504 prior to July 1, 1974, and
35 existing under the provisions of chapter 504, Code 1989, shall

1 not be required by this chapter to adopt the Iowa nonprofit
2 corporation Act or the revised Iowa nonprofit corporation Act
3 if it is not otherwise required to do so by law. The board of
4 directors of each such community mental health center shall
5 enter into an agreement with the county or affiliated counties
6 which are to be served by the center, which agreement shall
7 include but need not be limited to the period of time for
8 which the agreement is to be in force, what services the
9 center is to provide for residents of the county or counties
10 to be served, standards the center is to follow in determining
11 whether and to what extent persons seeking services from the
12 center shall be considered able to pay the cost of the
13 services received, and policies regarding availability of the
14 center's services to persons who are not residents of the
15 county or counties served by the center. The board of
16 directors, in addition to exercising the powers of the board
17 of directors of a nonprofit corporation may:

18 Sec. 183. Section 490.401, subsection 2, paragraph b, Code
19 2003, is amended to read as follows:

20 b. A corporate name reserved or registered under section
21 490.402, 490.403, 504.402, or 504A.7.

22 Sec. 184. Section 497.22, unnumbered paragraph 1, Code
23 2003, is amended to read as follows:

24 ~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84
25 apply to a cooperative association organized under this
26 chapter in the same manner as those sections apply to a
27 corporation organized under chapter 504 or 504A. In addition
28 to the information required to be set forth in the biennial
29 report under section 504.1613 or 504A.83, the cooperative
30 association shall also set forth the total amount of business
31 transacted, number of members, total expense of operation,
32 total amount of indebtedness, and total profits or losses for
33 each calendar or fiscal year of the two-year period which
34 ended immediately preceding the first day of January of the
35 year in which the report is filed.

1 Sec. 185. Section 498.24, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 ~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84
4 apply to a cooperative association organized under this
5 chapter in the same manner as those sections apply to a
6 corporation organized under chapter 504 or 504A. In addition
7 to the information required to be set forth in the biennial
8 report under section 504.1613 or 504A.83, the cooperative
9 association shall also set forth the total amount of business
10 transacted, number of members, total expense of operation,
11 total amount of indebtedness, and total profits or losses for
12 each calendar or fiscal year of the two-year period which
13 ended immediately preceding the first day of January of the
14 year in which the report is filed.

15 Sec. 186. Section 499.49, Code 2003, is amended to read as
16 follows:

17 499.49 BIENNIAL REPORT.

18 ~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84
19 apply to a cooperative organized under this chapter in the
20 same manner as those sections apply to a corporation organized
21 under chapter 504 or 504A. In addition to the information
22 required to be set forth in the biennial report under section
23 504.1613 or 504A.83, the cooperative shall also set forth the
24 number of members of the cooperative, the percentage of the
25 cooperative's business done with or for its own members during
26 each of the fiscal or calendar years of the preceding two-year
27 period, the percentage of the cooperative's business done with
28 or for each class of nonmembers specified in section 499.3,
29 and any other information deemed necessary by the secretary of
30 state to advise the secretary whether the cooperative is
31 actually functioning as a cooperative.

32 Sec. 187. Section 504A.102, Code 2003, is amended to read
33 as follows:

34 504A.102 FARM AID ASSOCIATIONS -- TERMINATION AND ELECTION
35 TO BE GOVERNED UNDER THE IOWA NONPROFIT CORPORATION ACT OR

1 REVISED IOWA NONPROFIT CORPORATION ACT.

2 1. TERMINATION. A corporation incorporated and governed
3 under chapter 176 as an association organized under chapter
4 176 prior to July 1, 2005, that is not governed as a
5 corporation under this chapter ~~on~~ before January 1, 2005,
6 or under chapter 504 on or after January 1, 2005, but prior to
7 June 30, 2005, as provided in this section is terminated on
8 July 1, 2005.

9 2. ELECTION PROCEDURE. A corporation incorporated and
10 governed under chapter 176 as an association organized under
11 chapter 176 prior to July 1, 2005, may elect to be governed as
12 a corporation under this chapter prior to January 1, 2005, or
13 under chapter 504 on or after January 1, 2005, but prior to
14 July 1, 2005. The association governed under chapter 176
15 shall be a corporation governed under this chapter or chapter
16 504 by complying with all of the following requirements:

17 a. The adoption of a resolution or resolutions at a
18 meeting of the board of directors upon receiving the vote of a
19 majority of the directors in office and of the members of the
20 association in the same manner as provided in section 504A.35
21 or 504.1003. The resolution or resolutions shall recite that
22 the association voluntarily elects to be governed as a
23 corporation under this chapter. The resolution must designate
24 the address of the association's initial registered office and
25 the name of the association's registered agent or agents at
26 that office, if any.

27 b. The adoption of articles of incorporation in compliance
28 with section 504A.29 or 504.202 at a meeting of the board of
29 directors upon receiving the vote of a majority of the
30 directors in office and of the members of the association in
31 the same manner as provided in section 504A.35 or 504.1003.
32 The articles of incorporation may be a restatement,
33 substitution, or amendment of articles of incorporation
34 adopted by the association pursuant to section 176.3. The
35 articles of incorporation may be made part of the resolution

1 or resolutions adopted by the association pursuant to
2 paragraph "a" of this subsection.

3 c. Upon the adoption of a resolution or resolutions and
4 articles of incorporation as provided in paragraphs "a" and
5 "b" of this subsection, the president or vice president and
6 secretary or an assistant secretary shall execute an
7 instrument of verification. The instrument of verification
8 shall certify all of the following:

9 (1) The association name as provided in the association's
10 articles of incorporation pursuant to section 176.3 and the
11 new corporation's corporate name, if different, as provided in
12 section 504A.6 or 504.401.

13 (2) An identification of each resolution adopted under
14 paragraph "a" of this subsection, including the date of each
15 resolution's adoption, and a recitation that each resolution
16 and the articles of incorporation for the new corporation are
17 filed with the office of secretary of state.

18 (3) The address of the new corporation's registered office
19 and the name of the new corporation's registered agent as
20 provided in section 504A.8 or 504.501.

21 d. All of the following shall be delivered to the office
22 of the secretary of state for filing and recording as provided
23 in section 504A.30 or 504.111:

24 (1) Each resolution adopted pursuant to paragraph "a" of
25 this subsection.

26 (2) The new corporation's articles of incorporation
27 adopted pursuant to paragraph "b" of this subsection.

28 (3) The instrument of verification that is executed
29 pursuant to paragraph "c" of this subsection.

30 3. CERTIFICATE OF INCORPORATION. Upon For an association
31 electing to be governed under this chapter prior to January 1,
32 2005, upon filing of the resolution or resolutions, the
33 articles of incorporation, and the instrument of verification
34 as provided in subsection 2, the office of secretary of state
35 shall issue a certificate of incorporation and send the

1 certificate to the corporation or its representative as
2 provided in section 504A.30. For an association electing to
3 be governed under chapter 504 on or after January 1, 2005, but
4 prior to July 1, 2005, unless a delayed effective date is
5 specified, the corporate existence begins when the articles of
6 incorporation are filed as provided in section 504.203.

7 4. LIABILITIES AND RIGHTS PRIOR TO THE ELECTION. An
8 association's election to be governed as a corporation under
9 this chapter or chapter 504 does not affect any right accrued
10 or established, or any liability or penalty incurred, under
11 the provisions of chapter 176, prior to filing of the
12 resolution or resolutions, articles of incorporation, and
13 instrument of verification by the association as provided in
14 subsection 2.

15 5. REPEAL. This section is repealed on July 1, 2005.

16 Sec. 188. Section 534.501, subsection 4, Code 2003, is
17 amended to read as follows:

18 4. AMENDMENT PROCEDURE. The procedure for amending
19 articles of incorporation or adopting restated articles for
20 mutual associations is that specified in section 504A.35 or
21 chapter 504, subchapter 10, as applicable, and for stock
22 associations it is that specified in section 490.726 and
23 sections 490.1002 through 490.1005.

24 Sec. 189. Section 602.8102, subsection 70, Code Supplement
25 2003, is amended to read as follows:

26 70. Certify a copy of a decree of dissolution of a
27 nonprofit corporation to the secretary of state and the
28 recorder in the county in which the corporation is located as
29 provided in section 504A.62 or 504.1434, as applicable.

30 Sec. 190. Sections 504A.1 through 504A.102, Code 2005, are
31 repealed effective July 1, 2005.

32 Sec. 191. CODE EDITOR DIRECTIVE. After July 1, 2005, the
33 Code editor is directed to remove Code references to chapter
34 504A as required due to the July 1, 2005, repeal of sections
35 504A.1 through 504A.102 by this Act.

1 members, resignation of members, termination, expulsion, or
2 suspension of members, purchase of memberships, derivative
3 suits, and delegates having some or all of the authority of
4 members.

5 Subchapter VII provides for annual and regular meetings,
6 special meetings, court-ordered meetings, action by written
7 consent, notice of meetings, waiver of notice, record dates,
8 determination of members entitled to notice and vote, action
9 by written ballot, a members' list for a meeting, voting
10 entitlement generally, quorum requirements, voting
11 requirements, proxies, cumulative voting for directors, other
12 methods of electing directors, a corporation's acceptance of
13 votes, and voting agreements.

14 Subchapter VIII provides for requirements for and duties of
15 the board of directors, qualifications of directors, number of
16 directors, election, designation, and appointment of
17 directors, terms of directors, staggered terms for directors,
18 resignation of directors, removal of directors elected by
19 members or directors, removal of designated or appointed
20 directors, removal of directors by judicial proceeding,
21 vacancy on the board of directors, compensation of directors,
22 regular and special meetings of the board, action without a
23 meeting of the board, call and notice of a meeting of the
24 board, waiver of notice of a meeting of the board, quorum and
25 voting at a meeting of the board, committees of the board,
26 general standards for directors, director conflicts of
27 interest, loans to or guarantees for directors and officers,
28 liability for unlawful distributions, required officers,
29 duties and authority of officers, standards of conduct for
30 officers, resignation and removal of officers, contract rights
31 of officers, officers' authority to execute documents,
32 authority of a nonprofit corporation to indemnify, mandatory
33 indemnification, advances for expenses of a director, court-
34 ordered indemnification, determination and authorization of
35 indemnification, indemnification of officers, employees, and

1 agents of the nonprofit corporation, and insurance purchased
2 and maintained by the nonprofit corporation.

3 Subchapter IX provides for personal liability and
4 limitations to the personal liability of a director, officer,
5 member, or volunteer of a nonprofit corporation.

6 Subchapter X provides for the authority to amend articles
7 of incorporation, amendment of the articles of incorporation
8 by the directors, amendment of the articles of incorporation
9 by directors and members, class voting by members on
10 amendments of the articles of incorporation, articles of
11 amendment, restated articles of incorporation, amendments of
12 the articles of incorporation pursuant to judicial
13 reorganization, effect of amendment and restatement, amendment
14 of the bylaws by directors, amendment of the bylaws by
15 directors and members, class voting by members on amendments
16 of the bylaws, approval of amendments of the bylaws and
17 articles of incorporation by third persons, and amendments
18 terminating members or redeeming or canceling memberships.

19 Subchapter XI provides for the approval of a plan of
20 merger, limitations on mergers by public benefit or religious
21 corporations, action on a merger plan by the board of
22 directors, members, and third persons, articles of merger,
23 effects of a merger, merger with a foreign corporation, and
24 bequests, devises, and gifts to a corporation involved in a
25 merger and conversion of a corporation to a mutual insurance
26 company.

27 Subchapter XII provides for the sale of assets in the
28 regular course of activities and mortgage of assets and the
29 sale of assets other than in the regular course of activities
30 by nonprofit corporations.

31 Subchapter XIII provides for prohibited distributions and
32 authorized distributions by nonprofit corporations.

33 Subchapter XIV provides for dissolution by incorporators or
34 directors and third persons, dissolution by directors,
35 members, and third persons, articles of dissolution,

1 revocation of dissolution, effects of dissolution, known
2 claims against a dissolved corporation, unknown claims against
3 a dissolved corporation, grounds for administrative
4 dissolution, procedure for and effect of administrative
5 dissolution, reinstatement following administrative
6 dissolution, appeal from denial of reinstatement, grounds for
7 judicial dissolution, procedure for judicial dissolution,
8 receivership or custodianship, decrees of dissolution, and
9 depositing assets with the treasurer of state.

10 Subchapter XV provides for requiring an authority to
11 transact business, consequences of transacting business
12 without authority, an application for a certificate of
13 authority, an amended certificate of authority, the corporate
14 name of a foreign corporation, the registered office and
15 registered agent of a foreign corporation, change of a
16 registered office of a registered agent of a foreign
17 corporation, the resignation of a registered agent of a
18 foreign corporation, service on a foreign corporation, the
19 withdrawal of a foreign corporation, grounds for revocation of
20 a certificate of authority, the procedure and effect of
21 revocation of a certificate of authority, and appeal from a
22 revocation of a certificate of authority.

23 Subchapter XVI provides for corporate records, the
24 inspection of corporate records by members, the scope of
25 inspection rights, court-ordered inspections, financial
26 statements of a corporation upon demand by members, and a
27 biennial report for the secretary of state.

28 Subchapter XVII provides for the application of new Code
29 chapter 504A to existing corporations and qualified foreign
30 corporations, savings provisions, severability, and the
31 designation of public benefit, mutual benefit, and religious
32 corporations.

33 The bill provides conforming amendments.

34 Code section 504A.102 relating to farm aid associations is
35 amended to provide that any liabilities or rights of a farm

1 aid association that exist prior to the association's election
2 to be governed as a corporation under chapter 504A continue
3 after the July 1, 2005, repeal of other transition provisions
4 relating to farm aid associations.

5 The bill takes effect July 1, 2004, and is applicable to
6 new corporations incorporated after January 1, 2005.

7 Corporations incorporated under Code chapter 504A are subject
8 to new Code chapter 504, the revised Iowa nonprofit
9 corporation Act, created in the bill, beginning on July 1,
10 2005. All corporations that are or become subject to this
11 bill on July 1, 2005, must be designated as a public benefit,
12 mutual benefit, or religious corporation on July 1, 2005.

13 Sections 504A.1 through 504A.102, contained in Code chapter
14 504A, the Iowa nonprofit corporation Act, are repealed on July
15 1, 2005.

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HOUSE FILE 2453

H-8270

- 1 Amend House File 2453 as follows:
- 2 1. Page 2, line 23, by striking the figure
- 3 "504A.503" and inserting the following: "504.503".
- 4 2. Page 5, line 35, by striking the figures and
- 5 word "504.503 and 504.1510" and inserting the
- 6 following: "504.504, 504.1510, and 504.1613".
- 7 3. Page 7, by striking lines 18 through 21 and
- 8 inserting the following:
- 9 "c. That all fees have been paid."
- 10 4. Page 11, line 11, by striking the figures and
- 11 word "6 or 7" and inserting the following: "VI or
- 12 VII".
- 13 5. Page 17, line 5, by striking the word "Each"
- 14 and inserting the following: "An".
- 15 6. Page 30, line 17, by striking the word
- 16 "therefore" and inserting the following: "therefor".
- 17 7. Page 46, line 9, by inserting after the word
- 18 "appointment" the following: "form".
- 19 8. Page 74, line 23, by striking the word
- 20 "director," and inserting the following: "director
- 21 or".
- 22 9. Page 128, by striking lines 12 and 13.
- 23 10. Page 128, line 14, by striking the letter
- 24 "f." and inserting the following: "e."
- 25 11. Page 129, line 6, by striking the figure
- 26 "504.508" and inserting the following: "504.503".
- 27 12. Page 129, line 9, by striking the figure
- 28 "504.508" and inserting the following: "504.503".
- 29 13. Page 131, line 30, by striking the word
- 30 "Each" and inserting the following: "For the purposes
- 31 of this chapter, each".
- 32 14. Page 131, line 30, by striking the word
- 33 "designated" and inserting the following: "deemed".
- 34 15. Page 135, line 25, by striking the words "or
- 35 agents".
- 36 16. Page 137, by striking lines 30 and 31, and
- 37 inserting the following:
- 38 "Sec. ____ Chapter 504A, Code 2005, is repealed
- 39 effective July 1, 2005."

By MADDOX of Polk

H-8270 FILED MARCH 18, 2004

Maddox, Ch.
Dennis
Jochum

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HSB664
JUDICIARY

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MADDOX)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the revised Iowa nonprofit corporation Act and
2 providing penalties and effective and applicability dates.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUBCHAPTER I
GENERAL PROVISIONS

PART 1

SHORT TITLE AND APPLICATIONS

Section 1. NEW SECTION. 504.101A SHORT TITLE.

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

Sec. 2. NEW SECTION. 504.101B 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.

PART 2

FILING DOCUMENTS

Sec. 3. NEW SECTION. 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 subchapter. 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:

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

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

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

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

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

17 9. The document must be delivered to the office of the
18 secretary of state for filing. Delivery may be made by
19 electronic transmission if and to the extent permitted by the
20 secretary of state. If it is filed in typewritten or printed
21 form and not transmitted electronically, the secretary of
22 state may require one exact or conformed copy to be delivered
23 with the document, except as provided in sections 504A.503 and
24 504.1509.

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

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

32 Sec. 4. NEW SECTION. 504.112 FORMS.

33 1. The secretary of state may prescribe and furnish on
34 request, forms for an application for a certificate of
35 existence, a foreign corporation's application for a

1 certificate of authority to transact business in this state, a
 2 foreign corporation's application for a certificate of
 3 withdrawal, and the biennial report. If the secretary of
 4 state so requires, use of these forms is mandatory.

5 2. The secretary of state may prescribe and furnish on
 6 request forms for other documents required or permitted to be
 7 filed by this chapter but their use is not mandatory.

8 Sec. 5. NEW SECTION. 504.113 FILING, SERVICE, AND
 9 COPYING FEES.

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

14 DOCUMENT	FEE
15 a. Articles of incorporation	\$ _____
16 b. Application for use of indistinguishable 17 name	\$ _____
18 c. Application for reserved name	\$ _____
19 d. Notice of transfer of reserved name	\$ _____
20 e. Application for registered name	\$ _____
21 f. Application for renewal of registered name ...	\$ _____
22 g. Corporation's statement of change of 23 registered agent or registered office or both	\$ _____
24 h. Agent's statement of change of registered 25 office for each affected corporation not to 26 exceed a total of _____	\$ _____
27 i. Agent's statement of resignation	no fee
28 j. Amendment of articles of incorporation	\$ _____
29 k. Restatement of articles of incorporation 30 with amendments	\$ _____
31 l. Articles of merger	\$ _____
32 m. Articles of dissolution	\$ _____
33 n. Articles of revocation of dissolution	\$ _____
34 o. Certificate of administrative dissolution	\$ _____
35 p. Application for reinstatement following	

- 1 administrative dissolution \$ _____
- 2 q. Certificate of reinstatement no fee
- 3 r. Certificate of judicial dissolution no fee
- 4 s. Application for certificate of authority \$ _____
- 5 t. Application for amended certificate of
- 6 authority \$ _____
- 7 u. Application for certificate of withdrawal \$ _____
- 8 v. Certificate of revocation of authority
- 9 to transact business no fee
- 10 w. Biennial report \$ _____
- 11 x. Articles of correction \$ _____
- 12 y. Application for certificate of existence
- 13 or authorization \$ _____
- 14 z. Any other document required or permitted
- 15 to be filed by this Act \$ _____

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

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

24 Sec. 6. NEW SECTION. 504.114 EFFECTIVE DATE OF DOCUMENT.

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

27 a. At the date and time of filing, as evidenced by such
 28 means as the secretary of state may use for the purpose of
 29 recording the date and time of filing.

30 b. At the time specified in the document as its effective
 31 time on the date it is filed.

32 2. A document may specify a delayed effective time and
 33 date, and if it does so the document becomes effective at the
 34 time and date specified. If a delayed effective date but no
 35 time is specified, the document is effective at the close of

1 business on that date. A delayed effective date for a
2 document shall not be later than the ninetieth day after the
3 date filed.

4 Sec. 7. NEW SECTION. 504.115 CORRECTING FILED DOCUMENT.

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

8 a. The document contains an inaccuracy.

9 b. The document was defectively executed, attested,
10 sealed, verified, or acknowledged.

11 c. The electronic transmission was defective.

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

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

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

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

18 (3) Correct the incorrect statement or defective
19 execution.

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

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

27 Sec. 8. NEW SECTION. 504.116 FILING DUTY OF SECRETARY OF
28 STATE.

29 1. If a document delivered to the office of the secretary
30 of state for filing satisfies the requirements of section
31 504.111, the secretary of state shall file it.

32 2. The secretary of state files a document by recording
33 the document as filed on the date and the time of receipt.

34 After filing a document, except as provided in sections
35 504.503 and 504.1510, the secretary of state shall deliver to

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1 the domestic or foreign corporation or its representative a
2 copy of the document with an acknowledgment of the date and
3 time of filing.

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

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

11 a. Affect the validity or invalidity of the document in
12 whole or in part.

13 b. Relate to the correctness or incorrectness of
14 information contained in the document.

15 c. Create a presumption that the document is valid or
16 invalid or that information contained in the document is
17 correct or incorrect.

18 Sec. 9. NEW SECTION. 504.117 APPEAL FROM SECRETARY OF
19 STATE'S REFUSAL TO FILE DOCUMENT.

20 1. If the secretary of state refuses to file a document
21 delivered for filing to the secretary of state's office, the
22 domestic or foreign corporation may appeal the refusal to the
23 district court in the county where the corporation's principal
24 office, or if there is none in this state, its registered
25 office, is or will be located. The appeal is commenced by
26 petitioning the court to compel filing the document and by
27 attaching to the petition the document and the secretary of
28 state's explanation of the refusal to file.

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

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

34 Sec. 10. NEW SECTION. 504.118 EVIDENTIARY EFFECT OF COPY
35 OF FILED DOCUMENT.

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

5 Sec. 11. NEW SECTION. 504.119 CERTIFICATE OF EXISTENCE.

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

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

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

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

18 c. That all fees, taxes, and penalties owed to this state
19 have been paid, if payment is reflected in the records of the
20 secretary of state and nonpayment affects the good standing of
21 the domestic or foreign corporation.

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

24 e. That articles of dissolution have not been filed.

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

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

31 Sec. 12. NEW SECTION. 504.120 PENALTY FOR SIGNING FALSE
32 DOCUMENT.

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

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1 filing.

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

4 PART 3

5 SECRETARY OF STATE

6 Sec. 13. NEW SECTION. 504.131 POWERS.

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

10 PART 4

11 DEFINITIONS

12 Sec. 14. NEW SECTION. 504.141 CHAPTER DEFINITIONS.

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

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

26 2. "Articles of incorporation" or "articles" includes
27 amended and restated articles of incorporation and articles of
28 merger.

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

33 4. "Bylaws" means the code or codes of rules other than
34 the articles adopted pursuant to this chapter for the
35 regulation or management of the affairs of a corporation

1 irrespective of the name or names by which such rules are
2 designated.

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

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

10 7. "Delegates" means those persons elected or appointed to
11 vote in a representative assembly for the election of a
12 director or directors or on other matters.

13 8. "Deliver" or "delivery" means any method of delivery
14 used in conventional commercial practice, including delivery
15 in person, by mail, commercial delivery, and electronic
16 transmission.

17 9. "Directors" means individuals, designated in the
18 articles or bylaws or elected by the incorporators, and their
19 successors and individuals elected or appointed by any other
20 name or title to act as members of the board.

21 10. "Distribution" means the payment of a dividend or any
22 part of the income or profit of a corporation to its members,
23 directors, or officers.

24 11. "Domestic corporation" means a corporation.

25 12. "Effective date of notice" is defined in section
26 504.142.

27 13. "Electronic transmission" or "electronically
28 transmitted" means any process of communication not directly
29 involving the physical transfer of paper that is suitable for
30 the retention, retrieval, and reproduction of information by
31 the recipient.

32 14. "Employee" does not include an officer or director of
33 a corporation who is not otherwise employed by the
34 corporation.

35 15. "Entity" includes a corporation and foreign

1 corporation; business corporation and foreign business
2 corporation; limited liability company and foreign limited
3 liability company; profit and nonprofit unincorporated
4 association; corporation sole; business trust, estate,
5 partnership, trust, and two or more persons having a joint or
6 common economic interest; and state, the United States, and
7 foreign government.

8 16. "File", "filed", or "filing" means filed in the office
9 of the secretary of state.

10 17. "Foreign corporation" means a corporation organized
11 under laws other than the laws of this state which would be a
12 nonprofit corporation if formed under the laws of this state.

13 18. "Governmental subdivision" includes an authority,
14 county, district, and municipality.

15 19. "Includes" denotes a partial definition.

16 20. "Individual" includes the estate of an incompetent
17 individual.

18 21. "Means" denotes a complete definition.

19 22. "Member" means a person who on more than one occasion,
20 pursuant to the provisions of a corporation's articles or
21 bylaws, has a right to vote for the election of a director or
22 directors of a corporation, irrespective of how a member is
23 defined in the articles or bylaws of the corporation. A
24 person is not a member because of any of the following:

- 25 a. The person's rights as a delegate.
- 26 b. The person's rights to designate a director.
- 27 c. The person's rights as a director.

28 23. "Membership" refers to the rights and obligations a
29 member or members have pursuant to a corporation's articles,
30 bylaws, and this chapter.

31 24. "Mutual benefit corporation" means a domestic or
32 foreign corporation that is required to be a mutual benefit
33 corporation pursuant to section 504.1705.

34 25. "Notice" is defined in section 504.142.

35 26. "Person" includes any individual or entity.

1 27. "Principal office" means the office in or out of this
2 state so designated in the biennial report filed pursuant to
3 section 504.1613 where the principal offices of a domestic or
4 foreign corporation are located.

5 28. "Proceeding" includes a civil suit and criminal,
6 administrative, or investigatory actions.

7 29. "Public benefit corporation" means a domestic or
8 foreign corporation that is required to be a public benefit
9 corporation pursuant to section 504.1705.

10 30. "Record date" means the date established under
11 subchapter 6 or 7 on which a corporation determines the
12 identity of its members for the purposes of this subchapter.

13 31. "Religious corporation" means a domestic or foreign
14 corporation, that engages in religious activity as one of the
15 corporation's principal purposes.

16 32. "Secretary" means the corporate officer to whom the
17 board of directors has delegated responsibility under section
18 504.841, subsection 2, for custody of the minutes of the
19 directors' and members' meetings and for authenticating the
20 records of the corporation.

21 33. "Sign" or "signature" includes a manual, facsimile,
22 conformed, or electronic signature.

23 34. "State", when referring to a part of the United
24 States, includes a state and commonwealth and their agencies
25 and governmental subdivisions, and a territory and insular
26 possession and their agencies and governmental subdivisions of
27 the United States.

28 35. "United States" includes a district, authority,
29 bureau, commission, department, and any other agency of the
30 United States.

31 36. "Vote" includes authorization by written ballot and
32 written consent.

33 37. "Voting power" means the total number of votes
34 entitled to be cast for the election of directors at the time
35 the determination of voting power is made, excluding a vote

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1 that is contingent upon the happening of a condition or event
2 that has not occurred at the time. When a class is entitled
3 to vote as a class for directors, the determination of voting
4 power of the class shall be based on the percentage of the
5 number of directors the class is entitled to elect out of the
6 total number of authorized directors.

7 Sec. 15. NEW SECTION. 504.142 NOTICE.

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

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

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

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

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

26 b. When electronically transmitted to the shareholder in a
27 manner authorized by the shareholder.

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

31 a. When received.

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

35 c. On the date shown on the return receipt, if sent by

1 registered or certified mail, return receipt requested, and
2 the receipt is signed by or on behalf of the addressee.

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

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

9 7. A written notice or report delivered as part of a
10 newsletter, magazine, or other publication regularly sent to
11 members shall constitute a written notice or report if
12 addressed or delivered to the member's address shown in the
13 corporation's current list of members, or in the case of
14 members who are residents of the same household and who have
15 the same address in the corporation's current list of members,
16 if addressed or delivered to one of such members, at the
17 address appearing on the current list of members.

18 8. Written notice is correctly addressed to a domestic or
19 foreign corporation authorized to transact business in this
20 state, other than in its capacity as a member, if addressed to
21 its registered agent or to its secretary at its principal
22 office shown in its most recent biennial report or, in the
23 case of a foreign corporation that has not yet delivered an
24 annual report, in its application for a certificate of
25 authority.

26 9. If section 504.705, subsection 2, or any other
27 provision of this chapter prescribes notice requirements for
28 particular circumstances, those requirements govern. If
29 articles or bylaws prescribe notice requirements not
30 inconsistent with this section or other provisions of this
31 chapter, those requirements govern.

32 PART 5

33 JUDICIAL RELIEF

34 Sec. 16. NEW SECTION. 504.151 JUDICIAL RELIEF.

35 1. If for any reason it is impractical or impossible for a

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1 corporation to call or conduct a meeting of its members,
2 delegates, or directors, or otherwise obtain their consent, in
3 the manner prescribed by its articles, bylaws, or this
4 chapter, then upon petition of a director, officer, delegate,
5 member, or the attorney general, the district court may order
6 that such a meeting be called or that a written ballot or
7 other form of obtaining the vote of members, delegates, or
8 directors be authorized, in such a manner as the court finds
9 fair and equitable under the circumstances.

10 2. The court shall, in an order issued pursuant to this
11 section, provide for a method of notice reasonably designed to
12 give actual notice to all persons who would be entitled to
13 notice of a meeting held pursuant to the articles, bylaws, and
14 this chapter, whether or not the method results in actual
15 notice to all such persons or conforms to the notice
16 requirements that would otherwise apply. In a proceeding
17 under this section, the court may determine who the members or
18 directors are.

19 3. An order issued pursuant to this section may dispense
20 with any requirement relating to the holding of or voting at
21 meetings or obtaining votes, including any requirement as to
22 quorums or as to the number or percentage of votes needed for
23 approval, that would otherwise be imposed by the articles,
24 bylaws, or this chapter.

25 4. Whenever practical, an order issued pursuant to this
26 section shall limit the subject matter of meetings or other
27 forms of consent authorized to items, including amendments to
28 the articles or bylaws, the resolution of which will or may
29 enable the corporation to continue managing its affairs
30 without further resort to this section; provided, however,
31 that an order under this section may also authorize the
32 obtaining of whatever votes and approvals are necessary for
33 the dissolution, merger, or sale of assets.

34 5. A meeting or other method of obtaining the vote of
35 members, delegates, or directors conducted pursuant to an

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

6 SUBCHAPTER II

7 ORGANIZATION

8 Sec. 17. NEW SECTION. 504.201 INCORPORATORS.

9 One or more persons may act as the incorporator or
10 incorporators of a corporation by delivering articles of
11 incorporation to the secretary of state for filing.

12 Sec. 18. NEW SECTION. 504.202 ARTICLES OF INCORPORATION.

13 1. The articles of incorporation shall set forth all of
14 the following:

15 a. A corporate name for the corporation that satisfies the
16 requirements of section 504.401.

17 b. The address of the corporation's initial registered
18 office and the name of its initial registered agent at that
19 office.

20 c. The name and address of each incorporator.

21 d. Whether the corporation will have members. A
22 corporation incorporated prior to January 1, 2005, may state
23 whether it will have members in either the articles of
24 incorporation or in the corporate bylaws.

25 e. For corporations incorporated after July 1, 2005,
26 provisions not inconsistent with law regarding the
27 distribution of assets on dissolution.

28 2. The articles of incorporation may set forth any of the
29 following:

30 a. The purpose for which the corporation is organized,
31 which may be, either alone or in combination with other
32 purposes, the transaction of any lawful activity.

33 b. The names and addresses of the individuals who are to
34 serve as the initial directors.

35 c. Provisions not inconsistent with law regarding all of

1 the following:

2 (1) Managing and regulating the affairs of the
3 corporation.

4 (2) Defining, limiting, and regulating the powers of the
5 corporation, its board of directors, and members, or any class
6 of members.

7 (3) The characteristics, qualifications, rights,
8 limitations, and obligations attaching to each or any class of
9 members.

10 d. A provision eliminating or limiting the liability of a
11 director to the corporation or its members for money damages
12 for any action taken, or any failure to take any action, as a
13 director, except liability for any of the following:

14 (1) The amount of a financial benefit received by a
15 director to which the director is not entitled.

16 (2) An intentional infliction of harm on the corporation
17 or its members.

18 (3) A violation of section 504.834.

19 (4) An intentional violation of criminal law.

20 A provision set forth in the articles of incorporation
21 pursuant to this paragraph shall not eliminate or limit the
22 liability of a director for an act or omission that occurs
23 prior to the date when the provision becomes effective. The
24 absence of a provision eliminating or limiting the liability
25 of a director pursuant to this paragraph shall not affect the
26 applicability of section 504.901.

27 e. A provision permitting or requiring a corporation to
28 indemnify a director for liability, as defined in section
29 504.851, subsection 5, to a person for any action taken, or
30 any failure to take any action, as a director except liability
31 for any of the following:

32 (1) Receipt of a financial benefit to which the person is
33 not entitled.

34 (2) Intentional infliction of harm on the corporation or
35 its members.

1 (3) A violation of section 504.834.

2 (4) Intentional violation of criminal law.

3 f. Any provision that under this chapter is required or
4 permitted to be set forth in the bylaws.

5 3. Each incorporator named in the articles must sign the
6 articles.

7 4. The articles of incorporation need not set forth any of
8 the corporate powers enumerated in this chapter.

9 Sec. 19. NEW SECTION. 504.203 INCORPORATION.

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

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

18 Sec. 20. NEW SECTION. 504.204 LIABILITY FOR
19 PREINCORPORATION TRANSACTIONS.

20 All persons purporting to act as or on behalf of a
21 corporation, knowing there was no incorporation under this
22 chapter, are jointly and severally liable for all liabilities
23 created while so acting.

24 Sec. 21. NEW SECTION. 504.205 ORGANIZATION OF
25 CORPORATION.

26 1. After incorporation:

27 a. If initial directors are named in the articles of
28 incorporation, the initial directors shall hold an
29 organizational meeting, at the call of a majority of the
30 directors, to complete the organization of the corporation by
31 appointing officers, adopting bylaws, and carrying on any
32 other business brought before the meeting.

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

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1 one of the following:

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

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

6 2. Action required or permitted by this chapter to be
7 taken by incorporators at an organizational meeting may be
8 taken without a meeting if the action taken is evidenced by
9 one or more written consents describing the action taken and
10 signed by each incorporator.

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

13 Sec. 22. NEW SECTION. 504.206 BYLAWS.

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

16 2. The bylaws may contain any provision for regulating and
17 managing the affairs of the corporation that is not
18 inconsistent with law or the articles of incorporation.

19 Sec. 23. NEW SECTION. 504.207 EMERGENCY BYLAWS AND
20 POWERS.

21 1. Unless the articles provide otherwise the directors of
22 a corporation may adopt, amend, or repeal bylaws to be
23 effective only in an emergency as described in subsection 4.
24 The emergency bylaws, which are subject to amendment or repeal
25 by the members, may provide special procedures necessary for
26 managing the corporation during the emergency, including all
27 of the following:

- 28 a. How to call a meeting of the board.
- 29 b. Quorum requirements for the meeting.
- 30 c. Designation of additional or substitute directors.

31 2. All provisions of the regular bylaws consistent with
32 the emergency bylaws remain effective during the emergency.
33 The emergency bylaws are not effective after the emergency
34 ends.

35 3. Corporate action taken in good faith in accordance with

1 the emergency bylaws does both of the following:

2 a. Binds the corporation.

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

5 4. An emergency exists for purposes of this section if a
6 quorum of the corporation's directors cannot readily be
7 assembled because of some catastrophic event.

8 SUBCHAPTER III

9 PURPOSES AND POWERS

10 Sec. 24. NEW SECTION. 504.301 PURPOSES.

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

14 2. A corporation engaging in an activity that is subject
15 to regulation under another statute of this state may
16 incorporate under this chapter only if incorporation under
17 this chapter is not prohibited by the other statute. The
18 corporation shall be subject to all limitations of the other
19 statute.

20 Sec. 25. NEW SECTION. 504.302 GENERAL POWERS.

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

26 1. Sue and be sued, complain, and defend in its corporate
27 name.

28 2. Have a corporate seal, which may be altered at will,
29 and to use it, or a facsimile of it, by impressing, affixing,
30 or in any other manner reproducing it.

31 3. Make and amend bylaws not inconsistent with its
32 articles of incorporation or with the laws of this state, for
33 regulating and managing the affairs of the corporation.

34 4. Purchase, receive, lease, or otherwise acquire, and
35 own, hold, improve, use, and otherwise deal with real or

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1 personal property, or any legal or equitable interest in
2 property, wherever located.

3 5. Sell, convey, mortgage, pledge, lease, exchange, and
4 otherwise dispose of all or any part of its property.

5 6. Purchase, receive, subscribe for, or otherwise acquire,
6 own, hold, vote, use, sell, mortgage, lend, pledge, or
7 otherwise dispose of, and deal in and with, shares or other
8 interests in, or obligations of, any entity.

9 7. Make contracts and guarantees, incur liabilities,
10 borrow money, issue notes, bonds, and other obligations, and
11 secure any of its obligations by mortgage or pledge of any of
12 its property, franchises, or income.

13 8. Lend money, invest and reinvest its funds, and receive
14 and hold real and personal property as security for repayment,
15 except as limited by section 504.833.

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

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

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

23 12. Pay pensions and establish pension plans, pension
24 trusts, and other benefit and incentive plans for any or all
25 of its current or former directors, officers, employees, and
26 agents.

27 13. Make donations not inconsistent with law for the
28 public welfare or for charitable, religious, scientific, or
29 educational purposes and for other purposes that further the
30 corporate interest.

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

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

35 16. Carry on a business.

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

4 Sec. 26. NEW SECTION. 504.303 EMERGENCY POWERS.

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

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

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

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

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

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

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

28 a. Binds the corporation.

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

31 4. An emergency exists for purposes of this section if a
32 quorum of the corporation's directors cannot readily be
33 assembled because of some catastrophic event.

34 Sec. 27. NEW SECTION. 504.304 ULTRA VIRES.

35 1. Except as provided in subsection 2, the validity of

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1 corporate action may not be challenged on the ground that the
2 corporation lacks or lacked power to act.

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

8 3. A corporation's power to act may be challenged in a
9 proceeding against an incumbent or former director, officer,
10 employee, or agent of the corporation. The proceeding may be
11 brought by a director, the corporation, directly,
12 derivatively, or through a receiver, a trustee or other legal
13 representative, or in the case of a public benefit
14 corporation, by the attorney general.

15 SUBCHAPTER IV

16 NAMES

17 Sec. 28. NEW SECTION. 504.401 CORPORATE NAME.

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

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

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

28 b. A corporate name reserved or registered under section
29 490.402, 490.403, 504.402, or 504.403.

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

33 3. A corporation may apply to the secretary of state for
34 authorization to use a name that is not distinguishable upon
35 the secretary of state's records from one or more of the names

1 described in subsection 2. The secretary of state shall
2 authorize use of the name applied for if either of the
3 following applies:

4 a. The other corporation consents to the use of the name
5 in writing and submits an undertaking in a form satisfactory
6 to the secretary of state to change its name to a name that is
7 distinguishable upon the records of the secretary of state
8 from the name of the applying corporation.

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

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

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

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

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

27 5. This subchapter does not control the use of fictitious
28 names; however, if a corporation or a foreign corporation uses
29 a fictitious name in this state it shall deliver to the
30 secretary of state for filing a copy of the resolution of its
31 board of directors, certified by its secretary, adopting the
32 fictitious name.

33 Sec. 29. NEW SECTION. 504.402 RESERVED NAME.

34 1. A person may reserve the exclusive use of a corporate
35 name, including a fictitious name for a foreign corporation

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1 whose corporate name is not available by delivering an
2 application to the secretary of state for filing. Upon
3 finding that the corporate name applied for is available, the
4 secretary of state shall reserve the name for the applicant's
5 exclusive use for a nonrenewable one hundred twenty-day
6 period.

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

11 Sec. 30. NEW SECTION. 504.403 REGISTERED NAME.

12 1. A foreign corporation may register its corporate name,
13 or its corporate name with any change required by section
14 504.1506, if the name is distinguishable upon the records of
15 the secretary of state from both of the following:

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

19 b. A corporate name reserved under section 490.402,
20 490.403, or 504.402, or registered under this section.

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

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

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

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

34 4. A foreign corporation whose registration is effective
35 may renew it for successive years by delivering to the

1 secretary of state for filing a renewal application which
2 complies with the requirements of subsection 2, between
3 October 1 and December 31 of the preceding year. The renewal
4 application renews the registration for the following calendar
5 year.

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

15 SUBCHAPTER V

16 OFFICE AND AGENT

17 Sec. 31. NEW SECTION. 504.501 REGISTERED OFFICE AND
18 REGISTERED AGENT.

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

21 1. A registered office with the same address as that of
22 the registered agent.

23 2. A registered agent, who may be any of the following:

24 a. An individual who resides in this state and whose
25 business office is identical with the registered office.

26 b. A domestic business or nonprofit corporation whose
27 business office is identical to the registered office.

28 c. A foreign business or nonprofit corporation authorized
29 to transact business in this state whose business office is
30 identical to the registered office.

31 Sec. 32. NEW SECTION. 504.502 CHANGE OF REGISTERED
32 OFFICE OR REGISTERED AGENT.

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

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1 following:

2 a. The name of the corporation.

3 b. If the current registered office is to be changed, the
4 address of the new registered office.

5 c. If the current registered agent is to be changed, the
6 name of the new registered agent and the new agent's written
7 consent, either on the statement or attached to it, to the
8 change.

9 d. That after the change or changes are made, the
10 addresses of its registered office and the office of its
11 registered agent will be identical.

12 2. If the address of a registered agent's business office
13 is changed, the registered agent may change the address of the
14 registered office of any corporation for which the registered
15 agent is the registered agent by notifying the corporation in
16 writing of the change and by signing, either manually or in
17 facsimile, and delivering to the secretary of state for
18 filing, a statement that complies with the requirements of
19 subsection 1 and recites that the corporation has been
20 notified of the change.

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

31 Sec. 33. NEW SECTION. 504.503 RESIGNATION OF REGISTERED
32 AGENT.

33 1. A registered agent may resign as registered agent by
34 signing and delivering to the secretary of state for filing a
35 signed original statement of resignation. The statement may

1 include a statement that the registered office is also
2 discontinued.

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

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

12 Sec. 34. NEW SECTION. 504.504 SERVICE ON CORPORATION.

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

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

23 a. The date the corporation receives the mail.

24 b. The date shown on the return receipt, if signed on
25 behalf of the corporation.

26 c. Five days after its deposit in the United States mail,
27 if mailed and correctly addressed with first class postage
28 affixed.

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

33

SUBCHAPTER VI

34

MEMBERS AND MEMBERSHIPS

35

PART 1

1 on them shall not be binding with respect to a member holding
2 a membership issued prior to the adoption of the restriction
3 unless the restriction is approved by the members and the
4 affected member.

5 Sec. 40. NEW SECTION. 504.613 MEMBER'S LIABILITY TO
6 THIRD PARTIES.

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

10 Sec. 41. NEW SECTION. 504.614 MEMBER'S LIABILITY FOR
11 DUES, ASSESSMENTS, AND FEES.

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

17 Sec. 42. NEW SECTION. 504.615 CREDITOR'S ACTION AGAINST
18 MEMBER.

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

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

31

PART 3

32

RESIGNATION AND TERMINATION

33 Sec. 43. NEW SECTION. 504.621 RESIGNATION.

34 1. A member may resign at any time.

35 2. The resignation of a member does not relieve the member

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1 from any obligations the member may have to the corporation as
2 a result of obligations incurred or commitments made prior to
3 resignation.

4 Sec. 44. NEW SECTION. 504.622 TERMINATION, EXPULSION, OR
5 SUSPENSION.

6 1. A member of a public benefit or mutual benefit
7 corporation shall not be expelled or suspended, and a
8 membership or memberships in such a corporation shall not be
9 terminated or suspended except pursuant to a procedure which
10 is fair and reasonable and is carried out in good faith.

11 2. A procedure is fair and reasonable when either of the
12 following occurs:

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

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

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

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

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

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

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

5 Sec. 45. NEW SECTION. 504.623 PURCHASE OF MEMBERSHIPS.

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

9 2. A mutual benefit corporation may purchase the
10 membership of a member who resigns or whose membership is
11 terminated for the amount and pursuant to the conditions set
12 forth in or authorized by its articles or bylaws. A payment
13 shall not be made in violation of subchapter 13.

14 PART 4

15 DERIVATIVE PROCEEDINGS

16 Sec. 46. NEW SECTION. 504.631 DERIVATIVE PROCEEDINGS --
17 DEFINITION.

18 In this part, unless the context otherwise requires,
19 "derivative proceeding" means a civil suit in the right of a
20 domestic corporation or, to the extent provided in section
21 504.638, in the right of a foreign corporation.

22 Sec. 47. NEW SECTION. 504.632 STANDING.

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

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

28 2. A director of the corporation.

29 Sec. 48. NEW SECTION. 504.633 DEMAND.

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

32 1. A written demand has been made upon the corporation to
33 take suitable action.

34 2. Ninety days have expired from the date the demand was
35 made, unless the member or director has earlier been notified

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1 that the demand has been rejected by the corporation or unless
2 irreparable injury to the corporation would result by waiting
3 for the expiration of the ninety-day period.

4 Sec. 49. NEW SECTION. 504.634 STAY OF PROCEEDINGS.

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

9 Sec. 50. NEW SECTION. 504.635 DISMISSAL.

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

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

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

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

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

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

35 b. The naming of the director as a defendant in the

1 derivative proceeding or as a person against whom action is
2 demanded.

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

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

10 a. That a majority of the board of directors did not
11 consist of independent directors at the time the determination
12 was made.

13 b. That the requirements of subsection 1 have not been
14 met.

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

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

28 6. The court may appoint a panel of one or more
29 independent persons upon motion by the corporation to make a
30 determination whether the maintenance of the derivative
31 proceeding is in the best interests of the corporation. In
32 such case, the plaintiff shall have the burden of proving that
33 the requirements of subsection 1 have not been met.

34 Sec. 51. NEW SECTION. 504.636 DISCONTINUANCE OR
35 SETTLEMENT.

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

7 Sec. 52. NEW SECTION. 504.637 PAYMENT OF EXPENSES.

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

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

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

19 Sec. 53. NEW SECTION. 504.638 APPLICABILITY TO FOREIGN
20 CORPORATIONS.

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

26 PART 5
27 DELEGATES

28 Sec. 54. NEW SECTION. 504.641 DELEGATES.

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

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

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

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

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

5 SUBCHAPTER VII

6 MEMBERS' MEETINGS AND VOTING

7 PART 1

8 MEETINGS AND ACTION WITHOUT MEETINGS

9 Sec. 55. NEW SECTION. 504.701 ANNUAL AND REGULAR
10 MEETINGS.

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

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

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

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

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

25 b. The members shall consider and act upon such other

26 matters as may be raised consistent with the notice
27 requirements of sections 504.705 and 504.713, subsection 4.

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

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

34 Sec. 56. NEW SECTION. 504.702 SPECIAL MEETING.

35 1. A corporation with members shall hold a special meeting

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1 of members when either of the following occurs:

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

4 b. Except as provided in the articles or bylaws of a
5 religious corporation, if the holders of at least five percent
6 of the voting power of any corporation sign, date, and deliver
7 to any corporate officer one or more written demands for the
8 meeting describing the purpose for which it is to be held.

9 Unless otherwise provided in the articles of incorporation, a
10 written demand for a special meeting may be revoked by a
11 writing to that effect received by the corporation prior to
12 the receipt by the corporation of demands sufficient in number
13 to require the holding of a special meeting.

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

19 3. If a notice for a special meeting demanded under
20 subsection 1, paragraph "b", is not given pursuant to section
21 504.705 within thirty days after the date the written demand
22 or demands are delivered to a corporate officer, regardless of
23 the requirements of subsection 4, a person signing the demand
24 may set the time and place of the meeting and give notice
25 pursuant to section 504.705.

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

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

34 Sec. 57. NEW SECTION. 504.703 COURT-ORDERED MEETING.

35 1. The district court of the county where a corporation's

1 principal office is located or, if none is located in this
2 state, where its registered office is located, may summarily
3 order a meeting to be held when any of the following occurs:

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

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

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

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

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

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

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

33 Sec. 58. NEW SECTION. 504.704 ACTION BY WRITTEN CONSENT.

34 1. Unless limited or prohibited by the articles or bylaws
35 of the corporation, action required or permitted by this

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1 subchapter to be approved by the members of a corporation may
2 be approved without a meeting of members if the action is
3 approved by members holding at least eighty percent of the
4 voting power. The action must be evidenced by one or more
5 written consents describing the action taken, signed by those
6 members representing at least eighty percent of the voting
7 power, and delivered to the corporation for inclusion in the
8 minutes or filing with the corporate records. A written
9 consent may be revoked by a writing to that effect received by
10 the corporation prior to the receipt by the corporation of
11 unrevoked written consents sufficient in number to take
12 corporation action.

13 2. If not otherwise determined under section 504.703 or
14 504.707, the record date for determining members entitled to
15 take action without a meeting is the date the first member
16 signs the consent under subsection 1.

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

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

25 Sec. 59. NEW SECTION. 504.705 NOTICE OF MEETING.

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

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

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

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

7 b. The notice of an annual or regular meeting includes a
8 description of any matter or matters which must be considered
9 for approval by the members under sections 504.833, 504.857,
10 504.1003, 504.1022, 504.1104, 504.1202, 504.1401, and
11 504.1402.

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

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

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

30 Sec. 60. NEW SECTION. 504.706 WAIVER OF NOTICE.

31 1. A member may waive any notice required by this
32 subchapter, the articles, or bylaws before or after the date
33 and time stated in the notice. The waiver must be in writing,
34 be signed by the member entitled to the notice, and be
35 delivered to the corporation for inclusion in the minutes or

1 filing with the corporate records.

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

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

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

12 Sec. 61. NEW SECTION. 504.707 RECORD DATE -- DETERMINING
13 MEMBERS ENTITLED TO NOTICE AND VOTE.

14 1. The bylaws of a corporation may fix or provide the
15 manner of fixing a date as the record date for determining the
16 members entitled to notice of a members' meeting. If the
17 bylaws do not fix or provide for fixing such a record date,
18 the board may fix a future date as such a record date. If a
19 record date is not fixed, members at the close of business on
20 the business day preceding the day on which notice is given,
21 or if notice is waived, at the close of business on the
22 business day preceding the day on which the meeting is held
23 are entitled to notice of the meeting.

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

32 3. The bylaws may fix or provide the manner for
33 determining a date as the record date for the purpose of
34 determining the members entitled to exercise any rights in
35 respect of any other lawful action. If the bylaws do not fix

1 or provide for fixing such a record date, the board may fix in
2 advance such a record date. If a record date is not fixed,
3 members at the close of business on the day on which the board
4 adopts the resolution relating thereto, or the sixtieth day
5 prior to the date of such other action, whichever is later,
6 are entitled to exercise such rights.

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

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

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

22 Sec. 62. NEW SECTION. 504.708 ACTION BY WRITTEN BALLOT.

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

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

29 a. Set forth each proposed action.

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

32 3. Approval by written ballot pursuant to this section
33 shall be valid only when the number of votes cast by ballot
34 equals or exceeds the quorum required to be present at a
35 meeting authorizing the action, and the number of approvals

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1 equals or exceeds the number of votes that would be required
2 to approve the matter at a meeting at which the total number
3 of votes cast was the same as the number of votes cast by
4 ballot.

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

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

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

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

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

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

21 PART 2

22 VOTING

23 Sec. 63. NEW SECTION. 504.711 MEMBERS' LIST FOR MEETING.

24 1. After fixing a record date for a notice of a meeting, a
25 corporation shall prepare an alphabetical list of the names of
26 all its members who are entitled to notice of the meeting.

27 The list must show the address of each member and number of
28 votes each member is entitled to cast at the meeting. The
29 corporation shall prepare on a current basis through the time
30 of the membership meeting a list of members, if any, who are
31 entitled to vote at the meeting, but not entitled to notice of
32 the meeting. This list shall be prepared on the same basis as
33 and be part of the list of members.

34 2. Except as set forth in section 504.1602, subsection 6,
35 the list of members must be available for inspection by any

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

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

18 4. Except as set forth in section 504.1602, subsection 6,
19 if a corporation refuses to allow a member, a member's agent,
20 or a member's attorney to inspect the list of members before
21 or at the meeting or copy the list as permitted by subsection
22 2, the district court of the county where a corporation's
23 principal office is located or, if none is located in this
24 state, where its registered office is located, on application
25 of the member, may summarily order the inspection or copying
26 of the membership list at the corporation's expense, may
27 postpone the meeting for which the list was prepared until the
28 inspection or copying is complete, and may order the
29 corporation to pay the member's costs, including reasonable
30 attorney fees incurred to obtain the order.

31 5. Unless a written demand to inspect and copy a
32 membership list has been made under subsection 2 prior to the
33 membership meeting and a corporation improperly refuses to
34 comply with the demand, refusal or failure to comply with this
35 section does not affect the validity of action taken at the

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1 meeting.

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

5 Sec. 64. NEW SECTION. 504.712 VOTING ENTITLEMENT
6 GENERALLY.

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

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

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

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

21 Sec. 65. NEW SECTION. 504.713 QUORUM REQUIREMENTS.

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

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

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

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

1 Sec. 66. NEW SECTION. 504.714 VOTING REQUIREMENTS.

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

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

11 Sec. 67. NEW SECTION. 504.715 PROXIES.

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

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

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

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

35 5. Appointment of a proxy is revoked by the person

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1 appointing the proxy if either of the following occurs:

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

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

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

15 Sec. 68. NEW SECTION. 504.716 CUMULATIVE VOTING FOR
16 DIRECTORS.

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

23 2. A director elected by cumulative voting may be removed
24 by the members without cause if the requirements of section
25 504.808 are met unless the votes cast against removal, or not
26 consenting in writing to such removal, would be sufficient to
27 elect such director if voted cumulatively at an election at
28 which the same total number of votes were cast or, if such
29 action is taken by written ballot, all memberships entitled to
30 vote were voted, and the entire number of directors authorized
31 at the time of the director's most recent election were then
32 being elected.

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

35 Sec. 69. NEW SECTION. 504.717 OTHER METHODS OF ELECTING

1 DIRECTORS.

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

7 Sec. 70. NEW SECTION. 504.718 CORPORATION'S ACCEPTANCE
8 OF VOTES.

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

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

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

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

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

31 d. In the case of a mutual benefit corporation:

32 (1) The name signed purports to be that of an
33 administrator, executor, guardian, or conservator representing
34 the member and, if the corporation requests, evidence of
35 fiduciary status acceptable to the corporation has been

1 presented with respect to the vote, consent, waiver, or proxy
2 appointment.

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

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

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

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

23 PART 3

24 VOTING AGREEMENTS

25 Sec. 71. NEW SECTION. 504.721 VOTING AGREEMENTS.

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

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

33 SUBCHAPTER VIII

34 DIRECTORS AND OFFICERS

35 PART 1

1 BOARD OF DIRECTORS

2 Sec. 72. NEW SECTION. 504.801 REQUIREMENT FOR AND DUTIES
3 OF BOARD.

4 1. Each corporation must have a board of directors.

5 2. Except as otherwise provided in this subchapter or
6 subsection 3, all corporate powers shall be exercised by or
7 under the authority of, and the affairs of the corporation
8 managed under the direction of, its board.

9 3. The articles of incorporation may authorize a person or
10 persons to exercise some or all of the powers which would
11 otherwise be exercised by a board. To the extent so
12 authorized, any such person or persons shall have the duties
13 and responsibilities of the directors, and the directors shall
14 be relieved to that extent from such duties and
15 responsibilities.

16 Sec. 73. NEW SECTION. 504.802 QUALIFICATIONS OF
17 DIRECTORS.

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

21 Sec. 74. NEW SECTION. 504.803 NUMBER OF DIRECTORS.

22 1. The board of directors of a corporation must consist of
23 one or more individuals, with the number specified in or fixed
24 in accordance with the articles or bylaws.

25 2. The number of directors may be increased or decreased
26 from time to time by amendment to or in the manner prescribed
27 in the articles or bylaws.

28 Sec. 75. NEW SECTION. 504.804 ELECTION, DESIGNATION, AND
29 APPOINTMENT OF DIRECTORS.

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

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

7 Sec. 76. NEW SECTION. 504.805 TERMS OF DIRECTORS
8 GENERALLY.

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

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

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

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

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

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

30 Sec. 77. NEW SECTION. 504.806 STAGGERED TERMS FOR
31 DIRECTORS.

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

1 Sec. 78. NEW SECTION. 504.807 RESIGNATION OF DIRECTORS.

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

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

11 Sec. 79. NEW SECTION. 504.808 REMOVAL OF DIRECTORS
12 ELECTED BY MEMBERS OR DIRECTORS.

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

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

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

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

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

34 6. For the purpose of computing whether a director is
35 protected from removal under subsections 2 through 4, it

1 should be assumed that the votes against removal are cast in
2 an election for the number of directors of the group to which
3 the director to be removed belonged on the date of that
4 director's election.

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

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

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

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

22 a. Limit the application of this section.

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

26 Sec. 80. NEW SECTION. 504.809 REMOVAL OF DESIGNATED OR
27 APPOINTED DIRECTORS.

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

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

34 b. The person removing the appointed director shall do so
35 by giving written notice of the removal to the director and

1 either the presiding officer of the board or the corporation's
2 president or secretary.

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

6 Sec. 81. NEW SECTION. 504.810 REMOVAL OF DIRECTORS BY
7 JUDICIAL PROCEEDING.

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

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

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

23 2. A member or a director who proceeds by or in the right
24 of a corporation pursuant to subsection 1 shall comply with
25 all of the requirements of section 504.631 and sections
26 504.633 through 504.638.

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

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

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

35 Sec. 82. NEW SECTION. 504.811 VACANCY ON BOARD.

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

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

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

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

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

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

24 4. A vacancy that will occur at a specific later date by
25 reason of a resignation effective at a later date under
26 section 504.807, subsection 2, or otherwise, may be filled
27 before the vacancy occurs, but the new director shall not take
28 office until the vacancy occurs.

29 Sec. 83. NEW SECTION. 504.812 COMPENSATION OF DIRECTORS.

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

33 PART 2

34 MEETINGS AND ACTION OF THE BOARD

35 Sec. 84. NEW SECTION. 504.821 REGULAR AND SPECIAL

1 MEETINGS.

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

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

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

14 Sec. 85. NEW SECTION. 504.822 ACTION WITHOUT MEETING.

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

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

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

32 Sec. 86. NEW SECTION. 504.823 CALL AND NOTICE OF
33 MEETINGS.

34 1. Unless the articles or bylaws of a corporation, or
35 subsection 3, provide otherwise, regular meetings of the board

1 may be held without notice.

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

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

13 4. Unless the articles or bylaws provide otherwise, the
14 presiding officer of the board, the president, or twenty
15 percent of the directors then in office may call and give
16 notice of a meeting of the board.

17 Sec. 87. NEW SECTION. 504.824 WAIVER OF NOTICE.

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

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

29 Sec. 88. NEW SECTION. 504.825 QUORUM AND VOTING.

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

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

5 Sec. 89. NEW SECTION. 504.826 COMMITTEES OF THE BOARD.

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

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

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

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

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

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

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

27 a. Authorize distributions.

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

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

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

34 6. The creation of, delegation of authority to, or action
35 by a committee does not alone constitute compliance by a

1 director with the standards of conduct described in section
2 504.831.

3 PART 3

4 STANDARDS OF CONDUCT

5 Sec. 90. NEW SECTION. 504.831 GENERAL STANDARDS FOR
6 DIRECTORS.

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

10 a. In good faith.

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

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

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

25 4. In discharging board or committee duties, a director is
26 entitled to rely on information, opinions, reports, or
27 statements, including financial statements and other financial
28 data, if prepared or presented by any of the persons specified
29 in subsection 5.

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

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

1 employee.

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

5 (1) Matters within the particular person's professional or
6 expert competence.

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

9 c. A committee of the board of which the director is not a
10 member, as to matters within its jurisdiction, if the director
11 reasonably believes the committee merits confidence.

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

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

23 Sec. 91. NEW SECTION. 504.832 STANDARDS OF LIABILITY FOR
24 DIRECTORS.

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

30 a. That section 504.901 or the protection afforded by
31 section 504.831, if interposed as a bar to the proceeding by
32 the director, does not preclude liability.

33 b. That the challenged conduct consisted or was the result
34 of one of the following:

35 (1) Action not in good faith.

1 (2) A decision that satisfies one of the following:

2 (a) That the director did not reasonably believe to be in
3 the best interests of the corporation.

4 (b) As to which the director was not informed to an extent
5 the director reasonably believed appropriate in the
6 circumstances.

7 (3) A lack of objectivity due to the director's familial,
8 financial, or business relationship with, or lack of
9 independence due to the director's domination or control by,
10 another person having a material interest in the challenged
11 conduct which also meets both of the following criteria:

12 (a) Which relationship or which domination or control
13 could reasonably be expected to have affected the director's
14 judgment respecting the challenged conduct in a manner adverse
15 to the corporation.

16 (b) After a reasonable expectation to such effect has been
17 established, the director shall not have established that the
18 challenged conduct was reasonably believed by the director to
19 be in the best interests of the corporation.

20 (4) A sustained failure of the director to devote
21 attention to ongoing oversight of the business and affairs of
22 the corporation, or a failure to devote timely attention, by
23 making, or causing to be made, appropriate inquiry, when
24 particular facts and circumstances of significant concern
25 materialize that would alert a reasonably attentive director
26 to the need therefor.

27 (5) Receipt of a financial benefit to which the director
28 was not entitled or any other breach of the director's duties
29 to deal fairly with the corporation and its members that is
30 actionable under applicable law.

31 2. a. A party seeking to hold a director liable for money
32 damages shall also have the burden of establishing both of the
33 following:

34 (1) That harm to the corporation or its members has been
35 suffered.

1 (2) The harm suffered was proximately caused by the
2 director's challenged conduct.

3 b. A party seeking to hold a director liable for other
4 money payment under a legal remedy, such as compensation for
5 the unauthorized use of corporate assets, shall also have
6 whatever burden of persuasion that may be called for to
7 establish that the payment sought is appropriate in the
8 circumstances.

9 c. A party seeking to hold a director liable for other
10 money payment under an equitable remedy, such as profit
11 recovery by or disgorgement to the corporation, shall also
12 have whatever burden of persuasion that may be called for to
13 establish that the equitable remedy sought is appropriate in
14 the circumstances.

15 3. This section shall not do any of the following:

16 a. In any instance where fairness is at issue, such as
17 consideration of the fairness of a transaction to the
18 corporation under section 504.833, alter the burden of proving
19 the fact or lack of fairness otherwise applicable.

20 b. Alter the fact or lack of liability of a director under
21 another section of this chapter, such as the provisions
22 governing the consequences of a transactional interest under
23 section 504.833 or an unlawful distribution under section
24 504.835.

25 c. Affect any rights to which the corporation or a
26 shareholder may be entitled under another statute of this
27 state or the United States.

28 Sec. 92. NEW SECTION. 504.833 DIRECTOR CONFLICT OF
29 INTEREST.

30 1. A conflict of interest transaction is a transaction
31 with the corporation in which a director of the corporation
32 has a direct or indirect interest. A conflict of interest
33 transaction is not voidable by the corporation on the basis of
34 the director's interest in the transaction if the transaction
35 was fair at the time it was entered into or is approved as

1 provided in subsection 2.

2 2. A transaction in which a director of a mutual benefit
3 corporation has a conflict of interest may be approved if
4 either of the following occurs:

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

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

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

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

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

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

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

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

20 Sec. 93. NEW SECTION. 504.834 LOANS TO OR GUARANTEES FOR
21 DIRECTORS AND OFFICERS.

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

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

27 Sec. 94. NEW SECTION. 504.835 LIABILITY FOR UNLAWFUL
28 DISTRIBUTIONS.

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

35 2. A director held liable for an unlawful distribution

1 under subsection 1 is entitled to contribution from both of
2 the following:

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

6 b. Each person who received an unlawful distribution for
7 the amount of the distribution whether or not the person
8 receiving the distribution knew it was made in violation of
9 this subchapter.

10 PART 4

11 OFFICERS

12 Sec. 95. NEW SECTION. 504.841 REQUIRED OFFICERS.

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

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

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

25 Sec. 96. NEW SECTION. 504.842 DUTIES AND AUTHORITY OF
26 OFFICERS.

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

33 Sec. 97. NEW SECTION. 504.843 STANDARDS OF CONDUCT FOR
34 OFFICERS.

35 1. An officer, when performing in such capacity, shall act

1 in conformity with all of the following:

2 a. In good faith.

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

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

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

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

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

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

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

30 3. An officer shall not be liable as an officer to the
31 corporation or its members for any decision to take or not to
32 take action, or any failure to take any action, if the duties
33 of the officer are performed in compliance with this section.
34 Whether an officer who does not comply with this section shall
35 have liability will depend in such instance on applicable law,

1 including those principles of sections 504.832 and 504.901
2 that have relevance.

3 Sec. 98. NEW SECTION. 504.844 RESIGNATION AND REMOVAL OF
4 OFFICERS.

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

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

16 a. The board of directors.

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

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

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

24 Sec. 99. NEW SECTION. 504.845 CONTRACT RIGHTS OF
25 OFFICERS.

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

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

32 Sec. 100. NEW SECTION. 504.846 OFFICERS' AUTHORITY TO
33 EXECUTE DOCUMENTS.

34 1. A contract or other instrument in writing executed or
35 entered into between a corporation and any other person is not

1 invalidated as to the corporation by any lack of authority of
2 the signing officers in the absence of actual knowledge on the
3 part of the other person that the signing officers had no
4 authority to execute the contract or other instrument if it is
5 signed by any two officers in category 1 or by one officer in
6 category 1 and one officer in category 2 as set out in
7 subsection 2.

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

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

12 PART 5

13 INDEMNIFICATION

14 Sec. 101. NEW SECTION. 504.851 DEFINITIONS.

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

17 1. "Corporation" includes any domestic or foreign
18 predecessor entity of a corporation in a merger.

19 2. "Director" or "officer" means an individual who is or
20 was a director or officer of a corporation or an individual
21 who, while a director or officer of a corporation, is or was
22 serving at the corporation's request as a director, officer,
23 partner, trustee, employee, or agent of another foreign or
24 domestic business or nonprofit corporation, partnership, joint
25 venture, trust, employee benefit plan, or other entity. A
26 "director" or "officer" is considered to be serving an
27 employee benefit plan at the corporation's request if the
28 director's or officer's duties to the corporation also impose
29 duties on, or otherwise involve services by, the director or
30 officer to the plan or to participants in or beneficiaries of
31 the plan. "Director" or "officer" includes, unless the
32 context otherwise requires, the estate or personal
33 representative of a director or officer.

34 3. "Disinterested director" means a director who at the
35 time of a vote referred to in section 504.854, subsection 3,

1 or a vote or selection referred to in section 504.856,
2 subsection 2 or 3, is not either of the following:

- 3 a. A party to the proceeding.
- 4 b. An individual having a familial, financial,
- 5 professional, or employment relationship with the director
- 6 whose indemnification or advance for expenses is the subject
- 7 of the decision being made, which relationship would, in the
- 8 circumstances, reasonably be expected to exert an influence on
- 9 the director's judgment when voting on the decision being
- 10 made.

11 4. "Expenses" includes attorney fees.

12 5. "Liability" means the obligation to pay a judgment,
13 settlement, penalty, or fine including an excise tax assessed
14 with respect to an employee benefit plan, or reasonable
15 expenses actually incurred with respect to a proceeding.

16 6. "Official capacity" means either of the following:

- 17 a. When used with respect to a director, the office of
- 18 director in a corporation.
- 19 b. When used with respect to an officer, as contemplated
- 20 in section 504.857, the office in a corporation held by the
- 21 officer. "Official capacity" does not include service for any
- 22 other foreign or domestic business or nonprofit corporation or
- 23 any partnership joint venture, trust, employee benefit plan,
- 24 or other entity.

25 7. "Party" means an individual who was, is, or is
26 threatened to be made a defendant or respondent in a
27 proceeding.

28 8. "Proceeding" means any threatened, pending, or
29 completed action, suit, or proceeding whether civil, criminal,
30 administrative, or investigative and whether formal or
31 informal.

32 Sec. 102. NEW SECTION. 504.852 PERMISSIBLE
33 INDEMNIFICATION.

34 1. Except as otherwise provided in this section, a
35 corporation may indemnify an individual who is a party to a

1 proceeding because the individual is a director, against
2 liability incurred in the proceeding if all of the following
3 apply:

4 a. The individual acted in good faith.

5 b. The individual reasonably believed either of the
6 following:

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

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

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

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

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

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

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

33 a. In connection with a proceeding by or in the right of
34 the corporation, except for reasonable expenses incurred in
35 the relevant standard of conduct under subsection 1.

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

6 Sec. 103. NEW SECTION. 504.853 MANDATORY
7 INDEMNIFICATION.

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

14 Sec. 104. NEW SECTION. 504.854 ADVANCE FOR EXPENSES.

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

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

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

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

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

3 a. By the board of directors as follows:

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

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

14 b. By the members, but the director who, at the time does
15 not qualify as a disinterested director, may not vote as a
16 member or on behalf of a member.

17 Sec. 105. NEW SECTION. 504.855 COURT-ORDERED
18 INDEMNIFICATION.

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

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

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

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

35 (1) To indemnify the director.

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

9 2. If the court determines that the director is entitled
 10 to indemnification under subsection 1, paragraph "a", or to
 11 indemnification or advance for expenses under subsection 1,
 12 paragraph "b", it shall also order the corporation to pay the
 13 director's reasonable expenses incurred in connection with
 14 obtaining court-ordered indemnification or advance for
 15 expenses. If the court determines that the director is
 16 entitled to indemnification or advance for expenses under
 17 subsection 1, paragraph "c", it may also order the corporation
 18 to pay the director's reasonable expenses to obtain court-
 19 ordered indemnification or advance for expenses.

20 Sec. 106. NEW SECTION. 504.856 DETERMINATION AND
 21 AUTHORIZATION OF INDEMNIFICATION.

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

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

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

35 b. By special legal counsel under one of the following

1 circumstances:

2 (1) Selected in the manner prescribed in paragraph "a".

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

6 c. By the members of a mutual benefit corporation, but
7 directors who are at the time parties to the proceeding shall
8 not vote on the determination.

9 3. Authorization of indemnification shall be made in the
10 same manner as the determination that indemnification is
11 permissible, except that if there are fewer than two
12 disinterested directors or if the determination is made by
13 special legal counsel, authorization of indemnification shall
14 be made by those entitled under subsection 2, paragraph "c",
15 to select special legal counsel.

16 Sec. 107. NEW SECTION. 504.857 INDEMNIFICATION OF
17 OFFICERS.

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

22 a. To the same extent as to a director.

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

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

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

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

34 (b) An intentional infliction of harm on the corporation
35 or the shareholders.

1 (c) An intentional violation of criminal law.

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

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

13 Sec. 108. NEW SECTION. 504.858 INSURANCE.

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

26 Sec. 109. NEW SECTION. 504.859 APPLICATION OF PART.

27 1. A corporation may, by a provision in its articles of
28 incorporation or bylaws or in a resolution adopted or a
29 contract approved by its board of directors or members,
30 obligate itself in advance of the act or omission giving rise
31 to a proceeding to provide indemnification in accordance with
32 section 504.852 or advance funds to pay for or reimburse
33 expenses in accordance with section 504.854. Any such
34 obligatory provision shall be deemed to satisfy the
35 requirements for authorization referred to in section 504.854,

1 subsection 3, and in section 504.856, subsection 2 or 3. Any
2 such provision that obligates the corporation to provide
3 indemnification to the fullest extent permitted by law shall
4 be deemed to obligate the corporation to advance funds to pay
5 for or reimburse expenses in accordance with section 504.854
6 to the fullest extent permitted by law, unless the provision
7 specifically provides otherwise.

8 2. Any provision pursuant to subsection 1 shall not
9 obligate the corporation to indemnify or advance expenses to a
10 director of a predecessor of the corporation, pertaining to
11 conduct with respect to the predecessor, unless otherwise
12 specifically provided. Any provision for indemnification or
13 advance for expenses in the articles of incorporation, bylaws,
14 or a resolution of the board of directors or members of a
15 predecessor of the corporation in a merger or in a contract to
16 which the predecessor is a party, existing at the time the
17 merger takes effect, shall be governed by section 504.1104.

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

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

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

29 Sec. 110. NEW SECTION. 504.860 EXCLUSIVITY OF PART.

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

33

SUBCHAPTER IX

34

PERSONAL LIABILITY

35

Sec. 111. NEW SECTION. 504.901 PERSONAL LIABILITY.

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

- 8 1. The amount of any financial benefit to which the person
9 is not entitled.
- 10 2. An intentional infliction of harm on the corporation or
11 the members.
- 12 3. A violation of section 504.834.
- 13 4. An intentional violation of criminal law.

14 SUBCHAPTER X

15 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

16 PART 1

17 ARTICLES OF INCORPORATION

18 Sec. 112. NEW SECTION. 504.1001 AUTHORITY TO AMEND.

19 A corporation may amend its articles of incorporation at
20 any time to add or change a provision that is required or
21 permitted in the articles or to delete a provision not
22 required in the articles. Whether a provision is required or
23 permitted in the articles is determined as of the effective
24 date of the amendment.

25 Sec. 113. NEW SECTION. 504.1002 AMENDMENT BY DIRECTORS.

26 1. Unless the articles provide otherwise, a corporation's
27 board of directors may adopt one or more amendments to the
28 corporation's articles without member approval to do any of
29 the following:

30 a. Extend the duration of the corporation if it was
31 incorporated at a time when limited duration was required by
32 law.

33 b. Delete the names and addresses of the initial
34 directors.

35 c. Delete the name and address of the initial registered

1 agent or registered office, if a statement of change is on
2 file with the secretary of state.

3 d. Change the corporate name by substituting the word
4 "corporation", "incorporated", "company", "limited", or the
5 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
6 word or abbreviation in the name, or by adding, deleting, or
7 changing a geographical attribution to the name.

8 e. Make any other change expressly permitted by this
9 subchapter to be made by director action.

10 2. If a corporation has no members, its incorporators,
11 until directors have been chosen, and thereafter its board of
12 directors, may adopt one or more amendments to the
13 corporation's articles subject to any approval required
14 pursuant to section 504.1031. The corporation shall provide
15 notice of any meeting at which an amendment is to be voted
16 upon. The notice shall be in accordance with section 504.823,
17 subsection 3. The notice must also state that the purpose, or
18 one of the purposes, of the meeting is to consider a proposed
19 amendment to the articles and contain or be accompanied by a
20 copy or summary of the amendment or state the general nature
21 of the amendment. The amendment must be approved by a
22 majority of the directors in office at the time the amendment
23 is adopted.

24 Sec. 114. NEW SECTION. 504.1003 AMENDMENT BY DIRECTORS
25 AND MEMBERS.

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

33 a. The board if the corporation is a public benefit or
34 religious corporation and the amendment does not relate to the
35 number of directors, the composition of the board, the term of

1 office of directors, or the method or way in which directors
2 are elected or selected.

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

7 c. In writing by any person or persons whose approval is
8 required by a provision of the articles authorized by section
9 504.1031.

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

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

18 4. If the board or the members seek to have the amendment
19 approved by the members at a membership meeting, the
20 corporation shall give notice to its members of the proposed
21 membership meeting in writing in accordance with section
22 504.705. The notice must state that the purpose, or one of
23 the purposes, of the meeting is to consider the proposed
24 amendment and contain or be accompanied by a copy or summary
25 of the amendment.

26 5. If the board or the members seek to have the amendment
27 approved by the members by written consent or written ballot,
28 the material soliciting the approval shall contain or be
29 accompanied by a copy or summary of the amendment.

30 Sec. 115. NEW SECTION. 504.1004 CLASS VOTING BY MEMBERS
31 ON AMENDMENTS.

32 1. Unless the articles or bylaws of the corporation
33 provide otherwise, the members of a class in a public benefit
34 corporation are entitled to vote as a class on a proposed
35 amendment to the articles if the amendment would change the

1 rights of that class as to voting in a manner different than
2 such amendment affects another class or members of another
3 class.

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

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

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

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

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

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

25 f. Authorize a new class of memberships.

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

30 4. Unless the articles or bylaws of the corporation
31 provide otherwise, if a class is to be divided into two or
32 more classes as a result of an amendment to the articles of a
33 public benefit or mutual benefit corporation, the amendment
34 must be approved by the members of each class that would be
35 created by the amendment.

1 5. Except as provided in the articles or bylaws of a
2 religious corporation, if a class vote is required to approve
3 an amendment to the articles of the corporation, the amendment
4 must be approved by the members of the class by two-thirds of
5 the votes cast by the class or a majority of the voting power
6 of the class, whichever is less.

7 Sec. 116. NEW SECTION. 504.1005 ARTICLES OF AMENDMENT.

8 A corporation amending its articles shall deliver to the
9 secretary of state articles of amendment setting forth:

- 10 1. The name of the corporation.
- 11 2. The text of each amendment adopted.
- 12 3. The date of each amendment's adoption.
- 13 4. If approval by members was not required, a statement to
14 that effect and a statement that the amendment was approved by
15 a sufficient vote of the board of directors or incorporators.
- 16 5. If approval by members was required, both of the
17 following:
 - 18 a. The designation, number of memberships outstanding,
19 number of votes entitled to be cast by each class entitled to
20 vote separately on the amendment, and number of votes of each
21 class indisputably voting on the amendment.
 - 22 b. Either the total number of votes cast for and against
23 the amendment by each class entitled to vote separately on the
24 amendment or the total number of undisputed votes cast for the
25 amendment by each class and a statement that the number of
26 votes cast for the amendment by each class was sufficient for
27 approval by that class.
- 28 6. If approval of the amendment by some person or persons
29 other than the members, the board, or the incorporators is
30 required pursuant to section 504.1031, a statement that the
31 approval was obtained.

32 Sec. 117. NEW SECTION. 504.1006 RESTATED ARTICLES OF
33 INCORPORATION.

34 1. A corporation's board of directors may restate the
35 corporation's articles of incorporation at any time with or

1 without approval by members or any other person.

2 2. The restatement may include one or more amendments to
3 the articles. If the restatement includes an amendment
4 requiring approval by the members or any other person, it must
5 be adopted as provided in section 504.1003.

6 3. If the restatement includes an amendment requiring
7 approval by members, the board must submit the restatement to
8 the members for their approval.

9 4. If the board seeks to have the restatement approved by
10 the members at a membership meeting, the corporation shall
11 notify each of its members of the proposed membership meeting
12 in writing in accordance with section 504.705. The notice
13 must also state that the purpose, or one of the purposes, of
14 the meeting is to consider the proposed restatement and must
15 contain or be accompanied by a copy or summary of the
16 restatement that identifies any amendments or other changes
17 the restatement would make in the articles.

18 5. If the board seeks to have the restatement approved by
19 the members by written ballot or written consent, the material
20 soliciting the approval shall contain or be accompanied by a
21 copy or summary of the restatement that identifies any
22 amendments or other changes the restatement would make in the
23 articles.

24 6. A restatement requiring approval by the members must be
25 approved by the same vote as an amendment to articles under
26 section 504.1003.

27 7. If the restatement includes an amendment requiring
28 approval pursuant to section 504.1031, the board must submit
29 the restatement for such approval.

30 8. A corporation restating its articles shall deliver to
31 the secretary of state articles of restatement setting forth
32 the name of the corporation and the text of the restated
33 articles of incorporation together with a certificate setting
34 forth all of the following:

35 a. Whether the restatement contains an amendment to the

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1 articles requiring approval by the members or any other person
2 other than the board of directors and, if it does not, that
3 the board of directors adopted the restatement.

4 b. If the restatement contains an amendment to the
5 articles requiring approval by the members, the information
6 required by section 504.1005.

7 c. If the restatement contains an amendment to the
8 articles requiring approval by a person whose approval is
9 required pursuant to section 504.1031, a statement that such
10 approval was obtained.

11 9. Duly adopted restated articles of incorporation
12 supersede the original articles of incorporation and all
13 amendments to the original articles.

14 10. The secretary of state may certify restated articles
15 of incorporation as the articles of incorporation currently in
16 effect without including the certificate information required
17 by subsection 8.

18 Sec. 118. NEW SECTION. 504.1007 AMENDMENT PURSUANT TO
19 JUDICIAL REORGANIZATION.

20 1. A corporation's articles may be amended without board
21 approval or approval by the members or approval required
22 pursuant to section 504.1031 to carry out a plan of
23 reorganization ordered or decreed by a court of competent
24 jurisdiction under federal statute if the articles after
25 amendment contain only provisions required or permitted by
26 section 504.202.

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

30 a. The name of the corporation.

31 b. The text of each amendment approved by the court.

32 c. The date of the court's order or decree approving the
33 articles of amendment.

34 d. The title of the reorganization proceeding in which the
35 order or decree was entered.

1 e. A statement that the court had jurisdiction of the
2 proceeding under federal statute.

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

7 Sec. 119. NEW SECTION. 504.1008 EFFECT OF AMENDMENT AND
8 RESTATEMENT.

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

18 PART 2

19 BYLAWS

20 Sec. 120. NEW SECTION. 504.1021 AMENDMENT BY DIRECTORS.

21 If a corporation has no members, its incorporators, until
22 directors have been chosen, and thereafter its board of
23 directors, may adopt one or more amendments to the
24 corporation's bylaws subject to any approval required pursuant
25 to section 504.1031. The corporation shall provide notice of
26 any meeting of directors at which an amendment is to be
27 approved. The notice must be given in accordance with section
28 504.823, subsection 3. The notice must also state that the
29 purpose, or one of the purposes, of the meeting is to consider
30 a proposed amendment to the bylaws and contain or be
31 accompanied by a copy or summary of the amendment or state the
32 general nature of the amendment. The amendment must be
33 approved by a majority of the directors in office at the time
34 the amendment is adopted.

35 Sec. 121. NEW SECTION. 504.1022 AMENDMENT BY DIRECTORS

1 AND MEMBERS.

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

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

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

15 c. In writing by any person or persons whose approval is
16 required by a provision of the articles authorized by section
17 504.1031.

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

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

26 4. If the board or the members seek to have the amendment
27 approved by the members at a membership meeting, the
28 corporation shall give notice to its members of the proposed
29 membership meeting in writing in accordance with section
30 504.705. The notice must also state that the purpose, or one
31 of the purposes, of the meeting is to consider the proposed
32 amendment and contain or be accompanied by a copy or summary
33 of the amendment.

34 5. If the board or the members seek to have the amendment
35 approved by the members by written consent or written ballot,

1 the material soliciting the approval shall contain or be
2 accompanied by a copy or summary of the amendment.

3 Sec. 122. NEW SECTION. 504.1023 CLASS VOTING BY MEMBERS
4 ON AMENDMENTS.

5 1. Unless the articles or bylaws of the corporation
6 provide otherwise, the members of a class in a public benefit
7 corporation are entitled to vote as a class on a proposed
8 amendment to the bylaws if the amendment would change the
9 rights of that class as to voting in a manner different than
10 such amendment affects another class or members of another
11 class.

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

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

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

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

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

31 e. Effect an exchange, reclassification, or termination of
32 all or part of the memberships of that class.

33 f. Authorize a new class of memberships.

34 3. The members of a class of a religious corporation are
35 entitled to vote as a class on a proposed amendment to the

1 bylaws only if a class vote is provided for in the articles or
2 bylaws.

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

8 5. Unless the articles or bylaws of the corporation
9 provide otherwise, if a class vote is required to approve an
10 amendment to the bylaws, the amendment must be approved by the
11 members of the class by two-thirds of the votes cast by the
12 class or a majority of the voting power of the class,
13 whichever is less.

14 PART 3

15 ARTICLES OF INCORPORATION AND BYLAWS

16 Sec. 123. NEW SECTION. 504.1031 APPROVAL BY THIRD
17 PERSONS.

18 The articles of a corporation may require that an amendment
19 to the articles or bylaws be approved in writing by a
20 specified person or persons other than the board. Such a
21 provision in the articles may only be amended with the
22 approval in writing of the person or persons specified in the
23 provision.

24 Sec. 124. NEW SECTION. 504.1032 AMENDMENT TERMINATING
25 MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS.

26 1. Unless the articles or bylaws provide otherwise, an
27 amendment to the articles or bylaws of a public benefit or
28 mutual benefit corporation which would terminate all members
29 or any class of members or redeem or cancel all memberships or
30 any class of memberships must meet the requirements of this
31 chapter and this section.

32 2. Before adopting a resolution proposing such an
33 amendment, the board of a mutual benefit corporation shall
34 give notice of the general nature of the amendment to the
35 members.

1 3. After adopting a resolution proposing such an
2 amendment, the notice to members proposing such amendment
3 shall include one statement of up to five hundred words
4 opposing the proposed amendment, if such statement is
5 submitted by any five members or members having three percent
6 or more of the voting power, whichever is less, not later than
7 twenty days after the board has voted to submit such amendment
8 to the members for their approval. In public benefit
9 corporations, the production and mailing costs of the
10 statement opposing the proposed amendment shall be paid by the
11 requesting members. In mutual benefit corporations, the
12 production and mailing costs of the statement opposing the
13 proposed amendment shall be paid by the corporation.

14 4. Any such amendment shall be approved by the members by
15 two-thirds of the votes cast by each class.

16 5. The provisions of section 504.622 shall not apply to
17 any amendment meeting the requirements of this chapter and
18 this section.

19 SUBCHAPTER XI

20 MERGER

21 Sec. 125. NEW SECTION. 504.1101 APPROVAL OF PLAN OF
22 MERGER.

23 1. Subject to the limitations set forth in section
24 504.1102, one or more nonprofit corporations may merge with or
25 into any one or more corporations or nonprofit corporations or
26 limited liability companies, if the plan of merger is approved
27 as provided in section 504.1103.

28 2. The plan of merger shall set forth all of the
29 following:

30 a. The name of each corporation or limited liability
31 company planning to merge and the name of the surviving
32 corporation into which each plans to merge.

33 b. The terms and conditions of the planned merger.

34 c. The manner and basis, if any, of converting the
35 memberships of each public benefit or religious corporation

1 into memberships of the surviving corporation or limited
2 liability company.

3 d. If the merger involves a mutual benefit corporation,
4 the manner and basis, if any, of converting memberships of
5 each merging corporation into memberships, obligations, or
6 securities of the surviving or any other corporation or
7 limited liability company or into cash or other property in
8 whole or in part.

9 3. The plan of merger may set forth any of the following:

10 a. Any amendments to the articles of incorporation or
11 bylaws of the surviving corporation or limited liability
12 company to be effected by the planned merger.

13 b. Other provisions relating to the planned merger.

14 Sec. 126. NEW SECTION. 504.1102 LIMITATIONS ON MERGERS
15 BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS.

16 1. Without the prior approval of the district court, a
17 public benefit or religious corporation may merge only with
18 one of the following:

19 a. A public benefit or religious corporation.

20 b. A foreign corporation which would qualify under this
21 chapter as a public benefit or religious corporation.

22 c. A wholly owned foreign or domestic business or mutual
23 benefit corporation, provided the public benefit or religious
24 corporation is the surviving corporation and continues to be a
25 public benefit or religious corporation after the merger.

26 d. A business or mutual benefit corporation or limited
27 liability company, provided that all of the following apply:

28 (1) On or prior to the effective date of the merger,
29 assets with a value equal to the greater of the fair market
30 value of the net tangible and intangible assets, including
31 goodwill, of the public benefit or religious corporation or
32 the fair market value of the public benefit or religious
33 corporation if it were to be operated as a business concern
34 are transferred or conveyed to one or more persons who would
35 have received its assets under section 504.1406, subsection 1,

1 paragraphs "e" and "f", had it dissolved.

2 (2) The business or mutual benefit corporation or limited
3 liability company shall return, transfer, or convey any assets
4 held by it upon condition requiring return, transfer, or
5 conveyance, which condition occurs by reason of the merger, in
6 accordance with such condition.

7 (3) The merger is approved by a majority of directors of
8 the public benefit or religious corporation who are not and
9 will not become members or shareholders in or officers,
10 employees, agents, or consultants of the surviving
11 corporation.

12 2. Without the prior approval of the district court in a
13 proceeding in which a guardian ad litem has been appointed to
14 represent the interests of the corporation, a member of a
15 public benefit or religious corporation shall not receive or
16 keep anything as a result of a merger other than a membership
17 in the surviving public benefit or religious corporation. The
18 court shall approve the transaction if it is in the public
19 interest.

20 Sec. 127. NEW SECTION. 504.1103 ACTION ON PLAN BY BOARD,
21 MEMBERS, AND THIRD PERSONS.

22 1. Unless this chapter, the articles, bylaws, or the board
23 of directors or members acting pursuant to subsection 3
24 require a greater vote or voting by class, or the articles or
25 bylaws impose other requirements, a plan of merger for a
26 corporation must be approved by all of the following to be
27 adopted:

28 a. The board.

29 b. The members, if any, by two-thirds of the votes cast or
30 a majority of the voting power, whichever is less.

31 c. In writing by any person or persons whose approval is
32 required by a provision of the articles authorized by section
33 504.1031 for an amendment to the articles or bylaws.

34 2. If the corporation does not have members, the merger
35 must be approved by a majority of the directors in office at

1 the time the merger is approved. In addition, the corporation
2 shall provide notice of any directors' meeting at which such
3 approval is to be obtained in accordance with section 504.823,
4 subsection 3. The notice must also state that the purpose, or
5 one of the purposes, of the meeting is to consider the
6 proposed merger.

7 3. The board may condition its submission of the proposed
8 merger, and the members may condition their approval of the
9 merger, on receipt of a higher percentage of affirmative votes
10 or on any other basis.

11 4. If the board seeks to have the plan approved by the
12 members at a membership meeting, the corporation shall give
13 notice to its members of the proposed membership meeting in
14 accordance with section 504.705. The notice must also state
15 that the purpose, or one of the purposes, of the meeting is to
16 consider the plan of merger and contain or be accompanied by a
17 copy or summary of the plan. The copy or summary of the plan
18 for members of the surviving corporation shall include any
19 provision that, if contained in a proposed amendment to the
20 articles of incorporation or bylaws, would entitle members to
21 vote on the provision. The copy or summary of the plan for
22 members of the disappearing corporation shall include a copy
23 or summary of the articles and bylaws which will be in effect
24 immediately after the merger takes effect.

25 5. If the board seeks to have the plan approved by the
26 members by written consent or written ballot, the material
27 soliciting the approval shall contain or be accompanied by a
28 copy or summary of the plan. The copy or summary of the plan
29 for members of the surviving corporation shall include any
30 provision that, if contained in a proposed amendment to the
31 articles of incorporation or bylaws, would entitle members to
32 vote on the provision. The copy or summary of the plan for
33 members of the disappearing corporation shall include a copy
34 or summary of the articles and bylaws which will be in effect
35 immediately after the merger takes effect.

1 6. Voting by a class of members is required on a plan of
2 merger if the plan contains a provision that, if contained in
3 a proposed amendment to articles of incorporation or bylaws,
4 would entitle the class of members to vote as a class on the
5 proposed amendment under section 504.1004 or 504.1023. The
6 plan must be approved by a class of members by two-thirds of
7 the votes cast by the class or a majority of the voting power
8 of the class, whichever is less.

9 7. After a merger is adopted, and at any time before
10 articles of merger are filed, the planned merger may be
11 abandoned subject to any contractual rights without further
12 action by members or other persons who approved the plan in
13 accordance with the procedure set forth in the plan of merger
14 or, if none is set forth, in the manner determined by the
15 board of directors.

16 Sec. 128. NEW SECTION. 504.1104 ARTICLES OF MERGER.

17 After a plan of merger is approved by the board of
18 directors, and if required by section 504.1103, by the members
19 and any other persons, the surviving or acquiring corporation
20 shall deliver to the secretary of state articles of merger
21 setting forth all of the following, as applicable:

22 1. The plan of merger.

23 2. If approval of members was not required, a statement to
24 that effect and a statement that the plan was approved by a
25 sufficient vote of the board of directors.

26 3. If approval by members was required, both of the
27 following:

28 a. The designation, number of memberships outstanding,
29 number of votes entitled to be cast by each class entitled to
30 vote separately on the plan, and number of votes of each class
31 indisputably voting on the plan.

32 b. Either the total number of votes cast for and against
33 the plan by each class entitled to vote separately on the plan
34 or the total number of undisputed votes cast for the plan by
35 each class and a statement that the number of votes cast for

1 the plan by each class was sufficient for approval by that
2 class.

3 4. If approval of the plan by some person or persons other
4 than the members of the board is required pursuant to section
5 504.1103, subsection 1, paragraph "c", a statement that the
6 approval was obtained.

7 Sec. 129. NEW SECTION. 504.1105 EFFECT OF MERGER.

8 When a merger takes effect, all of the following occur:

9 1. Every other corporation party to the merger merges into
10 the surviving corporation and the separate existence of every
11 corporation except the surviving corporation ceases.

12 2. The title to all real estate and other property owned
13 by each corporation party to the merger is vested in the
14 surviving corporation without reversion or impairment subject
15 to any and all conditions to which the property was subject
16 prior to the merger.

17 3. The surviving corporation has all the liabilities and
18 obligations of each corporation party to the merger.

19 4. A proceeding pending against any corporation party to
20 the merger may be continued as if the merger did not occur or
21 the surviving corporation may be substituted in the proceeding
22 for the corporation whose existence ceased.

23 5. The articles of incorporation and bylaws of the
24 surviving corporation are amended to the extent provided in
25 the plan of merger.

26 Sec. 130. NEW SECTION. 504.1106 MERGER WITH FOREIGN
27 CORPORATION.

28 1. Except as provided in section 504.1102, one or more
29 foreign business or nonprofit corporations may merge with one
30 or more domestic nonprofit corporations if all of the
31 following conditions are met:

32 a. The merger is permitted by the law of the state or
33 country under whose law each foreign corporation is
34 incorporated and each foreign corporation complies with that
35 law in effecting the merger.

1 b. The foreign corporation complies with section 504.1104
2 if it is the surviving corporation of the merger.

3 c. Each domestic nonprofit corporation complies with the
4 applicable provisions of sections 504.1101 through 504.1103
5 and, if it is the surviving corporation of the merger, with
6 section 504.1104.

7 2. Upon the merger taking effect, the surviving foreign
8 business or nonprofit corporation is deemed to have
9 irrevocably appointed the secretary of state as its agent for
10 service of process in any proceeding brought against it.

11 Sec. 131. NEW SECTION. 504.1107 BEQUESTS, DEVISES, AND
12 GIFTS.

13 Any bequest, devise, gift, grant, or promise contained in a
14 will or other instrument of donation, subscription, or
15 conveyance, that is made to a constituent corporation and
16 which takes effect or remains payable after the merger, inures
17 to the surviving corporation unless the will or other
18 instrument otherwise specifically provides.

19 Sec. 132. NEW SECTION. 504.1108 CONVERSION.

20 A corporation organized under this chapter that is an
21 insurance company may voluntarily elect to be organized as a
22 mutual insurance company under chapter 490 or 491 pursuant to
23 the procedures set forth in section 514.23.

24 SUBCHAPTER XII

25 SALE OF ASSETS

26 Sec. 133. NEW SECTION. 504.1201 SALE OF ASSETS IN
27 REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS.

28 1. A corporation may on the terms and conditions and for
29 the consideration determined by the board of directors do
30 either of the following:

31 a. Sell, lease, exchange, or otherwise dispose of all, or
32 substantially all, of its property in the usual and regular
33 course of its activities.

34 b. Mortgage, pledge, dedicate to the repayment of
35 indebtedness, whether with or without recourse, or otherwise

1 encumber any or all of its property whether or not in the
2 usual and regular course of its activities.

3 2. Unless the articles require it, approval of the members
4 or any other persons of a transaction described in subsection
5 1 is not required.

6 Sec. 134. NEW SECTION. 504.1202 SALE OF ASSETS OTHER
7 THAN IN REGULAR COURSE OF ACTIVITIES.

8 1. A corporation may sell, lease, exchange, or otherwise
9 dispose of all, or substantially all, of its property, with or
10 without the goodwill, other than in the usual and regular
11 course of its activities on the terms and conditions and for
12 the consideration determined by the corporation's board if the
13 proposed transaction is authorized by subsection 2.

14 2. Unless this chapter, the articles, bylaws, or the board
15 of directors or members acting pursuant to subsection 4
16 require a greater vote or voting by a class or the articles or
17 bylaws impose other requirements, the proposed transaction to
18 be authorized must be approved by all of the following:

19 a. The board.

20 b. The members by two-thirds of the votes cast or a
21 majority of the voting power, whichever is less.

22 c. In writing by any person or persons whose approval is
23 required by a provision of the articles authorized by section
24 504.1031 for an amendment to the articles or bylaws.

25 3. If the corporation does not have members, the
26 transaction must be approved by a vote of a majority of the
27 directors in office at the time the transaction is approved.
28 In addition, the corporation shall provide notice of any
29 directors' meeting at which such approval is to be obtained in
30 accordance with section 504.823, subsection 3. The notice
31 shall also state that the purpose, or one of the purposes, of
32 the meeting is to consider the sale, lease, exchange, or other
33 disposition of all, or substantially all, of the property or
34 assets of the corporation and contain or be accompanied by a
35 copy or summary of a description of the transaction.

1 4. The board may condition its submission of the proposed
2 transaction, and the members may condition their approval of
3 the transaction, on receipt of a higher percentage of
4 affirmative votes or on any other basis.

5 5. If the corporation seeks to have the transaction
6 approved by the members at a membership meeting, the
7 corporation shall give notice to its members of the proposed
8 membership meeting in accordance with section 504.705. The
9 notice must also state that the purpose, or one of the
10 purposes, of the meeting is to consider the sale, lease,
11 exchange, or other disposition of all, or substantially all,
12 of the property or assets of the corporation and contain or be
13 accompanied by a copy or summary of a description of the
14 transaction.

15 6. If the board is required to have the transaction
16 approved by the members by written consent or written ballot,
17 the material soliciting the approval shall contain or be
18 accompanied by a copy or summary of a description of the
19 transaction.

20 7. After a sale, lease, exchange, or other disposition of
21 property is authorized, the transaction may be abandoned,
22 subject to any contractual rights, without further action by
23 the members or any other person who approved the transaction
24 in accordance with the procedure set forth in the resolution
25 proposing the transaction or, if none is set forth, in the
26 manner determined by the board of directors.

27 SUBCHAPTER XIII

28 DISTRIBUTIONS

29 Sec. 135. NEW SECTION. 504.1301 PROHIBITED
30 DISTRIBUTIONS.

31 Except as authorized by section 504.1302, a corporation
32 shall not make any distributions.

33 Sec. 136. NEW SECTION. 504.1302 AUTHORIZED
34 DISTRIBUTIONS.

35 1. A mutual benefit corporation may purchase its

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1 memberships if after the purchase is completed, both of the
2 following apply:

3 a. The corporation will be able to pay its debts as they
4 become due in the usual course of its activities.

5 b. The corporation's total assets will at least equal the
6 sum of its total liabilities.

7 2. Corporations may make distributions upon dissolution in
8 conformity with subchapter 14.

9 SUBCHAPTER XIV

10 DISSOLUTION

11 PART 1

12 VOLUNTARY DISSOLUTION

13 Sec. 137. NEW SECTION. 504.1401 DISSOLUTION BY
14 INCORPORATORS OR DIRECTORS AND THIRD PERSONS.

15 1. A majority of the incorporators of a corporation that
16 has no directors and no members or a majority of the directors
17 of a corporation that has no members may, subject to any
18 approval required by the articles or bylaws, dissolve the
19 corporation by delivering articles of dissolution to the
20 secretary of state.

21 2. The corporation shall give notice of any meeting at
22 which dissolution will be approved. The notice must be in
23 accordance with section 504.823, subsection 3. The notice
24 must also state that the purpose, or one of the purposes, of
25 the meeting is to consider dissolution of the corporation.

26 3. The incorporators or directors in approving dissolution
27 shall adopt a plan of dissolution indicating to whom the
28 assets owned or held by the corporation will be distributed
29 after all creditors have been paid.

30 Sec. 138. NEW SECTION. 504.1402 DISSOLUTION BY
31 DIRECTORS, MEMBERS, AND THIRD PERSONS.

32 1. Unless this chapter, the articles, bylaws, or the board
33 of directors or members acting pursuant to subsection 3
34 require a greater vote or voting by class or the articles or
35 bylaws impose other requirements, dissolution is authorized if

1 it is approved by all of the following:

2 a. The board.

3 b. The members, if any, by two-thirds of the votes cast or
4 a majority of the voting power, whichever is less.

5 c. In writing by any person or persons whose approval is
6 required by a provision of the articles authorized by section
7 504.1031 for an amendment to the articles or bylaws.

8 2. If the corporation does not have members, dissolution
9 must be approved by a vote of a majority of the directors in
10 office at the time the transaction is approved. In addition,
11 the corporation shall provide notice of any directors' meeting
12 at which such approval is to be obtained in accordance with
13 section 504.823, subsection 3. The notice must also state
14 that the purpose, or one of the purposes, of the meeting is to
15 consider dissolution of the corporation and contain or be
16 accompanied by a copy or summary of the plan of dissolution.

17 3. The board may condition its submission of the proposed
18 dissolution, and the members may condition their approval of
19 the dissolution, on receipt of a higher percentage of
20 affirmative votes or on any other basis.

21 4. If the board seeks to have dissolution approved by the
22 members at a membership meeting, the corporation shall give
23 notice to its members of the proposed membership meeting in
24 accordance with section 504.705. The notice must also state
25 that the purpose, or one of the purposes, of the meeting is to
26 consider dissolving the corporation and must contain or be
27 accompanied by a copy or summary of the plan of dissolution.

28 5. If the board seeks to have the dissolution approved by
29 the members by written consent or written ballot, the material
30 soliciting the approval shall contain or be accompanied by a
31 copy or summary of the plan of dissolution.

32 6. The plan of dissolution shall indicate to whom the
33 assets owned or held by the corporation will be distributed
34 after all creditors have been paid.

35 Sec. 139. NEW SECTION. 504.1404 ARTICLES OF DISSOLUTION.

- 1 1. At any time after dissolution is authorized, a
- 2 corporation may dissolve by delivering articles of dissolution
- 3 to the secretary of state setting forth all of the following:
- 4 a. The name of the corporation.
- 5 b. The date dissolution was authorized.
- 6 c. A statement that dissolution was approved by a
- 7 sufficient vote of the board.
- 8 d. If approval of members was not required, a statement to
- 9 that effect and a statement that dissolution was approved by a
- 10 sufficient vote of the board of directors or incorporators.
- 11 e. If approval by members was required, both of the
- 12 following:
- 13 (1) The designation, number of memberships outstanding,
- 14 number of votes entitled to be cast by each class entitled to
- 15 vote separately on dissolution, and number of votes of each
- 16 class indisputably voting on dissolution.
- 17 (2) Either the total number of votes cast for and against
- 18 dissolution by each class entitled to vote separately on
- 19 dissolution or the total number of undisputed votes cast for
- 20 dissolution by each class and a statement that the number cast
- 21 for dissolution by each class was sufficient for approval by
- 22 that class.
- 23 f. If approval of dissolution by some person or persons
- 24 other than the members, the board, or the incorporators is
- 25 required pursuant to section 504.1402, subsection 1, paragraph
- 26 "c", a statement that the approval was obtained.

27 2. A corporation is dissolved upon the effective date of
 28 its articles of dissolution.

29 Sec. 140. NEW SECTION. 504.1405 REVOCATION OF
 30 DISSOLUTION.

31 1. A corporation may revoke its dissolution within one
 32 hundred twenty days of its effective date.

33 2. Revocation of dissolution must be authorized in the
 34 same manner as the dissolution was authorized unless that
 35 authorization permitted revocation by action of the board of

1 directors alone, in which event the board of directors may
2 revoke the dissolution without action by the members or any
3 other person.

4 3. After the revocation of dissolution is authorized, the
5 corporation may revoke the dissolution by delivering to the
6 secretary of state for filing, articles of revocation of
7 dissolution, together with a copy of its articles of
8 dissolution, that set forth all of the following:

9 a. The name of the corporation.

10 b. The effective date of the dissolution that was revoked.

11 c. The date that the revocation of dissolution was
12 authorized.

13 d. If the corporation's board of directors or
14 incorporators revoked the dissolution, a statement to that
15 effect.

16 e. If the corporation's board of directors revoked a
17 dissolution authorized by the members alone or in conjunction
18 with another person or persons, a statement that revocation
19 was permitted by action of the board of directors alone
20 pursuant to that authorization.

21 f. If member or third person action was required to revoke
22 the dissolution, the information required by section 504.1404,
23 subsection 1, paragraphs "e" and "f".

24 4. Revocation of dissolution is effective upon the
25 effective date of the articles of revocation of dissolution.

26 5. When the revocation of dissolution is effective, it
27 relates back to and takes effect as of the effective date of
28 the dissolution and the corporation resumes carrying on its
29 activities as if dissolution had never occurred.

30 Sec. 141. NEW SECTION. 504.1406 EFFECT OF DISSOLUTION.

31 1. A dissolved corporation continues its corporate
32 existence but shall not carry on any activities except those
33 appropriate to wind up and liquidate its affairs, including
34 all of the following:

35 a. Preserving and protecting its assets and minimizing its

1 liabilities.

2 b. Discharging or making provision for discharging its
3 liabilities and obligations.

4 c. Disposing of its properties that will not be
5 distributed in kind.

6 d. Returning, transferring, or conveying assets held by
7 the corporation upon a condition requiring return, transfer,
8 or conveyance, which condition occurs by reason of the
9 dissolution, in accordance with such condition.

10 e. Transferring, subject to any contractual or legal
11 requirements, its assets as provided in or authorized by its
12 articles of incorporation or bylaws.

13 f. If the corporation is a public benefit or religious
14 corporation, and a provision has not been made in its articles
15 or bylaws for distribution of assets on dissolution,
16 transferring, subject to any contractual or legal requirement,
17 its assets to one or more persons described in section
18 501(c)(3) of the Internal Revenue Code, or if the dissolved
19 corporation is not described in section 501(c)(3) of the
20 Internal Revenue Code, to one or more public benefit or
21 religious corporations.

22 g. If the corporation is a mutual benefit corporation and
23 a provision has not been made in its articles or bylaws for
24 distribution of assets on dissolution, transferring its assets
25 to its members or, if it has no members, those persons whom
26 the corporation holds itself out as benefiting or serving.

27 h. Doing every other act necessary to wind up and
28 liquidate its assets and affairs.

29 2. Dissolution of a corporation does not do any of the
30 following:

31 a. Transfer title to the corporation's property.

32 b. Subject its directors or officers to standards of
33 conduct different from those prescribed in subchapter 8.

34 c. Change quorum or voting requirements for its board or
35 members; change provisions for selection, resignation, or

1 removal of its directors or officers or both; or change
2 provisions for amending its bylaws.

3 d. Prevent commencement of a proceeding by or against the
4 corporation in its corporate name.

5 e. Abate or suspend a proceeding pending by or against the
6 corporation on the effective date of dissolution.

7 f. Terminate the authority of the registered agent.

8 Sec. 142. NEW SECTION. 504.1407 KNOWN CLAIMS AGAINST
9 DISSOLVED CORPORATION.

10 1. A dissolved corporation may dispose of the known claims
11 against it by following the procedure described in this
12 section.

13 2. The dissolved corporation shall notify its known
14 claimants in writing of the dissolution at any time after the
15 effective date of the dissolution. The written notice must do
16 all of the following:

17 a. Describe information that must be included in a claim.

18 b. Provide a mailing address where a claim may be sent.

19 c. State the deadline, which shall not be fewer than one
20 hundred twenty days from the effective date of the written
21 notice, by which the dissolved corporation must receive the
22 claim.

23 d. State that the claim will be barred if not received by
24 the deadline.

25 3. A claim against the dissolved corporation is barred if
26 either of the following occurs:

27 a. A claimant who was given written notice under
28 subsection 2 does not deliver the claim to the dissolved
29 corporation by the deadline.

30 b. A claimant whose claim was rejected by the dissolved
31 corporation does not commence a proceeding to enforce the
32 claim within ninety days from the effective date of the
33 rejection notice.

34 4. For purposes of this section, "claim" does not include
35 a contingent liability or a claim based on an event occurring

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1 after the effective date of dissolution.

2 Sec. 143. NEW SECTION. 504.1408 UNKNOWN CLAIMS AGAINST
3 DISSOLVED CORPORATION.

4 1. A dissolved corporation may also publish notice of its
5 dissolution and request that persons with claims against the
6 corporation present them in accordance with the notice.

7 2. The notice must do all of the following:

8 a. Be published one time in a newspaper of general
9 circulation in the county where the dissolved corporation's
10 principal office is located, or, if none is located in this
11 state, where its registered office is or was last located.

12 b. Describe the information that must be included in a
13 claim and provide a mailing address where the claim may be
14 sent.

15 c. State that a claim against the corporation will be
16 barred unless a proceeding to enforce the claim is commenced
17 within five years after publication of the notice.

18 3. If the dissolved corporation publishes a newspaper
19 notice in accordance with subsection 2, the claim of each of
20 the following claimants is barred unless the claimant
21 commences a proceeding to enforce the claim against the
22 dissolved corporation within five years after the publication
23 date of the newspaper notice:

24 a. A claimant who did not receive written notice under
25 section 504.1407.

26 b. A claimant whose claim was timely sent to the dissolved
27 corporation but not acted on.

28 c. A claimant whose claim is contingent or based on an
29 event occurring after the effective date of dissolution.

30 4. A claim may be enforced under this section to the
31 following extent, as applicable:

32 a. Against the dissolved corporation, to the extent of its
33 undistributed assets.

34 b. If the assets have been distributed in liquidation,
35 against any person, other than a creditor of the corporation,

1 to whom the corporation distributed its property to the extent
2 of the distributee's pro rata share of the claim or the
3 corporate assets distributed to such person in liquidation,
4 whichever is less, but the distributee's total liability for
5 all claims under this section shall not exceed the total
6 amount of assets distributed to the distributee.

7 PART 2

8 ADMINISTRATIVE DISSOLUTION

9 Sec. 144. NEW SECTION. 504.1421 GROUNDS FOR
10 ADMINISTRATIVE DISSOLUTION.

11 The secretary of state may commence a proceeding under
12 section 504.1422 to administratively dissolve a corporation if
13 any of the following occurs:

14 1. The corporation does not deliver its biennial report to
15 the secretary of state, in a form that meets the requirements
16 of section 504.1613, within sixty days after the report is
17 due.

18 2. The corporation is without a registered agent or
19 registered office in this state for sixty days or more.

20 3. The corporation does not notify the secretary of state
21 within sixty days that its registered agent or registered
22 office has been changed, that its registered agent has
23 resigned, or that its registered office has been discontinued.

24 4. The corporation's period of duration, if any, stated in
25 its articles of incorporation expires.

26 Sec. 145. NEW SECTION. 504.1422 PROCEDURE FOR AND EFFECT
27 OF ADMINISTRATIVE DISSOLUTION.

28 1. Upon determining that one or more grounds exist under
29 section 504.1421 for dissolving a corporation, the secretary
30 of state shall serve the corporation with written notice of
31 that determination under section 504.504.

32 2. If the corporation does not correct each ground for
33 dissolution or demonstrate to the reasonable satisfaction of
34 the secretary of state that each ground determined by the
35 secretary of state does not exist within at least sixty days

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1 after service of notice is perfected under section 504.504,
2 the secretary of state may administratively dissolve the
3 corporation by signing a certificate of dissolution that
4 recites the ground or grounds for dissolution and its
5 effective date. The secretary of state shall file the
6 original of the certificate of dissolution and serve a copy on
7 the corporation under section 504.504.

8 3. A corporation that is administratively dissolved
9 continues its corporate existence but may not carry on any
10 activities except those necessary to wind up and liquidate its
11 affairs pursuant to section 504.1406 and notify its claimants
12 pursuant to sections 504.1407 and 504.1408.

13 4. The administrative dissolution of a corporation does
14 not terminate the authority of its registered agent.

15 5. The secretary of state's administrative dissolution of
16 a corporation pursuant to this section appoints the secretary
17 of state as the corporation's agent for service of process in
18 any proceeding based on a cause of action which arose during
19 the time the corporation was authorized to transact business
20 in this state. Service of process on the secretary of state
21 under this subsection is service on the corporation. Upon
22 receipt of process, the secretary of state shall serve a copy
23 of the process on the corporation as provided in section
24 504.504. This subsection does not preclude service on the
25 corporation's registered agent, if any.

26 Sec. 146. NEW SECTION. 504.1423 REINSTATEMENT FOLLOWING
27 ADMINISTRATIVE DISSOLUTION.

28 1. A corporation administratively dissolved under section
29 504.1422 may apply to the secretary of state for reinstatement
30 within two years after the effective date of dissolution. The
31 application must state all of the following:

32 a. The name of the corporation and the effective date of
33 its administrative dissolution.

34 b. That the ground or grounds for dissolution either did
35 not exist or have been eliminated.

1 c. That the corporation's name satisfies the requirements
2 of section 504.401.

3 d. The federal tax identification number of the
4 corporation.

5 2. a. The secretary of state shall refer the federal tax
6 identification number contained in the application for
7 reinstatement to the department of revenue and finance. The
8 department of revenue and finance shall report to the
9 secretary of state the tax status of the corporation. If the
10 department reports to the secretary of state that a filing
11 delinquency or liability exists against the corporation, the
12 secretary of state shall not cancel the certificate of
13 dissolution until the filing delinquency or liability is
14 satisfied.

15 b. If the secretary of state determines that the
16 application contains the information required by subsection 1,
17 that a delinquency or liability reported pursuant to paragraph
18 "a" has been satisfied, and that all of the application
19 information is correct, the secretary of state shall cancel
20 the certificate of dissolution and prepare a certificate of
21 reinstatement reciting that determination and the effective
22 date of reinstatement, file the original of the certificate,
23 and serve a copy on the corporation under section 504.504. If
24 the corporate name in subsection 1, paragraph "c", is
25 different from the corporate name in subsection 1, paragraph
26 "a", the certificate of reinstatement shall constitute an
27 amendment to the articles of incorporation insofar as it
28 pertains to the corporate name.

29 3. When reinstatement is effective, it relates back to and
30 takes effect as of the effective date of the administrative
31 dissolution and the corporation shall resume carrying on its
32 activities as if the administrative dissolution had never
33 occurred.

34 Sec. 147. NEW SECTION. 504.1424 APPEAL FROM DENIAL OF
35 REINSTATEMENT.

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1 1. The secretary of state, upon denying a corporation's
2 application for reinstatement following administrative
3 dissolution, shall serve the corporation under section 504.504
4 with a written notice that explains the reason or reasons for
5 denial.

6 2. The corporation may appeal the denial of reinstatement
7 to the district court within ninety days after service of the
8 notice of denial is perfected by petitioning to set aside the
9 dissolution and attaching to the petition copies of the
10 secretary of state's certificate of dissolution, the
11 corporation's application for reinstatement, and the secretary
12 of state's notice of denial of reinstatement.

13 3. The court may summarily order the secretary of state to
14 reinstate the dissolved corporation or may take other action
15 the court considers appropriate.

16 4. The court's final decision may be appealed as in other
17 civil proceedings.

18 PART 3

19 JUDICIAL DISSOLUTION

20 Sec. 148. NEW SECTION. 504.1431 GROUNDS FOR JUDICIAL
21 DISSOLUTION.

22 1. The district court may dissolve a corporation in any of
23 the following ways:

24 a. In a proceeding brought by the attorney general, if any
25 of the following is established:

26 (1) The corporation obtained its articles of incorporation
27 through fraud.

28 (2) The corporation has continued to exceed or abuse the
29 authority conferred upon it by law.

30 b. Except as provided in the articles or bylaws of a
31 religious corporation, in a proceeding brought by fifty
32 members or members holding five percent of the voting power,
33 whichever is less, or by a director or any person specified in
34 the articles, if any of the following is established:

35 (1) The directors are deadlocked in the management of the

1 corporate affairs, and the members, if any, are unable to
2 break the deadlock.

3 (2) The directors or those in control of the corporation
4 have acted, are acting, or will act in a manner that is
5 illegal, oppressive, or fraudulent.

6 (3) The members are deadlocked in voting power and have
7 failed, for a period that includes at least two consecutive
8 annual meeting dates, to elect successors to directors whose
9 terms have, or would otherwise have, expired.

10 (4) The corporate assets are being misapplied or wasted.

11 c. In a proceeding brought by a creditor, if either of the
12 following is established:

13 (1) The creditor's claim has been reduced to judgment, the
14 execution on the judgment is returned unsatisfied, and the
15 corporation is insolvent.

16 (2) The corporation has admitted in writing that the
17 creditor's claim is due and owing and the corporation is
18 insolvent.

19 d. In a proceeding brought by the corporation to have its
20 voluntary dissolution continued under court supervision.

21 2. Prior to dissolving a corporation, the court shall
22 consider whether:

23 a. There are reasonable alternatives to dissolution.

24 b. Dissolution is in the public interest, if the
25 corporation is a public benefit corporation.

26 c. Dissolution is the best way of protecting the interests
27 of members, if the corporation is a mutual benefit
28 corporation.

29 Sec. 149. NEW SECTION. 504.1432 PROCEDURE FOR JUDICIAL
30 DISSOLUTION.

31 1. Venue for a proceeding brought by the attorney general
32 to dissolve a corporation lies in Polk county. Venue for a
33 proceeding brought by any other party named in section
34 504.1431 lies in the county where a corporation's principal
35 office is located or, if none is located in this state, where

1 its registered office is or was last located.

2 2. It is not necessary to make directors or members
3 parties to a proceeding to dissolve a corporation unless
4 relief is sought against them individually.

5 3. A court in a proceeding brought to dissolve a
6 corporation may issue injunctions, appoint a receiver or
7 custodian pendente lite with all powers and duties the court
8 directs, take other action required to preserve the corporate
9 assets wherever located, or carry on the activities of the
10 corporation until a full hearing can be held.

11 Sec. 150. NEW SECTION. 504.1433 RECEIVERSHIP OR
12 CUSTODIANSHIP.

13 1. A court in a judicial proceeding brought to dissolve a
14 public benefit or mutual benefit corporation may appoint one
15 or more receivers to wind up and liquidate, or one or more
16 custodians to manage, the affairs of the corporation. The
17 court shall hold a hearing, after notifying all parties to the
18 proceeding and any interested persons designated by the court,
19 before appointing a receiver or custodian. The court
20 appointing a receiver or custodian has exclusive jurisdiction
21 over the corporation and all of its property wherever located.

22 2. The court may appoint an individual, or a domestic or
23 foreign business or nonprofit corporation authorized to
24 transact business in this state as a receiver or custodian.
25 The court may require the receiver or custodian to post bond,
26 with or without sureties, in an amount the court directs.

27 3. The court shall describe the powers and duties of the
28 receiver or custodian in its appointing order, which may be
29 amended including the following:

30 a. The receiver or custodian may dispose of all or any
31 part of the assets of the corporation wherever located, at a
32 public or private sale, if authorized by the court. However,
33 the receiver's or custodian's power to dispose of the assets
34 of the corporation is subject to any trust and other
35 restrictions that would be applicable to the corporation. The

1 receiver or custodian may sue and defend in the receiver's or
2 custodian's name as receiver or custodian of the corporation,
3 as applicable, in all courts of this state.

4 b. The custodian may exercise all of the powers of the
5 corporation, through or in place of its board of directors or
6 officers, to the extent necessary to manage the affairs of the
7 corporation in the best interests of its members and
8 creditors.

9 4. The court during a receivership may redesignate the
10 receiver a custodian, and during a custodianship may
11 redesignate the custodian a receiver, if doing so is in the
12 best interests of the corporation, its members, and creditors.

13 5. The court during the receivership or custodianship may
14 order compensation paid and expense disbursements or
15 reimbursements made to the receiver or custodian and to the
16 receiver's or custodian's attorney from the assets of the
17 corporation or proceeds from the sale of the assets.

18 Sec. 151. NEW SECTION. 504.1434 DECREE OF DISSOLUTION.

19 1. If after a hearing the court determines that one or
20 more grounds for judicial dissolution described in section
21 504.1431 exist, the court may enter a decree dissolving the
22 corporation and specifying the effective date of the
23 dissolution, and the clerk of the court shall deliver a
24 certified copy of the decree to the secretary of state, who
25 shall file it.

26 2. After entering the decree of dissolution, the court
27 shall direct the winding up of the corporation's affairs and
28 liquidation of the corporation in accordance with section
29 504.1406 and the notification of its claimants in accordance
30 with sections 504.1407 and 504.1408.

31

PART 4

32

MISCELLANEOUS

33 Sec. 152. NEW SECTION. 504.1441 DEPOSIT WITH STATE
34 TREASURER.

35 Assets of a dissolved corporation which should be

1 transferred to a creditor, claimant, or member of the
 2 corporation who cannot be found or who is not competent to
 3 receive them shall be reduced to cash subject to known trust
 4 restrictions and deposited with the treasurer of state for
 5 safekeeping. However, in the treasurer of state's discretion,
 6 property may be received and held in kind. When the creditor,
 7 claimant, or member furnishes satisfactory proof of
 8 entitlement to the amount deposited or property held in kind,
 9 the treasurer of state shall deliver to the creditor, member,
 10 or other person or to the representative of the creditor,
 11 member, or other person that amount or property.

12 SUBCHAPTER XV

13 FOREIGN CORPORATIONS

14 PART 1

15 CERTIFICATE OF AUTHORITY

16 Sec. 153. NEW SECTION. 504.1501 AUTHORITY TO TRANSACT
 17 BUSINESS REQUIRED.

18 1. A foreign corporation shall not transact business in
 19 this state until it obtains a certificate of authority from
 20 the secretary of state.

21 2. The following activities, among others, do not
 22 constitute transacting business within the meaning of
 23 subsection 1:

24 a. Maintaining, defending, or settling any proceeding.

25 b. Holding meetings of the board of directors or members
 26 or carrying on other activities concerning internal corporate
 27 affairs.

28 c. Maintaining bank accounts.

29 d. Maintaining offices or agencies for the transfer,
 30 exchange, or registration of memberships or securities or
 31 maintaining trustees or depositaries with respect to those
 32 securities.

33 e. Selling through independent contractors.

34 f. Soliciting or obtaining orders, whether by mail or
 35 through employees or agents or otherwise, if the orders

1 require acceptance outside this state before they become
2 contracts.

3 g. Creating or acquiring indebtedness, mortgages, or
4 security interests in real or personal property.

5 h. Securing or collecting debts or enforcing mortgages or
6 security interests in property securing the debts.

7 i. Owning, without more, real or personal property.

8 j. Conducting an isolated transaction that is completed
9 within thirty days and that is not one in the course of
10 repeated transactions of a like nature.

11 k. Transacting business in interstate commerce.

12 Sec. 154. NEW SECTION. 504.1502 CONSEQUENCES OF
13 TRANSACTING BUSINESS WITHOUT AUTHORITY.

14 1. A foreign corporation transacting business in this
15 state without a certificate of authority shall not maintain a
16 proceeding in any court in this state until it obtains a
17 certificate of authority.

18 2. The successor to a foreign corporation that transacted
19 business in this state without a certificate of authority and
20 the assignee of a cause of action arising out of that business
21 shall not maintain a proceeding on that cause of action in any
22 court in this state until the foreign corporation or its
23 successor obtains a certificate of authority.

24 3. A court may stay a proceeding commenced by a foreign
25 corporation, its successor, or assignee until the court
26 determines whether the foreign corporation or its successor
27 requires a certificate of authority. If it so determines, the
28 court may further stay the proceeding until the foreign
29 corporation or its successor obtains the certificate.

30 4. A foreign corporation is liable for a civil penalty of
31 an amount not to exceed a total of one thousand dollars if it
32 transacts business in this state without a certificate of
33 authority. The attorney general may collect all penalties due
34 under this subsection.

35 5. Notwithstanding subsections 1 and 2, the failure of a

1 foreign corporation to obtain a certificate of authority does
2 not impair the validity of its corporate acts or prevent it
3 from defending any proceeding in this state.

4 Sec. 155. NEW SECTION. 504.1503 APPLICATION FOR
5 CERTIFICATE OF AUTHORITY.

6 1. A foreign corporation may apply for a certificate of
7 authority to transact business in this state by delivering an
8 application to the secretary of state. The application must
9 set forth all of the following:

10 a. The name of the foreign corporation or, if its name is
11 unavailable for use in this state, a corporate name that
12 satisfies the requirements of section 504.1506.

13 b. The name of the state or country under whose law it is
14 incorporated.

15 c. The date of incorporation and period of duration.

16 d. The address of its principal office.

17 e. The address of its registered office in this state and
18 the name of its registered agent at that office.

19 f. The names and usual business or home addresses of its
20 current directors and officers.

21 g. Whether the foreign corporation has members.

22 2. The foreign corporation shall deliver the completed
23 application to the secretary of state, and shall also deliver
24 to the secretary of state a certificate of existence or a
25 document of similar import duly authenticated by the secretary
26 of state or other official having custody of corporate records
27 in the state or country under whose law it is incorporated
28 which is dated no earlier than ninety days prior to the date
29 the application is filed with the secretary of state.

30 Sec. 156. NEW SECTION. 504.1504 AMENDED CERTIFICATE OF
31 AUTHORITY.

32 1. A foreign corporation authorized to transact business
33 in this state shall obtain an amended certificate of authority
34 from the secretary of state if it changes any of the
35 following:

1 a. Its corporate name.

2 b. The period of its duration.

3 c. The state or country of its incorporation.

4 2. The requirements of section 504.1503 for obtaining an
5 original certificate of authority apply to obtaining an
6 amended certificate under this section.

7 Sec. 157. NEW SECTION. 504.1505 EFFECT OF CERTIFICATE OF
8 AUTHORITY.

9 1. A certificate of authority authorizes the foreign
10 corporation to which it is issued to transact business in this
11 state subject, however, to the right of the state to revoke
12 the certificate as provided in this chapter.

13 2. A foreign corporation with a valid certificate of
14 authority has the same rights and has the same privileges as
15 and, except as otherwise provided by this chapter, is subject
16 to the same duties, restrictions, penalties, and liabilities
17 now or later imposed on a domestic corporation of like
18 character.

19 3. This chapter does not authorize this state to regulate
20 the organization or internal affairs of a foreign corporation
21 authorized to transact business in this state.

22 Sec. 158. NEW SECTION. 504.1506 CORPORATE NAME OF
23 FOREIGN CORPORATION.

24 1. If the corporate name of a foreign corporation does not
25 satisfy the requirements of section 504.401, the foreign
26 corporation, to obtain or maintain a certificate of authority
27 to transact business in this state, may use a fictitious name
28 to transact business in this state if the corporation's real
29 name is unavailable and it delivers to the secretary of state
30 for filing a copy of the resolution of its board of directors,
31 certified by its secretary, adopting the fictitious name.

32 2. Except as authorized by subsections 3 and 4, the
33 corporate name of a foreign corporation, including a
34 fictitious name, must be distinguishable upon the records of
35 the secretary of state from all of the following:

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1 a. The corporate name of a nonprofit or business
2 corporation incorporated or authorized to transact business in
3 this state.

4 b. A corporate name reserved or registered under section
5 504.402 or 504.403 or section 490.402 or 490.403.

6 c. The fictitious name of another foreign business or
7 nonprofit corporation authorized to transact business in this
8 state.

9 3. A foreign corporation may apply to the secretary of
10 state for authorization to use in this state the name of
11 another corporation incorporated or authorized to transact
12 business in this state that is not distinguishable upon the
13 records of the secretary of state from the name applied for.
14 The secretary of state shall authorize use of the name applied
15 for if either of the following applies:

16 a. The other corporation consents to the use in writing
17 and submits an undertaking in a form satisfactory to the
18 secretary of state to change its name to a name that is
19 distinguishable upon the records of the secretary of state
20 from the name of the applying corporation.

21 b. The applicant delivers to the secretary of state a
22 certified copy of a final judgment of a court of competent
23 jurisdiction establishing the applicant's right to use the
24 name applied for in this state.

25 4. A foreign corporation may use in this state the name,
26 including the fictitious name, of another domestic or foreign
27 business or nonprofit corporation that is used in this state
28 if the other corporation is incorporated or authorized to
29 transact business in this state and the foreign corporation
30 has filed documentation satisfactory to the secretary of state
31 of the occurrence of any of the following:

32 a. The foreign corporation has merged with the other
33 corporation.

34 b. The foreign corporation has been formed by
35 reorganization of the other corporation.

1 c. The foreign corporation has acquired all or
2 substantially all of the assets, including the corporate name,
3 of the other corporation.

4 5. If a foreign corporation authorized to transact
5 business in this state changes its corporate name to one that
6 does not satisfy the requirements of section 504.401, it shall
7 not transact business in this state under the changed name
8 until it adopts a name satisfying the requirements of section
9 504.401 and obtains an amended certificate of authority under
10 section 504.1504.

11 Sec. 159. NEW SECTION. 504.1507 REGISTERED OFFICE AND
12 REGISTERED AGENT OF FOREIGN CORPORATION.

13 Each foreign corporation authorized to transact business in
14 this state shall continuously maintain in this state both of
15 the following:

16 1. A registered office with the same address as that of
17 its registered agent.

18 2. A registered agent, who may be any of the following:

19 a. An individual who resides in this state and whose
20 office is identical to the registered office.

21 b. A domestic business or nonprofit corporation whose
22 office is identical to the registered office.

23 c. A foreign business or nonprofit corporation authorized
24 to transact business in this state whose office is identical
25 to the registered office.

26 Sec. 160. NEW SECTION. 504.1508 CHANGE OF REGISTERED
27 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

28 1. A foreign corporation authorized to transact business
29 in this state may change its registered office or registered
30 agent by delivering to the secretary of state for filing a
31 statement of change that sets forth all of the following that
32 apply:

33 a. The name of its registered office or registered agent.

34 b. If the current registered office is to be changed, the
35 address of its new registered office.

1 c. If the current registered agent is to be changed, the
2 name of its new registered agent and the new agent's written
3 consent to the appointment, either on the statement or
4 attached to it.

5 d. That after the change or changes are made, the
6 addresses of its registered office and the office of its
7 registered agent will be identical.

8 2. If a registered agent changes the address of its
9 business office, the agent may change the address of the
10 registered office of any foreign corporation for which the
11 agent is the registered agent by notifying the corporation in
12 writing of the change and signing either manually or in
13 facsimile and delivering to the secretary of state for filing
14 a statement of change that complies with the requirements of
15 subsection 1 and recites that the corporation has been
16 notified of the change.

17 3. If a registered agent changes the registered agent's
18 business address to another place, the registered agent may
19 change the address of the registered office of any corporation
20 for which the registered agent is the registered agent by
21 filing a statement as required in subsection 2 for each
22 corporation, or by filing a single statement for all
23 corporations named in the notice, except that it must be
24 signed either manually or in facsimile only by the registered
25 agent and must recite that a copy of the statement has been
26 mailed to each corporation named in the notice.

27 4. A corporation may also change its registered office or
28 registered agent in its biennial report as provided in section
29 504.1613.

30 Sec. 161. NEW SECTION. 504.1509 RESIGNATION OF
31 REGISTERED AGENT OF FOREIGN CORPORATION.

32 1. The registered agent of a foreign corporation may
33 resign as agent by signing and delivering to the secretary of
34 state for filing the original statement of resignation. The
35 statement of resignation may include a statement that the

1 registered office is also discontinued.

2 The registered agent shall send a copy of the statement of
3 resignation by certified mail to the corporation at its
4 principal office and to the registered office, if not
5 discontinued. The registered agent shall certify to the
6 secretary of state that the copies have been sent to the
7 corporation, including the date the copies were sent.

8 2. The agency appointment is terminated, and the
9 registered office discontinued if so provided, on the date on
10 which the statement is filed with the secretary of state.

11 Sec. 162. NEW SECTION. 504.1510 SERVICE ON FOREIGN
12 CORPORATION.

13 1. The registered agent of a foreign corporation
14 authorized to transact business in this state is the
15 corporation's agent for service of process, notice, or demand
16 required or permitted by law to be served on the foreign
17 corporation.

18 2. A foreign corporation may be served by registered or
19 certified mail, return receipt requested, addressed to the
20 secretary of the foreign corporation at its principal office
21 shown in its application for a certificate of authority or in
22 its most recent biennial report filed under section 504.1613
23 if any of the following conditions apply:

24 a. The foreign corporation has no registered agent or its
25 registered agent cannot with reasonable diligence be served.

26 b. The foreign corporation has withdrawn from transacting
27 business in this state under section 504.1521.

28 c. The foreign corporation has had its certificate of
29 authority revoked under section 504.1532.

30 3. Service is perfected under subsection 2 at the earliest
31 of any of the following:

32 a. The date the foreign corporation receives the mail.

33 b. The date shown on the return receipt, if signed on
34 behalf of the foreign corporation.

35 c. Five days after its deposit in the United States mail,

1 as evidenced by the postmark, if mailed postpaid and correctly
2 addressed.

3 4. This section does not prescribe the only means, or
4 necessarily the required means, of serving a foreign
5 corporation. A foreign corporation may also be served in any
6 other manner permitted by law.

7 PART 2

8 WITHDRAWAL

9 Sec. 163. NEW SECTION. 504.1521 WITHDRAWAL OF FOREIGN
10 CORPORATION.

11 1. A foreign corporation authorized to transact business
12 in this state shall not withdraw from this state until it
13 obtains a certificate of withdrawal from the secretary of
14 state.

15 2. A foreign corporation authorized to transact business
16 in this state may apply for a certificate of withdrawal by
17 delivering an application to the secretary of state for
18 filing. The application shall set forth all of the following:

19 a. The name of the foreign corporation and the name of the
20 state or country under whose law it is incorporated.

21 b. That it is not transacting business in this state and
22 that it surrenders its authority to transact business in this
23 state.

24 c. That it revokes the authority of its registered agent
25 to accept service on its behalf and appoints the secretary of
26 state as its agent for service of process in any proceeding
27 based on a cause of action arising during the time it was
28 authorized to do business in this state.

29 d. A mailing address to which the secretary of state may
30 mail a copy of any process served on the secretary of state
31 under paragraph "c".

32 3. After the withdrawal of the corporation is effective,
33 service of process on the secretary of state under this
34 section is service on the foreign corporation. Upon receipt
35 of process, the secretary of state shall mail a copy of the

1 process to the foreign corporation at the mailing address set
2 forth in its application for withdrawal.

3

PART 3

4

REVOCATION OF CERTIFICATE OF AUTHORITY

5

Sec. 164. NEW SECTION. 504.1531 GROUNDS FOR REVOCATION.

6

1. The secretary of state may commence a proceeding under
7 section 504.1532 to revoke the certificate of authority of a
8 foreign corporation authorized to transact business in this
9 state if any of the following applies:

10

a. The foreign corporation does not deliver the biennial
11 report to the secretary of state in a form that meets the
12 requirements of section 504.1613 within sixty days after it is
13 due.

14

b. The foreign corporation is without a registered agent
15 or registered office in this state for sixty days or more.

16

c. The foreign corporation does not inform the secretary
17 of state under section 504.1508 or 504.1509 that its
18 registered agent or registered office has changed, that its
19 registered agent has resigned, or that its registered office
20 has been discontinued within ninety days of the change,
21 resignation, or discontinuance.

22

d. An incorporator, director, officer, or agent of the
23 foreign corporation signed a document that such person knew
24 was false in any material respect with intent that the
25 document be delivered to the secretary of state for filing.

26

e. The secretary of state receives a duly authenticated
27 certificate from the secretary of state or other official
28 having custody of corporate records in the state or country
29 under whose law the foreign corporation is incorporated,
30 stating that it has been dissolved or disappeared as the
31 result of a merger.

32

2. The attorney general may commence a proceeding under
33 section 504.1532 to revoke the certificate of authority of a
34 foreign corporation authorized to transact business in this
35 state if the corporation has continued to exceed or abuse the

1 authority conferred upon it by law.

2 Sec. 165. NEW SECTION. 504.1532 PROCEDURE FOR AND EFFECT
3 OF REVOCATION.

4 1. The secretary of state, upon determining that one or
5 more grounds exist under section 504.1531 for revocation of a
6 certificate of authority, shall serve the foreign corporation
7 with written notice of that determination under section
8 504.1510.

9 2. The attorney general, upon determining that one or more
10 grounds exist under section 504.1531, subsection 2, for
11 revocation of a certificate of authority, shall request the
12 secretary of state to serve, and the secretary of state shall
13 serve, the foreign corporation with written notice of that
14 determination under section 504.1510.

15 3. If the foreign corporation does not correct each ground
16 for revocation or demonstrate to the reasonable satisfaction
17 of the secretary of state or attorney general that each ground
18 for revocation determined by the secretary of state or
19 attorney general does not exist within sixty days after
20 service of the notice is perfected under section 504.1510, the
21 secretary of state may revoke the foreign corporation's
22 certificate of authority by signing a certificate of
23 revocation that recites the ground or grounds for revocation
24 and its effective date. The secretary of state shall file the
25 original of the certificate and serve a copy on the foreign
26 corporation under section 504.1510.

27 4. The authority of a foreign corporation to transact
28 business in this state ceases on the date shown on the
29 certificate revoking its certificate of authority.

30 5. The secretary of state's revocation of a foreign
31 corporation's certificate of authority appoints the secretary
32 of state the foreign corporation's agent for service of
33 process in any proceeding based on a cause of action that
34 arose during the time the foreign corporation was authorized
35 to transact business in this state. Service of process on the

1 secretary of state under this subsection is service on the
2 foreign corporation. Upon receipt of process, the secretary
3 of state shall mail a copy of the process to the secretary of
4 the foreign corporation at its principal office shown in its
5 most recent biennial report or in any subsequent
6 communications received from the corporation stating the
7 current mailing address of its principal office, or, if none
8 are on file, in its application for a certificate of
9 authority.

10 6. Revocation of a foreign corporation's certificate of
11 authority does not terminate the authority of the registered
12 agent of the corporation.

13 Sec. 166. NEW SECTION. 504.1533 APPEAL FROM REVOCATION.

14 1. A foreign corporation may appeal the secretary of
15 state's revocation of its certificate of authority to the
16 district court within thirty days after the service of the
17 certificate of revocation is perfected under section 504.1510
18 by petitioning to set aside the revocation and attaching to
19 the petition copies of its certificate of authority and the
20 secretary of state's certificate of revocation.

21 2. The court may summarily order the secretary of state to
22 reinstate the certificate of authority or may take any other
23 action the court considers appropriate.

24 3. The court's final decision may be appealed as in other
25 civil proceedings.

26 SUBCHAPTER XVI

27 RECORDS AND REPORTS

28 PART 1

29 RECORDS

30 Sec. 167. NEW SECTION. 504.1601 CORPORATE RECORDS.

31 1. A corporation shall keep as permanent records minutes
32 of all meetings of its members and board of directors, a
33 record of all actions taken by the members or directors
34 without a meeting, and a record of all actions taken by
35 committees of the board of directors as authorized by section

1 504.826, subsection 4.

2 2. A corporation shall maintain appropriate accounting
3 records.

4 3. A corporation or its agent shall maintain a record of
5 its members in a form that permits preparation of a list of
6 the names and addresses of all members, in alphabetical order
7 by class, showing the number of votes each member is entitled
8 to vote.

9 4. A corporation shall maintain its records in written
10 form or in another form capable of conversion into written
11 form within a reasonable time.

12 5. A corporation shall keep a copy of all of the following
13 records:

14 a. Its articles or restated articles of incorporation and
15 all amendments to them currently in effect.

16 b. Its bylaws or restated bylaws and all amendments to
17 them currently in effect.

18 c. Resolutions adopted by its board of directors relating
19 to the characteristics, qualifications, rights, limitations,
20 and obligations of members or any class or category of
21 members.

22 d. The minutes of all meetings of members and records of
23 all actions approved by the members for the past three years.

24 e. All written communications to members generally within
25 the past three years, including the financial statements
26 furnished for the past three years under section 504.1611.

27 f. A list of the names and business or home addresses of
28 its current directors and officers.

29 g. Its most recent biennial report delivered to the
30 secretary of state under section 504.1613.

31 Sec. 168. NEW SECTION. 504.1602 INSPECTION OF RECORDS BY
32 MEMBERS.

33 1. Subject to subsection 5, a member is entitled to
34 inspect and copy, at a reasonable time and location specified
35 by the corporation, any of the records of the corporation

1 described in section 504.1601, subsection 5, if the member
2 gives the corporation written notice or a written demand at
3 least five business days before the date on which the member
4 wishes to inspect and copy.

5 2. Subject to subsection 5 and 6, a member is entitled to
6 inspect and copy, at a reasonable time and reasonable location
7 specified by the corporation, any of the following records of
8 the corporation if the member meets the requirements of
9 subsection 3 and gives the corporation written notice at least
10 ten business days before the date on which the member wishes
11 to inspect and copy:

12 a. Excerpts from any records required to be maintained
13 under section 504.1601, subsection 1, to the extent not
14 subject to inspection under section 504.1602, subsection 1.

15 b. Accounting records of the corporation.

16 c. The membership list.

17 3. A member may inspect and copy the records identified in
18 subsection 2 only if all of the following apply:

19 a. The member's demand is made in good faith and for a
20 proper purpose.

21 b. The member describes with reasonable particularity the
22 purpose of the demand and the records the member desires to
23 inspect.

24 c. The records are directly connected to the purpose
25 described.

26 d. The board consents, if consent is required by section
27 504.1605.

28 4. This section does not affect either of the following:

29 a. The right of a member to inspect records under section
30 504.711 or, if the member is in litigation with the
31 corporation, to the same extent as any other litigant.

32 b. The power of a court, independently of this chapter, to
33 compel the production of corporate records for examination.

34 5. The articles or bylaws of a religious corporation may
35 limit or abolish the right of a member under this section to

1 inspect and copy any corporate record.

2 6. A corporation may, within ten business days after
3 receiving a demand for inspection of a membership list under
4 section 504.711 or subsection 2 of this section, respond to
5 the demand with a written proposal offering a reasonable
6 alternative to the demand for inspection that will achieve the
7 purpose of the demand without providing access to or a copy of
8 the membership list. A proposal offering an alternative that
9 reasonably and in a timely manner accomplishes a proper
10 purpose identified in a demand for inspection shall be
11 considered to offer a reasonable alternative. A proposal for
12 a reasonable alternative that has been accepted by the person
13 making the demand for inspection shall cease to be considered
14 a reasonable alternative if the terms of the proposal are not
15 carried out by the corporation within a reasonable time after
16 acceptance of the proposal. For the purposes of this
17 subsection, a reasonable alternative may include, but is not
18 limited to, a communication prepared by a member and mailed by
19 the corporation at the expense of the member.

20 Sec. 169. NEW SECTION. 504.1603 SCOPE OF INSPECTION
21 RIGHT.

22 1. A member's agent or attorney has the same inspection
23 and copying rights as the member the agent or attorney
24 represents.

25 2. The right to copy records under section 504.1602
26 includes, if reasonable, the right to receive copies made by
27 photographic, xerographic, or other means.

28 3. The corporation may impose a reasonable charge,
29 covering the costs of labor and material, for copies of any
30 documents provided to the member. The charge shall not exceed
31 the estimated cost of production or reproduction of the
32 records.

33 4. The corporation may comply with a member's demand to
34 inspect the record of members under section 504.1602,
35 subsection 2, paragraph "c", by providing the member with a

1 list of its members that was compiled no earlier than the date
2 of the member's demand.

3 Sec. 170. NEW SECTION. 504.1604 COURT-ORDERED
4 INSPECTION.

5 1. If a corporation does not allow a member who complies
6 with section 504.1602, subsection 1, to inspect and copy any
7 records required by that subsection to be available for
8 inspection, the district court in the county where the
9 corporation's principal office is located or, if none is
10 located in this state, where its registered office is located,
11 may summarily order inspection and copying of the records
12 demanded at the corporation's expense upon application of the
13 member.

14 2. If a corporation does not within a reasonable time
15 allow a member to inspect and copy any other records, or
16 propose a reasonable alternative to such inspection and
17 copying, the member who complies with section 504.1602,
18 subsections 2 and 3, may apply to the district court in the
19 county where the corporation's principal office is located or,
20 if none is located in this state, where its registered office
21 is located, for an order to permit inspection and copying of
22 the records demanded. The court shall dispose of an
23 application under this subsection on an expedited basis.

24 3. If the court orders inspection and copying of the
25 records demanded or other relief deemed appropriate by the
26 court, it shall also order the corporation to pay the member's
27 costs, including reasonable attorney fees incurred, to obtain
28 the order unless the corporation proves that it refused
29 inspection in good faith because it had a reasonable basis for
30 doubt about the right of the member to inspect the records
31 demanded.

32 4. If the court orders inspection and copying of the
33 records demanded or other relief deemed appropriate by the
34 court, it may impose reasonable restrictions on the use or
35 distribution of the records by the demanding member.

1 Sec. 171. NEW SECTION. 504.1605 LIMITATIONS ON USE OF
2 CORPORATE RECORDS.

3 Without consent of the board, no corporate record may be
4 obtained or used by any person for any purpose unrelated to a
5 member's interest as a member. Without limiting the
6 generality of the foregoing, without the consent of the board,
7 corporate records including, without limitation, a membership
8 list or any part thereof, shall not be used for any of the
9 following:

- 10 1. To solicit money or property unless such money or
11 property will be used solely to solicit the votes of the
12 members in an election to be held by the corporation.
- 13 2. For any commercial purpose.
- 14 3. For sale to or purchase by any person.
- 15 4. For any purpose that is detrimental to the interests of
16 the corporation.

17 Sec. 172. NEW SECTION. 504.1606 INSPECTION OF RECORDS BY
18 DIRECTORS.

19 1. A director of a corporation is entitled to inspect and
20 copy the books, records, and documents of the corporation at
21 any reasonable time to the extent reasonably related to the
22 performance of the director's duties as a director, including
23 duties as a member of a committee, but not for any other
24 purpose or in any manner that would violate any duty to the
25 corporation.

26 2. The district court of the county where the
27 corporation's principal office, or if none in this state, its
28 registered office, is located may order inspection and copying
29 of the books, records, and documents at the corporation's
30 expense, upon application of a director who has been refused
31 such inspection rights, unless the corporation establishes
32 that the director is not entitled to such inspection rights.
33 The court shall dispose of an application under this
34 subsection on an expedited basis.

35 3. If an order is issued, the court may include provisions

1 protecting the corporation from undue burden or expense, and
2 prohibiting the director from using information obtained upon
3 exercise of the inspection rights in a manner that would
4 violate a duty to the corporation, and may also order the
5 corporation to reimburse the director for the director's
6 costs, including reasonable counsel fees, incurred in
7 connection with the application.

8 PART 2
9 REPORTS

10 Sec. 173. NEW SECTION. 504.1611 FINANCIAL STATEMENTS FOR
11 MEMBERS.

12 1. Except as provided in the articles or bylaws of a
13 religious corporation, a corporation upon written demand from
14 a member shall furnish that member the corporation's latest
15 annual financial statements, which may be consolidated or
16 combined statements of the corporation and one or more of its
17 subsidiaries or affiliates, as appropriate, that include a
18 balance sheet as of the end of the fiscal year and a statement
19 of operations for that year.

20 2. If annual financial statements are reported upon by a
21 public accountant, the accountant's report must accompany
22 them.

23 Sec. 174. NEW SECTION. 504.1612 REPORT OF
24 INDEMNIFICATION TO MEMBERS.

25 If a corporation indemnifies or advances expenses to a
26 director under section 504.852, 504.853, 504.854, or 504.855
27 in connection with a proceeding by or in the right of the
28 corporation, the corporation shall report the indemnification
29 or advance in writing to the members with or before the notice
30 of the next meeting of members.

31 Sec. 175. NEW SECTION. 504.1613 BIENNIAL REPORT FOR
32 SECRETARY OF STATE.

33 1. Each domestic corporation, and each foreign corporation
34 authorized to transact business in this state, shall deliver
35 to the secretary of state for filing a biennial report on a

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1 form prescribed and furnished by the secretary of state that
2 sets forth all of the following:

3 a. The name of the corporation and the state or country
4 under whose law it is incorporated.

5 b. The address of the corporation's registered office and
6 the name of the corporation's registered agent at that office
7 in this state, together with the consent of any new registered
8 agent.

9 c. The address of the corporation's principal office.

10 d. The names and addresses of the president, secretary,
11 treasurer, and one member of the board of directors.

12 e. A brief description of the nature of the corporation's
13 activities.

14 f. Whether or not the corporation has members.

15 2. The information in the biennial report must be current
16 on the date the biennial report is executed on behalf of the
17 corporation.

18 3. The first biennial report shall be delivered to the
19 secretary of state between January 1 and April 1 of the first
20 odd-numbered year following the calendar year in which a
21 domestic corporation was incorporated or a foreign corporation
22 was authorized to transact business. Subsequent biennial
23 reports must be delivered to the secretary of state between
24 January 1 and April 1 of the following odd-numbered calendar
25 years.

26 4. a. If a biennial report does not contain the
27 information required by this section, the secretary of state
28 shall promptly notify the reporting domestic or foreign
29 corporation in writing and return the report to the
30 corporation for correction.

31 b. A filing fee for the biennial report shall be
32 determined by the secretary of state.

33 c. For purposes of this section, each biennial report
34 shall contain information related to the two-year period
35 immediately preceding the calendar year in which the report is

1 filed.

2 5. The secretary of state may provide for the change of
3 registered office or registered agent on the form prescribed
4 by the secretary of state for the biennial report, provided
5 that the form contains the information required in section
6 504.502 or 504.508. If the secretary of state determines that
7 a biennial report does not contain the information required by
8 this section but otherwise meets the requirements of section
9 504.502 or 504.508 for the purpose of changing the registered
10 office or registered agent, the secretary of state shall file
11 the statement of change of registered office or registered
12 agent, effective as provided in section 504.114, before
13 returning the biennial report to the corporation as provided
14 in this section. A statement of change of registered office
15 or agent pursuant to this subsection shall be executed by a
16 person authorized to execute the biennial report.

17 SUBCHAPTER XVII

18 TRANSITION PROVISIONS

19 Sec. 176. NEW SECTION. 504.1701 APPLICATION TO EXISTING
20 DOMESTIC CORPORATIONS.

21 1. A domestic corporation that is incorporated under
22 chapter 504A is subject to this chapter beginning on July 1,
23 2005.

24 2. Prior to July 1, 2005, only the following corporations
25 are subject to the provisions of this chapter:

26 a. A corporation formed on or after January 1, 2005.

27 b. A corporation incorporated under chapter 504A, that
28 voluntarily elects to be subject to the provisions of this
29 chapter, in accordance with the procedures set forth in
30 subsection 3.

31 3. A corporation incorporated under chapter 504A may
32 voluntarily elect to be subject to the provisions of this
33 chapter by doing all of the following:

34 a. The corporation shall amend or restate its articles of
35 incorporation to indicate that the corporation voluntarily

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1 elects to be subject to the provisions of this chapter.

2 b. The corporation shall deliver a copy of the amended or
3 restated articles of incorporation to the secretary of state
4 for filing and recording in the office of the secretary of
5 state.

6 4. After the amended or restated articles of incorporation
7 have been filed with the secretary of state all of the
8 following shall occur:

9 a. The corporation shall be subject to all provisions of
10 this chapter.

11 b. The secretary of state shall issue a certificate of
12 filing of the corporation's amended or restated articles of
13 incorporation indicating that the corporation has made a
14 voluntary election to be subject to the provisions of this
15 chapter and shall deliver the certificate to the corporation
16 or to the corporation's representative.

17 c. The secretary of state shall not file the amended or
18 restated articles of incorporation of a corporation pursuant
19 to this subsection unless at the time of filing the
20 corporation is validly organized under the chapter under which
21 it is incorporated, and has filed all biennial reports that
22 are required and paid all fees that are due in connection with
23 such reports.

24 5. The voluntary election of a corporation to be subject
25 to the provisions of this chapter that is made pursuant to
26 this section does not affect any right accrued or established,
27 or any liability or penalty incurred by the corporation
28 pursuant to the chapter under which the corporation was
29 organized prior to such voluntary election.

30 Sec. 177. NEW SECTION. 504.1702 APPLICATION TO QUALIFIED
31 FOREIGN CORPORATIONS.

32 A foreign corporation authorized to transact business in
33 this state prior to January 1, 2005, is subject to this
34 chapter beginning on July 1, 2005, but is not required to
35 obtain a new certificate of authority to transact business

1 under this chapter.

2 Sec. 178. NEW SECTION. 504.1703 SAVINGS PROVISIONS.

3 1. Except as provided in subsection 2, the repeal of a
4 statute by this Act does not affect any of the following:

5 a. The operation of the statute or any action taken under
6 it before its repeal.

7 b. Any ratification, right, remedy, privilege, obligation,
8 or liability acquired, accrued, or incurred under the statute
9 before its repeal.

10 c. Any violation of the statute or any penalty,
11 forfeiture, or punishment incurred because of the violation,
12 before its repeal.

13 d. Any proceeding, reorganization, or dissolution
14 commenced under the statute before its repeal, and the
15 proceeding, reorganization, or dissolution may be completed in
16 accordance with the statute as if it had not been repealed.

17 2. If a penalty or punishment imposed for violation of a
18 statute repealed by this Act is reduced by this chapter, the
19 penalty or punishment, if not already imposed, shall be
20 imposed in accordance with this chapter.

21 Sec. 179. NEW SECTION. 504.1704 SEVERABILITY.

22 If any provision of this chapter or its application to any
23 person or circumstance is held invalid by a court of competent
24 jurisdiction, the invalidity does not affect other provisions
25 or applications of the chapter that can be given effect
26 without the invalid provision or application, and to this end
27 the provisions of the chapter are severable.

28 Sec. 180. NEW SECTION. 504.1705 PUBLIC BENEFIT, MUTUAL
29 BENEFIT, AND RELIGIOUS CORPORATIONS.

30 Each domestic corporation shall be designated a public
31 benefit, mutual benefit, or religious corporation as follows:

32 1. A corporation designated by statute as a public benefit
33 corporation, a mutual benefit corporation, or a religious
34 corporation is deemed to be the type of corporation designated
35 by that statute.

1 2. A corporation that does not come within subsection 1
2 but is organized primarily or exclusively for religious
3 purposes is a religious corporation.

4 3. A corporation that does not come within subsection 1 or
5 2 but which is recognized as exempt under section 501(c)(3) of
6 the Internal Revenue Code, or any successor section, is a
7 public benefit corporation.

8 4. A corporation that does not come within subsection 1,
9 2, or 3, but which is organized for a public or charitable
10 purpose and which upon dissolution must distribute its assets
11 to a public benefit corporation, the United States, a state,
12 or a person recognized as exempt under section 501(c)(3) of
13 the Internal Revenue Code, or any successor section, is a
14 public benefit corporation.

15 5. A corporation that does not come within subsection 1,
16 2, 3, or 4 is a mutual benefit corporation.

17 Sec. 181. Section 15E.64, subsection 2, unnumbered
18 paragraph 1, Code 2003, is amended to read as follows:

19 To facilitate the organization of an Iowa capital
20 investment corporation, both of the following persons shall
21 serve as incorporators as provided in section 504.201 or
22 504A.28, as applicable:

23 Sec. 182. Section 230A.12, unnumbered paragraph 1, Code
24 Supplement 2003, is amended to read as follows:

25 Each community mental health center established or
26 continued in operation pursuant to section 230A.3, shall be
27 organized under the Iowa nonprofit corporation Act appearing
28 as chapter 504A, Code and Code Supplement 2003, except that a
29 community mental health center organized after January 1,
30 2005, and a community mental health center continued in
31 operation after July 1, 2005, shall be organized under the
32 revised Iowa nonprofit corporation Act appearing as chapter
33 504, and except that a community mental health center
34 organized under former chapter 504 prior to July 1, 1974, and
35 existing under the provisions of chapter 504, Code 1989, shall

1 not be required by this chapter to adopt the Iowa nonprofit
2 corporation Act or the revised Iowa nonprofit corporation Act
3 if it is not otherwise required to do so by law. The board of
4 directors of each such community mental health center shall
5 enter into an agreement with the county or affiliated counties
6 which are to be served by the center, which agreement shall
7 include but need not be limited to the period of time for
8 which the agreement is to be in force, what services the
9 center is to provide for residents of the county or counties
10 to be served, standards the center is to follow in determining
11 whether and to what extent persons seeking services from the
12 center shall be considered able to pay the cost of the
13 services received, and policies regarding availability of the
14 center's services to persons who are not residents of the
15 county or counties served by the center. The board of
16 directors, in addition to exercising the powers of the board
17 of directors of a nonprofit corporation may:

18 Sec. 183. Section 490.401, subsection 2, paragraph b, Code
19 2003, is amended to read as follows:

20 b. A corporate name reserved or registered under section
21 490.402, 490.403, 504.402, or 504A.7.

22 Sec. 184. Section 497.22, unnumbered paragraph 1, Code
23 2003, is amended to read as follows:

24 ~~Sections~~ Section 504.1613 or ~~sections~~ 504A.83 and 504A.84
25 apply to a cooperative association organized under this
26 chapter in the same manner as those sections apply to a
27 corporation organized under chapter 504 or 504A. In addition
28 to the information required to be set forth in the biennial
29 report under section 504.1613 or 504A.83, the cooperative
30 association shall also set forth the total amount of business
31 transacted, number of members, total expense of operation,
32 total amount of indebtedness, and total profits or losses for
33 each calendar or fiscal year of the two-year period which
34 ended immediately preceding the first day of January of the
35 year in which the report is filed.

1 Sec. 185. Section 498.24, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 Sections Section 504.1613 or sections 504A.83 and 504A.84
4 apply to a cooperative association organized under this
5 chapter in the same manner as those sections apply to a
6 corporation organized under chapter 504 or 504A. In addition
7 to the information required to be set forth in the biennial
8 report under section 504.1613 or 504A.83, the cooperative
9 association shall also set forth the total amount of business
10 transacted, number of members, total expense of operation,
11 total amount of indebtedness, and total profits or losses for
12 each calendar or fiscal year of the two-year period which
13 ended immediately preceding the first day of January of the
14 year in which the report is filed.

15 Sec. 186. Section 499.49, Code 2003, is amended to read as
16 follows:

17 499.49 BIENNIAL REPORT.

18 Sections Section 504.1613 or sections 504A.83 and 504A.84
19 apply to a cooperative organized under this chapter in the
20 same manner as those sections apply to a corporation organized
21 under chapter 504 or 504A. In addition to the information
22 required to be set forth in the biennial report under section
23 504.1613 or 504A.83, the cooperative shall also set forth the
24 number of members of the cooperative, the percentage of the
25 cooperative's business done with or for its own members during
26 each of the fiscal or calendar years of the preceding two-year
27 period, the percentage of the cooperative's business done with
28 or for each class of nonmembers specified in section 499.3,
29 and any other information deemed necessary by the secretary of
30 state to advise the secretary whether the cooperative is
31 actually functioning as a cooperative.

32 Sec. 187. Section 504A.102, Code 2003, is amended to read
33 as follows:

34 504A.102 FARM AID ASSOCIATIONS -- TERMINATION AND ELECTION
35 TO BE GOVERNED UNDER THE IOWA NONPROFIT CORPORATION ACT OR

1 REVISED IOWA NONPROFIT CORPORATION ACT.

2 1. TERMINATION. A corporation incorporated and governed
3 under chapter 176 as an association organized under chapter
4 176 prior to July 1, 2005, that is not governed as a
5 corporation under this chapter ~~on-or~~ before January 1, 2005,
6 or under chapter 504 on or after January 1, 2005, but prior to
7 June 30, 2005, as provided in this section is terminated on
8 July 1, 2005.

9 2. ELECTION PROCEDURE. A corporation incorporated and
10 governed under chapter 176 as an association organized under
11 chapter 176 prior to July 1, 2005, may elect to be governed as
12 a corporation under this chapter prior to January 1, 2005, or
13 under chapter 504 on or after January 1, 2005, but prior to
14 July 1, 2005. The association governed under chapter 176
15 shall be a corporation governed under this chapter or chapter
16 504 by complying with all of the following requirements:

17 a. The adoption of a resolution or resolutions at a
18 meeting of the board of directors upon receiving the vote of a
19 majority of the directors in office and of the members of the
20 association in the same manner as provided in section 504A.35
21 or 504.1003. The resolution or resolutions shall recite that
22 the association voluntarily elects to be governed as a
23 corporation under this chapter. The resolution must designate
24 the address of the association's initial registered office and
25 the name of the association's registered agent or agents at
26 that office, if any.

27 b. The adoption of articles of incorporation in compliance
28 with section 504A.29 or 504.202 at a meeting of the board of
29 directors upon receiving the vote of a majority of the
30 directors in office and of the members of the association in
31 the same manner as provided in section 504A.35 or 504.1003.
32 The articles of incorporation may be a restatement,
33 substitution, or amendment of articles of incorporation
34 adopted by the association pursuant to section 176.3. The
35 articles of incorporation may be made part of the resolution

1 or resolutions adopted by the association pursuant to
2 paragraph "a" of this subsection.

3 c. Upon the adoption of a resolution or resolutions and
4 articles of incorporation as provided in paragraphs "a" and
5 "b" of this subsection, the president or vice president and
6 secretary or an assistant secretary shall execute an
7 instrument of verification. The instrument of verification
8 shall certify all of the following:

9 (1) The association name as provided in the association's
10 articles of incorporation pursuant to section 176.3 and the
11 new corporation's corporate name, if different, as provided in
12 section 504A.6 or 504.401.

13 (2) An identification of each resolution adopted under
14 paragraph "a" of this subsection, including the date of each
15 resolution's adoption, and a recitation that each resolution
16 and the articles of incorporation for the new corporation are
17 filed with the office of secretary of state.

18 (3) The address of the new corporation's registered office
19 and the name of the new corporation's registered agent as
20 provided in section 504A.8 or 504.501.

21 d. All of the following shall be delivered to the office
22 of the secretary of state for filing and recording as provided
23 in section 504A.30 or 504.111:

24 (1) Each resolution adopted pursuant to paragraph "a" of
25 this subsection.

26 (2) The new corporation's articles of incorporation
27 adopted pursuant to paragraph "b" of this subsection.

28 (3) The instrument of verification that is executed
29 pursuant to paragraph "c" of this subsection.

30 3. CERTIFICATE OF INCORPORATION. Upon For an association
31 electing to be governed under this chapter prior to January 1,
32 2005, upon filing of the resolution or resolutions, the
33 articles of incorporation, and the instrument of verification
34 as provided in subsection 2, the office of secretary of state
35 shall issue a certificate of incorporation and send the

1 certificate to the corporation or its representative as
2 provided in section 504A.30. For an association electing to
3 be governed under chapter 504 on or after January 1, 2005, but
4 prior to July 1, 2005, unless a delayed effective date is
5 specified, the corporate existence begins when the articles of
6 incorporation are filed as provided in section 504.203.

7 4. LIABILITIES AND RIGHTS PRIOR TO THE ELECTION. An
8 association's election to be governed as a corporation under
9 this chapter or chapter 504 does not affect any right accrued
10 or established, or any liability or penalty incurred, under
11 the provisions of chapter 176, prior to filing of the
12 resolution or resolutions, articles of incorporation, and
13 instrument of verification by the association as provided in
14 subsection 2.

15 5. REPEAL. This section is repealed on July 1, 2005.
16 Sec. 188. Section 534.501, subsection 4, Code 2003, is
17 amended to read as follows:

18 4. AMENDMENT PROCEDURE. The procedure for amending
19 articles of incorporation or adopting restated articles for
20 mutual associations is that specified in section 504A.35 or
21 chapter 504, subchapter 10, as applicable, and for stock
22 associations it is that specified in section 490.726 and
23 sections 490.1002 through 490.1005.

24 Sec. 189. Section 602.8102, subsection 70, Code Supplement
25 2003, is amended to read as follows:

26 70. Certify a copy of a decree of dissolution of a
27 nonprofit corporation to the secretary of state and the
28 recorder in the county in which the corporation is located as
29 provided in section 504A.62 or 504.1434, as applicable.

30 Sec. 190. Sections 504A.1 through 504A.102, Code 2005, are
31 repealed effective July 1, 2005.

32 Sec. 191. CODE EDITOR DIRECTIVE. After July 1, 2005, the
33 Code editor is directed to remove Code references to chapter
34 504A as required due to the July 1, 2005, repeal of sections
35 504A.1 through 504A.102 by this Act.

1 members, resignation of members, termination, expulsion, or
2 suspension of members, purchase of memberships, derivative
3 suits, and delegates having some or all of the authority of
4 members.

5 Subchapter VII provides for annual and regular meetings,
6 special meetings, court-ordered meetings, action by written
7 consent, notice of meetings, waiver of notice, record dates,
8 determination of members entitled to notice and vote, action
9 by written ballot, a members' list for a meeting, voting
10 entitlement generally, quorum requirements, voting
11 requirements, proxies, cumulative voting for directors, other
12 methods of electing directors, a corporation's acceptance of
13 votes, and voting agreements.

14 Subchapter VIII provides for requirements for and duties of
15 the board of directors, qualifications of directors, number of
16 directors, election, designation, and appointment of
17 directors, terms of directors, staggered terms for directors,
18 resignation of directors, removal of directors elected by
19 members or directors, removal of designated or appointed
20 directors, removal of directors by judicial proceeding,
21 vacancy on the board of directors, compensation of directors,
22 regular and special meetings of the board, action without a
23 meeting of the board, call and notice of a meeting of the
24 board, waiver of notice of a meeting of the board, quorum and
25 voting at a meeting of the board, committees of the board,
26 general standards for directors, director conflicts of
27 interest, loans to or guarantees for directors and officers,
28 liability for unlawful distributions, required officers,
29 duties and authority of officers, standards of conduct for
30 officers, resignation and removal of officers, contract rights
31 of officers, officers' authority to execute documents,
32 authority of a nonprofit corporation to indemnify, mandatory
33 indemnification, advances for expenses of a director, court-
34 ordered indemnification, determination and authorization of
35 indemnification, indemnification of officers, employees, and

1 agents of the nonprofit corporation, and insurance purchased
2 and maintained by the nonprofit corporation.

3 Subchapter IX provides for personal liability and
4 limitations to the personal liability of a director, officer,
5 member, or volunteer of a nonprofit corporation.

6 Subchapter X provides for the authority to amend articles
7 of incorporation, amendment of the articles of incorporation
8 by the directors, amendment of the articles of incorporation
9 by directors and members, class voting by members on
10 amendments of the articles of incorporation, articles of
11 amendment, restated articles of incorporation, amendments of
12 the articles of incorporation pursuant to judicial
13 reorganization, effect of amendment and restatement, amendment
14 of the bylaws by directors, amendment of the bylaws by
15 directors and members, class voting by members on amendments
16 of the bylaws, approval of amendments of the bylaws and
17 articles of incorporation by third persons, and amendments
18 terminating members or redeeming or canceling memberships.

19 Subchapter XI provides for the approval of a plan of
20 merger, limitations on mergers by public benefit or religious
21 corporations, action on a merger plan by the board of
22 directors, members, and third persons, articles of merger,
23 effects of a merger, merger with a foreign corporation, and
24 bequests, devises, and gifts to a corporation involved in a
25 merger and conversion of a corporation to a mutual insurance
26 company.

27 Subchapter XII provides for the sale of assets in the
28 regular course of activities and mortgage of assets and the
29 sale of assets other than in the regular course of activities
30 by nonprofit corporations.

31 Subchapter XIII provides for prohibited distributions and
32 authorized distributions by nonprofit corporations.

33 Subchapter XIV provides for dissolution by incorporators or
34 directors and third persons, dissolution by directors,
35 members, and third persons, articles of dissolution,

1 revocation of dissolution, effects of dissolution, known
2 claims against a dissolved corporation, unknown claims against
3 a dissolved corporation, grounds for administrative
4 dissolution, procedure for and effect of administrative
5 dissolution, reinstatement following administrative
6 dissolution, appeal from denial of reinstatement, grounds for
7 judicial dissolution, procedure for judicial dissolution,
8 receivership or custodianship, decrees of dissolution, and
9 depositing assets with the treasurer of state.

10 Subchapter XV provides for requiring an authority to
11 transact business, consequences of transacting business
12 without authority, an application for a certificate of
13 authority, an amended certificate of authority, the corporate
14 name of a foreign corporation, the registered office and
15 registered agent of a foreign corporation, change of a
16 registered office of a registered agent of a foreign
17 corporation, the resignation of a registered agent of a
18 foreign corporation, service on a foreign corporation, the
19 withdrawal of a foreign corporation, grounds for revocation of
20 a certificate of authority, the procedure and effect of
21 revocation of a certificate of authority, and appeal from a
22 revocation of a certificate of authority.

23 Subchapter XVI provides for corporate records, the
24 inspection of corporate records by members, the scope of
25 inspection rights, court-ordered inspections, financial
26 statements of a corporation upon demand by members, and a
27 biennial report for the secretary of state.

28 Subchapter XVII provides for the application of new Code
29 chapter 504A to existing corporations and qualified foreign
30 corporations, savings provisions, severability, and the
31 designation of public benefit, mutual benefit, and religious
32 corporations.

33 The bill provides conforming amendments.

34 Code section 504A.102 relating to farm aid associations is
35 amended to provide that any liabilities or rights of a farm

1 aid association that exist prior to the association's election
2 to be governed as a corporation under chapter 504A continue
3 after the July 1, 2005, repeal of other transition provisions
4 relating to farm aid associations.

5 The bill takes effect July 1, 2004, and is applicable to
6 new corporations incorporated after January 1, 2005.

7 Corporations incorporated under Code chapter 504A are subject
8 to new Code chapter 504, the revised Iowa nonprofit
9 corporation Act, created in the bill, beginning on July 1,
10 2005. All corporations that are or become subject to this
11 bill on July 1, 2005, must be designated as a public benefit,
12 mutual benefit, or religious corporation on July 1, 2005.

13 Sections 504A.1 through 504A.102, contained in Code chapter
14 504A, the Iowa nonprofit corporation Act, are repealed on July
15 1, 2005.

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