

MAR 17 2003
Place On Calendar

HOUSE FILE 607
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 132)

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

A BILL FOR

1 An Act relating to nonprofit corporations and providing penalties
2 and effective and applicability dates.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

HF-607

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SUBCHAPTER I
GENERAL PROVISIONS
PART 1

SHORT TITLE AND APPLICATIONS

Section 1. NEW SECTION. 504A.101A SHORT TITLE.

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

Sec. 2. NEW SECTION. 504A.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. 504A.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 504A.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 504A.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. 504A.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. 504A.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	15 FEE
16 a. Articles of incorporation	\$ _____
17 b. Application for use of indistinguishable 18 name	\$ _____
19 c. Application for reserved name	\$ _____
20 d. Notice of transfer of reserved name	\$ _____
21 e. Application for registered name	\$ _____
22 f. Application for renewal of registered name ...	\$ _____
23 g. Corporation's statement of change of 24 registered agent or registered office or both	\$ _____
25 h. Agent's statement of change of registered 26 office for each affected corporation not to 27 exceed a total of _____	\$ _____
28 i. Agent's statement of resignation	no fee
29 j. Amendment of articles of incorporation	\$ _____
30 k. Restatement of articles of incorporation 31 with amendments	\$ _____
32 l. Articles of merger	\$ _____
33 m. Articles of dissolution	\$ _____
34 n. Articles of revocation of dissolution	\$ _____
35 o. Certificate of administrative dissolution	\$ _____
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. 504A.114 EFFECTIVE DATE OF
25 DOCUMENT.

26 1. Except as provided in subsection 2 and section
27 504A.115, a document is effective at the later of the
28 following times:

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

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

34 2. A document may specify a delayed effective time and
35 date, and if it does so the document becomes effective at the

1 time and date specified. If a delayed effective date but no
2 time is specified, the document is effective at the close of
3 business on that date. A delayed effective date for a
4 document shall not be later than the ninetieth day after the
5 date filed.

6 Sec. 7. NEW SECTION. 504A.115 CORRECTING FILED DOCUMENT.

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

10 a. The document contains an inaccuracy.

11 b. The document was defectively executed, attested,
12 sealed, verified, or acknowledged.

13 c. The electronic transmission was defective.

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

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

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

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

20 (3) Correct the incorrect statement or defective
21 execution.

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

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

29 Sec. 8. NEW SECTION. 504A.116 FILING DUTY OF SECRETARY
30 OF STATE.

31 1. If a document delivered to the office of the secretary
32 of state for filing satisfies the requirements of section
33 504A.111, the secretary of state shall file it.

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

1 After filing a document, except as provided in sections
2 504A.503 and 504A.1510, the secretary of state shall deliver
3 to the domestic or foreign corporation or its representative a
4 copy of the document with an acknowledgment of the date and
5 time of filing.

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

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

13 a. Affect the validity or invalidity of the document in
14 whole or in part.

15 b. Relate to the correctness or incorrectness of
16 information contained in the document.

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

20 Sec. 9. NEW SECTION. 504A.117 APPEAL FROM SECRETARY OF
21 STATE'S REFUSAL TO FILE DOCUMENT.

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

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

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

1 Sec. 10. NEW SECTION. 504A.118 EVIDENTIARY EFFECT OF
2 COPY OF FILED DOCUMENT.

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

7 Sec. 11. NEW SECTION. 504A.119 CERTIFICATE OF EXISTENCE.

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

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

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

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

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

24 d. That its most recent biennial report required by
25 section 504A.1613 has been delivered to the secretary of
26 state.

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

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

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

34 Sec. 12. NEW SECTION. 504A.120 PENALTY FOR SIGNING FALSE
35 DOCUMENT.

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

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

7 PART 3

8 SECRETARY OF STATE

9 Sec. 13. NEW SECTION. 504A.131 POWERS.

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

13 PART 4

14 DEFINITIONS

15 Sec. 14. NEW SECTION. 504A.141 CHAPTER DEFINITIONS.

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

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

29 2. "Articles of incorporation" or "articles" includes
30 amended and restated articles of incorporation and articles of
31 merger.

32 3. "Board" or "board of directors" means the board of
33 directors of a corporation except that no person or group of
34 persons are the board of directors because of powers delegated
35 to that person or group pursuant to section 504A.801.

1 4. "Bylaws" means the code or codes of rules other than
2 the articles adopted pursuant to this chapter for the
3 regulation or management of the affairs of a corporation
4 irrespective of the name or names by which such rules are
5 designated.

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

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

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

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

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

24 10. "Distribution" means the payment of a dividend or any
25 part of the income or profit of a corporation to its members,
26 directors, or officers.

27 11. "Domestic corporation" means a corporation.

28 12. "Effective date of notice" is defined in section
29 504A.142.

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

35 14. "Employee" does not include an officer or director of

1 a corporation who is not otherwise employed by the
2 corporation.

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

10 16. "File", "filed", or "filing" means filed in the office
11 of the secretary of state.

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

15 18. "Governmental subdivision" includes an authority,
16 county, district, and municipality.

17 19. "Includes" denotes a partial definition.

18 20. "Individual" includes the estate of an incompetent
19 individual.

20 21. "Means" denotes a complete definition.

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

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

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

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

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

33 24. "Mutual benefit corporation" means a domestic
34 corporation that is formed as a mutual benefit corporation
35 pursuant to subchapter 2 or is required to be a mutual benefit

- 1 corporation pursuant to section 504A.1706.
- 2 25. "Notice" is defined in section 504A.142.
- 3 26. "Person" includes any individual or entity.
- 4 27. "Principal office" means the office in or out of this
5 state so designated in the biennial report filed pursuant to
6 section 504A.1613 where the principal offices of a domestic or
7 foreign corporation are located.
- 8 28. "Proceeding" includes a civil suit and criminal,
9 administrative, or investigatory actions.
- 10 29. "Public benefit corporation" means a domestic
11 corporation that is formed as a public benefit corporation
12 pursuant to subchapter 2 or is required to be a public benefit
13 corporation pursuant to section 504A.1706.
- 14 30. "Record date" means the date established under
15 subchapter 6 or 7 on which a corporation determines the
16 identity of its members for the purposes of this subchapter.
- 17 31. "Religious corporation" means a domestic corporation
18 that is formed as a religious corporation pursuant to
19 subchapter 2 or is required to be a religious corporation
20 pursuant to section 504A.1706.
- 21 32. "Secretary" means the corporate officer to whom the
22 board of directors has delegated responsibility under section
23 504A.841, subsection 2, for custody of the minutes of the
24 directors' and members' meetings and for authenticating the
25 records of the corporation.
- 26 33. "Sign" or "signature" includes a manual, facsimile,
27 conformed, or electronic signature.
- 28 34. "State", when referring to a part of the United
29 States, includes a state and commonwealth and their agencies
30 and governmental subdivisions, and a territory and insular
31 possession and their agencies and governmental subdivisions of
32 the United States.
- 33 35. "United States" includes a district, authority,
34 bureau, commission, department, and any other agency of the
35 United States.

1 36. "Vote" includes authorization by written ballot and
2 written consent.

3 37. "Voting power" means the total number of votes
4 entitled to be cast for the election of directors at the time
5 the determination of voting power is made, excluding a vote
6 that is contingent upon the happening of a condition or event
7 that has not occurred at the time. When a class is entitled
8 to vote as a class for directors, the determination of voting
9 power of the class shall be based on the percentage of the
10 number of directors the class is entitled to elect out of the
11 total number of authorized directors.

12 Sec. 15. NEW SECTION. 504A.142 NOTICE.

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

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

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

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

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

31 b. When electronically transmitted to the shareholder in a
32 manner authorized by the shareholder.

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

- 1 a. When received.
- 2 b. Five days after its deposit in the United States mail,
3 if mailed correctly addressed and with first-class postage
4 affixed.
- 5 c. On the date shown on the return receipt, if sent by
6 registered or certified mail, return receipt requested, and
7 the receipt is signed by or on behalf of the addressee.
- 8 d. Thirty days after its deposit in the United States
9 mail, if mailed correctly addressed and with other than first-
10 class, registered, or certified postage affixed.
- 11 6. Written notice is correctly addressed to a member of a
12 domestic or foreign corporation if addressed to the member's
13 address shown in the corporation's current list of members.
- 14 7. A written notice or report delivered as part of a
15 newsletter, magazine, or other publication regularly sent to
16 members shall constitute a written notice or report if
17 addressed or delivered to the member's address shown in the
18 corporation's current list of members, or in the case of
19 members who are residents of the same household and who have
20 the same address in the corporation's current list of members,
21 if addressed or delivered to one of such members, at the
22 address appearing on the current list of members.
- 23 8. Written notice is correctly addressed to a domestic or
24 foreign corporation authorized to transact business in this
25 state, other than in its capacity as a member, if addressed to
26 its registered agent or to its secretary at its principal
27 office shown in its most recent biennial report or, in the
28 case of a foreign corporation that has not yet delivered an
29 annual report, in its application for a certificate of
30 authority.
- 31 9. If section 504A.705, subsection 2, or any other
32 provision of this chapter prescribes notice requirements for
33 particular circumstances, those requirements govern. If
34 articles or bylaws prescribe notice requirements not
35 inconsistent with this section or other provisions of this

1 chapter, those requirements govern.

2

PART 5

3

JUDICIAL RELIEF

4

Sec. 16. NEW SECTION. 504A.151 JUDICIAL RELIEF.

5

1. If for any reason it is impractical or impossible for a
6 corporation to call or conduct a meeting of its members,
7 delegates, or directors, or otherwise obtain their consent, in
8 the manner prescribed by its articles, bylaws, or this
9 chapter, then upon petition of a director, officer, delegate,
10 member, or the attorney general, the district court may order
11 that such a meeting be called or that a written ballot or
12 other form of obtaining the vote of members, delegates, or
13 directors be authorized, in such a manner as the court finds
14 fair and equitable under the circumstances.

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

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

30 4. Whenever practical, an order issued pursuant to this
31 section shall limit the subject matter of meetings or other
32 forms of consent authorized to items, including amendments to
33 the articles or bylaws, the resolution of which will or may
34 enable the corporation to continue managing its affairs
35 without further resort to this section; provided, however,

1 that an order under this section may also authorize the
2 obtaining of whatever votes and approvals are necessary for
3 the dissolution, merger, or sale of assets.

4 5. A meeting or other method of obtaining the vote of
5 members, delegates, or directors conducted pursuant to an
6 order issued under this section, and which complies with all
7 the provisions of such order, is for all purposes a valid
8 meeting or vote, as the case may be, and shall have the same
9 force and effect as if it complied with every requirement
10 imposed by the articles, bylaws, and this chapter.

11 PART 6

12 ATTORNEY GENERAL

13 Sec. 17. NEW SECTION. 504A.161 ATTORNEY GENERAL.

14 1. The attorney general shall be given notice of the
15 commencement of a proceeding which this chapter authorizes the
16 attorney general to bring but which has been commenced by
17 another person.

18 2. Whenever a provision of this chapter requires that
19 notice be given to the attorney general before or after
20 commencing a proceeding or permits the attorney general to
21 commence a proceeding:

22 a. If no proceeding has been commenced, the attorney
23 general may take appropriate action including, but not limited
24 to, seeking injunctive relief.

25 b. If a proceeding has been commenced by a person other
26 than the attorney general, the attorney general, as of right,
27 may intervene in such proceeding.

28 Sec. 18. NEW SECTION. 504A.162 RELIGIOUS CORPORATIONS --
29 CONSTITUTIONAL PROTECTIONS.

30 If religious doctrine governing the affairs of a religious
31 corporation is inconsistent with the provisions of this
32 chapter on the same subject, the religious doctrine shall
33 control to the extent required by the Constitution of the
34 United States or the constitution of this state or both.

35 SUBCHAPTER II

1 ORGANIZATION

2 Sec. 19. NEW SECTION. 504A.201 INCORPORATORS.

3 One or more persons may act as the incorporator or
4 incorporators of a corporation by delivering articles of
5 incorporation to the secretary of state for filing.

6 Sec. 20. NEW SECTION. 504A.202 ARTICLES OF
7 INCORPORATION.

8 1. The articles of incorporation shall set forth all of
9 the following:

10 a. A corporate name for the corporation that satisfies the
11 requirements of section 504A.401.

12 b. One of the following statements:

13 (1) This corporation is a public benefit corporation.

14 (2) This corporation is a mutual benefit corporation.

15 (3) This corporation is a religious corporation.

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

19 d. The name and address of each incorporator.

20 e. Whether the corporation will have members.

21 f. Provisions not inconsistent with law regarding the
22 distribution of assets on dissolution.

23 2. The articles of incorporation may set forth any of the
24 following:

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

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

30 c. Provisions not inconsistent with law regarding all of
31 the following:

32 (1) Managing and regulating the affairs of the
33 corporation.

34 (2) Defining, limiting, and regulating the powers of the
35 corporation, its board of directors, and members, or any class

1 of members.

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

5 d. A provision permitting or requiring a corporation to
6 indemnify a director for liability, as defined in section
7 504A.851, subsection 5, to a person for any action taken, or
8 any failure to take any action, as a director except liability
9 for any of the following:

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

12 (2) Intentional infliction of harm on the corporation or
13 its members.

14 (3) A violation of section 504A.834.

15 (4) Intentional violation of criminal law.

16 e. Any provision that under this chapter is required or
17 permitted to be set forth in the bylaws.

18 3. Each incorporator named in the articles must sign the
19 articles.

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

22 Sec. 21. NEW SECTION. 504A.203 INCORPORATION.

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

26 2. The secretary of state's filing of the articles of
27 incorporation is conclusive proof that the incorporators
28 satisfied all conditions precedent to incorporation except in
29 a proceeding by the state to cancel or revoke the
30 incorporation or involuntarily dissolve the corporation.

31 Sec. 22. NEW SECTION. 504A.204 LIABILITY FOR
32 PREINCORPORATION TRANSACTIONS.

33 All persons purporting to act as or on behalf of a
34 corporation, knowing there was no incorporation under this
35 chapter, are jointly and severally liable for all liabilities

1 created while so acting.

2 Sec. 23. NEW SECTION. 504A.205 ORGANIZATION OF
3 CORPORATION.

4 1. After incorporation:

5 a. If initial directors are named in the articles of
6 incorporation, the initial directors shall hold an
7 organizational meeting, at the call of a majority of the
8 directors, to complete the organization of the corporation by
9 appointing officers, adopting bylaws, and carrying on any
10 other business brought before the meeting.

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

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

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

19 2. Action required or permitted by this chapter to be
20 taken by incorporators at an organizational meeting may be
21 taken without a meeting if the action taken is evidenced by
22 one or more written consents describing the action taken and
23 signed by each incorporator.

24 3. An organizational meeting may be held in or out of this
25 state in accordance with section 504A.821.

26 Sec. 24. NEW SECTION. 504A.206 BYLAWS.

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

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

32 Sec. 25. NEW SECTION. 504A.207 EMERGENCY BYLAWS AND
33 POWERS.

34 1. Unless the articles provide otherwise the directors of
35 a corporation may adopt, amend, or repeal bylaws to be

1 effective only in an emergency as described in subsection 4.
2 The emergency bylaws, which are subject to amendment or repeal
3 by the members, may provide special procedures necessary for
4 managing the corporation during the emergency, including all
5 of the following:

- 6 a. How to call a meeting of the board.
- 7 b. Quorum requirements for the meeting.
- 8 c. Designation of additional or substitute directors.

9 2. All provisions of the regular bylaws consistent with
10 the emergency bylaws remain effective during the emergency.
11 The emergency bylaws are not effective after the emergency
12 ends.

13 3. Corporate action taken in good faith in accordance with
14 the emergency bylaws does both of the following:

- 15 a. Binds the corporation.
- 16 b. Shall not be used to impose liability on a corporate
17 director, officer, employee, or agent.

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

21 SUBCHAPTER III

22 PURPOSES AND POWERS

23 Sec. 26. NEW SECTION. 504A.301 PURPOSES.

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

27 2. A corporation engaging in an activity that is subject
28 to regulation under another statute of this state may
29 incorporate under this chapter only if incorporation under
30 this chapter is not prohibited by the other statute. The
31 corporation shall be subject to all limitations of the other
32 statute.

33 Sec. 27. NEW SECTION. 504A.302 GENERAL POWERS.

34 Unless its articles of incorporation provide otherwise,
35 every corporation has perpetual duration and succession in its

1 corporate name and has the same powers as an individual to do
2 all things necessary or convenient to carry out its affairs,
3 including without limitation all of the following powers:

4 1. Sue and be sued, complain, and defend in its corporate
5 name.

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

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

12 4. Purchase, receive, lease, or otherwise acquire, and
13 own, hold, improve, use, and otherwise deal with real or
14 personal property, or any legal or equitable interest in
15 property, wherever located.

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

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

22 7. Make contracts and guarantees, incur liabilities,
23 borrow money, issue notes, bonds, and other obligations, and
24 secure any of its obligations by mortgage or pledge of any of
25 its property, franchises, or income.

26 8. Lend money, invest and reinvest its funds, and receive
27 and hold real and personal property as security for repayment,
28 except as limited by section 504A.833.

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

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

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

1 12. Pay pensions and establish pension plans, pension
2 trusts, and other benefit and incentive plans for any or all
3 of its current or former directors, officers, employees, and
4 agents.

5 13. Make donations not inconsistent with law for the
6 public welfare or for charitable, religious, scientific, or
7 educational purposes and for other purposes that further the
8 corporate interest.

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

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

13 16. Carry on a business.

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

17 Sec. 28. NEW SECTION. 504A.303 EMERGENCY POWERS.

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

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

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

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

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

33 b. One or more officers of the corporation present at a
34 meeting of the board of directors may be deemed to be
35 directors for the meeting, in order of rank and within the

1 same rank in order of seniority, as necessary to achieve a
2 quorum.

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

6 a. Binds the corporation.

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

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

12 Sec. 29. NEW SECTION. 504A.304 ULTRA VIRES.

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

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

21 3. A corporation's power to act may be challenged in a
22 proceeding against an incumbent or former director, officer,
23 employee, or agent of the corporation. The proceeding may be
24 brought by a director, the corporation, directly,
25 derivatively, or through a receiver, a trustee or other legal
26 representative, or in the case of a public benefit
27 corporation, by the attorney general.

28 SUBCHAPTER IV

29 NAMES

30 Sec. 30. NEW SECTION. 504A.401 CORPORATE NAME.

31 1. A corporate name shall not contain language stating or
32 implying that the corporation is organized for a purpose other
33 than that permitted by section 504A.301 and its articles of
34 incorporation.

35 2. Except as authorized by subsections 3 and 4, a

1 corporate name must be distinguishable upon the records of the
2 secretary of state from:

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

6 b. A corporate name reserved or registered under section
7 490.402, 490.403, 504A.402, or 504A.403.

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

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

17 a. The other corporation consents to the use of the name
18 in writing and submits an undertaking in a form satisfactory
19 to the secretary of state to change its name to a name that is
20 distinguishable upon the records of the secretary of state
21 from the name of the applying corporation.

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

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

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

35 b. The user corporation has been formed by reorganization

1 of the other corporation.

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

5 5. This subchapter does not control the use of fictitious
6 names; however, if a corporation or a foreign corporation uses
7 a fictitious name in this state it shall deliver to the
8 secretary of state for filing a copy of the resolution of its
9 board of directors, certified by its secretary, adopting the
10 fictitious name.

11 Sec. 31. NEW SECTION. 504A.402 RESERVED NAME.

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

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

24 Sec. 32. NEW SECTION. 504A.403 REGISTERED NAME.

25 1. A foreign corporation may register its corporate name,
26 or its corporate name with any change required by section
27 504A.1506, if the name is distinguishable upon the records of
28 the secretary of state from both of the following:

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

32 b. A corporate name reserved under section 490.402,
33 490.403, or 504A.402, or registered under this section.

34 2. A foreign corporation shall register its corporate
35 name, or its corporate name with any change required by

1 section 504A.1506, by delivering to the secretary of state an
2 application that does both of the following:

3 a. Sets forth its corporate name, or its corporate name
4 with any change required by section 504A.1506, the state or
5 country and date of its incorporation, and a brief description
6 of the nature of the activities in which it is engaged.

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

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

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

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

28

SUBCHAPTER V

29

OFFICE AND AGENT

30 Sec. 33. NEW SECTION. 504A.501 REGISTERED OFFICE AND
31 REGISTERED AGENT.

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

34 1. A registered office with the same address as that of
35 the registered agent.

1 2. A registered agent, who may be any of the following:

2 a. An individual who resides in this state and whose
3 business office is identical with the registered office.

4 b. A domestic business or nonprofit corporation whose
5 business office is identical to the registered office.

6 c. A foreign business or nonprofit corporation authorized
7 to transact business in this state whose business office is
8 identical to the registered office.

9 Sec. 34. NEW SECTION. 504A.502 CHANGE OF REGISTERED
10 OFFICE OR REGISTERED AGENT.

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

15 a. The name of the corporation.

16 b. If the current registered office is to be changed, the
17 address of the new registered office.

18 c. If the current registered agent is to be changed, the
19 name of the new registered agent and the new agent's written
20 consent, either on the statement or attached to it, to the
21 change.

22 d. That after the change or changes are made, the
23 addresses of its registered office and the office of its
24 registered agent will be identical.

25 2. If the address of a registered agent's business office
26 is changed, the registered agent may change the address of the
27 registered office of any corporation for which the registered
28 agent is the registered agent by notifying the corporation in
29 writing of the change and by signing, either manually or in
30 facsimile, and delivering to the secretary of state for
31 filing, a statement that complies with the requirements of
32 subsection 1 and recites that the corporation has been
33 notified of the change.

34 3. If a registered agent changes the registered agent's
35 business address to another place, the registered agent may

1 change the address of the registered office of any corporation
2 for which the registered agent is the registered agent by
3 filing a statement as required in subsection 2 for each
4 corporation, or by filing a single statement for all
5 corporations named in the notice, except that it need be
6 signed, either manually or in facsimile, only once by the
7 registered agent and must recite that a copy of the statement
8 has been mailed to each corporation named in the notice.

9 Sec. 35. NEW SECTION. 504A.503 RESIGNATION OF REGISTERED
10 AGENT.

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

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

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

25 Sec. 36. NEW SECTION. 504A.504 SERVICE ON CORPORATION.

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

29 2. If a corporation has no registered agent, or the agent
30 cannot with reasonable diligence be served, the corporation
31 may be served by registered or certified mail, return receipt
32 requested, addressed to the secretary of the corporation at
33 its principal office shown in the most recent biennial report
34 filed pursuant to section 504A.1613. Service is perfected
35 under this subsection on the earliest of any of the following:

- 1 a. The date the corporation receives the mail.
2 b. The date shown on the return receipt, if signed on
3 behalf of the corporation.
4 c. Five days after its deposit in the United States mail,
5 if mailed and correctly addressed with first class postage
6 affixed.
7 3. This section does not prescribe the only means, or
8 necessarily the required means, of serving a corporation. A
9 corporation may also be served in any other manner permitted
10 by law.

11 SUBCHAPTER VI

12 MEMBERS AND MEMBERSHIPS

13 PART 1

14 ADMISSION OF MEMBERS

15 Sec. 37. NEW SECTION. 504A.601 ADMISSION.

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

20 Sec. 38. NEW SECTION. 504A.602 CONSIDERATION.

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

24 Sec. 39. NEW SECTION. 504A.603 NO REQUIREMENT OF

25 MEMBERS.

26 A corporation is not required to have members.

27 PART 2

28 TYPES OF MEMBERSHIPS -- MEMBERS' RIGHTS AND OBLIGATIONS

29 Sec. 40. NEW SECTION. 504A.611 DIFFERENCES IN RIGHTS AND
30 OBLIGATIONS OF MEMBERS.

31 All members shall have the same rights and obligations with
32 respect to voting, dissolution, redemption, and transfer,
33 unless the articles or bylaws establish classes of membership
34 with different rights or obligations. All members shall have
35 the same rights and obligations with respect to any other

1 matters, except as set forth in or authorized by the articles
2 or bylaws. A person that has no voting rights and is
3 identified as a member in the articles or bylaws of the
4 corporation shall have only those rights set forth for members
5 in the articles or bylaws of the corporation.

6 Sec. 41. NEW SECTION. 504A.612 TRANSFERS.

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

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

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

18 Sec. 42. NEW SECTION. 504A.613 MEMBER'S LIABILITY TO
19 THIRD PARTIES.

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

23 Sec. 43. NEW SECTION. 504A.614 MEMBER'S LIABILITY FOR
24 DUES, ASSESSMENTS, AND FEES.

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

30 Sec. 44. NEW SECTION. 504A.615 CREDITOR'S ACTION AGAINST
31 MEMBER.

32 1. A proceeding shall not be brought by a creditor to
33 reach the liability, if any, of a member to the corporation
34 unless final judgment has been rendered in favor of the
35 creditor against the corporation and execution has been

1 returned unsatisfied in whole or in part or unless such
2 proceeding would be useless.

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

9 PART 3

10 RESIGNATION AND TERMINATION

11 Sec. 45. NEW SECTION. 504A.621 RESIGNATION.

12 1. A member may resign at any time.

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

17 Sec. 46. NEW SECTION. 504A.622 TERMINATION, EXPULSION,
18 OR SUSPENSION.

19 1. A member of a public benefit or mutual benefit
20 corporation shall not be expelled or suspended, and a
21 membership or memberships in such a corporation shall not be
22 terminated or suspended except pursuant to a procedure which
23 is fair and reasonable and is carried out in good faith.

24 2. A procedure is fair and reasonable when either of the
25 following occurs:

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

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

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

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

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

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

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

18 Sec. 47. NEW SECTION. 504A.623 PURCHASE OF MEMBERSHIPS.

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

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

27

PART 4

28

DERIVATIVE PROCEEDINGS

29 Sec. 48. NEW SECTION. 504A.631 DERIVATIVE PROCEEDINGS --
30 DEFINITION.

31 In this part, unless the context otherwise requires,
32 "derivative proceeding" means a civil suit in the right of a
33 domestic corporation or, to the extent provided in section
34 504A.638, in the right of a foreign corporation.

35 Sec. 49. NEW SECTION. 504A.632 STANDING.

1 A member or director shall not commence or maintain a
2 derivative proceeding unless the member or director satisfies
3 both of the following:

4 1. Was a member or director of the corporation at the time
5 of the act or omission complained of or became a member
6 through transfer by operation of law from one who was a member
7 at that time.

8 2. The member or director fairly and adequately represents
9 the interests of the corporation in enforcing the rights of
10 the corporation.

11 Sec. 50. NEW SECTION. 504A.633 DEMAND.

12 A member or director shall not commence a derivative
13 proceeding until both of the following have occurred:

14 1. A written demand has been made upon the corporation to
15 take suitable action.

16 2. Ninety days have expired from the date the demand was
17 made, unless the member or director has earlier been notified
18 that the demand has been rejected by the corporation or unless
19 irreparable injury to the corporation would result by waiting
20 for the expiration of the ninety-day period.

21 Sec. 51. NEW SECTION. 504A.634 STAY OF PROCEEDINGS.

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

26 Sec. 52. NEW SECTION. 504A.635 DISMISSAL.

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

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

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

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

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

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

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

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

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

27 a. That a majority of the board of directors did not
28 consist of independent directors at the time the determination
29 was made.

30 b. That the requirements of subsection 1 have not been
31 met.

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

1 that party.

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

10 6. The court may appoint a panel of one or more
11 independent persons upon motion by the corporation to make a
12 determination whether the maintenance of the derivative
13 proceeding is in the best interests of the corporation. In
14 such case, the plaintiff shall have the burden of proving that
15 the requirements of subsection 1 have not been met.

16 Sec. 53. NEW SECTION. 504A.636 DISCONTINUANCE OR
17 SETTLEMENT.

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

24 Sec. 54. NEW SECTION. 504A.637 PAYMENT OF EXPENSES.

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

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

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

1 accordance with the bylaws. If a place is not stated in or
2 fixed in accordance with the bylaws, annual and regular
3 meetings shall be held at the corporation's principal office.

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

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

7 b. The members shall consider and act upon such other
8 matters as may be raised consistent with the notice
9 requirements of sections 504A.705 and 504A.713, subsection 4.

10 5. At regular meetings, the members shall consider and act
11 upon such matters as may be raised consistent with the notice
12 requirements of sections 504A.705 and 504A.713, subsection 4.

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

16 Sec. 58. NEW SECTION. 504A.702 SPECIAL MEETING.

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

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

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

26 Unless otherwise provided in the articles of incorporation, a
27 written demand for a special meeting may be revoked by a
28 writing to that effect received by the corporation prior to
29 the receipt by the corporation of demands sufficient in number
30 to require the holding of a special meeting.

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

1 3. If a notice for a special meeting demanded under
2 subsection 1, paragraph "b", is not given pursuant to section
3 504A.705 within thirty days after the date the written demand
4 or demands are delivered to a corporate officer, regardless of
5 the requirements of subsection 4, a person signing the demand
6 may set the time and place of the meeting and give notice
7 pursuant to section 504A.705.

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

13 5. Only those matters that are within the purpose
14 described in the meeting notice required by section 504A.705
15 may be considered at a special meeting of members.

16 Sec. 59. NEW SECTION. 504A.703 COURT-ORDERED MEETING.

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

21 a. On application of any member or other person entitled
22 to participate in an annual or regular meeting of the
23 corporation, and in the case of a public benefit corporation,
24 the attorney general, if an annual meeting was not held within
25 the earlier of six months after the end of the corporation's
26 fiscal year or fifteen months after its last annual meeting.

27 b. On application of any member or other person entitled
28 to participate in a regular meeting of the corporation, and in
29 the case of a public benefit corporation, the attorney
30 general, if a regular meeting was not held within forty days
31 after the date it was required to be held.

32 c. On application of a member who signed a demand for a
33 special meeting valid under section 504A.702, a person
34 entitled to call a special meeting, and in the case of a
35 public benefit corporation, the attorney general, if any of

1 the following applies:

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

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

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

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

18 Sec. 60. NEW SECTION. 504A.704 ACTION BY WRITTEN
19 CONSENT.

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

34 2. If not otherwise determined under section 504A.703 or
35 504A.707, the record date for determining members entitled to

1 take action without a meeting is the date the first member
2 signs the consent under subsection 1.

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

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

11 Sec. 61. NEW SECTION. 504A.705 NOTICE OF MEETING.

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

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

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

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

28 b. The notice of an annual or regular meeting includes a
29 description of any matter or matters which must be considered
30 for approval by the members under sections 504A.833, 504A.857,
31 504A.1003, 504A.1022, 504A.1104, 504A.1202, 504A.1401, and
32 504A.1402.

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

35 4. Unless the bylaws require otherwise, if an annual,

1 regular, or special meeting of members is adjourned to a
2 different date, time, or place, notice need not be given of
3 the new date, time, or place, if the new date, time, or place
4 is announced at the meeting before adjournment. If a new
5 record date for the adjourned meeting is or must be fixed
6 under section 504A.707, however, notice of the adjourned
7 meeting must be given under this section to the members of
8 record as of the new record date.

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

16 Sec. 62. NEW SECTION. 504A.706 WAIVER OF NOTICE.

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

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

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

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

33 Sec. 63. NEW SECTION. 504A.707 RECORD DATE --
34 DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE.

35 1. The bylaws of a corporation may fix or provide the

1 manner of fixing a date as the record date for determining the
2 members entitled to notice of a members' meeting. If the
3 bylaws do not fix or provide for fixing such a record date,
4 the board may fix a future date as such a record date. If a
5 record date is not fixed, members at the close of business on
6 the business day preceding the day on which notice is given,
7 or if notice is waived, at the close of business on the
8 business day preceding the day on which the meeting is held
9 are entitled to notice of the meeting.

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

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

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

31 5. A determination of members entitled to notice of or to
32 vote at a membership meeting is effective for any adjournment
33 of the meeting unless the board fixes a new date for
34 determining the right to notice or the right to vote, which it
35 must do if the meeting is adjourned to a date more than

1 seventy days after the record date for determining members
2 entitled to notice of the original meeting.

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

8 Sec. 64. NEW SECTION. 504A.708 ACTION BY WRITTEN BALLOT.

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

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

15 a. Set forth each proposed action.

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

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

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

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

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

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

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

PART 2

VOTING

3 Sec. 65. NEW SECTION. 504A.711 MEMBERS' LIST FOR
4 MEETING.

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

15 2. The list of members must be available for inspection by
16 any member for the purpose of communication with other members
17 concerning the meeting, beginning two business days after
18 notice is given of the meeting for which the list was prepared
19 and continuing through the meeting, at the corporation's
20 principal office or at a reasonable place identified in the
21 meeting notice in the city where the meeting will be held. A
22 member, a member's agent, or a member's attorney is entitled
23 on written demand to inspect and, subject to the limitations
24 of section 504A.1602, subsection 3, and section 504A.1605, to
25 copy the list, at a reasonable time and at the member's
26 expense, during the period it is available for inspection.

27 3. A corporation shall make the list of members available
28 at the meeting, and any member, a member's agent, or a
29 member's attorney is entitled to inspect the list at any time
30 during the meeting or any adjournment.

31 4. If a corporation refuses to allow a member, a member's
32 agent, or a member's attorney to inspect the list of members
33 before or at the meeting or copy the list as permitted by
34 subsection 2, the district court of the county where a
35 corporation's principal office is located or, if none is

1 located in this state, where its registered office is located,
2 on application of the member, may summarily order the
3 inspection or copying of the membership list at the
4 corporation's expense, may postpone the meeting for which the
5 list was prepared until the inspection or copying is complete,
6 and may order the corporation to pay the member's costs,
7 including reasonable attorney fees incurred to obtain the
8 order.

9 5. Unless a written demand to inspect and copy a
10 membership list has been made under subsection 2 prior to the
11 membership meeting and a corporation improperly refuses to
12 comply with the demand, refusal or failure to comply with this
13 section does not affect the validity of action taken at the
14 meeting.

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

18 Sec. 66. NEW SECTION. 504A.712 VOTING ENTITLEMENT
19 GENERALLY.

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

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

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

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

34 Sec. 67. NEW SECTION. 504A.713 QUORUM REQUIREMENTS.

35 1. Unless this subchapter, or the articles or bylaws of a

1 corporation provide for a higher or lower quorum, ten percent
2 of the votes entitled to be cast on a matter must be
3 represented at a meeting of members to constitute a quorum on
4 that matter.

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

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

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

14 Sec. 68. NEW SECTION. 504A.714 VOTING REQUIREMENTS.

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

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

24 Sec. 69. NEW SECTION. 504A.715 PROXIES.

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

34 2. An appointment of a proxy is effective when a signed
35 appointment form or an electronic transmission of an

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

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

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

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

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

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

23 6. Subject to section 504A.718 and any express limitation
24 on the proxy's authority appearing on the face of the
25 appointment form, a corporation is entitled to accept the
26 proxy's vote or other action as that of the member making the
27 appointment.

28 Sec. 70. NEW SECTION. 504A.716 CUMULATIVE VOTING FOR
29 DIRECTORS.

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

1 2. A director elected by cumulative voting may be removed
2 by the members without cause if the requirements of section
3 504A.808 are met unless the votes cast against removal, or not
4 consenting in writing to such removal, would be sufficient to
5 elect such director if voted cumulatively at an election at
6 which the same total number of votes were cast or, if such
7 action is taken by written ballot, all memberships entitled to
8 vote were voted, and the entire number of directors authorized
9 at the time of the director's most recent election were then
10 being elected.

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

13 Sec. 71. NEW SECTION. 504A.717 OTHER METHODS OF ELECTING
14 DIRECTORS.

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

20 Sec. 72. NEW SECTION. 504A.718 CORPORATION'S ACCEPTANCE
21 OF VOTES.

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

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

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

35 b. The name signed purports to be that of an attorney in

1 fact of the member and if the corporation requests, evidence
2 acceptable to the corporation of the signatory's authority to
3 sign for the member has been presented with respect to the
4 vote, consent, waiver, or proxy appointment.

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

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

10 (1) The name signed purports to be that of an
11 administrator, executor, guardian, or conservator representing
12 the member and, if the corporation requests, evidence of
13 fiduciary status acceptable to the corporation has been
14 presented with respect to the vote, consent, waiver, or proxy
15 appointment.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

PART 3

VOTING AGREEMENTS

Sec. 73. NEW SECTION. 504A.721 VOTING AGREEMENTS.

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

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

SUBCHAPTER VIII

DIRECTORS AND OFFICERS

PART 1

BOARD OF DIRECTORS

Sec. 74. NEW SECTION. 504A.801 REQUIREMENT FOR AND DUTIES OF BOARD.

1. Each corporation must have a board of directors.

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

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

Sec. 75. NEW SECTION. 504A.802 QUALIFICATIONS OF DIRECTORS.

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

Sec. 76. NEW SECTION. 504A.803 NUMBER OF DIRECTORS.

1. The board of directors of a corporation must consist of

1 one or more individuals, with the number specified in or fixed
2 in accordance with the articles or bylaws.

3 2. The number of directors may be increased or decreased
4 from time to time by amendment to or in the manner prescribed
5 in the articles or bylaws.

6 Sec. 77. NEW SECTION. 504A.804 ELECTION, DESIGNATION,
7 AND APPOINTMENT OF DIRECTORS.

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

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

20 Sec. 78. NEW SECTION. 504A.805 TERMS OF DIRECTORS
21 GENERALLY.

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

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

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

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

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

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

8 Sec. 79. NEW SECTION. 504A.806 STAGGERED TERMS FOR
9 DIRECTORS.

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

14 Sec. 80. NEW SECTION. 504A.807 RESIGNATION OF DIRECTORS.

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

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

24 Sec. 81. NEW SECTION. 504A.808 REMOVAL OF DIRECTORS
25 ELECTED BY MEMBERS OR DIRECTORS.

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

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

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

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

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

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

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

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

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

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

35 a. Limit the application of this section.

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

4 Sec. 82. NEW SECTION. 504A.809 REMOVAL OF DESIGNATED OR
5 APPOINTED DIRECTORS.

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

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

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

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

19 Sec. 83. NEW SECTION. 504A.810 REMOVAL OF DIRECTORS BY
20 JUDICIAL PROCEEDING.

21 1. The district court of the county where a corporation's
22 principal office is located may remove any director of the
23 corporation from office in a proceeding commenced either by
24 the corporation, its members holding at least twenty percent
25 of the voting power of any class, or the attorney general in
26 the case of a public benefit corporation if the court finds
27 both of the following:

28 a. The director engaged in fraudulent or dishonest conduct
29 with respect to the corporation, or a final judgment has been
30 entered finding that the director has violated a duty set
31 forth in sections 504A.831 through 504A.835.

32 b. Removal is in the best interest of the corporation.

33 2. The court that removes a director may bar the director
34 from serving on the board for a period prescribed by the
35 court.

1 3. If members or the attorney general commence a
2 proceeding under subsection 1, the corporation shall be made a
3 party defendant.

4 4. If a public benefit corporation or its members commence
5 a proceeding under subsection 1, they shall give the attorney
6 general written notice of the proceeding.

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

9 Sec. 84. NEW SECTION. 504A.811 VACANCY ON BOARD.

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

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

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

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

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

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

33 4. A vacancy that will occur at a specific later date by
34 reason of a resignation effective at a later date under
35 section 504A.807, subsection 2, or otherwise, may be filled

1 before the vacancy occurs, but the new director shall not take
2 office until the vacancy occurs.

3 Sec. 85. NEW SECTION. 504A.812 COMPENSATION OF
4 DIRECTORS.

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

8 PART 2

9 MEETINGS AND ACTION OF THE BOARD

10 Sec. 86. NEW SECTION. 504A.821 REGULAR AND SPECIAL
11 MEETINGS.

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

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

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

24 Sec. 87. NEW SECTION. 504A.822 ACTION WITHOUT MEETING.

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

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

1 the director and delivered to the corporation prior to the
2 delivery to the corporation of unrevoked written consents
3 signed by all of the directors.

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

7 Sec. 88. NEW SECTION. 504A.823 CALL AND NOTICE OF
8 MEETINGS.

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

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

16 3. In corporations without members, any board action to
17 remove a director or to approve a matter which would require
18 approval by the members if the corporation had members shall
19 not be valid unless each director is given at least seven
20 days' written notice that the matter will be voted upon at a
21 directors' meeting or unless notice is waived pursuant to
22 section 504A.824.

23 4. Unless the articles or bylaws provide otherwise, the
24 presiding officer of the board, the president, or twenty
25 percent of the directors then in office may call and give
26 notice of a meeting of the board.

27 Sec. 89. NEW SECTION. 504A.824 WAIVER OF NOTICE.

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

33 2. A director's attendance at or participation in a
34 meeting waives any required notice of the meeting unless the
35 director, upon arriving at the meeting or prior to the vote on

1 a matter not noticed in conformity with this subchapter, the
2 articles, or bylaws, objects to lack of notice and does not
3 thereafter vote for or assent to the objected-to action.

4 Sec. 90. NEW SECTION. 504A.825 QUORUM AND VOTING.

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

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

15 Sec. 91. NEW SECTION. 504A.826 COMMITTEES OF THE BOARD.

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

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

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

26 b. The number of directors required by the articles or
27 bylaws to take action under section 504A.825.

28 3. Sections 504A.821 through 504A.825, which govern
29 meetings, action without meetings, notice and waiver of
30 notice, and quorum and voting requirements of the board, apply
31 to committees of the board and their members as well.

32 4. To the extent specified by the board of directors or in
33 the articles or bylaws, each committee of the board may
34 exercise the board's authority under section 504A.801.

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

1 the following:

2 a. Authorize distributions.

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

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

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

9 6. The creation of, delegation of authority to, or action
10 by a committee does not alone constitute compliance by a
11 director with the standards of conduct described in section
12 504A.831.

13 PART 3

14 STANDARDS OF CONDUCT

15 Sec. 92. NEW SECTION. 504A.831 GENERAL STANDARDS FOR
16 DIRECTORS.

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

20 a. In good faith.

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

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

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

35 4. In discharging board or committee duties, a director is

1 entitled to rely on information, opinions, reports, or
2 statements, including financial statements and other financial
3 data, if prepared or presented by any of the persons specified
4 in subsection 5.

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

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

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

15 (1) Matters within the particular person's professional or
16 expert competence.

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

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

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

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

33 Sec. 93. NEW SECTION. 504A.832 STANDARDS OF LIABILITY
34 FOR DIRECTORS.

35 1. A director shall not be liable to the corporation or

1 its members for any decision to take or not to take action, or
2 any failure to take any action, as director, unless the party
3 asserting liability in a proceeding establishes both of the
4 following:

5 a. That section 504A.901 or the protection afforded by
6 section 504A.831, if interposed as a bar to the proceeding by
7 the director, does not preclude liability.

8 b. That the challenged conduct consisted or was the result
9 of one of the following:

10 (1) Action not in good faith.

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

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

14 (b) As to which the director was not informed to an extent
15 the director reasonably believed appropriate in the
16 circumstances.

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

22 (a) Which relationship or which domination or control
23 could reasonably be expected to have affected the director's
24 judgment respecting the challenged conduct in a manner adverse
25 to the corporation.

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

30 (4) A sustained failure of the director to devote
31 attention to ongoing oversight of the business and affairs of
32 the corporation, or a failure to devote timely attention, by
33 making, or causing to be made, appropriate inquiry, when
34 particular facts and circumstances of significant concern
35 materialize that would alert a reasonably attentive director

1 to the need therefore.

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

6 2. a. The party seeking to hold the director liable for
7 money damages shall also have the burden of establishing both
8 of the following:

9 (1) That harm to the corporation or its members has been
10 suffered.

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

13 b. A party seeking to hold the director liable for other
14 money payment under a legal remedy, such as compensation for
15 the unauthorized use of corporate assets, shall also have
16 whatever persuasion burden may be called for to establish that
17 the payment sought is appropriate in the circumstances.

18 c. A party seeking to hold the director liable for other
19 money payment under an equitable remedy, such as profit
20 recovery by or disgorgement to the corporation, shall also
21 have whatever persuasion burden may be called for to establish
22 that the equitable remedy sought is appropriate in the
23 circumstances.

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

25 a. In any instance where fairness is at issue, such as
26 consideration of the fairness of a transaction to the
27 corporation under section 504A.833, alter the burden of
28 proving the fact or lack of fairness otherwise applicable.

29 b. Alter the fact or lack of liability of a director under
30 another section of this chapter, such as the provisions
31 governing the consequences of a transactional interest under
32 section 504A.833 or an unlawful distribution under section
33 504A.835.

34 c. Affect any rights to which the corporation or a
35 shareholder may be entitled under another statute of this

1 state or the United States.

2 Sec. 94. NEW SECTION. 504A.833 DIRECTOR CONFLICT OF
3 INTEREST.

4 1. A conflict of interest transaction is a transaction
5 with the corporation in which a director of the corporation
6 has a direct or indirect interest. A conflict of interest
7 transaction is not voidable by the corporation on the basis of
8 the director's interest in the transaction if the transaction
9 was fair at the time it was entered into or is approved as
10 provided in subsection 2 or 3.

11 2. A transaction in which a director of a public benefit
12 or religious corporation has a conflict of interest may be
13 approved in either of the following ways:

14 a. In advance by the vote of the board of directors or a
15 committee of the board if both of the following occur:

16 (1) The material facts of the transaction and the
17 director's interest are disclosed or known to the board or
18 committee of the board.

19 (2) The directors approving the transaction in good faith
20 reasonably believe that the transaction is fair to the
21 corporation.

22 b. Before or after the transaction is consummated by
23 obtaining approval of either of the following:

24 (1) The attorney general.

25 (2) The district court in an action in which the attorney
26 general is joined as a party.

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

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

35 b. The material facts of the transaction and the

1 director's interest were disclosed or known to the members and
2 they authorized, approved, or ratified the transaction.

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

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

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

11 5. For purposes of subsections 2 and 3, a conflict of
12 interest transaction is authorized, approved, or ratified if
13 it receives the affirmative vote of a majority of the
14 directors on the board or on a committee of the board, who
15 have no direct or indirect interest in the transaction, but a
16 transaction shall not be authorized, approved, or ratified
17 under this section by a single director. If a majority of the
18 directors on the board who have no direct or indirect interest
19 in the transaction vote to authorize, approve, or ratify the
20 transaction, a quorum is present for the purpose of taking
21 action under this section. The presence of, or a vote cast
22 by, a director with a direct or indirect interest in the
23 transaction does not affect the validity of any action taken
24 under subsection 2, paragraph "a", or subsection 3, paragraph
25 "a", if the transaction is otherwise approved as provided in
26 subsection 2 or 3.

27 6. For purposes of subsection 3, paragraph "b", a conflict
28 of interest transaction is authorized, approved, or ratified
29 by the members if it receives a majority of the votes entitled
30 to be counted under this subsection. Votes cast by or voted
31 under the control of a director who has a direct or indirect
32 interest in the transaction, and votes cast by or voted under
33 the control of an entity described in subsection 4, paragraph
34 "a", shall not be counted in a vote of members to determine
35 whether to authorize, approve, or ratify a conflict of

1 interest transaction under subsection 3, paragraph "b". The
2 vote of these members, however, is counted in determining
3 whether the transaction is approved under other sections of
4 this subchapter. A majority of the voting power, whether or
5 not present, that is entitled to be counted in a vote on the
6 transaction under this subsection constitutes a quorum for the
7 purpose of taking action under this section.

8 7. The articles, bylaws, or a resolution of the board may
9 impose additional requirements on conflict of interest
10 transactions.

11 Sec. 95. NEW SECTION. 504A.834 LOANS TO OR GUARANTEES
12 FOR DIRECTORS AND OFFICERS.

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

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

18 Sec. 96. NEW SECTION. 504A.835 LIABILITY FOR UNLAWFUL
19 DISTRIBUTIONS.

20 1. Unless a director complies with the applicable
21 standards of conduct described in section 504A.831, a director
22 who votes for or assents to a distribution made in violation
23 of this subchapter is personally liable to the corporation for
24 the amount of the distribution that exceeds what could have
25 been distributed without violating this subchapter.

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

29 a. Every other director who voted for or assented to the
30 distribution without complying with the applicable standards
31 of conduct described in section 504A.831.

32 b. Each person who received an unlawful distribution for
33 the amount of the distribution whether or not the person
34 receiving the distribution knew it was made in violation of
35 this subchapter.

PART 4
OFFICERS

1
2
3 Sec. 97. NEW SECTION. 504A.841 REQUIRED OFFICERS.

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

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

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

16 Sec. 98. NEW SECTION. 504A.842 DUTIES AND AUTHORITY OF
17 OFFICERS.

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

24 Sec. 99. NEW SECTION. 504A.843 STANDARDS OF CONDUCT FOR
25 OFFICERS.

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

28 a. In good faith.

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

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

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

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

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

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

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

21 3. An officer shall not be liable as an officer to the
22 corporation or its members for any decision to take or not to
23 take action, or any failure to take any action, if the duties
24 of the officer are performed in compliance with this section.
25 Whether an officer who does not comply with this section shall
26 have liability will depend in such instance on applicable law,
27 including those principles of sections 504A.832 and 504A.901
28 that have relevance.

29 Sec. 100. NEW SECTION. 504A.844 RESIGNATION AND REMOVAL
30 OF OFFICERS.

31 1. An officer of a corporation may resign at any time by
32 delivering notice to the corporation. A resignation is
33 effective when the notice is effective unless the notice
34 specifies a future effective time. If a resignation is made
35 effective at a future time and the board or appointing officer

1 accepts the future effective time, its board or appointing
2 officer may fill the pending vacancy before the effective time
3 if the board or appointing officer provides that the successor
4 does not take office until the effective time.

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

7 a. The board of directors.

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

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

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

15 Sec. 101. NEW SECTION. 504A.845 CONTRACT RIGHTS OF
16 OFFICERS.

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

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

23 Sec. 102. NEW SECTION. 504A.846 OFFICERS' AUTHORITY TO
24 EXECUTE DOCUMENTS.

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

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

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

3 PART 5

4 INDEMNIFICATION

5 Sec. 103. NEW SECTION. 504A.851 DEFINITIONS.

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

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

10 2. "Director" or "officer" means an individual who is or
11 was a director or officer of a corporation or an individual
12 who, while a director or officer of a corporation, is or was
13 serving at the corporation's request as a director, officer,
14 partner, trustee, employee, or agent of another foreign or
15 domestic business or nonprofit corporation, partnership, joint
16 venture, trust, employee benefit plan, or other entity. A
17 "director" or "officer" is considered to be serving an
18 employee benefit plan at the corporation's request if the
19 director's or officer's duties to the corporation also impose
20 duties on, or otherwise involve services by, the director or
21 officer to the plan or to participants in or beneficiaries of
22 the plan. "Director" or "officer" includes, unless the
23 context otherwise requires, the estate or personal
24 representative of a director or officer.

25 3. "Disinterested director" means a director who at the
26 time of a vote referred to in section 504A.854, subsection 3,
27 or a vote or selection referred to in section 504A.856,
28 subsection 2 or 3, is not either of the following:

29 a. A party to the proceeding.

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

1 made.

2 4. "Expenses" includes attorney fees.

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

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

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

10 b. When used with respect to an officer, as contemplated
11 in section 504A.857, the office in a corporation held by the
12 officer. "Official capacity" does not include service for any
13 other foreign or domestic business or nonprofit corporation or
14 any partnership joint venture, trust, employee benefit plan,
15 or other entity.

16 7. "Party" means an individual who was, is, or is
17 threatened to be made a defendant or respondent in a
18 proceeding.

19 8. "Proceeding" means any threatened, pending, or
20 completed action, suit, or proceeding whether civil, criminal,
21 administrative, or investigative and whether formal or
22 informal.

23 Sec. 104. NEW SECTION. 504A.852 PERMISSIBLE
24 INDEMNIFICATION.

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

30 a. The individual acted in good faith.

31 b. The individual reasonably believed either of the
32 following:

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

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

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

6 d. The individual engaged in conduct for which broader
7 indemnification has been made permissible or obligatory under
8 a provision of the articles of incorporation as authorized by
9 section 504A.202, subsection 2, paragraph "d".

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

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

20 4. Unless ordered by a court under section 504A.855,
21 subsection 1, paragraph "b", a corporation shall not indemnify
22 a director under this section under either of the following
23 circumstances:

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

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

32 Sec. 105. NEW SECTION. 504A.853 MANDATORY
33 INDEMNIFICATION.

34 A corporation shall indemnify a director who was wholly
35 successful, on the merits or otherwise, in the defense of any

1 proceeding to which the director was a party because the
2 director is or was a director of the corporation against
3 reasonable expenses actually incurred by the director in
4 connection with the proceeding.

5 Sec. 106. NEW SECTION. 504A.854 ADVANCE FOR EXPENSES.

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

11 a. A written affirmation of the director's good faith
12 belief that the director has met the relevant standard of
13 conduct described in section 504A.852 or that the proceeding
14 involved conduct for which liability has been eliminated under
15 a provision of the articles of incorporation as authorized by
16 section 504A.202, subsection 2, paragraph "d".

17 b. The director's written undertaking to repay any funds
18 advanced if the director is not entitled to mandatory
19 indemnification under section 504A.853 and it is ultimately
20 determined under section 504A.855 or 504A.856 that the
21 director has not met the relevant standard of conduct
22 described in section 504A.852.

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

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

29 a. By the board of directors as follows:

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

35 (2) If there are fewer than two disinterested directors,

1 by the vote necessary for action by the board in accordance
2 with section 504A.825, subsection 2, in which authorization
3 directors who do not qualify as disinterested directors may
4 participate.

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

8 Sec. 107. NEW SECTION. 504A.855 COURT-ORDERED
9 INDEMNIFICATION.

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

16 a. Order indemnification if the court determines that the
17 director is entitled to mandatory indemnification under
18 section 504A.853.

19 b. Order indemnification or advance for expenses if the
20 court determines that the director is entitled to
21 indemnification or advance for expenses pursuant to a
22 provision authorized by section 504A.859, subsection 1.

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

26 (1) To indemnify the director.

27 (2) To indemnify or advance expenses to the director, even
28 if the director has not met the relevant standard of conduct
29 set forth in section 504A.852, subsection 1, failed to comply
30 with section 504A.854 or was adjudged liable in a proceeding
31 referred to in section 504A.852, subsection 4, paragraph "a"
32 or "b", but if the director was adjudged so liable the
33 director's indemnification shall be limited to reasonable
34 expenses incurred in connection with the proceeding.

35 2. If the court determines that the director is entitled

1 to indemnification under subsection 1, paragraph "a", or to
2 indemnification or advance for expenses under subsection 1,
3 paragraph "b", it shall also order the corporation to pay the
4 director's reasonable expenses incurred in connection with
5 obtaining court-ordered indemnification or advance for
6 expenses. If the court determines that the director is
7 entitled to indemnification or advance for expenses under
8 subsection 1, paragraph "c", it may also order the corporation
9 to pay the director's reasonable expenses to obtain court-
10 ordered indemnification or advance for expenses.

11 Sec. 108. NEW SECTION. 504A.856 DETERMINATION AND
12 AUTHORIZATION OF INDEMNIFICATION.

13 1. A corporation shall not indemnify a director under
14 section 504A.852 unless authorized for a specific proceeding
15 after a determination has been made that indemnification of
16 the director is permissible because the director has met the
17 standard of conduct set forth in section 504A.852.

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

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

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

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

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

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

35 3. Authorization of indemnification shall be made in the

1 same manner as the determination that indemnification is
2 permissible, except that if there are fewer than two
3 disinterested directors or if the determination is made by
4 special legal counsel, authorization of indemnification shall
5 be made by those entitled under subsection 2, paragraph "c",
6 to select special legal counsel.

7 4. A director of a public benefit corporation shall not be
8 indemnified until twenty days after the effective date of
9 written notice to the attorney general of the proposed
10 indemnification.

11 Sec. 109. NEW SECTION. 504A.857 INDEMNIFICATION OF
12 OFFICERS.

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

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

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

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

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

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

29 (b) An intentional infliction of harm on the corporation
30 or the shareholders.

31 (c) An intentional violation of criminal law.

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

1 3. An officer of a corporation who is not a director is
2 entitled to mandatory indemnification under section 504A.853,
3 and may apply to a court under section 504A.855 for
4 indemnification or an advance for expenses, in each case to
5 the same extent to which a director may be entitled to
6 indemnification or advance for expenses under those
7 provisions.

8 Sec. 110. NEW SECTION. 504A.858 INSURANCE.

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

21 Sec. 111. NEW SECTION. 504A.859 APPLICATION OF PART.

22 1. A corporation may, by a provision in its articles of
23 incorporation or bylaws or in a resolution adopted or a
24 contract approved by its board of directors or members,
25 obligate itself in advance of the act or omission giving rise
26 to a proceeding to provide indemnification in accordance with
27 section 504A.852 or advance funds to pay for or reimburse
28 expenses in accordance with section 504A.854. Any such
29 obligatory provision shall be deemed to satisfy the
30 requirements for authorization referred to in section
31 504A.854, subsection 3, and in section 504A.856, subsection 2
32 or 3. Any such provision that obligates the corporation to
33 provide indemnification to the fullest extent permitted by law
34 shall be deemed to obligate the corporation to advance funds
35 to pay for or reimburse expenses in accordance with section

1 504A.854 to the fullest extent permitted by law, unless the
2 provision specifically provides otherwise.

3 2. Any provision pursuant to subsection 1 shall not
4 obligate the corporation to indemnify or advance expenses to a
5 director of a predecessor of the corporation, pertaining to
6 conduct with respect to the predecessor, unless otherwise
7 specifically provided. Any provision for indemnification or
8 advance for expenses in the articles of incorporation, bylaws,
9 or a resolution of the board of directors or members of a
10 predecessor of the corporation in a merger or in a contract to
11 which the predecessor is a party, existing at the time the
12 merger takes effect, shall be governed by section 504A.1104.

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

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

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

24 Sec. 112. NEW SECTION. 504A.860 EXCLUSIVITY OF PART.

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

28 SUBCHAPTER IX

29 PERSONAL LIABILITY

30 Sec. 113. NEW SECTION. 504A.901 PERSONAL LIABILITY.

31 Except as otherwise provided in this chapter, a director,
32 officer, employee, or member of a corporation is not liable
33 for the corporation's debts or obligations and a director,
34 officer, member, or volunteer is not personally liable in that
35 capacity, to any person for any action taken or failure to

1 take any action except liability for any of the following:

2 1. The amount of any financial benefit to which the person
3 is entitled.

4 2. An intentional infliction of harm on the corporation or
5 the members.

6 3. A violation of section 504A.834.

7 4. An intentional violation of criminal law.

8 SUBCHAPTER X

9 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

10 PART 1

11 ARTICLES OF INCORPORATION

12 Sec. 114. NEW SECTION. 504A.1001 AUTHORITY TO AMEND.

13 A corporation may amend its articles of incorporation at
14 any time to add or change a provision that is required or
15 permitted in the articles or to delete a provision not
16 required in the articles. Whether a provision is required or
17 permitted in the articles is determined as of the effective
18 date of the amendment.

19 Sec. 115. NEW SECTION. 504A.1002 AMENDMENT BY DIRECTORS.

20 1. Unless the articles provide otherwise, a corporation's
21 board of directors may adopt one or more amendments to the
22 corporation's articles without member approval to do any of
23 the following:

24 a. Extend the duration of the corporation if it was
25 incorporated at a time when limited duration was required by
26 law.

27 b. Delete the names and addresses of the initial
28 directors.

29 c. Delete the name and address of the initial registered
30 agent or registered office, if a statement of change is on
31 file with the secretary of state.

32 d. Change the corporate name by substituting the word
33 "corporation", "incorporated", "company", "limited", or the
34 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
35 word or abbreviation in the name, or by adding, deleting, or

1 changing a geographical attribution to the name.

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

4 2. If a corporation has no members, its incorporators,
5 until directors have been chosen, and thereafter its board of
6 directors, may adopt one or more amendments to the
7 corporation's articles subject to any approval required
8 pursuant to section 504A.1031. The corporation shall provide
9 notice of any meeting at which an amendment is to be voted
10 upon. The notice shall be in accordance with section
11 504A.823, subsection 3. The notice must also state that the
12 purpose, or one of the purposes, of the meeting is to consider
13 a proposed amendment to the articles and contain or be
14 accompanied by a copy or summary of the amendment or state the
15 general nature of the amendment. The amendment must be
16 approved by a majority of the directors in office at the time
17 the amendment is adopted.

18 Sec. 116. NEW SECTION. 504A.1003 AMENDMENT BY DIRECTORS
19 AND MEMBERS.

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

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

31 b. Except as provided in section 504A.1002, subsection 1,
32 by the members by two-thirds of the votes cast by the members
33 or a majority of the members' voting power that could be cast,
34 whichever is less.

35 c. In writing by any person or persons whose approval is

1 required by a provision of the articles authorized by section
2 504A.1031.

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

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

11 4. If the board or the members seek to have the amendment
12 approved by the members at a membership meeting, the
13 corporation shall give notice to its members of the proposed
14 membership meeting in writing in accordance with section
15 504A.705. The notice must state that the purpose, or one of
16 the purposes, of the meeting is to consider the proposed
17 amendment and contain or be accompanied by a copy or summary
18 of the amendment.

19 5. If the board or the members seek to have the amendment
20 approved by the members by written consent or written ballot,
21 the material soliciting the approval shall contain or be
22 accompanied by a copy or summary of the amendment.

23 Sec. 117. NEW SECTION. 504A.1004 CLASS VOTING BY MEMBERS
24 ON AMENDMENTS.

25 1. The members of a class in a public benefit corporation
26 are entitled to vote as a class on a proposed amendment to the
27 articles if the amendment would change the rights of that
28 class as to voting in a manner different than such amendment
29 affects another class or members of another class.

30 2. The members of a class in a mutual benefit corporation
31 are entitled to vote as a class on a proposed amendment to the
32 articles if the amendment would do any of the following:

33 a. Affect the rights, privileges, preferences,
34 restrictions, or conditions of that class as to voting,
35 dissolution, redemption, or transfer of memberships in a

1 manner different than such amendment would affect another
2 class.

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

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

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

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

14 f. Authorize a new class of memberships.

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

19 4. If a class is to be divided into two or more classes as
20 a result of an amendment to the articles of a public benefit
21 or mutual benefit corporation, the amendment must be approved
22 by the members of each class that would be created by the
23 amendment.

24 5. Except as provided in the articles or bylaws of a
25 religious corporation, if a class vote is required to approve
26 an amendment to the articles of the corporation, the amendment
27 must be approved by the members of the class by two-thirds of
28 the votes cast by the class or a majority of the voting power
29 of the class, whichever is less.

30 6. A class of members of a public benefit or mutual
31 benefit corporation is entitled to the voting rights granted
32 by this section even if the public benefit or mutual benefit
33 corporation's articles and bylaws provide that the class shall
34 not vote on the proposed amendment.

35 Sec. 118. NEW SECTION. 504A.1005 ARTICLES OF AMENDMENT.

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

- 3 1. The name of the corporation.
- 4 2. The text of each amendment adopted.
- 5 3. The date of each amendment's adoption.
- 6 4. If approval by members was not required, a statement to
7 that effect and a statement that the amendment was approved by
8 a sufficient vote of the board of directors or incorporators.
- 9 5. If approval by members was required, both of the
10 following:

- 11 a. The designation, number of memberships outstanding,
12 number of votes entitled to be cast by each class entitled to
13 vote separately on the amendment, and number of votes of each
14 class indisputably voting on the amendment.

- 15 b. Either the total number of votes cast for and against
16 the amendment by each class entitled to vote separately on the
17 amendment or the total number of undisputed votes cast for the
18 amendment by each class and a statement that the number of
19 votes cast for the amendment by each class was sufficient for
20 approval by that class.

- 21 6. If approval of the amendment by some person or persons
22 other than the members, the board, or the incorporators is
23 required pursuant to section 504A.1031, a statement that the
24 approval was obtained.

25 Sec. 119. NEW SECTION. 504A.1006 RESTATED ARTICLES OF
26 INCORPORATION.

27 1. A corporation's board of directors may restate the
28 corporation's articles of incorporation at any time with or
29 without approval by members or any other person.

30 2. The restatement may include one or more amendments to
31 the articles. If the restatement includes an amendment
32 requiring approval by the members or any other person, it must
33 be adopted as provided in section 504A.1003.

34 3. If the restatement includes an amendment requiring
35 approval by members, the board must submit the restatement to

1 the members for their approval.

2 4. If the board seeks to have the restatement approved by
3 the members at a membership meeting, the corporation shall
4 notify each of its members of the proposed membership meeting
5 in writing in accordance with section 504A.705. The notice
6 must also state that the purpose, or one of the purposes, of
7 the meeting is to consider the proposed restatement and must
8 contain or be accompanied by a copy or summary of the
9 restatement that identifies any amendments or other changes
10 the restatement would make in the articles.

11 5. If the board seeks to have the restatement approved by
12 the members by written ballot or written consent, the material
13 soliciting the approval shall contain or be accompanied by a
14 copy or summary of the restatement that identifies any
15 amendments or other changes the restatement would make in the
16 articles.

17 6. A restatement requiring approval by the members must be
18 approved by the same vote as an amendment to articles under
19 section 504A.1003.

20 7. If the restatement includes an amendment requiring
21 approval pursuant to section 504A.1031, the board must submit
22 the restatement for such approval.

23 8. A corporation restating its articles shall deliver to
24 the secretary of state articles of restatement setting forth
25 the name of the corporation and the text of the restated
26 articles of incorporation together with a certificate setting
27 forth all of the following:

28 a. Whether the restatement contains an amendment to the
29 articles requiring approval by the members or any other person
30 other than the board of directors and, if it does not, that
31 the board of directors adopted the restatement.

32 b. If the restatement contains an amendment to the
33 articles requiring approval by the members, the information
34 required by section 504A.1005.

35 c. If the restatement contains an amendment to the

1 articles requiring approval by a person whose approval is
2 required pursuant to section 504A.1031, a statement that such
3 approval was obtained.

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

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

11 Sec. 120. NEW SECTION. 504A.1007 AMENDMENT PURSUANT TO
12 JUDICIAL REORGANIZATION.

13 1. A corporation's articles may be amended without board
14 approval or approval by the members or approval required
15 pursuant to section 504A.1031 to carry out a plan of
16 reorganization ordered or decreed by a court of competent
17 jurisdiction under federal statute if the articles after
18 amendment contain only provisions required or permitted by
19 section 504A.202.

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

23 a. The name of the corporation.

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

25 c. The date of the court's order or decree approving the
26 articles of amendment.

27 d. The title of the reorganization proceeding in which the
28 order or decree was entered.

29 e. A statement that the court had jurisdiction of the
30 proceeding under federal statute.

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

35 Sec. 121. NEW SECTION. 504A.1008 EFFECT OF AMENDMENT AND

1 RESTATEMENT.

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

11 PART 2

12 BYLAWS

13 Sec. 122. NEW SECTION. 504A.1021 AMENDMENT BY DIRECTORS.

14 If a corporation has no members, its incorporators, until
15 directors have been chosen, and thereafter its board of
16 directors, may adopt one or more amendments to the
17 corporation's bylaws subject to any approval required pursuant
18 to section 504A.1031. The corporation shall provide notice of
19 any meeting of directors at which an amendment is to be
20 approved. The notice must be given in accordance with section
21 504A.823, subsection 3. The notice must also state that the
22 purpose, or one of the purposes, of the meeting is to consider
23 a proposed amendment to the bylaws and contain or be
24 accompanied by a copy or summary of the amendment or state the
25 general nature of the amendment. The amendment must be
26 approved by a majority of the directors in office at the time
27 the amendment is adopted.

28 Sec. 123. NEW SECTION. 504A.1022 AMENDMENT BY DIRECTORS
29 AND MEMBERS.

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

35 a. By the board if the corporation is a public benefit or

1 religious corporation and the amendment does not relate to the
2 number of directors, the composition of the board, the term of
3 office of directors, or the method or way in which directors
4 are elected or selected.

5 b. By the members by two-thirds of the votes cast or a
6 majority of the voting power, 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 504A.1031.

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

13 3. If the board initiates an amendment to the bylaws or
14 board approval is required by subsection 1 to adopt an
15 amendment to the bylaws, the board may condition the
16 amendment's adoption on receipt of a higher percentage of
17 affirmative votes or on 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 504A.705. The notice must also state that the purpose, or one
23 of 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. 124. NEW SECTION. 504A.1023 CLASS VOTING BY MEMBERS
31 ON AMENDMENTS.

32 1. The members of a class in a public benefit corporation
33 are entitled to vote as a class on a proposed amendment to the
34 bylaws if the amendment would change the rights of that class
35 as to voting in a manner different than such amendment affects

- 1 another class or members of another class.
- 2 2. The members of a class in a mutual benefit corporation
3 are entitled to vote as a class on a proposed amendment to the
4 bylaws if the amendment would do any of the following:
- 5 a. Affect the rights, privileges, preferences,
6 restrictions, or conditions of that class as to voting,
7 dissolution, redemption, or transfer of memberships in a
8 manner different than such amendment would affect another
9 class.
- 10 b. Change the rights, privileges, preferences,
11 restrictions, or conditions of that class as to voting,
12 dissolution, redemption, or transfer by changing the rights,
13 privileges, preferences, restrictions, or conditions of
14 another class.
- 15 c. Increase or decrease the number of memberships
16 authorized for that class.
- 17 d. Increase the number of memberships authorized for
18 another class.
- 19 e. Effect an exchange, reclassification, or termination of
20 all or part of the memberships of that class.
- 21 f. Authorize a new class of memberships.
- 22 3. The members of a class of a religious corporation are
23 entitled to vote as a class on a proposed amendment to the
24 bylaws only if a class vote is provided for in the articles or
25 bylaws.
- 26 4. If a class is to be divided into two or more classes as
27 a result of an amendment to the bylaws, the amendment must be
28 approved by the members of each class that would be created by
29 the amendment.
- 30 5. If a class vote is required to approve an amendment to
31 the bylaws, the amendment must be approved by the members of
32 the class by two-thirds of the votes cast by the class or a
33 majority of the voting power of the class, whichever is less.
- 34 6. A class of members is entitled to the voting rights
35 granted by this section even if the articles and bylaws

1 provide that the class may not vote on the proposed amendment.

2

PART 3

3

ARTICLES OF INCORPORATION AND BYLAWS

4 Sec. 125. NEW SECTION. 504A.1031 APPROVAL BY THIRD
5 PERSONS.

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

12 Sec. 126. NEW SECTION. 504A.1032 AMENDMENT TERMINATING
13 MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS.

14 1. An amendment to the articles or bylaws of a public
15 benefit or mutual benefit corporation which would terminate
16 all members or any class of members or redeem or cancel all
17 memberships or any class of memberships must meet the
18 requirements of this chapter and this section.

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

23 3. After adopting a resolution proposing such an
24 amendment, the notice to members proposing such amendment
25 shall include one statement of up to five hundred words
26 opposing the proposed amendment, if such statement is
27 submitted by any five members or members having three percent
28 or more of the voting power, whichever is less, not later than
29 twenty days after the board has voted to submit such amendment
30 to the members for their approval. In public benefit
31 corporations, the production and mailing costs of the
32 statement opposing the proposed amendment shall be paid by the
33 requesting members. In mutual benefit corporations, the
34 production and mailing costs of the statement opposing the
35 proposed amendment shall be paid by the corporation.

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

3 5. The provisions of section 504A.622 shall not apply to
4 any amendment meeting the requirements of this chapter and
5 this section.

6 SUBCHAPTER XI

7 MERGER

8 Sec. 127. NEW SECTION. 504A.1101 APPROVAL OF PLAN OF
9 MERGER.

10 1. Subject to the limitations set forth in section
11 504A.1102, one or more nonprofit corporations may merge with
12 or into any one or more corporations or nonprofit corporations
13 or limited liability companies, if the plan of merger is
14 approved as provided in section 504A.1103.

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

17 a. The name of each corporation or limited liability
18 company planning to merge and the name of the surviving
19 corporation into which each plans to merge.

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

21 c. The manner and basis, if any, of converting the
22 memberships of each public benefit or religious corporation
23 into memberships of the surviving corporation or limited
24 liability company.

25 d. If the merger involves a mutual benefit corporation,
26 the manner and basis, if any, of converting memberships of
27 each merging corporation into memberships, obligations, or
28 securities of the surviving or any other corporation or
29 limited liability company or into cash or other property in
30 whole or in part.

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

32 a. Any amendments to the articles of incorporation or
33 bylaws of the surviving corporation or limited liability
34 company to be effected by the planned merger.

35 b. Other provisions relating to the planned merger.

1 Sec. 128. NEW SECTION. 504A.1102 LIMITATIONS ON MERGERS
2 BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS.

3 1. Without the prior approval of the district court in a
4 proceeding of which the attorney general has been given
5 written notice, a public benefit or religious corporation may
6 merge only with one of the following:

7 a. A public benefit or religious corporation.

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

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

14 d. A business or mutual benefit corporation, provided that
15 all of the following apply:

16 (1) On or prior to the effective date of the merger,
17 assets with a value equal to the greater of the fair market
18 value of the net tangible and intangible assets, including
19 goodwill, of the public benefit or religious corporation or
20 the fair market value of the public benefit or religious
21 corporation if it were to be operated as a business concern
22 are transferred or conveyed to one or more persons who would
23 have received its assets under section 504A.1406, subsection
24 1, paragraphs "e" and "f", had it dissolved.

25 (2) The business or mutual benefit corporation shall
26 return, transfer, or convey any assets held by it upon
27 condition requiring return, transfer, or conveyance, which
28 condition occurs by reason of the merger, in accordance with
29 such condition.

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

35 2. At least twenty days before consummation of any merger

1 of a public benefit corporation or a religious corporation
2 pursuant to subsection 1, paragraph "d", notice, including a
3 copy of the proposed plan of merger, must be delivered to the
4 attorney general.

5 3. Without the prior written consent of the attorney
6 general or of the district court in a proceeding in which the
7 attorney general has been given notice, a member of a public
8 benefit or religious corporation shall not receive or keep
9 anything as a result of a merger other than a membership in
10 the surviving public benefit or religious corporation. The
11 court shall approve the transaction if it is in the public
12 interest.

13 Sec. 129. NEW SECTION. 504A.1103 ACTION ON PLAN BY
14 BOARD, MEMBERS, AND THIRD PERSONS.

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

20 a. The board.

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

23 c. In writing by any person or persons whose approval is
24 required by a provision of the articles authorized by section
25 504A.1031 for an amendment to the articles or bylaws.

26 2. If the corporation does not have members, the merger
27 must be approved by a majority of the directors in office at
28 the time the merger is approved. In addition, the corporation
29 shall provide notice of any directors' meeting at which such
30 approval is to be obtained in accordance with section
31 504A.823, subsection 3. The notice must also state that the
32 purpose, or one of the purposes, of the meeting is to consider
33 the proposed merger.

34 3. The board may condition its submission of the proposed
35 merger, and the members may condition their approval of the

1 merger, on receipt of a higher percentage of affirmative votes
2 or on any other basis.

3 4. If the board seeks to have the plan approved by the
4 members at a membership meeting, the corporation shall give
5 notice to its members of the proposed membership meeting in
6 accordance with section 504A.705. The notice must also state
7 that the purpose, or one of the purposes, of the meeting is to
8 consider the plan of merger and contain or be accompanied by a
9 copy or summary of the plan. The copy or summary of the plan
10 for members of the surviving corporation shall include any
11 provision that, if contained in a proposed amendment to the
12 articles of incorporation or bylaws, would entitle members to
13 vote on the provision. The copy or summary of the plan for
14 members of the disappearing corporation shall include a copy
15 or summary of the articles and bylaws which will be in effect
16 immediately after the merger takes effect.

17 5. If the board seeks to have the plan approved by the
18 members by written consent or written ballot, the material
19 soliciting the approval shall contain or be accompanied by a
20 copy or summary of the plan. The copy or summary of the plan
21 for members of the surviving corporation shall include any
22 provision that, if contained in a proposed amendment to the
23 articles of incorporation or bylaws, would entitle members to
24 vote on the provision. The copy or summary of the plan for
25 members of the disappearing corporation shall include a copy
26 or summary of the articles and bylaws which will be in effect
27 immediately after the merger takes effect.

28 6. Voting by a class of members is required on a plan of
29 merger if the plan contains a provision that, if contained in
30 a proposed amendment to articles of incorporation or bylaws,
31 would entitle the class of members to vote as a class on the
32 proposed amendment under section 504A.1004 or 504A.1023. The
33 plan must be approved by a class of members by two-thirds of
34 the votes cast by the class or a majority of the voting power
35 of the class, whichever is less.

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

8 Sec. 130. NEW SECTION. 504A.1104 ARTICLES OF MERGER.

9 After a plan of merger is approved by the board of
10 directors, and if required by section 504A.1103, by the
11 members and any other persons, the surviving or acquiring
12 corporation shall deliver to the secretary of state articles
13 of merger setting forth all of the following, as applicable:

14 1. The plan of merger.

15 2. If approval of members was not required, a statement to
16 that effect and a statement that the plan was approved by a
17 sufficient vote of the board of directors.

18 3. If approval by members was required, both of the
19 following:

20 a. The designation, number of memberships outstanding,
21 number of votes entitled to be cast by each class entitled to
22 vote separately on the plan, and number of votes of each class
23 indisputably voting on the plan.

24 b. Either the total number of votes cast for and against
25 the plan by each class entitled to vote separately on the plan
26 or the total number of undisputed votes cast for the plan by
27 each class and a statement that the number of votes cast for
28 the plan by each class was sufficient for approval by that
29 class.

30 4. If approval of the plan by some person or persons other
31 than the members of the board is required pursuant to section
32 504A.1103, subsection 1, paragraph "c", a statement that the
33 approval was obtained.

34 Sec. 131. NEW SECTION. 504A.1105 EFFECT OF MERGER.

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

1 1. Every other corporation party to the merger merges into
2 the surviving corporation and the separate existence of every
3 corporation except the surviving corporation ceases.

4 2. The title to all real estate and other property owned
5 by each corporation party to the merger is vested in the
6 surviving corporation without reversion or impairment subject
7 to any and all conditions to which the property was subject
8 prior to the merger.

9 3. The surviving corporation has all the liabilities and
10 obligations of each corporation party to the merger.

11 4. A proceeding pending against any corporation party to
12 the merger may be continued as if the merger did not occur or
13 the surviving corporation may be substituted in the proceeding
14 for the corporation whose existence ceased.

15 5. The articles of incorporation and bylaws of the
16 surviving corporation are amended to the extent provided in
17 the plan of merger.

18 Sec. 132. NEW SECTION. 504A.1106 MERGER WITH FOREIGN
19 CORPORATION.

20 1. Except as provided in section 504A.1102, one or more
21 foreign business or nonprofit corporations may merge with one
22 or more domestic nonprofit corporations if all of the
23 following conditions are met:

24 a. The merger is permitted by the law of the state or
25 country under whose law each foreign corporation is
26 incorporated and each foreign corporation complies with that
27 law in effecting the merger.

28 b. The foreign corporation complies with section 504A.1104
29 if it is the surviving corporation of the merger.

30 c. Each domestic nonprofit corporation complies with the
31 applicable provisions of sections 504A.1101 through 504A.1103
32 and, if it is the surviving corporation of the merger, with
33 section 504A.1104.

34 2. Upon the merger taking effect, the surviving foreign
35 business or nonprofit corporation is deemed to have

1 irrevocably appointed the secretary of state as its agent for
2 service of process in any proceeding brought against it.

3 Sec. 133. NEW SECTION. 504A.1107 BEQUESTS, DEVISES, AND
4 GIFTS.

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

11 SUBCHAPTER XII

12 SALE OF ASSETS

13 Sec. 134. NEW SECTION. 504A.1201 SALE OF ASSETS IN
14 REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS.

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

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

21 b. Mortgage, pledge, dedicate to the repayment of
22 indebtedness, whether with or without recourse, or otherwise
23 encumber any or all of its property whether or not in the
24 usual and regular course of its activities.

25 2. Unless the articles require it, approval of the members
26 or any other persons of a transaction described in subsection
27 1 is not required.

28 Sec. 135. NEW SECTION. 504A.1202 SALE OF ASSETS OTHER
29 THAN IN REGULAR COURSE OF ACTIVITIES.

30 1. A corporation may sell, lease, exchange, or otherwise
31 dispose of all, or substantially all, of its property, with or
32 without the goodwill, other than in the usual and regular
33 course of its activities on the terms and conditions and for
34 the consideration determined by the corporation's board if the
35 proposed transaction is authorized by subsection 2.

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

6 a. The board.

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

9 c. In writing by any person or persons whose approval is
10 required by a provision of the articles authorized by section
11 504A.1031 for an amendment to the articles or bylaws.

12 3. If the corporation does not have members, the
13 transaction must be approved by a vote of a majority of the
14 directors in office at the time the transaction is approved.
15 In addition, the corporation shall provide notice of any
16 directors' meeting at which such approval is to be obtained in
17 accordance with section 504A.823, subsection 3. The notice
18 shall also state that the purpose, or one of the purposes, of
19 the meeting is to consider the sale, lease, exchange, or other
20 disposition of all, or substantially all, of the property or
21 assets of the corporation and contain or be accompanied by a
22 copy or summary of a description of the transaction.

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

27 5. If the corporation seeks to have the transaction
28 approved by the members at a membership meeting, the
29 corporation shall give notice to its members of the proposed
30 membership meeting in accordance with section 504A.705. The
31 notice must also state that the purpose, or one of the
32 purposes, of the meeting is to consider the sale, lease,
33 exchange, or other disposition of all, or substantially all,
34 of the property or assets of the corporation and contain or be
35 accompanied by a copy or summary of a description of the

1 transaction.

2 6. If the board is required to have the transaction
3 approved by the members by written consent or written ballot,
4 the material soliciting the approval shall contain or be
5 accompanied by a copy or summary of a description of the
6 transaction.

7 7. A public benefit or religious corporation shall give
8 written notice to the attorney general twenty days before it
9 sells, leases, exchanges, or otherwise disposes of all, or
10 substantially all, of its property if the transaction is not
11 in the usual and regular course of its activities unless the
12 attorney general has given the corporation a written waiver of
13 the requirements of this subsection. The attorney general
14 shall be deemed to have consented to the transaction unless
15 notice is given to the corporation within the twenty days.

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

23 SUBCHAPTER XIII

24 DISTRIBUTIONS

25 Sec. 136. NEW SECTION. 504A.1301 PROHIBITED
26 DISTRIBUTIONS.

27 Except as authorized by section 504A.1302, a corporation
28 shall not make any distributions.

29 Sec. 137. NEW SECTION. 504A.1302 AUTHORIZED
30 DISTRIBUTIONS.

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

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

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

3 2. Corporations may make distributions upon dissolution in
4 conformity with subchapter 14.

5 SUBCHAPTER XIV

6 DISSOLUTION

7 PART 1

8 VOLUNTARY DISSOLUTION

9 Sec. 138. NEW SECTION. 504A.1401 DISSOLUTION BY
10 INCORPORATORS OR DIRECTORS AND THIRD PERSONS.

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

17 2. The corporation shall give notice of any meeting at
18 which dissolution will be approved. The notice must be in
19 accordance with section 504A.823, subsection 3. The notice
20 must also state that the purpose, or one of the purposes, of
21 the meeting is to consider dissolution of the corporation.

22 3. The incorporators or directors in approving dissolution
23 shall adopt a plan of dissolution indicating to whom the
24 assets owned or held by the corporation will be distributed
25 after all creditors have been paid.

26 Sec. 139. NEW SECTION. 504A.1402 DISSOLUTION BY
27 DIRECTORS, MEMBERS, AND THIRD PERSONS.

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

32 a. The board.

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

35 c. In writing by any person or persons whose approval is

1 required by a provision of the articles authorized by section
2 504A.1031 for an amendment to the articles or bylaws.

3 2. If the corporation does not have members, dissolution
4 must be approved by a vote of a majority of the directors in
5 office at the time the transaction is approved. In addition,
6 the corporation shall provide notice of any directors' meeting
7 at which such approval is to be obtained in accordance with
8 section 504A.823, subsection 3. The notice must also state
9 that the purpose, or one of the purposes, of the meeting is to
10 consider dissolution of the corporation and contain or be
11 accompanied by a copy or summary of the plan of dissolution.

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

16 4. If the board seeks to have dissolution approved by the
17 members at a membership meeting, the corporation shall give
18 notice to its members of the proposed membership meeting in
19 accordance with section 504A.705. The notice must also state
20 that the purpose, or one of the purposes, of the meeting is to
21 consider dissolving the corporation and must contain or be
22 accompanied by a copy or summary of the plan of dissolution.

23 5. If the board seeks to have the dissolution approved by
24 the members by written consent or written ballot, the material
25 soliciting the approval shall contain or be accompanied by a
26 copy or summary of the plan of dissolution.

27 6. The plan of dissolution shall indicate to whom the
28 assets owned or held by the corporation will be distributed
29 after all creditors have been paid.

30 Sec. 140. NEW SECTION. 504A.1403 NOTICES TO THE ATTORNEY
31 GENERAL.

32 1. A public benefit or religious corporation shall give
33 the attorney general written notice that it intends to
34 dissolve at or before the time it delivers articles of
35 dissolution to the secretary of state. The notice shall

1 include a copy or summary of the plan of dissolution.

2 2. Assets shall not be transferred or conveyed by a public
3 benefit or religious corporation as part of the dissolution
4 process until twenty days after it has given the written
5 notice required by subsection 1 to the attorney general or
6 until the attorney general has consented in writing to, or
7 indicated in writing that, the attorney general will take no
8 action in respect to the transfer or conveyance, whichever is
9 earlier.

10 3. When all or substantially all of the assets of a public
11 benefit corporation have been transferred or conveyed
12 following approval of dissolution, the board shall deliver to
13 the attorney general a list showing to whom, other than
14 creditors, the assets were transferred or conveyed. The list
15 shall indicate the addresses of each person, other than
16 creditors, who received assets and indicate what assets each
17 received.

18 Sec. 141. NEW SECTION. 504A.1404 ARTICLES OF
19 DISSOLUTION.

20 1. At any time after dissolution is authorized, a
21 corporation may dissolve by delivering articles of dissolution
22 to the secretary of state setting forth all of the following:

23 a. The name of the corporation.

24 b. The date dissolution was authorized.

25 c. A statement that dissolution was approved by a
26 sufficient vote of the board.

27 d. If approval of members was not required, a statement to
28 that effect and a statement that dissolution was approved by a
29 sufficient vote of the board of directors or incorporators.

30 e. If approval by members was required, both of the
31 following:

32 (1) The designation, number of memberships outstanding,
33 number of votes entitled to be cast by each class entitled to
34 vote separately on dissolution, and number of votes of each
35 class indisputably voting on dissolution.

1 (2) Either the total number of votes cast for and against
2 dissolution by each class entitled to vote separately on
3 dissolution or the total number of undisputed votes cast for
4 dissolution by each class and a statement that the number cast
5 for dissolution by each class was sufficient for approval by
6 that class.

7 f. If approval of dissolution by some person or persons
8 other than the members, the board, or the incorporators is
9 required pursuant to section 504A.1402, subsection 1,
10 paragraph "c", a statement that the approval was obtained.

11 g. If the corporation is a public benefit or religious
12 corporation, that the notice to the attorney general required
13 by section 504A.1403, subsection 1, has been given.

14 2. A corporation is dissolved upon the effective date of
15 its articles of dissolution.

16 Sec. 142. NEW SECTION. 504A.1405 REVOCATION OF
17 DISSOLUTION.

18 1. A corporation may revoke its dissolution within one
19 hundred twenty days of its effective date.

20 2. Revocation of dissolution must be authorized in the
21 same manner as the dissolution was authorized unless that
22 authorization permitted revocation by action of the board of
23 directors alone, in which event the board of directors may
24 revoke the dissolution without action by the members or any
25 other person.

26 3. After the revocation of dissolution is authorized, the
27 corporation may revoke the dissolution by delivering to the
28 secretary of state for filing, articles of revocation of
29 dissolution, together with a copy of its articles of
30 dissolution, that set forth all of the following:

31 a. The name of the corporation.

32 b. The effective date of the dissolution that was revoked.

33 c. The date that the revocation of dissolution was
34 authorized.

35 d. If the corporation's board of directors or

1 incorporators revoked the dissolution, a statement to that
2 effect.

3 e. If the corporation's board of directors revoked a
4 dissolution authorized by the members alone or in conjunction
5 with another person or persons, a statement that revocation
6 was permitted by action of the board of directors alone
7 pursuant to that authorization.

8 f. If member or third person action was required to revoke
9 the dissolution, the information required by section
10 504A.1404, subsection 1, paragraphs "e" and "f".

11 4. Revocation of dissolution is effective upon the
12 effective date of the articles of revocation of dissolution.

13 5. When the revocation of dissolution is effective, it
14 relates back to and takes effect as of the effective date of
15 the dissolution and the corporation resumes carrying on its
16 activities as if dissolution had never occurred.

17 Sec. 143. NEW SECTION. 504A.1406 EFFECT OF DISSOLUTION.

18 1. A dissolved corporation continues its corporate
19 existence but shall not carry on any activities except those
20 appropriate to wind up and liquidate its affairs, including
21 all of the following:

22 a. Preserving and protecting its assets and minimizing its
23 liabilities.

24 b. Discharging or making provision for discharging its
25 liabilities and obligations.

26 c. Disposing of its properties that will not be
27 distributed in kind.

28 d. Returning, transferring, or conveying assets held by
29 the corporation upon a condition requiring return, transfer,
30 or conveyance, which condition occurs by reason of the
31 dissolution, in accordance with such condition.

32 e. Transferring, subject to any contractual or legal
33 requirements, its assets as provided in or authorized by its
34 articles of incorporation or bylaws.

35 f. If the corporation is a public benefit or religious

1 corporation, and a provision has not been made in its articles
2 or bylaws for distribution of assets on dissolution,
3 transferring, subject to any contractual or legal requirement,
4 its assets to one or more persons described in section
5 501(c)(3) of the Internal Revenue Code, or if the dissolved
6 corporation is not described in section 501(c)(3) of the
7 Internal Revenue Code, to one or more public benefit or
8 religious corporations.

9 g. If the corporation is a mutual benefit corporation and
10 a provision has not been made in its articles or bylaws for
11 distribution of assets on dissolution, transferring its assets
12 to its members or, if it has no members, those persons whom
13 the corporation holds itself out as benefiting or serving.

14 h. Doing every other act necessary to wind up and
15 liquidate its assets and affairs.

16 2. Dissolution of a corporation does not do any of the
17 following:

18 a. Transfer title to the corporation's property.

19 b. Subject its directors or officers to standards of
20 conduct different from those prescribed in subchapter 8.

21 c. Change quorum or voting requirements for its board or
22 members; change provisions for selection, resignation, or
23 removal of its directors or officers or both; or change
24 provisions for amending its bylaws.

25 d. Prevent commencement of a proceeding by or against the
26 corporation in its corporate name.

27 e. Abate or suspend a proceeding pending by or against the
28 corporation on the effective date of dissolution.

29 f. Terminate the authority of the registered agent.

30 Sec. 144. NEW SECTION. 504A.1407 KNOWN CLAIMS AGAINST
31 DISSOLVED CORPORATION.

32 1. A dissolved corporation may dispose of the known claims
33 against it by following the procedure described in this
34 section.

35 2. The dissolved corporation shall notify its known

1 claimants in writing of the dissolution at any time after the
2 effective date of the dissolution. The written notice must do
3 all of the following:

4 a. Describe information that must be included in a claim.

5 b. Provide a mailing address where a claim may be sent.

6 c. State the deadline, which shall not be fewer than one
7 hundred twenty days from the effective date of the written
8 notice, by which the dissolved corporation must receive the
9 claim.

10 d. State that the claim will be barred if not received by
11 the deadline.

12 3. A claim against the dissolved corporation is barred if
13 either of the following occurs:

14 a. A claimant who was given written notice under
15 subsection 2 does not deliver the claim to the dissolved
16 corporation by the deadline.

17 b. A claimant whose claim was rejected by the dissolved
18 corporation does not commence a proceeding to enforce the
19 claim within ninety days from the effective date of the
20 rejection notice.

21 4. For purposes of this section, "claim" does not include
22 a contingent liability or a claim based on an event occurring
23 after the effective date of dissolution.

24 Sec. 145. NEW SECTION. 504A.1408 UNKNOWN CLAIMS AGAINST
25 DISSOLVED CORPORATION.

26 1. A dissolved corporation may also publish notice of its
27 dissolution and request that persons with claims against the
28 corporation present them in accordance with the notice.

29 2. The notice must do all of the following:

30 a. Be published one time in a newspaper of general
31 circulation in the county where the dissolved corporation's
32 principal office is located, or, if none is located in this
33 state, where its registered office is or was last located.

34 b. Describe the information that must be included in a
35 claim and provide a mailing address where the claim may be

1 sent.

2 c. State that a claim against the corporation will be
3 barred unless a proceeding to enforce the claim is commenced
4 within five years after publication of the notice.

5 3. If the dissolved corporation publishes a newspaper
6 notice in accordance with subsection 2, the claim of each of
7 the following claimants is barred unless the claimant
8 commences a proceeding to enforce the claim against the
9 dissolved corporation within five years after the publication
10 date of the newspaper notice:

11 a. A claimant who did not receive written notice under
12 section 504A.1407.

13 b. A claimant whose claim was timely sent to the dissolved
14 corporation but not acted on.

15 c. A claimant whose claim is contingent or based on an
16 event occurring after the effective date of dissolution.

17 4. A claim may be enforced under this section to the
18 following extent, as applicable:

19 a. Against the dissolved corporation, to the extent of its
20 undistributed assets.

21 b. If the assets have been distributed in liquidation,
22 against any person, other than a creditor of the corporation,
23 to whom the corporation distributed its property to the extent
24 of the distributee's pro rata share of the claim or the
25 corporate assets distributed to such person in liquidation,
26 whichever is less, but the distributee's total liability for
27 all claims under this section shall not exceed the total
28 amount of assets distributed to the distributee.

29

PART 2

30

ADMINISTRATIVE DISSOLUTION

31 Sec. 146. NEW SECTION. 504A.1421 GROUNDS FOR
32 ADMINISTRATIVE DISSOLUTION.

33 The secretary of state may commence a proceeding under
34 section 504A.1422 to administratively dissolve a corporation
35 if any of the following occurs:

1 1. The corporation does not deliver its biennial report to
2 the secretary of state, in a form that meets the requirements
3 of section 504A.1613, within sixty days after the report is
4 due.

5 2. The corporation is without a registered agent or
6 registered office in this state for sixty days or more.

7 3. The corporation does not notify the secretary of state
8 within sixty days that its registered agent or registered
9 office has been changed, that its registered agent has
10 resigned, or that its registered office has been discontinued.

11 4. The corporation's period of duration, if any, stated in
12 its articles of incorporation expires.

13 Sec. 147. NEW SECTION. 504A.1422 PROCEDURE FOR AND
14 EFFECT OF ADMINISTRATIVE DISSOLUTION.

15 1. Upon determining that one or more grounds exist under
16 section 504A.1421 for dissolving a corporation, the secretary
17 of state shall serve the corporation with written notice of
18 that determination under section 504A.504, and in the case of
19 a public benefit corporation shall notify the attorney general
20 in writing of that determination.

21 2. If the corporation does not correct each ground for
22 dissolution or demonstrate to the reasonable satisfaction of
23 the secretary of state that each ground determined by the
24 secretary of state does not exist within at least sixty days
25 after service of notice is perfected under section 504A.504,
26 the secretary of state may administratively dissolve the
27 corporation by signing a certificate of dissolution that
28 recites the ground or grounds for dissolution and its
29 effective date. The secretary of state shall file the
30 original of the certificate of dissolution and serve a copy on
31 the corporation under section 504A.504, and in the case of a
32 public benefit corporation shall notify the attorney general
33 in writing of the dissolution.

34 3. A corporation administratively dissolved continues its
35 corporate existence but may not carry on any activities except

1 those necessary to wind up and liquidate its affairs pursuant
2 to section 504A.1406 and notify its claimants pursuant to
3 sections 504A.1407 and 504A.1408.

4 4. The administrative dissolution of a corporation does
5 not terminate the authority of its registered agent.

6 5. The secretary of state's administrative dissolution of
7 a corporation pursuant to this section appoints the secretary
8 of state as the corporation's agent for service of process in
9 any proceeding based on a cause of action which arose during
10 the time the corporation was authorized to transact business
11 in this state. Service of process on the secretary of state
12 under this subsection is service on the corporation. Upon
13 receipt of process, the secretary of state shall serve a copy
14 of the process on the corporation as provided in section
15 504A.504. This subsection does not preclude service on the
16 corporation's registered agent, if any.

17 Sec. 148. NEW SECTION. 504A.1423 REINSTATEMENT FOLLOWING
18 ADMINISTRATIVE DISSOLUTION.

19 1. A corporation administratively dissolved under section
20 504A.1422 may apply to the secretary of state for
21 reinstatement within two years after the effective date of
22 dissolution. The application must state all of the following:

23 a. The name of the corporation and the effective date of
24 its administrative dissolution.

25 b. That the ground or grounds for dissolution either did
26 not exist or have been eliminated.

27 c. That the corporation's name satisfies the requirements
28 of section 504A.401.

29 d. The federal tax identification number of the
30 corporation.

31 2. a. The secretary of state shall refer the federal tax
32 identification number contained in the application for
33 reinstatement to the department of revenue and finance. The
34 department of revenue and finance shall report to the
35 secretary of state the tax status of the corporation. If the

1 department reports to the secretary of state that a filing
2 delinquency or liability exists against the corporation, the
3 secretary of state shall not cancel the certificate of
4 dissolution until the filing delinquency or liability is
5 satisfied.

6 b. If the secretary of state determines that the
7 application contains the information required by subsection 1,
8 that a delinquency or liability reported pursuant to paragraph
9 "a" has been satisfied, and that all of the application
10 information is correct, the secretary of state shall cancel
11 the certificate of dissolution and prepare a certificate of
12 reinstatement reciting that determination and the effective
13 date of reinstatement, file the original of the certificate,
14 and serve a copy on the corporation under section 504A.504.
15 If the corporate name in subsection 1, paragraph "c", is
16 different from the corporate name in subsection 1, paragraph
17 "a", the certificate of reinstatement shall constitute an
18 amendment to the articles of incorporation insofar as it
19 pertains to the corporate name.

20 3. When reinstatement is effective, it relates back to and
21 takes effect as of the effective date of the administrative
22 dissolution and the corporation shall resume carrying on its
23 activities as if the administrative dissolution had never
24 occurred.

25 Sec. 149. NEW SECTION. 504A.1424 APPEAL FROM DENIAL OF
26 REINSTATEMENT.

27 1. The secretary of state, upon denying a corporation's
28 application for reinstatement following administrative
29 dissolution, shall serve the corporation under section
30 504A.504 with a written notice that explains the reason or
31 reasons for denial.

32 2. The corporation may appeal the denial of reinstatement
33 to the district court within ninety days after service of the
34 notice of denial is perfected by petitioning to set aside the
35 dissolution and attaching to the petition copies of the

1 secretary of state's certificate of dissolution, the
2 corporation's application for reinstatement, and the secretary
3 of state's notice of denial of reinstatement.

4 3. The court may summarily order the secretary of state to
5 reinstate the dissolved corporation or may take other action
6 the court considers appropriate.

7 4. The court's final decision may be appealed as in other
8 civil proceedings.

9

PART 3

10

JUDICIAL DISSOLUTION

11 Sec. 150. NEW SECTION. 504A.1431 GROUNDS FOR JUDICIAL
12 DISSOLUTION.

13 1. The district court may dissolve a corporation in any of
14 the following ways:

15 a. In a proceeding brought by the attorney general, if any
16 of the following is established:

17 (1) The corporation obtained its articles of incorporation
18 through fraud.

19 (2) The corporation has continued to exceed or abuse the
20 authority conferred upon it by law.

21 (3) The corporation is a public benefit corporation and
22 the corporate assets are being misapplied or wasted.

23 (4) The corporation is a public benefit corporation and is
24 no longer able to carry out its purposes.

25 b. Except as provided in the articles or bylaws of a
26 religious corporation, in a proceeding brought by fifty
27 members or members holding five percent of the voting power,
28 whichever is less, or by a director or any person specified in
29 the articles, if any of the following is established:

30 (1) The directors are deadlocked in the management of the
31 corporate affairs, and the members, if any, are unable to
32 break the deadlock.

33 (2) The directors or those in control of the corporation
34 have acted, are acting, or will act in a manner that is
35 illegal, oppressive, or fraudulent.

1 (3) The members are deadlocked in voting power and have
2 failed, for a period that includes at least two consecutive
3 annual meeting dates, to elect successors to directors whose
4 terms have, or would otherwise have, expired.

5 (4) The corporate assets are being misapplied or wasted.

6 (5) The corporation is a public benefit or religious
7 corporation and is no longer able to carry out its purposes.

8 c. In a proceeding brought by a creditor, if either of the
9 following is established:

10 (1) The creditor's claim has been reduced to judgment, the
11 execution on the judgment is returned unsatisfied, and the
12 corporation is insolvent.

13 (2) The corporation has admitted in writing that the
14 creditor's claim is due and owing and the corporation is
15 insolvent.

16 d. In a proceeding brought by the corporation to have its
17 voluntary dissolution continued under court supervision.

18 2. Prior to dissolving a corporation, the court shall
19 consider whether:

20 a. There are reasonable alternatives to dissolution.

21 b. Dissolution is in the public interest, if the
22 corporation is a public benefit corporation.

23 c. Dissolution is the best way of protecting the interests
24 of members, if the corporation is a mutual benefit
25 corporation.

26 Sec. 151. NEW SECTION. 504A.1432 PROCEDURE FOR JUDICIAL
27 DISSOLUTION.

28 1. Venue for a proceeding brought by the attorney general
29 to dissolve a corporation lies in Polk county. Venue for a
30 proceeding brought by any other party named in section
31 504A.1431 lies in the county where a corporation's principal
32 office is located or, if none is located in this state, where
33 its registered office is or was last located.

34 2. It is not necessary to make directors or members
35 parties to a proceeding to dissolve a corporation unless

1 relief is sought against them individually.

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

8 4. A person other than the attorney general who brings an
9 involuntary dissolution proceeding for a public benefit or
10 religious corporation shall immediately give written notice of
11 the proceeding to the attorney general who may then intervene.

12 Sec. 152. NEW SECTION. 504A.1433 RECEIVERSHIP OR
13 CUSTODIANSHIP.

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

23 2. The court may appoint an individual, or a domestic or
24 foreign business or nonprofit corporation authorized to
25 transact business in this state as a receiver or custodian.
26 The court may require the receiver or custodian to post bond,
27 with or without sureties, in an amount the court directs.

28 3. The court shall describe the powers and duties of the
29 receiver or custodian in its appointing order, which may be
30 amended including the following:

31 a. The receiver or custodian may dispose of all or any
32 part of the assets of the corporation wherever located, at a
33 public or private sale, if authorized by the court. However,
34 the receiver's or custodian's power to dispose of the assets
35 of the corporation is subject to any trust and other

1 restrictions that would be applicable to the corporation. The
2 receiver or custodian may sue and defend in the receiver's or
3 custodian's name as receiver or custodian of the corporation,
4 as applicable, in all courts of this state.

5 b. The custodian may exercise all of the powers of the
6 corporation, through or in place of its board of directors or
7 officers, to the extent necessary to manage the affairs of the
8 corporation in the best interests of its members and
9 creditors.

10 4. The court during a receivership may redesignate the
11 receiver a custodian, and during a custodianship may
12 redesignate the custodian a receiver, if doing so is in the
13 best interests of the corporation, its members, and creditors.

14 5. The court during the receivership or custodianship may
15 order compensation paid and expense disbursements or
16 reimbursements made to the receiver or custodian and to the
17 receiver's or custodian's attorney from the assets of the
18 corporation or proceeds from the sale of the assets.

19 Sec. 153. NEW SECTION. 504A.1434 DECREE OF DISSOLUTION.

20 1. If after a hearing the court determines that one or
21 more grounds for judicial dissolution described in section
22 504A.1431 exist, the court may enter a decree dissolving the
23 corporation and specifying the effective date of the
24 dissolution, and the clerk of the court shall deliver a
25 certified copy of the decree to the secretary of state, who
26 shall file it.

27 2. After entering the decree of dissolution, the court
28 shall direct the winding up of the corporation's affairs and
29 liquidation of the corporation in accordance with section
30 504A.1406 and the notification of its claimants in accordance
31 with sections 504A.1407 and 504A.1408.

32 PART 4

33 MISCELLANEOUS

34 Sec. 154. NEW SECTION. 504A.1441 DEPOSIT WITH STATE
35 TREASURER.

1 Assets of a dissolved corporation which should be
2 transferred to a creditor, claimant, or member of the
3 corporation who cannot be found or who is not competent to
4 receive them shall be reduced to cash subject to known trust
5 restrictions and deposited with the treasurer of state for
6 safekeeping. However, in the treasurer of state's discretion,
7 property may be received and held in kind. When the creditor,
8 claimant, or member furnishes satisfactory proof of
9 entitlement to the amount deposited or property held in kind,
10 the treasurer of state shall deliver to the creditor, member,
11 or other person or to the representative of the creditor,
12 member, or other person that amount or property.

13 SUBCHAPTER XV

14 FOREIGN CORPORATIONS

15 PART 1

16 CERTIFICATE OF AUTHORITY

17 Sec. 155. NEW SECTION. 504A.1501 AUTHORITY TO TRANSACT
18 BUSINESS REQUIRED.

19 1. A foreign corporation shall not transact business in
20 this state until it obtains a certificate of authority from
21 the secretary of state.

22 2. The following activities, among others, do not
23 constitute transacting business within the meaning of
24 subsection 1:

25 a. Maintaining, defending, or settling any proceeding.

26 b. Holding meetings of the board of directors or members
27 or carrying on other activities concerning internal corporate
28 affairs.

29 c. Maintaining bank accounts.

30 d. Maintaining offices or agencies for the transfer,
31 exchange, or registration of memberships or securities or
32 maintaining trustees or depositaries with respect to those
33 securities.

34 e. Selling through independent contractors.

35 f. Soliciting or obtaining orders, whether by mail or

1 through employees or agents or otherwise, if the orders
2 require acceptance outside this state before they become
3 contracts.

4 g. Creating or acquiring indebtedness, mortgages, or
5 security interests in real or personal property.

6 h. Securing or collecting debts or enforcing mortgages or
7 security interests in property securing the debts.

8 i. Owning, without more, real or personal property.

9 j. Conducting an isolated transaction that is completed
10 within thirty days and that is not one in the course of
11 repeated transactions of a like nature.

12 k. Transacting business in interstate commerce.

13 Sec. 156. NEW SECTION. 504A.1502 CONSEQUENCES OF
14 TRANSACTING BUSINESS WITHOUT AUTHORITY.

15 1. A foreign corporation transacting business in this
16 state without a certificate of authority shall not maintain a
17 proceeding in any court in this state until it obtains a
18 certificate of authority.

19 2. The successor to a foreign corporation that transacted
20 business in this state without a certificate of authority and
21 the assignee of a cause of action arising out of that business
22 shall not maintain a proceeding on that cause of action in any
23 court in this state until the foreign corporation or its
24 successor obtains a certificate of authority.

25 3. A court may stay a proceeding commenced by a foreign
26 corporation, its successor, or assignee until the court
27 determines whether the foreign corporation or its successor
28 requires a certificate of authority. If it so determines, the
29 court may further stay the proceeding until the foreign
30 corporation or its successor obtains the certificate.

31 4. A foreign corporation is liable for a civil penalty of
32 an amount not to exceed a total of one thousand dollars if it
33 transacts business in this state without a certificate of
34 authority. The attorney general may collect all penalties due
35 under this subsection.

1 5. Notwithstanding subsections 1 and 2, the failure of a
2 foreign corporation to obtain a certificate of authority does
3 not impair the validity of its corporate acts or prevent it
4 from defending any proceeding in this state.

5 Sec. 157. NEW SECTION. 504A.1503 APPLICATION FOR
6 CERTIFICATE OF AUTHORITY.

7 1. A foreign corporation may apply for a certificate of
8 authority to transact business in this state by delivering an
9 application to the secretary of state. The application must
10 set forth all of the following:

11 a. The name of the foreign corporation or, if its name is
12 unavailable for use in this state, a corporate name that
13 satisfies the requirements of section 504A.1506.

14 b. The name of the state or country under whose law it is
15 incorporated.

16 c. The date of incorporation and period of duration.

17 d. The address of its principal office.

18 e. The address of its registered office in this state and
19 the name of its registered agent at that office.

20 f. The names and usual business or home addresses of its
21 current directors and officers.

22 g. Whether the foreign corporation has members.

23 h. Whether the corporation, if it had been incorporated in
24 this state, would be a public benefit, mutual benefit, or
25 religious corporation.

26 2. The foreign corporation shall deliver the completed
27 application to the secretary of state, and shall also deliver
28 to the secretary of state a certificate of existence or a
29 document of similar import duly authenticated by the secretary
30 of state or other official having custody of corporate records
31 in the state or country under whose law it is incorporated
32 which is dated no earlier than ninety days prior to the date
33 the application is filed with the secretary of state.

34 Sec. 158. NEW SECTION. 504A.1504 AMENDED CERTIFICATE OF
35 AUTHORITY.

1 1. A foreign corporation authorized to transact business
2 in this state shall obtain an amended certificate of authority
3 from the secretary of state if it changes any of the
4 following:

5 a. Its corporate name.

6 b. The period of its duration.

7 c. The state or country of its incorporation.

8 2. The requirements of section 504A.1503 for obtaining an
9 original certificate of authority apply to obtaining an
10 amended certificate under this section.

11 Sec. 159. NEW SECTION. 504A.1505 EFFECT OF CERTIFICATE
12 OF AUTHORITY.

13 1. A certificate of authority authorizes the foreign
14 corporation to which it is issued to transact business in this
15 state subject, however, to the right of the state to revoke
16 the certificate as provided in this chapter.

17 2. A foreign corporation with a valid certificate of
18 authority has the same rights and has the same privileges as
19 and, except as otherwise provided by this chapter, is subject
20 to the same duties, restrictions, penalties, and liabilities
21 now or later imposed on a domestic corporation of like
22 character.

23 3. This chapter does not authorize this state to regulate
24 the organization or internal affairs of a foreign corporation
25 authorized to transact business in this state.

26 Sec. 160. NEW SECTION. 504A.1506 CORPORATE NAME OF
27 FOREIGN CORPORATION.

28 1. If the corporate name of a foreign corporation does not
29 satisfy the requirements of section 504A.401, the foreign
30 corporation, to obtain or maintain a certificate of authority
31 to transact business in this state, may use a fictitious name
32 to transact business in this state if the corporation's real
33 name is unavailable and it delivers to the secretary of state
34 for filing a copy of the resolution of its board of directors,
35 certified by its secretary, adopting the fictitious name.

1 2. Except as authorized by subsections 3 and 4, the
2 corporate name of a foreign corporation, including a
3 fictitious name, must be distinguishable upon the records of
4 the secretary of state from all of the following:

5 a. The corporate name of a nonprofit or business
6 corporation incorporated or authorized to transact business in
7 this state.

8 b. A corporate name reserved or registered under section
9 504A.402 or 504A.403 or section 490.402 or 490.403.

10 c. The fictitious name of another foreign business or
11 nonprofit corporation authorized to transact business in this
12 state.

13 3. A foreign corporation may apply to the secretary of
14 state for authorization to use in this state the name of
15 another corporation incorporated or authorized to transact
16 business in this state that is not distinguishable upon the
17 records of the secretary of state from the name applied for.
18 The secretary of state shall authorize use of the name applied
19 for if either of the following applies:

20 a. The other corporation consents to the use in writing
21 and submits an undertaking in a form satisfactory to the
22 secretary of state to change its name to a name that is
23 distinguishable upon the records of the secretary of state
24 from the name of the applying corporation.

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

29 4. A foreign corporation may use in this state the name,
30 including the fictitious name, of another domestic or foreign
31 business or nonprofit corporation that is used in this state
32 if the other corporation is incorporated or authorized to
33 transact business in this state and the foreign corporation
34 has filed documentation satisfactory to the secretary of state
35 of the occurrence of any of the following:

S.F. _____ H.F. 607

1 a. The foreign corporation has merged with the other
2 corporation.

3 b. The foreign corporation has been formed by
4 reorganization of the other corporation.

5 c. The foreign corporation has acquired all or
6 substantially all of the assets, including the corporate name,
7 of the other corporation.

8 5. If a foreign corporation authorized to transact
9 business in this state changes its corporate name to one that
10 does not satisfy the requirements of section 504A.401, it
11 shall not transact business in this state under the changed
12 name until it adopts a name satisfying the requirements of
13 section 504A.401 and obtains an amended certificate of
14 authority under section 504A.1504.

15 Sec. 161. NEW SECTION. 504A.1507 REGISTERED OFFICE AND
16 REGISTERED AGENT OF FOREIGN CORPORATION.

17 Each foreign corporation authorized to transact business in
18 this state shall continuously maintain in this state both of
19 the following:

20 1. A registered office with the same address as that of
21 its registered agent.

22 2. A registered agent, who may be any of the following:

23 a. An individual who resides in this state and whose
24 office is identical to the registered office.

25 b. A domestic business or nonprofit corporation whose
26 office is identical to the registered office.

27 c. A foreign business or nonprofit corporation authorized
28 to transact business in this state whose office is identical
29 to the registered office.

30 Sec. 162. NEW SECTION. 504A.1508 CHANGE OF REGISTERED
31 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

32 1. A foreign corporation authorized to transact business
33 in this state may change its registered office or registered
34 agent by delivering to the secretary of state for filing a
35 statement of change that sets forth all of the following that

1 apply:

2 a. The name of its registered office or registered agent.

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

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

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 a registered agent changes the address of its
13 business office, the agent may change the address of the
14 registered office of any foreign corporation for which the
15 agent is the registered agent by notifying the corporation in
16 writing of the change and signing either manually or in
17 facsimile and delivering to the secretary of state for filing
18 a statement of change 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 must be
28 signed either manually or in facsimile only by the registered
29 agent and must recite that a copy of the statement has been
30 mailed to each corporation named in the notice.

31 4. A corporation may also change its registered office or
32 registered agent in its biennial report as provided in section
33 504A.1613.

34 Sec. 163. NEW SECTION. 504A.1509 RESIGNATION OF
35 REGISTERED AGENT OF FOREIGN CORPORATION.

1 1. The registered agent of a foreign corporation may
2 resign as agent by signing and delivering to the secretary of
3 state for filing the original statement of resignation. The
4 statement of resignation may include a statement that the
5 registered office is also discontinued.

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

12 2. The agency appointment is terminated, and the
13 registered office discontinued if so provided, on the date on
14 which the statement is filed with the secretary of state.

15 Sec. 164. NEW SECTION. 504A.1510 SERVICE ON FOREIGN
16 CORPORATION.

17 1. The registered agent of a foreign corporation
18 authorized to transact business in this state is the
19 corporation's agent for service of process, notice, or demand
20 required or permitted by law to be served on the foreign
21 corporation.

22 2. A foreign corporation may be served by registered or
23 certified mail, return receipt requested, addressed to the
24 secretary of the foreign corporation at its principal office
25 shown in its application for a certificate of authority or in
26 its most recent biennial report filed under section 504A.1613
27 if any of the following conditions apply:

28 a. The foreign corporation has no registered agent or its
29 registered agent cannot with reasonable diligence be served.

30 b. The foreign corporation has withdrawn from transacting
31 business in this state under section 504A.1521.

32 c. The foreign corporation has had its certificate of
33 authority revoked under section 504A.1532.

34 3. Service is perfected under subsection 2 at the earliest
35 of any of the following:

- 1 a. The date the foreign corporation receives the mail.
- 2 b. The date shown on the return receipt, if signed on
- 3 behalf of the foreign corporation.
- 4 c. Five days after its deposit in the United States mail,
- 5 as evidenced by the postmark, if mailed postpaid and correctly
- 6 addressed.
- 7 4. This section does not prescribe the only means, or
- 8 necessarily the required means, of serving a foreign
- 9 corporation. A foreign corporation may also be served in any
- 10 other manner permitted by law.

11 PART 2

12 WITHDRAWAL

13 Sec. 165. NEW SECTION. 504A.1521 WITHDRAWAL OF FOREIGN
14 CORPORATION.

15 1. A foreign corporation authorized to transact business
16 in this state shall not withdraw from this state until it
17 obtains a certificate of withdrawal from the secretary of
18 state.

19 2. A foreign corporation authorized to transact business
20 in this state may apply for a certificate of withdrawal by
21 delivering an application to the secretary of state for
22 filing. The application shall set forth all of the following:

23 a. The name of the foreign corporation and the name of the
24 state or country under whose law it is incorporated.

25 b. That it is not transacting business in this state and
26 that it surrenders its authority to transact business in this
27 state.

28 c. That it revokes the authority of its registered agent
29 to accept service on its behalf and appoints the secretary of
30 state as its agent for service of process in any proceeding
31 based on a cause of action arising during the time it was
32 authorized to do business in this state.

33 d. A mailing address to which the secretary of state may
34 mail a copy of any process served on the secretary of state
35 under paragraph "c".

1 3. After the withdrawal of the corporation is effective,
2 service of process on the secretary of state under this
3 section is service on the foreign corporation. Upon receipt
4 of process, the secretary of state shall mail a copy of the
5 process to the foreign corporation at the mailing address set
6 forth in its application for withdrawal.

7

PART 3

8

REVOCATION OF CERTIFICATE OF AUTHORITY

9

Sec. 166. NEW SECTION. 504A.1531 GROUNDS FOR REVOCATION.

10

1. The secretary of state may commence a proceeding under
11 section 504A.1532 to revoke the certificate of authority of a
12 foreign corporation authorized to transact business in this
13 state if any of the following applies:

14

a. The foreign corporation does not deliver the biennial
15 report to the secretary of state in a form that meets the
16 requirements of section 504A.1613 within sixty days after it
17 is due.

18

b. The foreign corporation is without a registered agent
19 or registered office in this state for sixty days or more.

20

c. The foreign corporation does not inform the secretary
21 of state under section 504A.1508 or 504A.1509 that its
22 registered agent or registered office has changed, that its
23 registered agent has resigned, or that its registered office
24 has been discontinued within ninety days of the change,
25 resignation, or discontinuance.

26

d. An incorporator, director, officer, or agent of the
27 foreign corporation signed a document that such person knew
28 was false in any material respect with intent that the
29 document be delivered to the secretary of state for filing.

30

e. The secretary of state receives a duly authenticated
31 certificate from the secretary of state or other official
32 having custody of corporate records in the state or country
33 under whose law the foreign corporation is incorporated,
34 stating that it has been dissolved or disappeared as the
35 result of a merger.

1 2. The attorney general may commence a proceeding under
2 section 504A.1532 to revoke the certificate of authority of a
3 foreign corporation authorized to transact business in this
4 state if any of the following applies:

5 a. The corporation has continued to exceed or abuse the
6 authority conferred upon it by law.

7 b. The corporation would have been a public benefit
8 corporation had it been incorporated in this state and its
9 corporate assets in this state are being misapplied or wasted.

10 c. The corporation would have been a public benefit
11 corporation had it been incorporated in this state and it is
12 no longer able to carry out its purposes.

13 Sec. 167. NEW SECTION. 504A.1532 PROCEDURE FOR AND
14 EFFECT OF REVOCATION.

15 1. The secretary of state, upon determining that one or
16 more grounds exist under section 504A.1531 for revocation of a
17 certificate of authority, shall serve the foreign corporation
18 with written notice of that determination under section
19 504A.1510.

20 2. The attorney general, upon determining that one or more
21 grounds exist under section 504A.1531, subsection 2, for
22 revocation of a certificate of authority, shall request the
23 secretary of state to serve, and the secretary of state shall
24 serve, the foreign corporation with written notice of that
25 determination under section 504A.1510.

26 3. If the foreign corporation does not correct each ground
27 for revocation or demonstrate to the reasonable satisfaction
28 of the secretary of state or attorney general that each ground
29 for revocation determined by the secretary of state or
30 attorney general does not exist within sixty days after
31 service of the notice is perfected under section 504A.1510,
32 the secretary of state may revoke the foreign corporation's
33 certificate of authority by signing a certificate of
34 revocation that recites the ground or grounds for revocation
35 and its effective date. The secretary of state shall file the

1 original of the certificate and serve a copy on the foreign
2 corporation under section 504A.1510.

3 4. The authority of a foreign corporation to transact
4 business in this state ceases on the date shown on the
5 certificate revoking its certificate of authority.

6 5. The secretary of state's revocation of a foreign
7 corporation's certificate of authority appoints the secretary
8 of state the foreign corporation's agent for service of
9 process in any proceeding based on a cause of action that
10 arose during the time the foreign corporation was authorized
11 to transact business in this state. Service of process on the
12 secretary of state under this subsection is service on the
13 foreign corporation. Upon receipt of process, the secretary
14 of state shall mail a copy of the process to the secretary of
15 the foreign corporation at its principal office shown in its
16 most recent biennial report or in any subsequent
17 communications received from the corporation stating the
18 current mailing address of its principal office, or, if none
19 are on file, in its application for a certificate of
20 authority.

21 6. Revocation of a foreign corporation's certificate of
22 authority does not terminate the authority of the registered
23 agent of the corporation.

24 Sec. 168. NEW SECTION. 504A.1533 APPEAL FROM REVOCATION.

25 1. A foreign corporation may appeal the secretary of
26 state's revocation of its certificate of authority to the
27 district court within thirty days after the service of the
28 certificate of revocation is perfected under section 504A.1510
29 by petitioning to set aside the revocation and attaching to
30 the petition copies of its certificate of authority and the
31 secretary of state's certificate of revocation.

32 2. The court may summarily order the secretary of state to
33 reinstate the certificate of authority or may take any other
34 action the court considers appropriate.

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

1 civil proceedings.

2

SUBCHAPTER XVI

3

RECORDS AND REPORTS

4

PART 1

5

RECORDS

6

Sec. 169. NEW SECTION. 504A.1601 CORPORATE RECORDS.

7

1. A corporation shall keep as permanent records minutes

8

of all meetings of its members and board of directors, a

9

record of all actions taken by the members or directors

10

without a meeting, and a record of all actions taken by

11

committees of the board of directors as authorized by section

12

504A.826, subsection 4.

13

2. A corporation shall maintain appropriate accounting

14

records.

15

3. A corporation or its agent shall maintain a record of

16

its members in a form that permits preparation of a list of

17

the names and addresses of all members, in alphabetical order

18

by class, showing the number of votes each member is entitled

19

to vote.

20

4. A corporation shall maintain its records in written

21

form or in another form capable of conversion into written

22

form within a reasonable time.

23

5. A corporation shall keep a copy of all of the following

24

records:

25

a. Its articles or restated articles of incorporation and

26

all amendments to them currently in effect.

27

b. Its bylaws or restated bylaws and all amendments to

28

them currently in effect.

29

c. Resolutions adopted by its board of directors relating

30

to the characteristics, qualifications, rights, limitations,

31

and obligations of members or any class or category of

32

members.

33

d. The minutes of all meetings of members and records of

34

all actions approved by the members for the past three years.

35

e. All written communications to members generally within

1 the past three years, including the financial statements
2 furnished for the past three years under section 504A.1611.

3 f. A list of the names and business or home addresses of
4 its current directors and officers.

5 g. Its most recent biennial report delivered to the
6 secretary of state under section 504A.1613.

7 Sec. 170. NEW SECTION. 504A.1602 INSPECTION OF RECORDS
8 BY MEMBERS.

9 1. Subject to subsection 5, a member is entitled to
10 inspect and copy, at a reasonable time and location specified
11 by the corporation, any of the records of the corporation
12 described in section 504A.1601, subsection 5, if the member
13 gives the corporation written notice or a written demand at
14 least five business days before the date on which the member
15 wishes to inspect and copy.

16 2. Subject to subsection 5, a member is entitled to
17 inspect and copy, at a reasonable time and reasonable location
18 specified by the corporation, any of the following records of
19 the corporation if the member meets the requirements of
20 subsection 3 and gives the corporation written notice at least
21 five business days before the date on which the member wishes
22 to inspect and copy:

23 a. Excerpts from any records required to be maintained
24 under section 504A.1601, subsection 1, to the extent not
25 subject to inspection under section 504A.1602, subsection 1.

26 b. Accounting records of the corporation.

27 c. The membership list.

28 3. A member may inspect and copy the records identified in
29 subsection 2 only if all of the following apply:

30 a. The member's demand is made in good faith and for a
31 proper purpose.

32 b. The member describes with reasonable particularity the
33 purpose of the demand and the records the member desires to
34 inspect.

35 c. The records are directly connected to the purpose

1 described.

2 d. The board consents, if consent is required by section
3 504A.1605.

4 4. This section does not affect either of the following:

5 a. The right of a member to inspect records under section
6 504A.711 or, if the member is in litigation with the
7 corporation, to the same extent as any other litigant.

8 b. The power of a court, independently of this chapter, to
9 compel the production of corporate records for examination.

10 5. The articles or bylaws of a religious corporation may
11 limit or abolish the right of a member under this section to
12 inspect and copy any corporate record.

13 Sec. 171. NEW SECTION. 504A.1603 SCOPE OF INSPECTION
14 RIGHT.

15 1. A member's agent or attorney has the same inspection
16 and copying rights as the member the agent or attorney
17 represents.

18 2. The right to copy records under section 504A.1602
19 includes, if reasonable, the right to receive copies made by
20 photographic, xerographic, or other means.

21 3. The corporation may impose a reasonable charge,
22 covering the costs of labor and material, for copies of any
23 documents provided to the member. The charge shall not exceed
24 the estimated cost of production or reproduction of the
25 records.

26 4. The corporation may comply with a member's demand to
27 inspect the record of members under section 504A.1602,
28 subsection 2, paragraph "c", by providing the member with a
29 list of its members that was compiled no earlier than the date
30 of the member's demand.

31 Sec. 172. NEW SECTION. 504A.1604 COURT-ORDERED
32 INSPECTION.

33 1. If a corporation does not allow a member who complies
34 with section 504A.1602, subsection 1, to inspect and copy any
35 records required by that subsection to be available for

1 inspection, the district court in the county where the
2 corporation's principal office is located or, if none is
3 located in this state, where its registered office is located,
4 may summarily order inspection and copying of the records
5 demanded at the corporation's expense upon application of the
6 member.

7 2. If a corporation does not within a reasonable time
8 allow a member to inspect and copy any other records, the
9 member who complies with section 504A.1602, subsections 2 and
10 3, may apply to the district court in the county where the
11 corporation's principal office is located or, if none is
12 located in this state, where its registered office is located,
13 for an order to permit inspection and copying of the records
14 demanded. The court shall dispose of an application under
15 this subsection on an expedited basis.

16 3. If the court orders inspection and copying of the
17 records demanded, it shall also order the corporation to pay
18 the member's costs, including reasonable attorney fees
19 incurred, to obtain the order unless the corporation proves
20 that it refused inspection in good faith because it had a
21 reasonable basis for doubt about the right of the member to
22 inspect the records demanded.

23 4. If the court orders inspection and copying of the
24 records demanded, it may impose reasonable restrictions on the
25 use or distribution of the records by the demanding member.

26 Sec. 173. NEW SECTION. 504A.1605 LIMITATIONS ON USE OF
27 CORPORATE RECORDS.

28 Without consent of the board, no corporate record may be
29 obtained or used by any person for any purpose unrelated to a
30 member's interest as a member. Without limiting the
31 generality of the foregoing, without the consent of the board,
32 corporate records including, without limitation, a membership
33 list or any part thereof, shall not be used for any of the
34 following:

35 1. To solicit money or property unless such money or

1 property will be used solely to solicit the votes of the
2 members in an election to be held by the corporation.

3 2. For any commercial purpose.

4 3. For sale to or purchase by any person.

5 4. For any purpose that is detrimental to the interests of
6 the corporation.

7 Sec. 174. NEW SECTION. 504A.1606 INSPECTION OF RECORDS
8 BY DIRECTORS.

9 1. A director of a corporation is entitled to inspect and
10 copy the books, records, and documents of the corporation at
11 any reasonable time to the extent reasonably related to the
12 performance of the director's duties as a director, including
13 duties as a member of a committee, but not for any other
14 purpose or in any manner that would violate any duty to the
15 corporation.

16 2. The district court of the county where the
17 corporation's principal office, or if none in this state, its
18 registered office, is located may order inspection and copying
19 of the books, records, and documents at the corporation's
20 expense, upon application of a director who has been refused
21 such inspection rights, unless the corporation establishes
22 that the director is not entitled to such inspection rights.
23 The court shall dispose of an application under this
24 subsection on an expedited basis.

25 3. If an order is issued, the court may include provisions
26 protecting the corporation from undue burden or expense, and
27 prohibiting the director from using information obtained upon
28 exercise of the inspection rights in a manner that would
29 violate a duty to the corporation, and may also order the
30 corporation to reimburse the director for the director's
31 costs, including reasonable counsel fees, incurred in
32 connection with the application.

33 PART 2
34 REPORTS

35 Sec. 175. NEW SECTION. 504A.1611 FINANCIAL STATEMENTS

1 FOR MEMBERS.

2 1. Except as provided in the articles or bylaws of a
3 religious corporation, a corporation upon written demand from
4 a member shall furnish that member the corporation's latest
5 annual financial statements, which may be consolidated or
6 combined statements of the corporation and one or more of its
7 subsidiaries or affiliates, as appropriate, that include a
8 balance sheet as of the end of the fiscal year and a statement
9 of operations for that year.

10 2. If annual financial statements are reported upon by a
11 public accountant, the accountant's report must accompany
12 them.

13 Sec. 176. NEW SECTION. 504A.1612 REPORT OF
14 INDEMNIFICATION TO MEMBERS.

15 If a corporation indemnifies or advances expenses to a
16 director under section 504A.852, 504A.853, 504A.854, or
17 504A.855 in connection with a proceeding by or in the right of
18 the corporation, the corporation shall report the
19 indemnification or advance in writing to the members with or
20 before the notice of the next meeting of members.

21 Sec. 177. NEW SECTION. 504A.1613 BIENNIAL REPORT FOR
22 SECRETARY OF STATE.

23 1. Each domestic corporation, and each foreign corporation
24 authorized to transact business in this state, shall deliver
25 to the secretary of state for filing a biennial report on a
26 form prescribed and furnished by the secretary of state that
27 sets forth all of the following:

28 a. The name of the corporation and the state or country
29 under whose law it is incorporated.

30 b. The address of the corporation's registered office and
31 the name of the corporation's registered agent at that office
32 in this state, together with the consent of any new registered
33 agent.

34 c. The address of the corporation's principal office.

35 d. The names and addresses of the president, secretary,

1 treasurer, and one member of the board of directors.

2 e. A brief description of the nature of the corporation's
3 activities.

4 f. Whether or not the corporation has members.

5 g. If the corporation is a domestic corporation, whether
6 the corporation is a public benefit, mutual benefit, or
7 religious corporation.

8 h. If the corporation is a foreign corporation, whether
9 the corporation would be a public benefit, mutual benefit, or
10 religious corporation had the corporation been incorporated in
11 this state.

12 2. The information in the biennial report must be current
13 on the date the biennial report is executed on behalf of the
14 corporation.

15 3. The first biennial report shall be delivered to the
16 secretary of state between January 1 and April 1 of the first
17 odd-numbered year following the calendar year in which a
18 domestic corporation was incorporated or a foreign corporation
19 was authorized to transact business. Subsequent biennial
20 reports must be delivered to the secretary of state between
21 January 1 and April 1 of the following odd-numbered calendar
22 years.

23 4. a. If a biennial report does not contain the
24 information required by this section, the secretary of state
25 shall promptly notify the reporting domestic or foreign
26 corporation in writing and return the report to the
27 corporation for correction.

28 b. A filing fee for the biennial report shall be
29 determined by the secretary of state.

30 c. For purposes of this section, each biennial report
31 shall contain information related to the two-year period
32 immediately preceding the calendar year in which the report is
33 filed.

34 5. The secretary of state may provide for the change of
35 registered office or registered agent on the form prescribed

1 by the secretary of state for the biennial report, provided
2 that the form contains the information required in section
3 504A.502 or 504A.508. If the secretary of state determines
4 that a biennial report does not contain the information
5 required by this section but otherwise meets the requirements
6 of section 504A.502 or 504A.508 for the purpose of changing
7 the registered office or registered agent, the secretary of
8 state shall file the statement of change of registered office
9 or registered agent, effective as provided in section
10 504A.114, before returning the biennial report to the
11 corporation as provided in this section. A statement of
12 change of registered office or agent pursuant to this
13 subsection shall be executed by a person authorized to execute
14 the biennial report.

15 SUBCHAPTER XVII

16 TRANSITION PROVISIONS

17 Sec. 178. NEW SECTION. 504A.1701 APPLICATION TO EXISTING
18 DOMESTIC CORPORATIONS.

19 A domestic corporation in existence on April 1, 2005, that
20 was incorporated under the statutes of this state as they
21 existed prior to July 1, 2004, is subject to this chapter on
22 and after April 1, 2005.

23 Sec. 179. NEW SECTION. 504A.1702 APPLICATION TO
24 QUALIFIED FOREIGN CORPORATIONS.

25 A foreign corporation authorized to transact business in
26 this state on the effective date of this Act is subject to
27 this chapter, but is not required to obtain a new certificate
28 of authority to transact business under this chapter.

29 Sec. 180. NEW SECTION. 504A.1703 SAVINGS PROVISIONS.

30 1. Except as provided in subsection 2, the repeal of a
31 statute by this Act does not affect any of the following:

32 a. The operation of the statute or any action taken under
33 it before its repeal.

34 b. Any ratification, right, remedy, privilege, obligation,
35 or liability acquired, accrued, or incurred under the statute

1 before its repeal.

2 c. Any violation of the statute or any penalty,
3 forfeiture, or punishment incurred because of the violation,
4 before its repeal.

5 d. Any proceeding, reorganization, or dissolution
6 commenced under the statute before its repeal, and the
7 proceeding, reorganization, or dissolution may be completed in
8 accordance with the statute as if it had not been repealed.

9 2. If a penalty or punishment imposed for violation of a
10 statute repealed by this Act is reduced by this chapter, the
11 penalty or punishment, if not already imposed, shall be
12 imposed in accordance with this chapter.

13 Sec. 181. NEW SECTION. 504A.1704 SEVERABILITY.

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

20 Sec. 182. NEW SECTION. 504A.1705 PUBLIC BENEFIT, MUTUAL
21 BENEFIT, AND RELIGIOUS CORPORATIONS.

22 On April 1, 2005, each domestic corporation existing on
23 April 1, 2005, that is or becomes subject to this chapter as
24 provided in section 504A.1701, shall be designated as a public
25 benefit, mutual benefit, or religious corporation as follows:

26 1. A corporation designated by statute as a public benefit
27 corporation, a mutual benefit corporation, or a religious
28 corporation is deemed to be the type of corporation designated
29 by that statute.

30 2. A corporation that does not come within subsection 1
31 but is organized primarily or exclusively for religious
32 purposes is a religious corporation.

33 3. A corporation that does not come within subsection 1 or
34 2 but which is recognized as exempt under section 501(c)(3) of
35 the Internal Revenue Code, or any successor section, is a

1 public benefit corporation.

2 4. A corporation that does not come within subsection 1,
3 2, or 3, but which is organized for a public or charitable
4 purpose and which upon dissolution must distribute its assets
5 to a public benefit corporation, the United States, a state,
6 or a person recognized as exempt under section 501(c)(3) of
7 the Internal Revenue Code, or any successor section, is a
8 public benefit corporation.

9 5. A corporation that does not come within subsection 1,
10 2, 3, or 4 is a mutual benefit corporation.

11 Sec. 183. Section 15E.64, subsection 2, unnumbered
12 paragraph 1, Code 2003, is amended to read as follows:

13 To facilitate the organization of an Iowa capital
14 investment corporation, both of the following persons shall
15 serve as incorporators as provided in section ~~504A-28~~
16 504A.201:

17 Sec. 184. Section 230A.12, unnumbered paragraph 1, Code
18 2003, is amended to read as follows:

19 Each community mental health center established or
20 continued in operation pursuant to section 230A.3, shall be
21 organized under ~~the-Iowa-nonprofit-corporation-Act-appearing~~
22 ~~as~~ chapter 504A, except that a community mental health center
23 organized under chapter 504 prior to July 1, 1974, shall not
24 be required by this chapter to adopt the Iowa nonprofit
25 corporation Act if it is not otherwise required to do so by
26 law. The board of directors of each such community mental
27 health center shall enter into an agreement with the county or
28 affiliated counties which are to be served by the center,
29 which agreement shall include but need not be limited to the
30 period of time for which the agreement is to be in force, what
31 services the center is to provide for residents of the county
32 or counties to be served, standards the center is to follow in
33 determining whether and to what extent persons seeking
34 services from the center shall be considered able to pay the
35 cost of the services received, and policies regarding

1 availability of the center's services to persons who are not
2 residents of the county or counties served by the center. The
3 board of directors, in addition to exercising the powers of
4 the board of directors of a nonprofit corporation may:

5 Sec. 185. Section 490.401, subsection 2, paragraph b, Code
6 2003, is amended to read as follows:

7 b. A corporate name reserved or registered under section
8 490.402, 490.403, or ~~504A-7~~ 504A.402.

9 Sec. 186. Section 497.22, unnumbered paragraph 1, Code
10 2003, is amended to read as follows:

11 ~~Sections-504A-83-and-504A-84-apply~~ Section 504A.1613
12 applies to a cooperative association organized under this
13 chapter in the same manner as ~~those-sections-apply~~ that
14 section applies to a corporation organized under chapter 504A.
15 In addition to the information required to be set forth in the
16 biennial report under section ~~504A-83~~ 504A.1613, the
17 cooperative association shall also set forth the total amount
18 of business transacted, number of members, total expense of
19 operation, total amount of indebtedness, and total profits or
20 losses for each calendar or fiscal year of the two-year period
21 which ended immediately preceding the first day of January of
22 the year in which the report is filed.

23 Sec. 187. Section 498.24, unnumbered paragraph 1, Code
24 2003, is amended to read as follows:

25 ~~Sections-504A-83-and-504A-84-apply~~ Section 504A.1613
26 applies to a cooperative association organized under this
27 chapter in the same manner as ~~those-sections-apply~~ that
28 section applies to a corporation organized under chapter 504A.
29 In addition to the information required to be set forth in the
30 biennial report under section ~~504A-83~~ 504A.1613, the
31 cooperative association shall also set forth the total amount
32 of business transacted, number of members, total expense of
33 operation, total amount of indebtedness, and total profits or
34 losses for each calendar or fiscal year of the two-year period
35 which ended immediately preceding the first day of January of

1 the year in which the report is filed.

2 Sec. 188. Section 499.49, Code 2003, is amended to read as
3 follows:

4 499.49 BIENNIAL REPORT.

5 ~~Sections 504A-83 and 504A-84 apply~~ Section 504A.1613

6 applies to a cooperative organized under this chapter in the
7 same manner as ~~those sections apply~~ that section applies to a
8 corporation organized under chapter 504A. In addition to the
9 information required to be set forth in the biennial report
10 under section ~~504A-83~~ 504A.1613, the cooperative shall also
11 set forth the number of members of the cooperative, the
12 percentage of the cooperative's business done with or for its
13 own members during each of the fiscal or calendar years of the
14 preceding two-year period, the percentage of the cooperative's
15 business done with or for each class of nonmembers specified
16 in section 499.3, and any other information deemed necessary
17 by the secretary of state to advise the secretary whether the
18 cooperative is actually functioning as a cooperative.

19 Sec. 189. Section 504A.102, subsection 2, paragraphs a and
20 b, Code 2003, are amended to read as follows:

21 a. The adoption of a resolution or resolutions at a
22 meeting of the board of directors upon receiving the vote of a
23 majority of the directors in office and of the members of the
24 association in the same manner as provided in section ~~504A-35~~
25 504A.1003. The resolution or resolutions shall recite that
26 the association voluntarily elects to be governed as a
27 corporation under this chapter. The resolution must designate
28 the address of the association's initial registered office and
29 the name of the association's registered agent or agents at
30 that office, if any.

31 b. The adoption of articles of incorporation in compliance
32 with section ~~504A-29~~ 504A.202 at a meeting of the board of
33 directors upon receiving the vote of a majority of the
34 directors in office and of the members of the association in
35 the same manner as provided in section ~~504A-35~~ 504A.1003. The

1 articles of incorporation may be a restatement, substitution,
2 or amendment of articles of incorporation adopted by the
3 association pursuant to section 176.3. The articles of
4 incorporation may be made part of the resolution or
5 resolutions adopted by the association pursuant to paragraph
6 "a" of this subsection.

7 Sec. 190. Section 504A.102, subsection 2, paragraph c,
8 subparagraphs (1) and (3), Code 2003, are amended to read as
9 follows:

10 (1) The association name as provided in the association's
11 articles of incorporation pursuant to section 176.3 and the
12 new corporation's corporate name, if different, as provided in
13 section ~~504A-6~~ 504A.401.

14 (3) The address of the new corporation's registered office
15 and the name of the new corporation's registered agent as
16 provided in section ~~504A-8~~ 504A.501.

17 Sec. 191. Section 504A.102, subsection 2, paragraph d,
18 unnumbered paragraph 1, Code 2003, is amended to read as
19 follows:

20 All of the following shall be delivered to the office of
21 the secretary of state for filing and recording as provided in
22 section ~~504A-30~~ 504A.111:

23 Sec. 192. Section 504A.102, subsection 3, Code 2003, is
24 amended by striking the subsection and inserting in lieu
25 thereof the following:

26 3. CERTIFICATE OF INCORPORATION. Unless a delayed
27 effective date is specified, the corporate existence begins
28 when the articles of incorporation are filed as provided in
29 section 504A.203.

30 Sec. 193. Section 504A.102, subsection 4, Code 2003, is
31 amended to read as follows:

32 4. LIABILITIES AND RIGHTS PRIOR TO THE ELECTION. An
33 association's election to be governed as a corporation under
34 this chapter does not affect any right accrued or established,
35 or any liability or penalty incurred, under the provisions of

1 chapter 176, prior to filing of the resolution or resolutions,
2 articles of incorporation, and instrument of verification by
3 the association as provided in subsection-2 this chapter.

4 Sec. 194. Section 504A.102, subsection 5, Code 2003, is
5 amended to read as follows:

6 5. REPEAL. ~~This section is~~ Subsections 1, 2, and 3 of
7 this section are repealed on July 1, 2005.

8 Sec. 195. Section 534.501, subsection 4, Code 2003, is
9 amended to read as follows:

10 4. AMENDMENT PROCEDURE. The procedure for amending
11 articles of incorporation or adopting restated articles for
12 mutual associations is that specified in ~~section-504A-35~~
13 chapter 504A, subchapter 10, and for stock associations it is
14 that specified in section 490.726 and sections 490.1002
15 through 490.1005.

16 Sec. 196. Section 602.8102, subsection 70, Code 2003, is
17 amended to read as follows:

18 70. Certify a copy of a decree of dissolution of a
19 nonprofit corporation to the secretary of state and the
20 recorder in the county in which the corporation is located as
21 provided in section ~~504A-62~~ 504A.1434.

22 Sec. 197. Sections 504A.1 through 504A.101, Code 2003, are
23 repealed.

24 Sec. 198. EFFECTIVE DATE. This Act takes effect July 1,
25 2004.

26 EXPLANATION

27 This bill repeals Code sections 504A.1 through 504A.101,
28 relating to nonprofit corporations, and replaces them with the
29 revised model nonprofit corporation Act.

30 Subchapter I provides for filing requirements, forms
31 prescribed and furnished by the secretary of state, filing,
32 service, and copying fees, the effective date of filed
33 documents, correcting filed documents, the filing duty of the
34 secretary of state, the procedure for appealing from the
35 secretary of state's refusal to file a document, evidentiary

1 effect of a copy of a filed document, a certificate of
2 existence, a penalty for signing a false document, powers of
3 the secretary of state, notice requirements, judicial relief,
4 the role of the attorney general, and religious corporations.

5 Subchapter II provides for incorporators of a nonprofit
6 corporation, articles of incorporation, incorporation,
7 liability for preincorporation transactions, organization of a
8 nonprofit corporation, bylaws, and emergency bylaws and
9 powers.

10 Subchapter III provides for the general powers of a
11 nonprofit corporation, emergency powers of a nonprofit
12 corporation, and ultra vires.

13 Subchapter IV provides for corporate names, reserved names,
14 and registered names.

15 Subchapter V provides for registered offices and registered
16 agents of the corporation, the method of changing a registered
17 office or registered agent, resignation of registered agents,
18 and the method of service on the nonprofit corporation.

19 Subchapter VI provides for the admission of members,
20 consideration for admission, member requirements, differences
21 in rights and obligations of members, transfer of memberships,
22 a member's liability to third parties, a member's liability
23 for dues, assessments, and fees, a creditor's action against
24 members, resignation of members, termination, expulsion, or
25 suspension of members, purchase of memberships, derivative
26 suits, and delegates having some or all of the authority of
27 members.

28 Subchapter VII provides for annual and regular meetings,
29 special meetings, court-ordered meetings, action by written
30 consent, notice of meetings, waiver of notice, record dates,
31 determination of members entitled to notice and vote, action
32 by written ballot, a members' list for a meeting, voting
33 entitlement generally, quorum requirements, voting
34 requirements, proxies, cumulative voting for directors, other
35 methods of electing directors, a corporation's acceptance of

1 votes, and voting agreements.

2 Subchapter VIII provides for requirements for and duties of
3 the board of directors, qualifications of directors, number of
4 directors, election, designation, and appointment of
5 directors, terms of directors, staggered terms for directors,
6 resignation of directors, removal of directors elected by
7 members or directors, removal of designated or appointed
8 directors, removal of directors by judicial proceeding,
9 vacancy on the board of directors, compensation of directors,
10 regular and special meetings of the board, action without a
11 meeting of the board, call and notice of a meeting of the
12 board, waiver of notice of a meeting of the board, quorum and
13 voting at a meeting of the board, committees of the board,
14 general standards for directors, director conflicts of
15 interest, loans to or guarantees for directors and officers,
16 liability for unlawful distributions, required officers,
17 duties and authority of officers, standards of conduct for
18 officers, resignation and removal of officers, contract rights
19 of officers, officers' authority to execute documents,
20 authority of a nonprofit corporation to indemnify, mandatory
21 indemnification, advances for expenses of a director, court-
22 ordered indemnification, determination and authorization of
23 indemnification, indemnification of officers, employees, and
24 agents of the nonprofit corporation, and insurance purchased
25 and maintained by the nonprofit corporation.

26 Subchapter IX provides for personal liability and
27 limitations to the personal liability of a director, officer,
28 member, or volunteer of a nonprofit corporation.

29 Subchapter X provides for the authority to amend articles
30 of incorporation, amendment of the articles of incorporation
31 by the directors, amendment of the articles of incorporation
32 by directors and members, class voting by members on
33 amendments of the articles of incorporation, articles of
34 amendment, restated articles of incorporation, amendments of
35 the articles of incorporation pursuant to judicial

1 reorganization, effect of amendment and restatement, amendment
2 of the bylaws by directors, amendment of the bylaws by
3 directors and members, class voting by members on amendments
4 of the bylaws, approval of amendments of the bylaws and
5 articles of incorporation by third persons, and amendments
6 terminating members or redeeming or canceling memberships.

7 Subchapter XI provides for the approval of a plan of
8 merger, limitations on mergers by public benefit or religious
9 corporations, action on a merger plan by the board of
10 directors, members, and third persons, articles of merger,
11 effects of a merger, merger with a foreign corporation, and
12 bequests, devises, and gifts to a corporation involved in a
13 merger.

14 Subchapter XII provides for the sale of assets in the
15 regular course of activities and mortgage of assets and the
16 sale of assets other than in the regular course of activities
17 by nonprofit corporations.

18 Subchapter XIII provides for prohibited distributions and
19 authorized distributions by nonprofit corporations.

20 Subchapter XIV provides for dissolution by incorporators or
21 directors and third persons, dissolution by directors,
22 members, and third persons, notices to the attorney general,
23 articles of dissolution, revocation of dissolution, effects of
24 dissolution, known claims against a dissolved corporation,
25 unknown claims against a dissolved corporation, grounds for
26 administrative dissolution, procedure for and effect of
27 administrative dissolution, reinstatement following
28 administrative dissolution, appeal from denial of
29 reinstatement, grounds for judicial dissolution, procedure for
30 judicial dissolution, receivership or custodianship, decrees
31 of dissolution, and depositing assets with the treasurer of
32 state.

33 Subchapter XV provides for requiring an authority to
34 transact business, consequences of transacting business
35 without authority, an application for a certificate of

1 authority, an amended certificate of authority, the corporate
2 name of a foreign corporation, the registered office and
3 registered agent of a foreign corporation, change of a
4 registered office of a registered agent of a foreign
5 corporation, the resignation of a registered agent of a
6 foreign corporation, service on a foreign corporation, the
7 withdrawal of a foreign corporation, grounds for revocation of
8 a certificate of authority, the procedure and effect of
9 revocation of a certificate of authority, and appeal from a
10 revocation of a certificate of authority.

11 Subchapter XVI provides for corporate records, the
12 inspection of corporate records by members, the scope of
13 inspection rights, court-ordered inspections, financial
14 statements of a corporation upon demand by members, and a
15 biennial report for the secretary of state.

16 Subchapter XVII provides for the application of new Code
17 chapter 504A to existing corporations and qualified foreign
18 corporations, savings provisions, severability, and the
19 designation of public benefit, mutual benefit, and religious
20 corporations.

21 The bill provides conforming amendments.

22 Code section 504A.102 relating to farm aid associations is
23 amended to provide that any liabilities or rights of a farm
24 aid association that exist prior to the association's election
25 to be governed as a corporation under chapter 504A continue
26 after the July 1, 2005, repeal of other transition provisions
27 relating to farm aid associations.

28 The bill takes effect July 1, 2004, and is applicable to
29 new corporations incorporated after that date. Corporations
30 in existence prior to July 1, 2004, are subject to the bill on
31 and after April 1, 2005. All corporations that are or become
32 subject to this bill on April 1, 2005, must be designated as a
33 public benefit, mutual benefit, or religious corporation on
34 April 1, 2005.

35

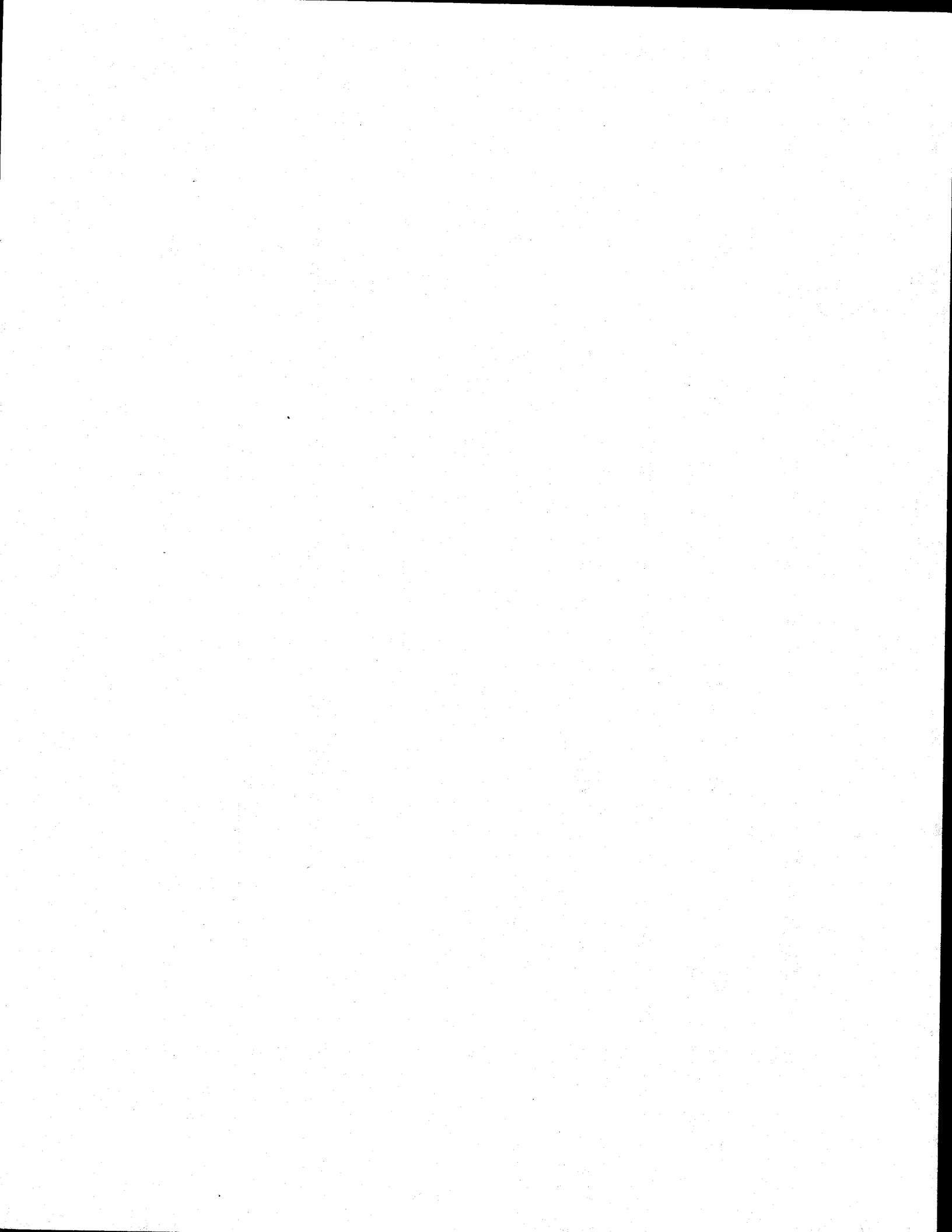
HOUSE FILE 607

H-1113

- 1 Amend House File 607 as follows:
2 1. Page 10, line 5, by inserting after the word
3 "company" the following: "and foreign limited
4 liability company".
5 2. Page 11, line 1, by striking the figure
6 "504A.1706" and inserting the following: "504A.1705".
7 3. Page 11, line 13, by striking the figure
8 "504A.1706" and inserting the following: "504A.1705".
9 4. Page 11, line 20 by striking the figure
10 "504A.1706" and inserting the following: "504A.1705".
11 5. Page 17, by inserting after line 4, the
12 following:
13 "_____. A provision eliminating or limiting the
14 liability of a director to the corporation or its
15 members for money damages for any action taken, or any
16 failure to take any action, as a director, except
17 liability for any of the following:
18 (1) The amount of a financial benefit received by
19 a director to which the director is not entitled.
20 (2) An intentional infliction of harm on the
21 corporation or its members.
22 (3) A violation of section 504A.834.
23 (4) An intentional violation of criminal law.
24 A provision set forth in the articles of
25 incorporation pursuant to this paragraph shall not
26 eliminate or limit the liability of a director for an
27 act or omission that occurs prior to the date when the
28 provision becomes effective."
29 6. Page 29, line 4 by striking the word "members"
30 and inserting the following: "such a member".
31 7. Page 61, line 1, by striking the word
32 "therefore" and inserting the following: "therefor".
33 8. Page 76, line 34, by inserting after the word
34 "or" the following: "other".
35 9. Page 77, line 1, by inserting after the word
36 "action" the following: "in the discharge of the
37 person's duties".
38 10. Page 77, line 3, by inserting after the word
39 "is" the following: "not".
40 11. Page 84, line 33, by inserting after the word
41 "class," the following: "or the articles or bylaws
42 provide otherwise,".
43 12. By renumbering as necessary.

By MADDOX of Polk

H-1113 FILED MARCH 20, 2003



Maddox, Ch
Heaton
Reasoner

Succeeded By
SF 0607

HSB 132

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 nonprofit corporations and providing penalties
2 and effective and applicability dates.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SUBCHAPTER I
GENERAL PROVISIONS

PART 1

SHORT TITLE AND APPLICATIONS

Section 1. NEW SECTION. 504A.101A SHORT TITLE.

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

Sec. 2. NEW SECTION. 504A.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. 504A.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 504A.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 504A.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. 504A.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. 504A.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. 504A.114 EFFECTIVE DATE OF
 25 DOCUMENT.

26 1. Except as provided in subsection 2 and section
 27 504A.115, a document is effective at the later of the
 28 following times:

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

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

34 2. A document may specify a delayed effective time and
 35 date, and if it does so the document becomes effective at the

1 time and date specified. If a delayed effective date but no
2 time is specified, the document is effective at the close of
3 business on that date. A delayed effective date for a
4 document shall not be later than the ninetieth day after the
5 date filed.

6 Sec. 7. NEW SECTION. 504A.115 CORRECTING FILED DOCUMENT.

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

10 a. The document contains an inaccuracy.

11 b. The document was defectively executed, attested,
12 sealed, verified, or acknowledged.

13 c. The electronic transmission was defective.

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

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

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

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

20 (3) Correct the incorrect statement or defective
21 execution.

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

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

29 Sec. 8. NEW SECTION. 504A.116 FILING DUTY OF SECRETARY
30 OF STATE.

31 1. If a document delivered to the office of the secretary
32 of state for filing satisfies the requirements of section
33 504A.111, the secretary of state shall file it.

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

1 After filing a document, except as provided in sections
2 504A.503 and 504A.1510, the secretary of state shall deliver
3 to the domestic or foreign corporation or its representative a
4 copy of the document with an acknowledgment of the date and
5 time of filing.

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

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

13 a. Affect the validity or invalidity of the document in
14 whole or in part.

15 b. Relate to the correctness or incorrectness of
16 information contained in the document.

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

20 Sec. 9. NEW SECTION. 504A.117 APPEAL FROM SECRETARY OF
21 STATE'S REFUSAL TO FILE DOCUMENT.

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

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

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

1 Sec. 10. NEW SECTION. 504A.118 EVIDENTIARY EFFECT OF
2 COPY OF FILED DOCUMENT.

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

7 Sec. 11. NEW SECTION. 504A.119 CERTIFICATE OF EXISTENCE.

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

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

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

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

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

24 d. That its most recent biennial report required by
25 section 504A.1613 has been delivered to the secretary of
26 state.

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

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

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

34 Sec. 12. NEW SECTION. 504A.120 PENALTY FOR SIGNING FALSE
35 DOCUMENT.

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

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

7 PART 3

8 SECRETARY OF STATE

9 Sec. 13. NEW SECTION. 504A.131 POWERS.

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

13 PART 4

14 DEFINITIONS

15 Sec. 14. NEW SECTION. 504A.141 CHAPTER DEFINITIONS.

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

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

29 2. "Articles of incorporation" or "articles" includes
30 amended and restated articles of incorporation and articles of
31 merger.

32 3. "Board" or "board of directors" means the board of
33 directors of a corporation except that no person or group of
34 persons are the board of directors because of powers delegated
35 to that person or group pursuant to section 504A.801.

1 4. "Bylaws" means the code or codes of rules other than
2 the articles adopted pursuant to this chapter for the
3 regulation or management of the affairs of a corporation
4 irrespective of the name or names by which such rules are
5 designated.

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

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

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

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

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

24 10. "Distribution" means the payment of a dividend or any
25 part of the income or profit of a corporation to its members,
26 directors, or officers.

27 11. "Domestic corporation" means a corporation.

28 12. "Effective date of notice" is defined in section
29 504A.142.

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

35 14. "Employee" does not include an officer or director of

1 a corporation who is not otherwise employed by the
2 corporation.

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

10 16. "File", "filed", or "filing" means filed in the office
11 of the secretary of state.

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

15 18. "Governmental subdivision" includes an authority,
16 county, district, and municipality.

17 19. "Includes" denotes a partial definition.

18 20. "Individual" includes the estate of an incompetent
19 individual.

20 21. "Means" denotes a complete definition.

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

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

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

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

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

33 24. "Mutual benefit corporation" means a domestic
34 corporation that is formed as a mutual benefit corporation
35 pursuant to subchapter 2 or is required to be a mutual benefit

1 corporation pursuant to section 504A.1706.

2 25. "Notice" is defined in section 504A.142.

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

4 27. "Principal office" means the office in or out of this
5 state so designated in the biennial report filed pursuant to
6 section 504A.1613 where the principal offices of a domestic or
7 foreign corporation are located.

8 28. "Proceeding" includes a civil suit and criminal,
9 administrative, or investigatory actions.

10 29. "Public benefit corporation" means a domestic
11 corporation that is formed as a public benefit corporation
12 pursuant to subchapter 2 or is required to be a public benefit
13 corporation pursuant to section 504A.1706.

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

17 31. "Religious corporation" means a domestic corporation
18 that is formed as a religious corporation pursuant to
19 subchapter 2 or is required to be a religious corporation
20 pursuant to section 504A.1706.

21 32. "Secretary" means the corporate officer to whom the
22 board of directors has delegated responsibility under section
23 504A.841, subsection 2, for custody of the minutes of the
24 directors' and members' meetings and for authenticating the
25 records of the corporation.

26 33. "Sign" or "signature" includes a manual, facsimile,
27 conformed, or electronic signature.

28 34. "State", when referring to a part of the United
29 States, includes a state and commonwealth and their agencies
30 and governmental subdivisions, and a territory and insular
31 possession and their agencies and governmental subdivisions of
32 the United States.

33 35. "United States" includes a district, authority,
34 bureau, commission, department, and any other agency of the
35 United States.

1 36. "Vote" includes authorization by written ballot and
2 written consent.

3 37. "Voting power" means the total number of votes
4 entitled to be cast for the election of directors at the time
5 the determination of voting power is made, excluding a vote
6 that is contingent upon the happening of a condition or event
7 that has not occurred at the time. When a class is entitled
8 to vote as a class for directors, the determination of voting
9 power of the class shall be based on the percentage of the
10 number of directors the class is entitled to elect out of the
11 total number of authorized directors.

12 Sec. 15. NEW SECTION. 504A.142 NOTICE.

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

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

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

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

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

31 b. When electronically transmitted to the shareholder in a
32 manner authorized by the shareholder.

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

- 1 a. When received.
- 2 b. Five days after its deposit in the United States mail,
3 if mailed correctly addressed and with first-class postage
4 affixed.
- 5 c. On the date shown on the return receipt, if sent by
6 registered or certified mail, return receipt requested, and
7 the receipt is signed by or on behalf of the addressee.
- 8 d. Thirty days after its deposit in the United States
9 mail, if mailed correctly addressed and with other than first-
10 class, registered, or certified postage affixed.
- 11 6. Written notice is correctly addressed to a member of a
12 domestic or foreign corporation if addressed to the member's
13 address shown in the corporation's current list of members.
- 14 7. A written notice or report delivered as part of a
15 newsletter, magazine, or other publication regularly sent to
16 members shall constitute a written notice or report if
17 addressed or delivered to the member's address shown in the
18 corporation's current list of members, or in the case of
19 members who are residents of the same household and who have
20 the same address in the corporation's current list of members,
21 if addressed or delivered to one of such members, at the
22 address appearing on the current list of members.
- 23 8. Written notice is correctly addressed to a domestic or
24 foreign corporation authorized to transact business in this
25 state, other than in its capacity as a member, if addressed to
26 its registered agent or to its secretary at its principal
27 office shown in its most recent biennial report or, in the
28 case of a foreign corporation that has not yet delivered an
29 annual report, in its application for a certificate of
30 authority.
- 31 9. If section 504A.705, subsection 2, or any other
32 provision of this chapter prescribes notice requirements for
33 particular circumstances, those requirements govern. If
34 articles or bylaws prescribe notice requirements not
35 inconsistent with this section or other provisions of this

1 chapter, those requirements govern.

2

PART 5

3

JUDICIAL RELIEF

4

Sec. 16. NEW SECTION. 504A.151 JUDICIAL RELIEF.

5

1. If for any reason it is impractical or impossible for a
6 corporation to call or conduct a meeting of its members,
7 delegates, or directors, or otherwise obtain their consent, in
8 the manner prescribed by its articles, bylaws, or this
9 chapter, then upon petition of a director, officer, delegate,
10 member, or the attorney general, the district court may order
11 that such a meeting be called or that a written ballot or
12 other form of obtaining the vote of members, delegates, or
13 directors be authorized, in such a manner as the court finds
14 fair and equitable under the circumstances.

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

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

30 4. Whenever practical, an order issued pursuant to this
31 section shall limit the subject matter of meetings or other
32 forms of consent authorized to items, including amendments to
33 the articles or bylaws, the resolution of which will or may
34 enable the corporation to continue managing its affairs
35 without further resort to this section; provided, however,

1 that an order under this section may also authorize the
2 obtaining of whatever votes and approvals are necessary for
3 the dissolution, merger, or sale of assets.

4 5. A meeting or other method of obtaining the vote of
5 members, delegates, or directors conducted pursuant to an
6 order issued under this section, and which complies with all
7 the provisions of such order, is for all purposes a valid
8 meeting or vote, as the case may be, and shall have the same
9 force and effect as if it complied with every requirement
10 imposed by the articles, bylaws, and this chapter.

11 PART 6

12 ATTORNEY GENERAL

13 Sec. 17. NEW SECTION. 504A.161 ATTORNEY GENERAL.

14 1. The attorney general shall be given notice of the
15 commencement of a proceeding which this chapter authorizes the
16 attorney general to bring but which has been commenced by
17 another person.

18 2. Whenever a provision of this chapter requires that
19 notice be given to the attorney general before or after
20 commencing a proceeding or permits the attorney general to
21 commence a proceeding:

22 a. If no proceeding has been commenced, the attorney
23 general may take appropriate action including, but not limited
24 to, seeking injunctive relief.

25 b. If a proceeding has been commenced by a person other
26 than the attorney general, the attorney general, as of right,
27 may intervene in such proceeding.

28 Sec. 18. NEW SECTION. 504A.162 RELIGIOUS CORPORATIONS --
29 CONSTITUTIONAL PROTECTIONS.

30 If religious doctrine governing the affairs of a religious
31 corporation is inconsistent with the provisions of this
32 chapter on the same subject, the religious doctrine shall
33 control to the extent required by the Constitution of the
34 United States or the constitution of this state or both.

35 SUBCHAPTER II

1 ORGANIZATION

2 Sec. 19. NEW SECTION. 504A.201 INCORPORATORS.

3 One or more persons may act as the incorporator or
4 incorporators of a corporation by delivering articles of
5 incorporation to the secretary of state for filing.

6 Sec. 20. NEW SECTION. 504A.202 ARTICLES OF
7 INCORPORATION.

8 1. The articles of incorporation shall set forth all of
9 the following:

10 a. A corporate name for the corporation that satisfies the
11 requirements of section 504A.401.

12 b. One of the following statements:

13 (1) This corporation is a public benefit corporation.

14 (2) This corporation is a mutual benefit corporation.

15 (3) This corporation is a religious corporation.

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

19 d. The name and address of each incorporator.

20 e. Whether the corporation will have members.

21 f. Provisions not inconsistent with law regarding the
22 distribution of assets on dissolution.

23 2. The articles of incorporation may set forth any of the
24 following:

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

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

30 c. Provisions not inconsistent with law regarding all of
31 the following:

32 (1) Managing and regulating the affairs of the
33 corporation.

34 (2) Defining, limiting, and regulating the powers of the
35 corporation, its board of directors, and members, or any class

1 of members.

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

5 d. A provision permitting or requiring a corporation to
6 indemnify a director for liability, as defined in section
7 504A.851, subsection 5, to a person for any action taken, or
8 any failure to take any action, as a director except liability
9 for any of the following:

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

12 (2) Intentional infliction of harm on the corporation or
13 its members.

14 (3) A violation of section 504A.834.

15 (4) Intentional violation of criminal law.

16 e. Any provision that under this chapter is required or
17 permitted to be set forth in the bylaws.

18 3. Each incorporator named in the articles must sign the
19 articles.

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

22 Sec. 21. NEW SECTION. 504A.203 INCORPORATION.

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

26 2. The secretary of state's filing of the articles of
27 incorporation is conclusive proof that the incorporators
28 satisfied all conditions precedent to incorporation except in
29 a proceeding by the state to cancel or revoke the
30 incorporation or involuntarily dissolve the corporation.

31 Sec. 22. NEW SECTION. 504A.204 LIABILITY FOR
32 PREINCORPORATION TRANSACTIONS.

33 All persons purporting to act as or on behalf of a
34 corporation, knowing there was no incorporation under this
35 chapter, are jointly and severally liable for all liabilities

1 created while so acting.

2 Sec. 23. NEW SECTION. 504A.205 ORGANIZATION OF
3 CORPORATION.

4 1. After incorporation:

5 a. If initial directors are named in the articles of
6 incorporation, the initial directors shall hold an
7 organizational meeting, at the call of a majority of the
8 directors, to complete the organization of the corporation by
9 appointing officers, adopting bylaws, and carrying on any
10 other business brought before the meeting.

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

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

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

19 2. Action required or permitted by this chapter to be
20 taken by incorporators at an organizational meeting may be
21 taken without a meeting if the action taken is evidenced by
22 one or more written consents describing the action taken and
23 signed by each incorporator.

24 3. An organizational meeting may be held in or out of this
25 state in accordance with section 504A.821.

26 Sec. 24. NEW SECTION. 504A.206 BYLAWS.

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

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

32 Sec. 25. NEW SECTION. 504A.207 EMERGENCY BYLAWS AND
33 POWERS.

34 1. Unless the articles provide otherwise the directors of
35 a corporation may adopt, amend, or repeal bylaws to be

1 effective only in an emergency as described in subsection 4.

2 The emergency bylaws, which are subject to amendment or repeal
3 by the members, may provide special procedures necessary for
4 managing the corporation during the emergency, including all
5 of the following:

- 6 a. How to call a meeting of the board.
 - 7 b. Quorum requirements for the meeting.
 - 8 c. Designation of additional or substitute directors.
- 9 2. All provisions of the regular bylaws consistent with

10 the emergency bylaws remain effective during the emergency.

11 The emergency bylaws are not effective after the emergency
12 ends.

13 3. Corporate action taken in good faith in accordance with
14 the emergency bylaws does both of the following:

- 15 a. Binds the corporation.
- 16 b. Shall not be used to impose liability on a corporate
17 director, officer, employee, or agent.

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

21 SUBCHAPTER III

22 PURPOSES AND POWERS

23 Sec. 26. NEW SECTION. 504A.301 PURPOSES.

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

27 2. A corporation engaging in an activity that is subject
28 to regulation under another statute of this state may
29 incorporate under this chapter only if incorporation under
30 this chapter is not prohibited by the other statute. The
31 corporation shall be subject to all limitations of the other
32 statute.

33 Sec. 27. NEW SECTION. 504A.302 GENERAL POWERS.

34 Unless its articles of incorporation provide otherwise,
35 every corporation has perpetual duration and succession in its

1 corporate name and has the same powers as an individual to do
2 all things necessary or convenient to carry out its affairs,
3 including without limitation all of the following powers:

4 1. Sue and be sued, complain, and defend in its corporate
5 name.

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

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

12 4. Purchase, receive, lease, or otherwise acquire, and
13 own, hold, improve, use, and otherwise deal with real or
14 personal property, or any legal or equitable interest in
15 property, wherever located.

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

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

22 7. Make contracts and guarantees, incur liabilities,
23 borrow money, issue notes, bonds, and other obligations, and
24 secure any of its obligations by mortgage or pledge of any of
25 its property, franchises, or income.

26 8. Lend money, invest and reinvest its funds, and receive
27 and hold real and personal property as security for repayment,
28 except as limited by section 504A.833.

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

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

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

1 12. Pay pensions and establish pension plans, pension
2 trusts, and other benefit and incentive plans for any or all
3 of its current or former directors, officers, employees, and
4 agents.

5 13. Make donations not inconsistent with law for the
6 public welfare or for charitable, religious, scientific, or
7 educational purposes and for other purposes that further the
8 corporate interest.

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

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

13 16. Carry on a business.

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

17 Sec. 28. NEW SECTION. 504A.303 EMERGENCY POWERS.

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

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

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

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

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

33 b. One or more officers of the corporation present at a
34 meeting of the board of directors may be deemed to be
35 directors for the meeting, in order of rank and within the

1 same rank in order of seniority, as necessary to achieve a
2 quorum.

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

6 a. Binds the corporation.

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

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

12 Sec. 29. NEW SECTION. 504A.304 ULTRA VIRES.

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

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

21 3. A corporation's power to act may be challenged in a
22 proceeding against an incumbent or former director, officer,
23 employee, or agent of the corporation. The proceeding may be
24 brought by a director, the corporation, directly,
25 derivatively, or through a receiver, a trustee or other legal
26 representative, or in the case of a public benefit
27 corporation, by the attorney general.

28 SUBCHAPTER IV

29 NAMES

30 Sec. 30. NEW SECTION. 504A.401 CORPORATE NAME.

31 1. A corporate name shall not contain language stating or
32 implying that the corporation is organized for a purpose other
33 than that permitted by section 504A.301 and its articles of
34 incorporation.

35 2. Except as authorized by subsections 3 and 4, a

1 corporate name must be distinguishable upon the records of the
2 secretary of state from:

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

6 b. A corporate name reserved or registered under section
7 490.402, 490.403, 504A.402, or 504A.403.

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

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

17 a. The other corporation consents to the use of the name
18 in writing and submits an undertaking in a form satisfactory
19 to the secretary of state to change its name to a name that is
20 distinguishable upon the records of the secretary of state
21 from the name of the applying corporation.

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

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

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

35 b. The user corporation has been formed by reorganization

1 of the other corporation.

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

5 5. This subchapter does not control the use of fictitious
6 names; however, if a corporation or a foreign corporation uses
7 a fictitious name in this state it shall deliver to the
8 secretary of state for filing a copy of the resolution of its
9 board of directors, certified by its secretary, adopting the
10 fictitious name.

11 Sec. 31. NEW SECTION. 504A.402 RESERVED NAME.

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

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

24 Sec. 32. NEW SECTION. 504A.403 REGISTERED NAME.

25 1. A foreign corporation may register its corporate name,
26 or its corporate name with any change required by section
27 504A.1506, if the name is distinguishable upon the records of
28 the secretary of state from both of the following:

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

32 b. A corporate name reserved under section 490.402,
33 490.403, or 504A.402, or registered under this section.

34 2. A foreign corporation shall register its corporate
35 name, or its corporate name with any change required by

1 section 504A.1506, by delivering to the secretary of state an
2 application that does both of the following:

3 a. Sets forth its corporate name, or its corporate name
4 with any change required by section 504A.1506, the state or
5 country and date of its incorporation, and a brief description
6 of the nature of the activities in which it is engaged.

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

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

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

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

28 SUBCHAPTER V

29 OFFICE AND AGENT

30 Sec. 33. NEW SECTION. 504A.501 REGISTERED OFFICE AND
31 REGISTERED AGENT.

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

34 1. A registered office with the same address as that of
35 the registered agent.

1 2. A registered agent, who may be any of the following:

2 a. An individual who resides in this state and whose
3 business office is identical with the registered office.

4 b. A domestic business or nonprofit corporation whose
5 business office is identical to the registered office.

6 c. A foreign business or nonprofit corporation authorized
7 to transact business in this state whose business office is
8 identical to the registered office.

9 Sec. 34. NEW SECTION. 504A.502 CHANGE OF REGISTERED
10 OFFICE OR REGISTERED AGENT.

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

15 a. The name of the corporation.

16 b. If the current registered office is to be changed, the
17 address of the new registered office.

18 c. If the current registered agent is to be changed, the
19 name of the new registered agent and the new agent's written
20 consent, either on the statement or attached to it, to the
21 change.

22 d. That after the change or changes are made, the
23 addresses of its registered office and the office of its
24 registered agent will be identical.

25 2. If the address of a registered agent's business office
26 is changed, the registered agent may change the address of the
27 registered office of any corporation for which the registered
28 agent is the registered agent by notifying the corporation in
29 writing of the change and by signing, either manually or in
30 facsimile, and delivering to the secretary of state for
31 filing, a statement that complies with the requirements of
32 subsection 1 and recites that the corporation has been
33 notified of the change.

34 3. If a registered agent changes the registered agent's
35 business address to another place, the registered agent may

1 change the address of the registered office of any corporation
2 for which the registered agent is the registered agent by
3 filing a statement as required in subsection 2 for each
4 corporation, or by filing a single statement for all
5 corporations named in the notice, except that it need be
6 signed, either manually or in facsimile, only once by the
7 registered agent and must recite that a copy of the statement
8 has been mailed to each corporation named in the notice.

9 Sec. 35. NEW SECTION. 504A.503 RESIGNATION OF REGISTERED
10 AGENT.

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

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

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

25 Sec. 36. NEW SECTION. 504A.504 SERVICE ON CORPORATION.

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

29 2. If a corporation has no registered agent, or the agent
30 cannot with reasonable diligence be served, the corporation
31 may be served by registered or certified mail, return receipt
32 requested, addressed to the secretary of the corporation at
33 its principal office shown in the most recent biennial report
34 filed pursuant to section 504A.1613. Service is perfected
35 under this subsection on the earliest of any of the following:

- 1 a. The date the corporation receives the mail.
- 2 b. The date shown on the return receipt, if signed on
- 3 behalf of the corporation.
- 4 c. Five days after its deposit in the United States mail,
- 5 if mailed and correctly addressed with first class postage
- 6 affixed.
- 7 3. This section does not prescribe the only means, or
- 8 necessarily the required means, of serving a corporation. A
- 9 corporation may also be served in any other manner permitted
- 10 by law.

11 SUBCHAPTER VI
12 MEMBERS AND MEMBERSHIPS
13 PART 1

14 ADMISSION OF MEMBERS

15 Sec. 37. NEW SECTION. 504A.601 ADMISSION.

16 1. The articles or bylaws may establish criteria or
17 procedures for admission of members.

18 2. A person shall not be admitted as a member without the
19 person's consent or affirmative action evidencing consent.

20 Sec. 38. NEW SECTION. 504A.602 CONSIDERATION.

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

24 Sec. 39. NEW SECTION. 504A.603 NO REQUIREMENT OF
25 MEMBERS.

26 A corporation is not required to have members.

27 PART 2

28 TYPES OF MEMBERSHIPS -- MEMBERS' RIGHTS AND OBLIGATIONS

29 Sec. 40. NEW SECTION. 504A.611 DIFFERENCES IN RIGHTS AND
30 OBLIGATIONS OF MEMBERS.

31 All members shall have the same rights and obligations with
32 respect to voting, dissolution, redemption, and transfer,
33 unless the articles or bylaws establish classes of membership
34 with different rights or obligations. All members shall have
35 the same rights and obligations with respect to any other

1 matters, except as set forth in or authorized by the articles
2 or bylaws. A person that has no voting rights and is
3 identified as a member in the articles or bylaws of the
4 corporation shall have only those rights set forth for members
5 in the articles or bylaws of the corporation.

6 Sec. 41. NEW SECTION. 504A.612 TRANSFERS.

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

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

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

18 Sec. 42. NEW SECTION. 504A.613 MEMBER'S LIABILITY TO
19 THIRD PARTIES.

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

23 Sec. 43. NEW SECTION. 504A.614 MEMBER'S LIABILITY FOR
24 DUES, ASSESSMENTS, AND FEES.

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

30 Sec. 44. NEW SECTION. 504A.615 CREDITOR'S ACTION AGAINST
31 MEMBER.

32 1. A proceeding shall not be brought by a creditor to
33 reach the liability, if any, of a member to the corporation
34 unless final judgment has been rendered in favor of the
35 creditor against the corporation and execution has been

1 returned unsatisfied in whole or in part or unless such
2 proceeding would be useless.

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

9 PART 3

10 RESIGNATION AND TERMINATION

11 Sec. 45. NEW SECTION. 504A.621 RESIGNATION.

12 1. A member may resign at any time.

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

17 Sec. 46. NEW SECTION. 504A.622 TERMINATION, EXPULSION,
18 OR SUSPENSION.

19 1. A member of a public benefit or mutual benefit
20 corporation shall not be expelled or suspended, and a
21 membership or memberships in such a corporation shall not be
22 terminated or suspended except pursuant to a procedure which
23 is fair and reasonable and is carried out in good faith.

24 2. A procedure is fair and reasonable when either of the
25 following occurs:

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

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

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

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

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

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

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

18 Sec. 47. NEW SECTION. 504A.623 PURCHASE OF MEMBERSHIPS.

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

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

27 PART 4

28 DERIVATIVE PROCEEDINGS

29 Sec. 48. NEW SECTION. 504A.631 DERIVATIVE PROCEEDINGS --
30 DEFINITION.

31 In this part, unless the context otherwise requires,
32 "derivative proceeding" means a civil suit in the right of a
33 domestic corporation or, to the extent provided in section
34 504A.638, in the right of a foreign corporation.

35 Sec. 49. NEW SECTION. 504A.632 STANDING.

1 A member or director shall not commence or maintain a
2 derivative proceeding unless the member or director satisfies
3 both of the following:

4 1. Was a member or director of the corporation at the time
5 of the act or omission complained of or became a member
6 through transfer by operation of law from one who was a member
7 at that time.

8 2. The member or director fairly and adequately represents
9 the interests of the corporation in enforcing the rights of
10 the corporation.

11 Sec. 50. NEW SECTION. 504A.633 DEMAND.

12 A member or director shall not commence a derivative
13 proceeding until both of the following have occurred:

14 1. A written demand has been made upon the corporation to
15 take suitable action.

16 2. Ninety days have expired from the date the demand was
17 made, unless the member or director has earlier been notified
18 that the demand has been rejected by the corporation or unless
19 irreparable injury to the corporation would result by waiting
20 for the expiration of the ninety-day period.

21 Sec. 51. NEW SECTION. 504A.634 STAY OF PROCEEDINGS.

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

26 Sec. 52. NEW SECTION. 504A.635 DISMISSAL.

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

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

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

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

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

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

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

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

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

27 a. That a majority of the board of directors did not
28 consist of independent directors at the time the determination
29 was made.

30 b. That the requirements of subsection 1 have not been
31 met.

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

1 that party.

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

10 6. The court may appoint a panel of one or more
11 independent persons upon motion by the corporation to make a
12 determination whether the maintenance of the derivative
13 proceeding is in the best interests of the corporation. In
14 such case, the plaintiff shall have the burden of proving that
15 the requirements of subsection 1 have not been met.

16 Sec. 53. NEW SECTION. 504A.636 DISCONTINUANCE OR
17 SETTLEMENT.

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

24 Sec. 54. NEW SECTION. 504A.637 PAYMENT OF EXPENSES.

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

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

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

1 accordance with the bylaws. If a place is not stated in or
2 fixed in accordance with the bylaws, annual and regular
3 meetings shall be held at the corporation's principal office.

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

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

7 b. The members shall consider and act upon such other
8 matters as may be raised consistent with the notice
9 requirements of sections 504A.705 and 504A.713, subsection 4.

10 5. At regular meetings, the members shall consider and act
11 upon such matters as may be raised consistent with the notice
12 requirements of sections 504A.705 and 504A.713, subsection 4.

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

16 Sec. 58. NEW SECTION. 504A.702 SPECIAL MEETING.

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

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

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

26 Unless otherwise provided in the articles of incorporation, a
27 written demand for a special meeting may be revoked by a
28 writing to that effect received by the corporation prior to
29 the receipt by the corporation of demands sufficient in number
30 to require the holding of a special meeting.

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

1 3. If a notice for a special meeting demanded under
2 subsection 1, paragraph "b", is not given pursuant to section
3 504A.705 within thirty days after the date the written demand
4 or demands are delivered to a corporate officer, regardless of
5 the requirements of subsection 4, a person signing the demand
6 may set the time and place of the meeting and give notice
7 pursuant to section 504A.705.

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

13 5. Only those matters that are within the purpose
14 described in the meeting notice required by section 504A.705
15 may be considered at a special meeting of members.

16 Sec. 59. NEW SECTION. 504A.703 COURT-ORDERED MEETING.

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

21 a. On application of any member or other person entitled
22 to participate in an annual or regular meeting of the
23 corporation, and in the case of a public benefit corporation,
24 the attorney general, if an annual meeting was not held within
25 the earlier of six months after the end of the corporation's
26 fiscal year or fifteen months after its last annual meeting.

27 b. On application of any member or other person entitled
28 to participate in a regular meeting of the corporation, and in
29 the case of a public benefit corporation, the attorney
30 general, if a regular meeting was not held within forty days
31 after the date it was required to be held.

32 c. On application of a member who signed a demand for a
33 special meeting valid under section 504A.702, a person
34 entitled to call a special meeting, and in the case of a
35 public benefit corporation, the attorney general, if any of

1 the following applies:

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

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

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

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

18 Sec. 60. NEW SECTION. 504A.704 ACTION BY WRITTEN
19 CONSENT.

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

34 2. If not otherwise determined under section 504A.703 or
35 504A.707, the record date for determining members entitled to

1 take action without a meeting is the date the first member
2 signs the consent under subsection 1.

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

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

11 Sec. 61. NEW SECTION. 504A.705 NOTICE OF MEETING.

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

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

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

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

28 b. The notice of an annual or regular meeting includes a
29 description of any matter or matters which must be considered
30 for approval by the members under sections 504A.833, 504A.857,
31 504A.1003, 504A.1022, 504A.1104, 504A.1202, 504A.1401, and
32 504A.1402.

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

35 4. Unless the bylaws require otherwise, if an annual,

1 regular, or special meeting of members is adjourned to a
2 different date, time, or place, notice need not be given of
3 the new date, time, or place, if the new date, time, or place
4 is announced at the meeting before adjournment. If a new
5 record date for the adjourned meeting is or must be fixed
6 under section 504A.707, however, notice of the adjourned
7 meeting must be given under this section to the members of
8 record as of the new record date.

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

16 Sec. 62. NEW SECTION. 504A.706 WAIVER OF NOTICE.

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

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

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

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

33 Sec. 63. NEW SECTION. 504A.707 RECORD DATE --
34 DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE.

35 1. The bylaws of a corporation may fix or provide the

1 manner of fixing a date as the record date for determining the
2 members entitled to notice of a members' meeting. If the
3 bylaws do not fix or provide for fixing such a record date,
4 the board may fix a future date as such a record date. If a
5 record date is not fixed, members at the close of business on
6 the business day preceding the day on which notice is given,
7 or if notice is waived, at the close of business on the
8 business day preceding the day on which the meeting is held
9 are entitled to notice of the meeting.

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

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

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

31 5. A determination of members entitled to notice of or to
32 vote at a membership meeting is effective for any adjournment
33 of the meeting unless the board fixes a new date for
34 determining the right to notice or the right to vote, which it
35 must do if the meeting is adjourned to a date more than

1 seventy days after the record date for determining members
2 entitled to notice of the original meeting.

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

8 Sec. 64. NEW SECTION. 504A.708 ACTION BY WRITTEN BALLOT.

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

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

15 a. Set forth each proposed action.

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

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

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

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

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

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

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

1 PART 2

2 VOTING

3 Sec. 65. NEW SECTION. 504A.711 MEMBERS' LIST FOR
4 MEETING.

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

15 2. The list of members must be available for inspection by
16 any member for the purpose of communication with other members
17 concerning the meeting, beginning two business days after
18 notice is given of the meeting for which the list was prepared
19 and continuing through the meeting, at the corporation's
20 principal office or at a reasonable place identified in the
21 meeting notice in the city where the meeting will be held. A
22 member, a member's agent, or a member's attorney is entitled
23 on written demand to inspect and, subject to the limitations
24 of section 504A.1602, subsection 3, and section 504A.1605, to
25 copy the list, at a reasonable time and at the member's
26 expense, during the period it is available for inspection.

27 3. A corporation shall make the list of members available
28 at the meeting, and any member, a member's agent, or a
29 member's attorney is entitled to inspect the list at any time
30 during the meeting or any adjournment.

31 4. If a corporation refuses to allow a member, a member's
32 agent, or a member's attorney to inspect the list of members
33 before or at the meeting or copy the list as permitted by
34 subsection 2, the district court of the county where a
35 corporation's principal office is located or, if none is

1 located in this state, where its registered office is located,
2 on application of the member, may summarily order the
3 inspection or copying of the membership list at the
4 corporation's expense, may postpone the meeting for which the
5 list was prepared until the inspection or copying is complete,
6 and may order the corporation to pay the member's costs,
7 including reasonable attorney fees incurred to obtain the
8 order.

9 5. Unless a written demand to inspect and copy a
10 membership list has been made under subsection 2 prior to the
11 membership meeting and a corporation improperly refuses to
12 comply with the demand, refusal or failure to comply with this
13 section does not affect the validity of action taken at the
14 meeting.

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

18 Sec. 66. NEW SECTION. 504A.712 VOTING ENTITLEMENT
19 GENERALLY.

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

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

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

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

34 Sec. 67. NEW SECTION. 504A.713 QUORUM REQUIREMENTS.

35 1. Unless this subchapter, or the articles or bylaws of a

1 corporation provide for a higher or lower quorum, ten percent
2 of the votes entitled to be cast on a matter must be
3 represented at a meeting of members to constitute a quorum on
4 that matter.

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

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

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

14 Sec. 68. NEW SECTION. 504A.714 VOTING REQUIREMENTS.

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

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

24 Sec. 69. NEW SECTION. 504A.715 PROXIES.

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

34 2. An appointment of a proxy is effective when a signed
35 appointment form or an electronic transmission of an

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

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

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

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

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

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

23 6. Subject to section 504A.718 and any express limitation
24 on the proxy's authority appearing on the face of the
25 appointment form, a corporation is entitled to accept the
26 proxy's vote or other action as that of the member making the
27 appointment.

28 Sec. 70. NEW SECTION. 504A.716 CUMULATIVE VOTING FOR
29 DIRECTORS.

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

1 2. A director elected by cumulative voting may be removed
2 by the members without cause if the requirements of section
3 504A.808 are met unless the votes cast against removal, or not
4 consenting in writing to such removal, would be sufficient to
5 elect such director if voted cumulatively at an election at
6 which the same total number of votes were cast or, if such
7 action is taken by written ballot, all memberships entitled to
8 vote were voted, and the entire number of directors authorized
9 at the time of the director's most recent election were then
10 being elected.

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

13 Sec. 71. NEW SECTION. 504A.717 OTHER METHODS OF ELECTING
14 DIRECTORS.

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

20 Sec. 72. NEW SECTION. 504A.718 CORPORATION'S ACCEPTANCE
21 OF VOTES.

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

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

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

35 b. The name signed purports to be that of an attorney in

1 fact of the member and if the corporation requests, evidence
2 acceptable to the corporation of the signatory's authority to
3 sign for the member has been presented with respect to the
4 vote, consent, waiver, or proxy appointment.

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

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

10 (1) The name signed purports to be that of an
11 administrator, executor, guardian, or conservator representing
12 the member and, if the corporation requests, evidence of
13 fiduciary status acceptable to the corporation has been
14 presented with respect to the vote, consent, waiver, or proxy
15 appointment.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

PART 3

VOTING AGREEMENTS

Sec. 73. NEW SECTION. 504A.721 VOTING AGREEMENTS.

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

SUBCHAPTER VIII

DIRECTORS AND OFFICERS

PART 1

BOARD OF DIRECTORS

Sec. 74. NEW SECTION. 504A.801 REQUIREMENT FOR AND DUTIES OF BOARD.

1. Each corporation must have a board of directors.
 2. Except as otherwise provided in this subchapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.
 3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.
- Sec. 75. NEW SECTION. 504A.802 QUALIFICATIONS OF DIRECTORS.

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

Sec. 76. NEW SECTION. 504A.803 NUMBER OF DIRECTORS.

1. The board of directors of a corporation must consist of

1 one or more individuals, with the number specified in or fixed
2 in accordance with the articles or bylaws.

3 2. The number of directors may be increased or decreased
4 from time to time by amendment to or in the manner prescribed
5 in the articles or bylaws.

6 Sec. 77. NEW SECTION. 504A.804 ELECTION, DESIGNATION,
7 AND APPOINTMENT OF DIRECTORS.

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

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

20 Sec. 78. NEW SECTION. 504A.805 TERMS OF DIRECTORS
21 GENERALLY.

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

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

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

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

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

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

8 Sec. 79. NEW SECTION. 504A.806 STAGGERED TERMS FOR
9 DIRECTORS.

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

14 Sec. 80. NEW SECTION. 504A.807 RESIGNATION OF DIRECTORS.

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

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

24 Sec. 81. NEW SECTION. 504A.808 REMOVAL OF DIRECTORS
25 ELECTED BY MEMBERS OR DIRECTORS.

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

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

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

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

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

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

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

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

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

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

35 a. Limit the application of this section.

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

4 Sec. 82. NEW SECTION. 504A.809 REMOVAL OF DESIGNATED OR
5 APPOINTED DIRECTORS.

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

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

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

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

19 Sec. 83. NEW SECTION. 504A.810 REMOVAL OF DIRECTORS BY
20 JUDICIAL PROCEEDING.

21 1. The district court of the county where a corporation's
22 principal office is located may remove any director of the
23 corporation from office in a proceeding commenced either by
24 the corporation, its members holding at least twenty percent
25 of the voting power of any class, or the attorney general in
26 the case of a public benefit corporation if the court finds
27 both of the following:

28 a. The director engaged in fraudulent or dishonest conduct
29 with respect to the corporation, or a final judgment has been
30 entered finding that the director has violated a duty set
31 forth in sections 504A.831 through 504A.835.

32 b. Removal is in the best interest of the corporation.

33 2. The court that removes a director may bar the director
34 from serving on the board for a period prescribed by the
35 court.

1 3. If members or the attorney general commence a
2 proceeding under subsection 1, the corporation shall be made a
3 party defendant.

4 4. If a public benefit corporation or its members commence
5 a proceeding under subsection 1, they shall give the attorney
6 general written notice of the proceeding.

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

9 Sec. 84. NEW SECTION. 504A.811 VACANCY ON BOARD.

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

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

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

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

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

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

33 4. A vacancy that will occur at a specific later date by
34 reason of a resignation effective at a later date under
35 section 504A.807, subsection 2, or otherwise, may be filled

1 before the vacancy occurs, but the new director shall not take
2 office until the vacancy occurs.

3 Sec. 85. NEW SECTION. 504A.812 COMPENSATION OF
4 DIRECTORS.

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

8 PART 2

9 MEETINGS AND ACTION OF THE BOARD

10 Sec. 86. NEW SECTION. 504A.821 REGULAR AND SPECIAL
11 MEETINGS.

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

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

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

24 Sec. 87. NEW SECTION. 504A.822 ACTION WITHOUT MEETING.

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

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

1 the director and delivered to the corporation prior to the
2 delivery to the corporation of unrevoked written consents
3 signed by all of the directors.

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

7 Sec. 88. NEW SECTION. 504A.823 CALL AND NOTICE OF
8 MEETINGS.

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

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

16 3. In corporations without members, any board action to
17 remove a director or to approve a matter which would require
18 approval by the members if the corporation had members shall
19 not be valid unless each director is given at least seven
20 days' written notice that the matter will be voted upon at a
21 directors' meeting or unless notice is waived pursuant to
22 section 504A.824.

23 4. Unless the articles or bylaws provide otherwise, the
24 presiding officer of the board, the president, or twenty
25 percent of the directors then in office may call and give
26 notice of a meeting of the board.

27 Sec. 89. NEW SECTION. 504A.824 WAIVER OF NOTICE.

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

33 2. A director's attendance at or participation in a
34 meeting waives any required notice of the meeting unless the
35 director, upon arriving at the meeting or prior to the vote on

1 a matter not noticed in conformity with this subchapter, the
2 articles, or bylaws, objects to lack of notice and does not
3 thereafter vote for or assent to the objected-to action.

4 Sec. 90. NEW SECTION. 504A.825 QUORUM AND VOTING.

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

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

15 Sec. 91. NEW SECTION. 504A.826 COMMITTEES OF THE BOARD.

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

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

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

26 b. The number of directors required by the articles or
27 bylaws to take action under section 504A.825.

28 3. Sections 504A.821 through 504A.825, which govern
29 meetings, action without meetings, notice and waiver of
30 notice, and quorum and voting requirements of the board, apply
31 to committees of the board and their members as well.

32 4. To the extent specified by the board of directors or in
33 the articles or bylaws, each committee of the board may
34 exercise the board's authority under section 504A.801.

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

1 the following:

2 a. Authorize distributions.

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

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

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

9 6. The creation of, delegation of authority to, or action
10 by a committee does not alone constitute compliance by a
11 director with the standards of conduct described in section
12 504A.831.

13 PART 3

14 STANDARDS OF CONDUCT

15 Sec. 92. NEW SECTION. 504A.831 GENERAL STANDARDS FOR
16 DIRECTORS.

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

20 a. In good faith.

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

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

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

35 4. In discharging board or committee duties, a director is

1 entitled to rely on information, opinions, reports, or
2 statements, including financial statements and other financial
3 data, if prepared or presented by any of the persons specified
4 in subsection 5.

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

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

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

15 (1) Matters within the particular person's professional or
16 expert competence.

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

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

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

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

33 Sec. 93. NEW SECTION. 504A.832 STANDARDS OF LIABILITY
34 FOR DIRECTORS.

35 1. A director shall not be liable to the corporation or

1 its members for any decision to take or not to take action, or
2 any failure to take any action, as director, unless the party
3 asserting liability in a proceeding establishes both of the
4 following:

5 a. That section 504A.901 or the protection afforded by
6 section 504A.831, if interposed as a bar to the proceeding by
7 the director, does not preclude liability.

8 b. That the challenged conduct consisted or was the result
9 of one of the following:

10 (1) Action not in good faith.

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

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

14 (b) As to which the director was not informed to an extent
15 the director reasonably believed appropriate in the
16 circumstances.

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

22 (a) Which relationship or which domination or control
23 could reasonably be expected to have affected the director's
24 judgment respecting the challenged conduct in a manner adverse
25 to the corporation.

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

30 (4) A sustained failure of the director to devote
31 attention to ongoing oversight of the business and affairs of
32 the corporation, or a failure to devote timely attention, by
33 making, or causing to be made, appropriate inquiry, when
34 particular facts and circumstances of significant concern
35 materialize that would alert a reasonably attentive director

1 to the need therefore.

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

6 2. a. The party seeking to hold the director liable for
7 money damages shall also have the burden of establishing both
8 of the following:

9 (1) That harm to the corporation or its members has been
10 suffered.

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

13 b. A party seeking to hold the director liable for other
14 money payment under a legal remedy, such as compensation for
15 the unauthorized use of corporate assets, shall also have
16 whatever persuasion burden may be called for to establish that
17 the payment sought is appropriate in the circumstances.

18 c. A party seeking to hold the director liable for other
19 money payment under an equitable remedy, such as profit
20 recovery by or disgorgement to the corporation, shall also
21 have whatever persuasion burden may be called for to establish
22 that the equitable remedy sought is appropriate in the
23 circumstances.

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

25 a. In any instance where fairness is at issue, such as
26 consideration of the fairness of a transaction to the
27 corporation under section 504A.833, alter the burden of
28 proving the fact or lack of fairness otherwise applicable.

29 b. Alter the fact or lack of liability of a director under
30 another section of this chapter, such as the provisions
31 governing the consequences of a transactional interest under
32 section 504A.833 or an unlawful distribution under section
33 504A.835.

34 c. Affect any rights to which the corporation or a
35 shareholder may be entitled under another statute of this

1 state or the United States.

2 Sec. 94. NEW SECTION. 504A.833 DIRECTOR CONFLICT OF
3 INTEREST.

4 1. A conflict of interest transaction is a transaction
5 with the corporation in which a director of the corporation
6 has a direct or indirect interest. A conflict of interest
7 transaction is not voidable by the corporation on the basis of
8 the director's interest in the transaction if the transaction
9 was fair at the time it was entered into or is approved as
10 provided in subsection 2 or 3.

11 2. A transaction in which a director of a public benefit
12 or religious corporation has a conflict of interest may be
13 approved in either of the following ways:

14 a. In advance by the vote of the board of directors or a
15 committee of the board if both of the following occur:

16 (1) The material facts of the transaction and the
17 director's interest are disclosed or known to the board or
18 committee of the board.

19 (2) The directors approving the transaction in good faith
20 reasonably believe that the transaction is fair to the
21 corporation.

22 b. Before or after the transaction is consummated by
23 obtaining approval of either of the following:

24 (1) The attorney general.

25 (2) The district court in an action in which the attorney
26 general is joined as a party.

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

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

35 b. The material facts of the transaction and the

1 director's interest were disclosed or known to the members and
2 they authorized, approved, or ratified the transaction.

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

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

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

11 5. For purposes of subsections 2 and 3, a conflict of
12 interest transaction is authorized, approved, or ratified if
13 it receives the affirmative vote of a majority of the
14 directors on the board or on a committee of the board, who
15 have no direct or indirect interest in the transaction, but a
16 transaction shall not be authorized, approved, or ratified
17 under this section by a single director. If a majority of the
18 directors on the board who have no direct or indirect interest
19 in the transaction vote to authorize, approve, or ratify the
20 transaction, a quorum is present for the purpose of taking
21 action under this section. The presence of, or a vote cast
22 by, a director with a direct or indirect interest in the
23 transaction does not affect the validity of any action taken
24 under subsection 2, paragraph "a", or subsection 3, paragraph
25 "a", if the transaction is otherwise approved as provided in
26 subsection 2 or 3.

27 6. For purposes of subsection 3, paragraph "b", a conflict
28 of interest transaction is authorized, approved, or ratified
29 by the members if it receives a majority of the votes entitled
30 to be counted under this subsection. Votes cast by or voted
31 under the control of a director who has a direct or indirect
32 interest in the transaction, and votes cast by or voted under
33 the control of an entity described in subsection 4, paragraph
34 "a", shall not be counted in a vote of members to determine
35 whether to authorize, approve, or ratify a conflict of

1 interest transaction under subsection 3, paragraph "b". The
2 vote of these members, however, is counted in determining
3 whether the transaction is approved under other sections of
4 this subchapter. A majority of the voting power, whether or
5 not present, that is entitled to be counted in a vote on the
6 transaction under this subsection constitutes a quorum for the
7 purpose of taking action under this section.

8 7. The articles, bylaws, or a resolution of the board may
9 impose additional requirements on conflict of interest
10 transactions.

11 Sec. 95. NEW SECTION. 504A.834 LOANS TO OR GUARANTEES
12 FOR DIRECTORS AND OFFICERS.

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

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

18 Sec. 96. NEW SECTION. 504A.835 LIABILITY FOR UNLAWFUL
19 DISTRIBUTIONS.

20 1. Unless a director complies with the applicable
21 standards of conduct described in section 504A.831, a director
22 who votes for or assents to a distribution made in violation
23 of this subchapter is personally liable to the corporation for
24 the amount of the distribution that exceeds what could have
25 been distributed without violating this subchapter.

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

29 a. Every other director who voted for or assented to the
30 distribution without complying with the applicable standards
31 of conduct described in section 504A.831.

32 b. Each person who received an unlawful distribution for
33 the amount of the distribution whether or not the person
34 receiving the distribution knew it was made in violation of
35 this subchapter.

1 PART 4
2 OFFICERS

3 Sec. 97. NEW SECTION. 504A.841 REQUIRED OFFICERS.

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

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

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

16 Sec. 98. NEW SECTION. 504A.842 DUTIES AND AUTHORITY OF
17 OFFICERS.

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

24 Sec. 99. NEW SECTION. 504A.843 STANDARDS OF CONDUCT FOR
25 OFFICERS.

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

28 a. In good faith.

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

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

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

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

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

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

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

21 3. An officer shall not be liable as an officer to the
22 corporation or its members for any decision to take or not to
23 take action, or any failure to take any action, if the duties
24 of the officer are performed in compliance with this section.
25 Whether an officer who does not comply with this section shall
26 have liability will depend in such instance on applicable law,
27 including those principles of sections 504A.832 and 504A.901
28 that have relevance.

29 Sec. 100. NEW SECTION. 504A.844 RESIGNATION AND REMOVAL
30 OF OFFICERS.

31 1. An officer of a corporation may resign at any time by
32 delivering notice to the corporation. A resignation is
33 effective when the notice is effective unless the notice
34 specifies a future effective time. If a resignation is made
35 effective at a future time and the board or appointing officer

1 accepts the future effective time, its board or appointing
2 officer may fill the pending vacancy before the effective time
3 if the board or appointing officer provides that the successor
4 does not take office until the effective time.

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

7 a. The board of directors.

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

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

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

15 Sec. 101. NEW SECTION. 504A.845 CONTRACT RIGHTS OF
16 OFFICERS.

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

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

23 Sec. 102. NEW SECTION. 504A.846 OFFICERS' AUTHORITY TO
24 EXECUTE DOCUMENTS.

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

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

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

3

PART 5

4

INDEMNIFICATION

5

Sec. 103. NEW SECTION. 504A.851 DEFINITIONS.

6

As used in this part, unless the context otherwise

7

requires:

8

1. "Corporation" includes any domestic or foreign

9

predecessor entity of a corporation in a merger.

10

2. "Director" or "officer" means an individual who is or

11

was a director or officer of a corporation or an individual

12

who, while a director or officer of a corporation, is or was

13

serving at the corporation's request as a director, officer,

14

partner, trustee, employee, or agent of another foreign or

15

domestic business or nonprofit corporation, partnership, joint

16

venture, trust, employee benefit plan, or other entity. A

17

"director" or "officer" is considered to be serving an

18

employee benefit plan at the corporation's request if the

19

director's or officer's duties to the corporation also impose

20

duties on, or otherwise involve services by, the director or

21

officer to the plan or to participants in or beneficiaries of

22

the plan. "Director" or "officer" includes, unless the

23

context otherwise requires, the estate or personal

24

representative of a director or officer.

25

3. "Disinterested director" means a director who at the

26

time of a vote referred to in section 504A.854, subsection 3,

27

or a vote or selection referred to in section 504A.856,

28

subsection 2 or 3, is not either of the following:

29

a. A party to the proceeding.

30

b. An individual having a familial, financial,

31

professional, or employment relationship with the director

32

whose indemnification or advance for expenses is the subject

33

of the decision being made, which relationship would, in the

34

circumstances, reasonably be expected to exert an influence on

35

the director's judgment when voting on the decision being

1 made.

2 4. "Expenses" includes attorney fees.

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

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

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

10 b. When used with respect to an officer, as contemplated
11 in section 504A.857, the office in a corporation held by the
12 officer. "Official capacity" does not include service for any
13 other foreign or domestic business or nonprofit corporation or
14 any partnership joint venture, trust, employee benefit plan,
15 or other entity.

16 7. "Party" means an individual who was, is, or is
17 threatened to be made a defendant or respondent in a
18 proceeding.

19 8. "Proceeding" means any threatened, pending, or
20 completed action, suit, or proceeding whether civil, criminal,
21 administrative, or investigative and whether formal or
22 informal.

23 Sec. 104. NEW SECTION. 504A.852 PERMISSIBLE
24 INDEMNIFICATION.

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

30 a. The individual acted in good faith.

31 b. The individual reasonably believed either of the
32 following:

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

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

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

6 d. The individual engaged in conduct for which broader
7 indemnification has been made permissible or obligatory under
8 a provision of the articles of incorporation as authorized by
9 section 504A.202, subsection 2, paragraph "d".

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

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

20 4. Unless ordered by a court under section 504A.855,
21 subsection 1, paragraph "b", a corporation shall not indemnify
22 a director under this section under either of the following
23 circumstances:

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

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

32 Sec. 105. NEW SECTION. 504A.853 MANDATORY
33 INDEMNIFICATION.

34 A corporation shall indemnify a director who was wholly
35 successful, on the merits or otherwise, in the defense of any

1 proceeding to which the director was a party because the
2 director is or was a director of the corporation against
3 reasonable expenses actually incurred by the director in
4 connection with the proceeding.

5 Sec. 106. NEW SECTION. 504A.854 ADVANCE FOR EXPENSES.

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

11 a. A written affirmation of the director's good faith
12 belief that the director has met the relevant standard of
13 conduct described in section 504A.852 or that the proceeding
14 involved conduct for which liability has been eliminated under
15 a provision of the articles of incorporation as authorized by
16 section 504A.202, subsection 2, paragraph "d".

17 b. The director's written undertaking to repay any funds
18 advanced if the director is not entitled to mandatory
19 indemnification under section 504A.853 and it is ultimately
20 determined under section 504A.855 or 504A.856 that the
21 director has not met the relevant standard of conduct
22 described in section 504A.852.

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

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

29 a. By the board of directors as follows:

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

35 (2) If there are fewer than two disinterested directors,

1 by the vote necessary for action by the board in accordance
2 with section 504A.825, subsection 2, in which authorization
3 directors who do not qualify as disinterested directors may
4 participate.

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

8 Sec. 107. NEW SECTION. 504A.855 COURT-ORDERED
9 INDEMNIFICATION.

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

16 a. Order indemnification if the court determines that the
17 director is entitled to mandatory indemnification under
18 section 504A.853.

19 b. Order indemnification or advance for expenses if the
20 court determines that the director is entitled to
21 indemnification or advance for expenses pursuant to a
22 provision authorized by section 504A.859, subsection 1.

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

26 (1) To indemnify the director.

27 (2) To indemnify or advance expenses to the director, even
28 if the director has not met the relevant standard of conduct
29 set forth in section 504A.852, subsection 1, failed to comply
30 with section 504A.854 or was adjudged liable in a proceeding
31 referred to in section 504A.852, subsection 4, paragraph "a"
32 or "b", but if the director was adjudged so liable the
33 director's indemnification shall be limited to reasonable
34 expenses incurred in connection with the proceeding.

35 2. If the court determines that the director is entitled

1 to indemnification under subsection 1, paragraph "a", or to
2 indemnification or advance for expenses under subsection 1,
3 paragraph "b", it shall also order the corporation to pay the
4 director's reasonable expenses incurred in connection with
5 obtaining court-ordered indemnification or advance for
6 expenses. If the court determines that the director is
7 entitled to indemnification or advance for expenses under
8 subsection 1, paragraph "c", it may also order the corporation
9 to pay the director's reasonable expenses to obtain court-
10 ordered indemnification or advance for expenses.

11 Sec. 108. NEW SECTION. 504A.856 DETERMINATION AND
12 AUTHORIZATION OF INDEMNIFICATION.

13 1. A corporation shall not indemnify a director under
14 section 504A.852 unless authorized for a specific proceeding
15 after a determination has been made that indemnification of
16 the director is permissible because the director has met the
17 standard of conduct set forth in section 504A.852.

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

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

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

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

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

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

35 3. Authorization of indemnification shall be made in the

1 same manner as the determination that indemnification is
2 permissible, except that if there are fewer than two
3 disinterested directors or if the determination is made by
4 special legal counsel, authorization of indemnification shall
5 be made by those entitled under subsection 2, paragraph "c",
6 to select special legal counsel.

7 4. A director of a public benefit corporation shall not be
8 indemnified until twenty days after the effective date of
9 written notice to the attorney general of the proposed
10 indemnification.

11 Sec. 109. NEW SECTION. 504A.857 INDEMNIFICATION OF
12 OFFICERS.

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

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

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

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

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

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

29 (b) An intentional infliction of harm on the corporation
30 or the shareholders.

31 (c) An intentional violation of criminal law.

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

1 3. An officer of a corporation who is not a director is
2 entitled to mandatory indemnification under section 504A.853,
3 and may apply to a court under section 504A.855 for
4 indemnification or an advance for expenses, in each case to
5 the same extent to which a director may be entitled to
6 indemnification or advance for expenses under those
7 provisions.

8 Sec. 110. NEW SECTION. 504A.858 INSURANCE.

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

21 Sec. 111. NEW SECTION. 504A.859 APPLICATION OF PART.

22 1. A corporation may, by a provision in its articles of
23 incorporation or bylaws or in a resolution adopted or a
24 contract approved by its board of directors or members,
25 obligate itself in advance of the act or omission giving rise
26 to a proceeding to provide indemnification in accordance with
27 section 504A.852 or advance funds to pay for or reimburse
28 expenses in accordance with section 504A.854. Any such
29 obligatory provision shall be deemed to satisfy the
30 requirements for authorization referred to in section
31 504A.854, subsection 3, and in section 504A.856, subsection 2
32 or 3. Any such provision that obligates the corporation to
33 provide indemnification to the fullest extent permitted by law
34 shall be deemed to obligate the corporation to advance funds
35 to pay for or reimburse expenses in accordance with section

1 504A.854 to the fullest extent permitted by law, unless the
2 provision specifically provides otherwise.

3 2. Any provision pursuant to subsection 1 shall not
4 obligate the corporation to indemnify or advance expenses to a
5 director of a predecessor of the corporation, pertaining to
6 conduct with respect to the predecessor, unless otherwise
7 specifically provided. Any provision for indemnification or
8 advance for expenses in the articles of incorporation, bylaws,
9 or a resolution of the board of directors or members of a
10 predecessor of the corporation in a merger or in a contract to
11 which the predecessor is a party, existing at the time the
12 merger takes effect, shall be governed by section 504A.1104.

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

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

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

24 Sec. 112. NEW SECTION. 504A.860 EXCLUSIVITY OF PART.

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

28 SUBCHAPTER IX

29 PERSONAL LIABILITY

30 Sec. 113. NEW SECTION. 504A.901 PERSONAL LIABILITY.

31 Except as otherwise provided in this chapter, a director,
32 officer, employee, or member of a corporation is not liable
33 for the corporation's debts or obligations and a director,
34 officer, member, or volunteer is not personally liable in that
35 capacity, to any person for any action taken or failure to

1 take any action except liability for any of the following:

2 1. The amount of any financial benefit to which the person
3 is entitled.

4 2. An intentional infliction of harm on the corporation or
5 the members.

6 3. A violation of section 504A.834.

7 4. An intentional violation of criminal law.

8 SUBCHAPTER X

9 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

10 PART 1

11 ARTICLES OF INCORPORATION

12 Sec. 114. NEW SECTION. 504A.1001 AUTHORITY TO AMEND.

13 A corporation may amend its articles of incorporation at
14 any time to add or change a provision that is required or
15 permitted in the articles or to delete a provision not
16 required in the articles. Whether a provision is required or
17 permitted in the articles is determined as of the effective
18 date of the amendment.

19 Sec. 115. NEW SECTION. 504A.1002 AMENDMENT BY DIRECTORS.

20 1. Unless the articles provide otherwise, a corporation's
21 board of directors may adopt one or more amendments to the
22 corporation's articles without member approval to do any of
23 the following:

24 a. Extend the duration of the corporation if it was
25 incorporated at a time when limited duration was required by
26 law.

27 b. Delete the names and addresses of the initial
28 directors.

29 c. Delete the name and address of the initial registered
30 agent or registered office, if a statement of change is on
31 file with the secretary of state.

32 d. Change the corporate name by substituting the word
33 "corporation", "incorporated", "company", "limited", or the
34 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
35 word or abbreviation in the name, or by adding, deleting, or

1 changing a geographical attribution to the name.

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

4 2. If a corporation has no members, its incorporators,
5 until directors have been chosen, and thereafter its board of
6 directors, may adopt one or more amendments to the
7 corporation's articles subject to any approval required
8 pursuant to section 504A.1031. The corporation shall provide
9 notice of any meeting at which an amendment is to be voted
10 upon. The notice shall be in accordance with section
11 504A.823, subsection 3. The notice must also state that the
12 purpose, or one of the purposes, of the meeting is to consider
13 a proposed amendment to the articles and contain or be
14 accompanied by a copy or summary of the amendment or state the
15 general nature of the amendment. The amendment must be
16 approved by a majority of the directors in office at the time
17 the amendment is adopted.

18 Sec. 116. NEW SECTION. 504A.1003 AMENDMENT BY DIRECTORS
19 AND MEMBERS.

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

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

31 b. Except as provided in section 504A.1002, subsection 1,
32 by the members by two-thirds of the votes cast by the members
33 or a majority of the members' voting power that could be cast,
34 whichever is less.

35 c. In writing by any person or persons whose approval is

1 required by a provision of the articles authorized by section
2 504A.1031.

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

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

11 4. If the board or the members seek to have the amendment
12 approved by the members at a membership meeting, the
13 corporation shall give notice to its members of the proposed
14 membership meeting in writing in accordance with section
15 504A.705. The notice must state that the purpose, or one of
16 the purposes, of the meeting is to consider the proposed
17 amendment and contain or be accompanied by a copy or summary
18 of the amendment.

19 5. If the board or the members seek to have the amendment
20 approved by the members by written consent or written ballot,
21 the material soliciting the approval shall contain or be
22 accompanied by a copy or summary of the amendment.

23 Sec. 117. NEW SECTION. 504A.1004 CLASS VOTING BY MEMBERS
24 ON AMENDMENTS.

25 1. The members of a class in a public benefit corporation
26 are entitled to vote as a class on a proposed amendment to the
27 articles if the amendment would change the rights of that
28 class as to voting in a manner different than such amendment
29 affects another class or members of another class.

30 2. The members of a class in a mutual benefit corporation
31 are entitled to vote as a class on a proposed amendment to the
32 articles if the amendment would do any of the following:

33 a. Affect the rights, privileges, preferences,
34 restrictions, or conditions of that class as to voting,
35 dissolution, redemption, or transfer of memberships in a

1 manner different than such amendment would affect another
2 class.

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

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

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

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

14 f. Authorize a new class of memberships.

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

19 4. If a class is to be divided into two or more classes as
20 a result of an amendment to the articles of a public benefit
21 or mutual benefit corporation, the amendment must be approved
22 by the members of each class that would be created by the
23 amendment.

24 5. Except as provided in the articles or bylaws of a
25 religious corporation, if a class vote is required to approve
26 an amendment to the articles of the corporation, the amendment
27 must be approved by the members of the class by two-thirds of
28 the votes cast by the class or a majority of the voting power
29 of the class, whichever is less.

30 6. A class of members of a public benefit or mutual
31 benefit corporation is entitled to the voting rights granted
32 by this section even if the public benefit or mutual benefit
33 corporation's articles and bylaws provide that the class shall
34 not vote on the proposed amendment.

35 Sec. 118. NEW SECTION. 504A.1005 ARTICLES OF AMENDMENT.

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

3 1. The name of the corporation.

4 2. The text of each amendment adopted.

5 3. The date of each amendment's adoption.

6 4. If approval by members was not required, a statement to
7 that effect and a statement that the amendment was approved by
8 a sufficient vote of the board of directors or incorporators.

9 5. If approval by members was required, both of the
10 following:

11 a. The designation, number of memberships outstanding,
12 number of votes entitled to be cast by each class entitled to
13 vote separately on the amendment, and number of votes of each
14 class indisputably voting on the amendment.

15 b. Either the total number of votes cast for and against
16 the amendment by each class entitled to vote separately on the
17 amendment or the total number of undisputed votes cast for the
18 amendment by each class and a statement that the number of
19 votes cast for the amendment by each class was sufficient for
20 approval by that class.

21 6. If approval of the amendment by some person or persons
22 other than the members, the board, or the incorporators is
23 required pursuant to section 504A.1031, a statement that the
24 approval was obtained.

25 Sec. 119. NEW SECTION. 504A.1006 RESTATED ARTICLES OF
26 INCORPORATION.

27 1. A corporation's board of directors may restate the
28 corporation's articles of incorporation at any time with or
29 without approval by members or any other person.

30 2. The restatement may include one or more amendments to
31 the articles. If the restatement includes an amendment
32 requiring approval by the members or any other person, it must
33 be adopted as provided in section 504A.1003.

34 3. If the restatement includes an amendment requiring
35 approval by members, the board must submit the restatement to

1 the members for their approval.

2 4. If the board seeks to have the restatement approved by
3 the members at a membership meeting, the corporation shall
4 notify each of its members of the proposed membership meeting
5 in writing in accordance with section 504A.705. The notice
6 must also state that the purpose, or one of the purposes, of
7 the meeting is to consider the proposed restatement and must
8 contain or be accompanied by a copy or summary of the
9 restatement that identifies any amendments or other changes
10 the restatement would make in the articles.

11 5. If the board seeks to have the restatement approved by
12 the members by written ballot or written consent, the material
13 soliciting the approval shall contain or be accompanied by a
14 copy or summary of the restatement that identifies any
15 amendments or other changes the restatement would make in the
16 articles.

17 6. A restatement requiring approval by the members must be
18 approved by the same vote as an amendment to articles under
19 section 504A.1003.

20 7. If the restatement includes an amendment requiring
21 approval pursuant to section 504A.1031, the board must submit
22 the restatement for such approval.

23 8. A corporation restating its articles shall deliver to
24 the secretary of state articles of restatement setting forth
25 the name of the corporation and the text of the restated
26 articles of incorporation together with a certificate setting
27 forth all of the following:

28 a. Whether the restatement contains an amendment to the
29 articles requiring approval by the members or any other person
30 other than the board of directors and, if it does not, that
31 the board of directors adopted the restatement.

32 b. If the restatement contains an amendment to the
33 articles requiring approval by the members, the information
34 required by section 504A.1005.

35 c. If the restatement contains an amendment to the

1 articles requiring approval by a person whose approval is
2 required pursuant to section 504A.1031, a statement that such
3 approval was obtained.

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

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

11 Sec. 120. NEW SECTION. 504A.1007 AMENDMENT PURSUANT TO
12 JUDICIAL REORGANIZATION.

13 1. A corporation's articles may be amended without board
14 approval or approval by the members or approval required
15 pursuant to section 504A.1031 to carry out a plan of
16 reorganization ordered or decreed by a court of competent
17 jurisdiction under federal statute if the articles after
18 amendment contain only provisions required or permitted by
19 section 504A.202.

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

23 a. The name of the corporation.

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

25 c. The date of the court's order or decree approving the
26 articles of amendment.

27 d. The title of the reorganization proceeding in which the
28 order or decree was entered.

29 e. A statement that the court had jurisdiction of the
30 proceeding under federal statute.

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

35 Sec. 121. NEW SECTION. 504A.1008 EFFECT OF AMENDMENT AND

1 RESTATEMENT.

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

11 PART 2

12 BYLAWS

13 Sec. 122. NEW SECTION. 504A.1021 AMENDMENT BY DIRECTORS.

14 If a corporation has no members, its incorporators, until
15 directors have been chosen, and thereafter its board of
16 directors, may adopt one or more amendments to the
17 corporation's bylaws subject to any approval required pursuant
18 to section 504A.1031. The corporation shall provide notice of
19 any meeting of directors at which an amendment is to be
20 approved. The notice must be given in accordance with section
21 504A.823, subsection 3. The notice must also state that the
22 purpose, or one of the purposes, of the meeting is to consider
23 a proposed amendment to the bylaws and contain or be
24 accompanied by a copy or summary of the amendment or state the
25 general nature of the amendment. The amendment must be
26 approved by a majority of the directors in office at the time
27 the amendment is adopted.

28 Sec. 123. NEW SECTION. 504A.1022 AMENDMENT BY DIRECTORS
29 AND MEMBERS.

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

35 a. By the board if the corporation is a public benefit or

1 religious corporation and the amendment does not relate to the
2 number of directors, the composition of the board, the term of
3 office of directors, or the method or way in which directors
4 are elected or selected.

5 b. By the members by two-thirds of the votes cast or a
6 majority of the voting power, 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 504A.1031.

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

13 3. If the board initiates an amendment to the bylaws or
14 board approval is required by subsection 1 to adopt an
15 amendment to the bylaws, the board may condition the
16 amendment's adoption on receipt of a higher percentage of
17 affirmative votes or on 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 504A.705. The notice must also state that the purpose, or one
23 of 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. 124. NEW SECTION. 504A.1023 CLASS VOTING BY MEMBERS
31 ON AMENDMENTS.

32 1. The members of a class in a public benefit corporation
33 are entitled to vote as a class on a proposed amendment to the
34 bylaws if the amendment would change the rights of that class
35 as to voting in a manner different than such amendment affects

1 another class or members of another class.

2 2. The members of a class in a mutual benefit corporation
3 are entitled to vote as a class on a proposed amendment to the
4 bylaws if the amendment would do any of the following:

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

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

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

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

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

21 f. Authorize a new class of memberships.

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

26 4. If a class is to be divided into two or more classes as
27 a result of an amendment to the bylaws, the amendment must be
28 approved by the members of each class that would be created by
29 the amendment.

30 5. If a class vote is required to approve an amendment to
31 the bylaws, the amendment must be approved by the members of
32 the class by two-thirds of the votes cast by the class or a
33 majority of the voting power of the class, whichever is less.

34 6. A class of members is entitled to the voting rights
35 granted by this section even if the articles and bylaws

1 provide that the class may not vote on the proposed amendment.

2

PART 3

3

ARTICLES OF INCORPORATION AND BYLAWS

4

Sec. 125. NEW SECTION. 504A.1031 APPROVAL BY THIRD

5 PERSONS.

6 The articles of a corporation may require that an amendment

7 to the articles or bylaws be approved in writing by a

8 specified person or persons other than the board. Such a

9 provision in the articles may only be amended with the

10 approval in writing of the person or persons specified in the

11 provision.

12

Sec. 126. NEW SECTION. 504A.1032 AMENDMENT TERMINATING

13

MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS.

14

1. An amendment to the articles or bylaws of a public

15 benefit or mutual benefit corporation which would terminate

16 all members or any class of members or redeem or cancel all

17 memberships or any class of memberships must meet the

18 requirements of this chapter and this section.

19

2. Before adopting a resolution proposing such an

20 amendment, the board of a mutual benefit corporation shall

21 give notice of the general nature of the amendment to the

22 members.

23

3. After adopting a resolution proposing such an

24 amendment, the notice to members proposing such amendment

25 shall include one statement of up to five hundred words

26 opposing the proposed amendment, if such statement is

27 submitted by any five members or members having three percent

28 or more of the voting power, whichever is less, not later than

29 twenty days after the board has voted to submit such amendment

30 to the members for their approval. In public benefit

31 corporations, the production and mailing costs of the

32 statement opposing the proposed amendment shall be paid by the

33 requesting members. In mutual benefit corporations, the

34 production and mailing costs of the statement opposing the

35 proposed amendment shall be paid by the corporation.

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

3 5. The provisions of section 504A.622 shall not apply to
4 any amendment meeting the requirements of this chapter and
5 this section.

6 SUBCHAPTER XI

7 MERGER

8 Sec. 127. NEW SECTION. 504A.1101 APPROVAL OF PLAN OF
9 MERGER.

10 1. Subject to the limitations set forth in section
11 504A.1102, one or more nonprofit corporations may merge with
12 or into any one or more corporations or nonprofit corporations
13 or limited liability companies, if the plan of merger is
14 approved as provided in section 504A.1103.

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

17 a. The name of each corporation or limited liability
18 company planning to merge and the name of the surviving
19 corporation into which each plans to merge.

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

21 c. The manner and basis, if any, of converting the
22 memberships of each public benefit or religious corporation
23 into memberships of the surviving corporation or limited
24 liability company.

25 d. If the merger involves a mutual benefit corporation,
26 the manner and basis, if any, of converting memberships of
27 each merging corporation into memberships, obligations, or
28 securities of the surviving or any other corporation or
29 limited liability company or into cash or other property in
30 whole or in part.

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

32 a. Any amendments to the articles of incorporation or
33 bylaws of the surviving corporation or limited liability
34 company to be effected by the planned merger.

35 b. Other provisions relating to the planned merger.

1 Sec. 128. NEW SECTION. 504A.1102 LIMITATIONS ON MERGERS
2 BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS.

3 1. Without the prior approval of the district court in a
4 proceeding of which the attorney general has been given
5 written notice, a public benefit or religious corporation may
6 merge only with one of the following:

7 a. A public benefit or religious corporation.

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

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

14 d. A business or mutual benefit corporation, provided that
15 all of the following apply:

16 (1) On or prior to the effective date of the merger,
17 assets with a value equal to the greater of the fair market
18 value of the net tangible and intangible assets, including
19 goodwill, of the public benefit or religious corporation or
20 the fair market value of the public benefit or religious
21 corporation if it were to be operated as a business concern
22 are transferred or conveyed to one or more persons who would
23 have received its assets under section 504A.1406, subsection
24 1, paragraphs "e" and "f", had it dissolved.

25 (2) The business or mutual benefit corporation shall
26 return, transfer, or convey any assets held by it upon
27 condition requiring return, transfer, or conveyance, which
28 condition occurs by reason of the merger, in accordance with
29 such condition.

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

35 2. At least twenty days before consummation of any merger

1 of a public benefit corporation or a religious corporation
2 pursuant to subsection 1, paragraph "d", notice, including a
3 copy of the proposed plan of merger, must be delivered to the
4 attorney general.

5 3. Without the prior written consent of the attorney
6 general or of the district court in a proceeding in which the
7 attorney general has been given notice, a member of a public
8 benefit or religious corporation shall not receive or keep
9 anything as a result of a merger other than a membership in
10 the surviving public benefit or religious corporation. The
11 court shall approve the transaction if it is in the public
12 interest.

13 Sec. 129. NEW SECTION. 504A.1103 ACTION ON PLAN BY
14 BOARD, MEMBERS, AND THIRD PERSONS.

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

20 a. The board.

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

23 c. In writing by any person or persons whose approval is
24 required by a provision of the articles authorized by section
25 504A.1031 for an amendment to the articles or bylaws.

26 2. If the corporation does not have members, the merger
27 must be approved by a majority of the directors in office at
28 the time the merger is approved. In addition, the corporation
29 shall provide notice of any directors' meeting at which such
30 approval is to be obtained in accordance with section
31 504A.823, subsection 3. The notice must also state that the
32 purpose, or one of the purposes, of the meeting is to consider
33 the proposed merger.

34 3. The board may condition its submission of the proposed
35 merger, and the members may condition their approval of the

1 merger, on receipt of a higher percentage of affirmative votes
2 or on any other basis.

3 4. If the board seeks to have the plan approved by the
4 members at a membership meeting, the corporation shall give
5 notice to its members of the proposed membership meeting in
6 accordance with section 504A.705. The notice must also state
7 that the purpose, or one of the purposes, of the meeting is to
8 consider the plan of merger and contain or be accompanied by a
9 copy or summary of the plan. The copy or summary of the plan
10 for members of the surviving corporation shall include any
11 provision that, if contained in a proposed amendment to the
12 articles of incorporation or bylaws, would entitle members to
13 vote on the provision. The copy or summary of the plan for
14 members of the disappearing corporation shall include a copy
15 or summary of the articles and bylaws which will be in effect
16 immediately after the merger takes effect.

17 5. If the board seeks to have the plan approved by the
18 members by written consent or written ballot, the material
19 soliciting the approval shall contain or be accompanied by a
20 copy or summary of the plan. The copy or summary of the plan
21 for members of the surviving corporation shall include any
22 provision that, if contained in a proposed amendment to the
23 articles of incorporation or bylaws, would entitle members to
24 vote on the provision. The copy or summary of the plan for
25 members of the disappearing corporation shall include a copy
26 or summary of the articles and bylaws which will be in effect
27 immediately after the merger takes effect.

28 6. Voting by a class of members is required on a plan of
29 merger if the plan contains a provision that, if contained in
30 a proposed amendment to articles of incorporation or bylaws,
31 would entitle the class of members to vote as a class on the
32 proposed amendment under section 504A.1004 or 504A.1023. The
33 plan must be approved by a class of members by two-thirds of
34 the votes cast by the class or a majority of the voting power
35 of the class, whichever is less.

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

8 Sec. 130. NEW SECTION. 504A.1104 ARTICLES OF MERGER.

9 After a plan of merger is approved by the board of
10 directors, and if required by section 504A.1103, by the
11 members and any other persons, the surviving or acquiring
12 corporation shall deliver to the secretary of state articles
13 of merger setting forth all of the following, as applicable:

14 1. The plan of merger.

15 2. If approval of members was not required, a statement to
16 that effect and a statement that the plan was approved by a
17 sufficient vote of the board of directors.

18 3. If approval by members was required, both of the
19 following:

20 a. The designation, number of memberships outstanding,
21 number of votes entitled to be cast by each class entitled to
22 vote separately on the plan, and number of votes of each class
23 indisputably voting on the plan.

24 b. Either the total number of votes cast for and against
25 the plan by each class entitled to vote separately on the plan
26 or the total number of undisputed votes cast for the plan by
27 each class and a statement that the number of votes cast for
28 the plan by each class was sufficient for approval by that
29 class.

30 4. If approval of the plan by some person or persons other
31 than the members of the board is required pursuant to section
32 504A.1103, subsection 1, paragraph "c", a statement that the
33 approval was obtained.

34 Sec. 131. NEW SECTION. 504A.1105 EFFECT OF MERGER.

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

1 1. Every other corporation party to the merger merges into
2 the surviving corporation and the separate existence of every
3 corporation except the surviving corporation ceases.

4 2. The title to all real estate and other property owned
5 by each corporation party to the merger is vested in the
6 surviving corporation without reversion or impairment subject
7 to any and all conditions to which the property was subject
8 prior to the merger.

9 3. The surviving corporation has all the liabilities and
10 obligations of each corporation party to the merger.

11 4. A proceeding pending against any corporation party to
12 the merger may be continued as if the merger did not occur or
13 the surviving corporation may be substituted in the proceeding
14 for the corporation whose existence ceased.

15 5. The articles of incorporation and bylaws of the
16 surviving corporation are amended to the extent provided in
17 the plan of merger.

18 Sec. 132. NEW SECTION. 504A.1106 MERGER WITH FOREIGN
19 CORPORATION.

20 1. Except as provided in section 504A.1102, one or more
21 foreign business or nonprofit corporations may merge with one
22 or more domestic nonprofit corporations if all of the
23 following conditions are met:

24 a. The merger is permitted by the law of the state or
25 country under whose law each foreign corporation is
26 incorporated and each foreign corporation complies with that
27 law in effecting the merger.

28 b. The foreign corporation complies with section 504A.1104
29 if it is the surviving corporation of the merger.

30 c. Each domestic nonprofit corporation complies with the
31 applicable provisions of sections 504A.1101 through 504A.1103
32 and, if it is the surviving corporation of the merger, with
33 section 504A.1104.

34 2. Upon the merger taking effect, the surviving foreign
35 business or nonprofit corporation is deemed to have

1 irrevocably appointed the secretary of state as its agent for
2 service of process in any proceeding brought against it.

3 Sec. 133. NEW SECTION. 504A.1107 BEQUESTS, DEVISES, AND
4 GIFTS.

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

11 SUBCHAPTER XII

12 SALE OF ASSETS

13 Sec. 134. NEW SECTION. 504A.1201 SALE OF ASSETS IN
14 REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS.

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

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

21 b. Mortgage, pledge, dedicate to the repayment of
22 indebtedness, whether with or without recourse, or otherwise
23 encumber any or all of its property whether or not in the
24 usual and regular course of its activities.

25 2. Unless the articles require it, approval of the members
26 or any other persons of a transaction described in subsection
27 1 is not required.

28 Sec. 135. NEW SECTION. 504A.1202 SALE OF ASSETS OTHER
29 THAN IN REGULAR COURSE OF ACTIVITIES.

30 1. A corporation may sell, lease, exchange, or otherwise
31 dispose of all, or substantially all, of its property, with or
32 without the goodwill, other than in the usual and regular
33 course of its activities on the terms and conditions and for
34 the consideration determined by the corporation's board if the
35 proposed transaction is authorized by subsection 2.

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

6 a. The board.

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

9 c. In writing by any person or persons whose approval is
10 required by a provision of the articles authorized by section
11 504A.1031 for an amendment to the articles or bylaws.

12 3. If the corporation does not have members, the
13 transaction must be approved by a vote of a majority of the
14 directors in office at the time the transaction is approved.
15 In addition, the corporation shall provide notice of any
16 directors' meeting at which such approval is to be obtained in
17 accordance with section 504A.823, subsection 3. The notice
18 shall also state that the purpose, or one of the purposes, of
19 the meeting is to consider the sale, lease, exchange, or other
20 disposition of all, or substantially all, of the property or
21 assets of the corporation and contain or be accompanied by a
22 copy or summary of a description of the transaction.

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

27 5. If the corporation seeks to have the transaction
28 approved by the members at a membership meeting, the
29 corporation shall give notice to its members of the proposed
30 membership meeting in accordance with section 504A.705. The
31 notice must also state that the purpose, or one of the
32 purposes, of the meeting is to consider the sale, lease,
33 exchange, or other disposition of all, or substantially all,
34 of the property or assets of the corporation and contain or be
35 accompanied by a copy or summary of a description of the

1 transaction.

2 6. If the board is required to have the transaction
3 approved by the members by written consent or written ballot,
4 the material soliciting the approval shall contain or be
5 accompanied by a copy or summary of a description of the
6 transaction.

7 7. A public benefit or religious corporation shall give
8 written notice to the attorney general twenty days before it
9 sells, leases, exchanges, or otherwise disposes of all, or
10 substantially all, of its property if the transaction is not
11 in the usual and regular course of its activities unless the
12 attorney general has given the corporation a written waiver of
13 the requirements of this subsection. The attorney general
14 shall be deemed to have consented to the transaction unless
15 notice is given to the corporation within the twenty days.

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

23 SUBCHAPTER XIII

24 DISTRIBUTIONS

25 Sec. 136. NEW SECTION. 504A.1301 PROHIBITED
26 DISTRIBUTIONS.

27 Except as authorized by section 504A.1302, a corporation
28 shall not make any distributions.

29 Sec. 137. NEW SECTION. 504A.1302 AUTHORIZED
30 DISTRIBUTIONS.

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

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

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

3 2. Corporations may make distributions upon dissolution in
4 conformity with subchapter 14.

5 SUBCHAPTER XIV

6 DISSOLUTION

7 PART 1

8 VOLUNTARY DISSOLUTION

9 Sec. 138. NEW SECTION. 504A.1401 DISSOLUTION BY
10 INCORPORATORS OR DIRECTORS AND THIRD PERSONS.

11 1. A majority of the incorporators of a corporation that
12 has no directors and no members or a majority of the directors
13 of a corporation that has no members may, subject to any
14 approval required by the articles or bylaws, dissolve the
15 corporation by delivering articles of dissolution to the
16 secretary of state.

17 2. The corporation shall give notice of any meeting at
18 which dissolution will be approved. The notice must be in
19 accordance with section 504A.823, subsection 3. The notice
20 must also state that the purpose, or one of the purposes, of
21 the meeting is to consider dissolution of the corporation.

22 3. The incorporators or directors in approving dissolution
23 shall adopt a plan of dissolution indicating to whom the
24 assets owned or held by the corporation will be distributed
25 after all creditors have been paid.

26 Sec. 139. NEW SECTION. 504A.1402 DISSOLUTION BY
27 DIRECTORS, MEMBERS, AND THIRD PERSONS.

28 1. Unless this chapter, the articles, bylaws, or the board
29 of directors or members acting pursuant to subsection 3
30 require a greater vote or voting by class, dissolution is
31 authorized if it is approved by all of the following:

32 a. The board.

33 b. The members, if any, by two-thirds of the votes cast or
34 a majority of the voting power, whichever is less.

35 c. In writing by any person or persons whose approval is

1 required by a provision of the articles authorized by section
2 504A.1031 for an amendment to the articles or bylaws.

3 2. If the corporation does not have members, dissolution
4 must be approved by a vote of a majority of the directors in
5 office at the time the transaction is approved. In addition,
6 the corporation shall provide notice of any directors' meeting
7 at which such approval is to be obtained in accordance with
8 section 504A.823, subsection 3. The notice must also state
9 that the purpose, or one of the purposes, of the meeting is to
10 consider dissolution of the corporation and contain or be
11 accompanied by a copy or summary of the plan of dissolution.

12 3. The board may condition its submission of the proposed
13 dissolution, and the members may condition their approval of
14 the dissolution, on receipt of a higher percentage of
15 affirmative votes or on any other basis.

16 4. If the board seeks to have dissolution approved by the
17 members at a membership meeting, the corporation shall give
18 notice to its members of the proposed membership meeting in
19 accordance with section 504A.705. The notice must also state
20 that the purpose, or one of the purposes, of the meeting is to
21 consider dissolving the corporation and must contain or be
22 accompanied by a copy or summary of the plan of dissolution.

23 5. If the board seeks to have the dissolution approved by
24 the members by written consent or written ballot, the material
25 soliciting the approval shall contain or be accompanied by a
26 copy or summary of the plan of dissolution.

27 6. The plan of dissolution shall indicate to whom the
28 assets owned or held by the corporation will be distributed
29 after all creditors have been paid.

30 Sec. 140. NEW SECTION. 504A.1403 NOTICES TO THE ATTORNEY
31 GENERAL.

32 1. A public benefit or religious corporation shall give
33 the attorney general written notice that it intends to
34 dissolve at or before the time it delivers articles of
35 dissolution to the secretary of state. The notice shall

1 include a copy or summary of the plan of dissolution.

2 2. Assets shall not be transferred or conveyed by a public
3 benefit or religious corporation as part of the dissolution
4 process until twenty days after it has given the written
5 notice required by subsection 1 to the attorney general or
6 until the attorney general has consented in writing to, or
7 indicated in writing that, the attorney general will take no
8 action in respect to the transfer or conveyance, whichever is
9 earlier.

10 3. When all or substantially all of the assets of a public
11 benefit corporation have been transferred or conveyed
12 following approval of dissolution, the board shall deliver to
13 the attorney general a list showing to whom, other than
14 creditors, the assets were transferred or conveyed. The list
15 shall indicate the addresses of each person, other than
16 creditors, who received assets and indicate what assets each
17 received.

18 Sec. 141. NEW SECTION. 504A.1404 ARTICLES OF
19 DISSOLUTION.

20 1. At any time after dissolution is authorized, a
21 corporation may dissolve by delivering articles of dissolution
22 to the secretary of state setting forth all of the following:

23 a. The name of the corporation.

24 b. The date dissolution was authorized.

25 c. A statement that dissolution was approved by a
26 sufficient vote of the board.

27 d. If approval of members was not required, a statement to
28 that effect and a statement that dissolution was approved by a
29 sufficient vote of the board of directors or incorporators.

30 e. If approval by members was required, both of the
31 following:

32 (1) The designation, number of memberships outstanding,
33 number of votes entitled to be cast by each class entitled to
34 vote separately on dissolution, and number of votes of each
35 class indisputably voting on dissolution.

1 (2) Either the total number of votes cast for and against
2 dissolution by each class entitled to vote separately on
3 dissolution or the total number of undisputed votes cast for
4 dissolution by each class and a statement that the number cast
5 for dissolution by each class was sufficient for approval by
6 that class.

7 f. If approval of dissolution by some person or persons
8 other than the members, the board, or the incorporators is
9 required pursuant to section 504A.1402, subsection 1,
10 paragraph "c", a statement that the approval was obtained.

11 g. If the corporation is a public benefit or religious
12 corporation, that the notice to the attorney general required
13 by section 504A.1403, subsection 1, has been given.

14 2. A corporation is dissolved upon the effective date of
15 its articles of dissolution.

16 Sec. 142. NEW SECTION. 504A.1405 REVOCATION OF
17 DISSOLUTION.

18 1. A corporation may revoke its dissolution within one
19 hundred twenty days of its effective date.

20 2. Revocation of dissolution must be authorized in the
21 same manner as the dissolution was authorized unless that
22 authorization permitted revocation by action of the board of
23 directors alone, in which event the board of directors may
24 revoke the dissolution without action by the members or any
25 other person.

26 3. After the revocation of dissolution is authorized, the
27 corporation may revoke the dissolution by delivering to the
28 secretary of state for filing, articles of revocation of
29 dissolution, together with a copy of its articles of
30 dissolution, that set forth all of the following:

31 a. The name of the corporation.

32 b. The effective date of the dissolution that was revoked.

33 c. The date that the revocation of dissolution was
34 authorized.

35 d. If the corporation's board of directors or

1 incorporators revoked the dissolution, a statement to that
2 effect.

3 e. If the corporation's board of directors revoked a
4 dissolution authorized by the members alone or in conjunction
5 with another person or persons, a statement that revocation
6 was permitted by action of the board of directors alone
7 pursuant to that authorization.

8 f. If member or third person action was required to revoke
9 the dissolution, the information required by section
10 504A.1404, subsection 1, paragraphs "e" and "f".

11 4. Revocation of dissolution is effective upon the
12 effective date of the articles of revocation of dissolution.

13 5. When the revocation of dissolution is effective, it
14 relates back to and takes effect as of the effective date of
15 the dissolution and the corporation resumes carrying on its
16 activities as if dissolution had never occurred.

17 Sec. 143. NEW SECTION. 504A.1406 EFFECT OF DISSOLUTION.

18 1. A dissolved corporation continues its corporate
19 existence but shall not carry on any activities except those
20 appropriate to wind up and liquidate its affairs, including
21 all of the following:

22 a. Preserving and protecting its assets and minimizing its
23 liabilities.

24 b. Discharging or making provision for discharging its
25 liabilities and obligations.

26 c. Disposing of its properties that will not be
27 distributed in kind.

28 d. Returning, transferring, or conveying assets held by
29 the corporation upon a condition requiring return, transfer,
30 or conveyance, which condition occurs by reason of the
31 dissolution, in accordance with such condition.

32 e. Transferring, subject to any contractual or legal
33 requirements, its assets as provided in or authorized by its
34 articles of incorporation or bylaws.

35 f. If the corporation is a public benefit or religious

1 corporation, and a provision has not been made in its articles
2 or bylaws for distribution of assets on dissolution,
3 transferring, subject to any contractual or legal requirement,
4 its assets to one or more persons described in section
5 501(c)(3) of the Internal Revenue Code, or if the dissolved
6 corporation is not described in section 501(c)(3) of the
7 Internal Revenue Code, to one or more public benefit or
8 religious corporations.

9 g. If the corporation is a mutual benefit corporation and
10 a provision has not been made in its articles or bylaws for
11 distribution of assets on dissolution, transferring its assets
12 to its members or, if it has no members, those persons whom
13 the corporation holds itself out as benefiting or serving.

14 h. Doing every other act necessary to wind up and
15 liquidate its assets and affairs.

16 2. Dissolution of a corporation does not do any of the
17 following:

18 a. Transfer title to the corporation's property.

19 b. Subject its directors or officers to standards of
20 conduct different from those prescribed in subchapter 8.

21 c. Change quorum or voting requirements for its board or
22 members; change provisions for selection, resignation, or
23 removal of its directors or officers or both; or change
24 provisions for amending its bylaws.

25 d. Prevent commencement of a proceeding by or against the
26 corporation in its corporate name.

27 e. Abate or suspend a proceeding pending by or against the
28 corporation on the effective date of dissolution.

29 f. Terminate the authority of the registered agent.

30 Sec. 144. NEW SECTION. 504A.1407 KNOWN CLAIMS AGAINST
31 DISSOLVED CORPORATION.

32 1. A dissolved corporation may dispose of the known claims
33 against it by following the procedure described in this
34 section.

35 2. The dissolved corporation shall notify its known

1 claimants in writing of the dissolution at any time after the
2 effective date of the dissolution. The written notice must do
3 all of the following:

4 a. Describe information that must be included in a claim.

5 b. Provide a mailing address where a claim may be sent.

6 c. State the deadline, which shall not be fewer than one
7 hundred twenty days from the effective date of the written
8 notice, by which the dissolved corporation must receive the
9 claim.

10 d. State that the claim will be barred if not received by
11 the deadline.

12 3. A claim against the dissolved corporation is barred if
13 either of the following occurs:

14 a. A claimant who was given written notice under
15 subsection 2 does not deliver the claim to the dissolved
16 corporation by the deadline.

17 b. A claimant whose claim was rejected by the dissolved
18 corporation does not commence a proceeding to enforce the
19 claim within ninety days from the effective date of the
20 rejection notice.

21 4. For purposes of this section, "claim" does not include
22 a contingent liability or a claim based on an event occurring
23 after the effective date of dissolution.

24 Sec. 145. NEW SECTION. 504A.1408 UNKNOWN CLAIMS AGAINST
25 DISSOLVED CORPORATION.

26 1. A dissolved corporation may also publish notice of its
27 dissolution and request that persons with claims against the
28 corporation present them in accordance with the notice.

29 2. The notice must do all of the following:

30 a. Be published one time in a newspaper of general
31 circulation in the county where the dissolved corporation's
32 principal office is located, or, if none is located in this
33 state, where its registered office is or was last located.

34 b. Describe the information that must be included in a
35 claim and provide a mailing address where the claim may be

1 sent.

2 c. State that a claim against the corporation will be
3 barred unless a proceeding to enforce the claim is commenced
4 within five years after publication of the notice.

5 3. If the dissolved corporation publishes a newspaper
6 notice in accordance with subsection 2, the claim of each of
7 the following claimants is barred unless the claimant
8 commences a proceeding to enforce the claim against the
9 dissolved corporation within five years after the publication
10 date of the newspaper notice:

11 a. A claimant who did not receive written notice under
12 section 504A.1407.

13 b. A claimant whose claim was timely sent to the dissolved
14 corporation but not acted on.

15 c. A claimant whose claim is contingent or based on an
16 event occurring after the effective date of dissolution.

17 4. A claim may be enforced under this section to the
18 following extent, as applicable:

19 a. Against the dissolved corporation, to the extent of its
20 undistributed assets.

21 b. If the assets have been distributed in liquidation,
22 against any person, other than a creditor of the corporation,
23 to whom the corporation distributed its property to the extent
24 of the distributee's pro rata share of the claim or the
25 corporate assets distributed to such person in liquidation,
26 whichever is less, but the distributee's total liability for
27 all claims under this section shall not exceed the total
28 amount of assets distributed to the distributee.

29 PART 2

30 ADMINISTRATIVE DISSOLUTION

31 Sec. 146. NEW SECTION. 504A.1421 GROUNDS FOR
32 ADMINISTRATIVE DISSOLUTION.

33 The secretary of state may commence a proceeding under
34 section 504A.1422 to administratively dissolve a corporation
35 if any of the following occurs:

1 1. The corporation does not deliver its biennial report to
2 the secretary of state, in a form that meets the requirements
3 of section 504A.1613, within sixty days after the report is
4 due.

5 2. The corporation is without a registered agent or
6 registered office in this state for sixty days or more.

7 3. The corporation does not notify the secretary of state
8 within sixty days that its registered agent or registered
9 office has been changed, that its registered agent has
10 resigned, or that its registered office has been discontinued.

11 4. The corporation's period of duration, if any, stated in
12 its articles of incorporation expires.

13 Sec. 147. NEW SECTION. 504A.1422 PROCEDURE FOR AND
14 EFFECT OF ADMINISTRATIVE DISSOLUTION.

15 1. Upon determining that one or more grounds exist under
16 section 504A.1421 for dissolving a corporation, the secretary
17 of state shall serve the corporation with written notice of
18 that determination under section 504A.504, and in the case of
19 a public benefit corporation shall notify the attorney general
20 in writing of that determination.

21 2. If the corporation does not correct each ground for
22 dissolution or demonstrate to the reasonable satisfaction of
23 the secretary of state that each ground determined by the
24 secretary of state does not exist within at least sixty days
25 after service of notice is perfected under section 504A.504,
26 the secretary of state may administratively dissolve the
27 corporation by signing a certificate of dissolution that
28 recites the ground or grounds for dissolution and its
29 effective date. The secretary of state shall file the
30 original of the certificate of dissolution and serve a copy on
31 the corporation under section 504A.504, and in the case of a
32 public benefit corporation shall notify the attorney general
33 in writing of the dissolution.

34 3. A corporation administratively dissolved continues its
35 corporate existence but may not carry on any activities except

1 those necessary to wind up and liquidate its affairs pursuant
2 to section 504A.1406 and notify its claimants pursuant to
3 sections 504A.1407 and 504A.1408.

4 4. The administrative dissolution of a corporation does
5 not terminate the authority of its registered agent.

6 5. The secretary of state's administrative dissolution of
7 a corporation pursuant to this section appoints the secretary
8 of state as the corporation's agent for service of process in
9 any proceeding based on a cause of action which arose during
10 the time the corporation was authorized to transact business
11 in this state. Service of process on the secretary of state
12 under this subsection is service on the corporation. Upon
13 receipt of process, the secretary of state shall serve a copy
14 of the process on the corporation as provided in section
15 504A.504. This subsection does not preclude service on the
16 corporation's registered agent, if any.

17 Sec. 148. NEW SECTION. 504A.1423 REINSTATEMENT FOLLOWING
18 ADMINISTRATIVE DISSOLUTION.

19 1. A corporation administratively dissolved under section
20 504A.1422 may apply to the secretary of state for
21 reinstatement within two years after the effective date of
22 dissolution. The application must state all of the following:

23 a. The name of the corporation and the effective date of
24 its administrative dissolution.

25 b. That the ground or grounds for dissolution either did
26 not exist or have been eliminated.

27 c. That the corporation's name satisfies the requirements
28 of section 504A.401.

29 d. The federal tax identification number of the
30 corporation.

31 2. a. The secretary of state shall refer the federal tax
32 identification number contained in the application for
33 reinstatement to the department of revenue and finance. The
34 department of revenue and finance shall report to the
35 secretary of state the tax status of the corporation. If the

1 department reports to the secretary of state that a filing
2 delinquency or liability exists against the corporation, the
3 secretary of state shall not cancel the certificate of
4 dissolution until the filing delinquency or liability is
5 satisfied.

6 b. If the secretary of state determines that the
7 application contains the information required by subsection 1,
8 that a delinquency or liability reported pursuant to paragraph
9 "a" has been satisfied, and that all of the application
10 information is correct, the secretary of state shall cancel
11 the certificate of dissolution and prepare a certificate of
12 reinstatement reciting that determination and the effective
13 date of reinstatement, file the original of the certificate,
14 and serve a copy on the corporation under section 504A.504.
15 If the corporate name in subsection 1, paragraph "c", is
16 different from the corporate name in subsection 1, paragraph
17 "a", the certificate of reinstatement shall constitute an
18 amendment to the articles of incorporation insofar as it
19 pertains to the corporate name.

20 3. When reinstatement is effective, it relates back to and
21 takes effect as of the effective date of the administrative
22 dissolution and the corporation shall resume carrying on its
23 activities as if the administrative dissolution had never
24 occurred.

25 Sec. 149. NEW SECTION. 504A.1424 APPEAL FROM DENIAL OF
26 REINSTATEMENT.

27 1. The secretary of state, upon denying a corporation's
28 application for reinstatement following administrative
29 dissolution, shall serve the corporation under section
30 504A.504 with a written notice that explains the reason or
31 reasons for denial.

32 2. The corporation may appeal the denial of reinstatement
33 to the district court within ninety days after service of the
34 notice of denial is perfected by petitioning to set aside the
35 dissolution and attaching to the petition copies of the

1 secretary of state's certificate of dissolution, the
2 corporation's application for reinstatement, and the secretary
3 of state's notice of denial of reinstatement.

4 3. The court may summarily order the secretary of state to
5 reinstate the dissolved corporation or may take other action
6 the court considers appropriate.

7 4. The court's final decision may be appealed as in other
8 civil proceedings.

9 PART 3

10 JUDICIAL DISSOLUTION

11 Sec. 150. NEW SECTION. 504A.1431 GROUNDS FOR JUDICIAL
12 DISSOLUTION.

13 1. The district court may dissolve a corporation in any of
14 the following ways:

15 a. In a proceeding brought by the attorney general, if any
16 of the following is established:

17 (1) The corporation obtained its articles of incorporation
18 through fraud.

19 (2) The corporation has continued to exceed or abuse the
20 authority conferred upon it by law.

21 (3) The corporation is a public benefit corporation and
22 the corporate assets are being misapplied or wasted.

23 (4) The corporation is a public benefit corporation and is
24 no longer able to carry out its purposes.

25 b. Except as provided in the articles or bylaws of a
26 religious corporation, in a proceeding brought by fifty
27 members or members holding five percent of the voting power,
28 whichever is less, or by a director or any person specified in
29 the articles, if any of the following is established:

30 (1) The directors are deadlocked in the management of the
31 corporate affairs, and the members, if any, are unable to
32 break the deadlock.

33 (2) The directors or those in control of the corporation
34 have acted, are acting, or will act in a manner that is
35 illegal, oppressive, or fraudulent.

1 (3) The members are deadlocked in voting power and have
2 failed, for a period that includes at least two consecutive
3 annual meeting dates, to elect successors to directors whose
4 terms have, or would otherwise have, expired.

5 (4) The corporate assets are being misapplied or wasted.

6 (5) The corporation is a public benefit or religious
7 corporation and is no longer able to carry out its purposes.

8 c. In a proceeding brought by a creditor, if either of the
9 following is established:

10 (1) The creditor's claim has been reduced to judgment, the
11 execution on the judgment is returned unsatisfied, and the
12 corporation is insolvent.

13 (2) The corporation has admitted in writing that the
14 creditor's claim is due and owing and the corporation is
15 insolvent.

16 d. In a proceeding brought by the corporation to have its
17 voluntary dissolution continued under court supervision.

18 2. Prior to dissolving a corporation, the court shall
19 consider whether:

20 a. There are reasonable alternatives to dissolution.

21 b. Dissolution is in the public interest, if the
22 corporation is a public benefit corporation.

23 c. Dissolution is the best way of protecting the interests
24 of members, if the corporation is a mutual benefit
25 corporation.

26 Sec. 151. NEW SECTION. 504A.1432 PROCEDURE FOR JUDICIAL
27 DISSOLUTION.

28 1. Venue for a proceeding brought by the attorney general
29 to dissolve a corporation lies in Polk county. Venue for a
30 proceeding brought by any other party named in section
31 504A.1431 lies in the county where a corporation's principal
32 office is located or, if none is located in this state, where
33 its registered office is or was last located.

34 2. It is not necessary to make directors or members
35 parties to a proceeding to dissolve a corporation unless

1 relief is sought against them individually.

2 3. A court in a proceeding brought to dissolve a
3 corporation may issue injunctions, appoint a receiver or
4 custodian pendente lite with all powers and duties the court
5 directs, take other action required to preserve the corporate
6 assets wherever located, or carry on the activities of the
7 corporation until a full hearing can be held.

8 4. A person other than the attorney general who brings an
9 involuntary dissolution proceeding for a public benefit or
10 religious corporation shall immediately give written notice of
11 the proceeding to the attorney general who may then intervene.

12 Sec. 152. NEW SECTION. 504A.1433 RECEIVERSHIP OR
13 CUSTODIANSHIP.

14 1. A court in a judicial proceeding brought to dissolve a
15 public benefit or mutual benefit corporation may appoint one
16 or more receivers to wind up and liquidate, or one or more
17 custodians to manage, the affairs of the corporation. The
18 court shall hold a hearing, after notifying all parties to the
19 proceeding and any interested persons designated by the court,
20 before appointing a receiver or custodian. The court
21 appointing a receiver or custodian has exclusive jurisdiction
22 over the corporation and all of its property wherever located.

23 2. The court may appoint an individual, or a domestic or
24 foreign business or nonprofit corporation authorized to
25 transact business in this state as a receiver or custodian.
26 The court may require the receiver or custodian to post bond,
27 with or without sureties, in an amount the court directs.

28 3. The court shall describe the powers and duties of the
29 receiver or custodian in its appointing order, which may be
30 amended including the following:

31 a. The receiver or custodian may dispose of all or any
32 part of the assets of the corporation wherever located, at a
33 public or private sale, if authorized by the court. However,
34 the receiver's or custodian's power to dispose of the assets
35 of the corporation is subject to any trust and other

1 restrictions that would be applicable to the corporation. The
2 receiver or custodian may sue and defend in the receiver's or
3 custodian's name as receiver or custodian of the corporation,
4 as applicable, in all courts of this state.

5 b. The custodian may exercise all of the powers of the
6 corporation, through or in place of its board of directors or
7 officers, to the extent necessary to manage the affairs of the
8 corporation in the best interests of its members and
9 creditors.

10 4. The court during a receivership may redesignate the
11 receiver a custodian, and during a custodianship may
12 redesignate the custodian a receiver, if doing so is in the
13 best interests of the corporation, its members, and creditors.

14 5. The court during the receivership or custodianship may
15 order compensation paid and expense disbursements or
16 reimbursements made to the receiver or custodian and to the
17 receiver's or custodian's attorney from the assets of the
18 corporation or proceeds from the sale of the assets.

19 Sec. 153. NEW SECTION. 504A.1434 DECREE OF DISSOLUTION.

20 1. If after a hearing the court determines that one or
21 more grounds for judicial dissolution described in section
22 504A.1431 exist, the court may enter a decree dissolving the
23 corporation and specifying the effective date of the
24 dissolution, and the clerk of the court shall deliver a
25 certified copy of the decree to the secretary of state, who
26 shall file it.

27 2. After entering the decree of dissolution, the court
28 shall direct the winding up of the corporation's affairs and
29 liquidation of the corporation in accordance with section
30 504A.1406 and the notification of its claimants in accordance
31 with sections 504A.1407 and 504A.1408.

32

PART 4

33

MISCELLANEOUS

34 Sec. 154. NEW SECTION. 504A.1441 DEPOSIT WITH STATE
35 TREASURER.

1 Assets of a dissolved corporation which should be
2 transferred to a creditor, claimant, or member of the
3 corporation who cannot be found or who is not competent to
4 receive them shall be reduced to cash subject to known trust
5 restrictions and deposited with the treasurer of state for
6 safekeeping. However, in the treasurer of state's discretion,
7 property may be received and held in kind. When the creditor,
8 claimant, or member furnishes satisfactory proof of
9 entitlement to the amount deposited or property held in kind,
10 the treasurer of state shall deliver to the creditor, member,
11 or other person or to the representative of the creditor,
12 member, or other person that amount or property.

13 SUBCHAPTER XV

14 FOREIGN CORPORATIONS

15 PART 1

16 CERTIFICATE OF AUTHORITY

17 Sec. 155. NEW SECTION. 504A.1501 AUTHORITY TO TRANSACT
18 BUSINESS REQUIRED.

19 1. A foreign corporation shall not transact business in
20 this state until it obtains a certificate of authority from
21 the secretary of state.

22 2. The following activities, among others, do not
23 constitute transacting business within the meaning of
24 subsection 1:

25 a. Maintaining, defending, or settling any proceeding.

26 b. Holding meetings of the board of directors or members
27 or carrying on other activities concerning internal corporate
28 affairs.

29 c. Maintaining bank accounts.

30 d. Maintaining offices or agencies for the transfer,
31 exchange, or registration of memberships or securities or
32 maintaining trustees or depositaries with respect to those
33 securities.

34 e. Selling through independent contractors.

35 f. Soliciting or obtaining orders, whether by mail or

1 through employees or agents or otherwise, if the orders
2 require acceptance outside this state before they become
3 contracts.

4 g. Creating or acquiring indebtedness, mortgages, or
5 security interests in real or personal property.

6 h. Securing or collecting debts or enforcing mortgages or
7 security interests in property securing the debts.

8 i. Owning, without more, real or personal property.

9 j. Conducting an isolated transaction that is completed
10 within thirty days and that is not one in the course of
11 repeated transactions of a like nature.

12 k. Transacting business in interstate commerce.

13 Sec. 156. NEW SECTION. 504A.1502 CONSEQUENCES OF
14 TRANSACTING BUSINESS WITHOUT AUTHORITY.

15 1. A foreign corporation transacting business in this
16 state without a certificate of authority shall not maintain a
17 proceeding in any court in this state until it obtains a
18 certificate of authority.

19 2. The successor to a foreign corporation that transacted
20 business in this state without a certificate of authority and
21 the assignee of a cause of action arising out of that business
22 shall not maintain a proceeding on that cause of action in any
23 court in this state until the foreign corporation or its
24 successor obtains a certificate of authority.

25 3. A court may stay a proceeding commenced by a foreign
26 corporation, its successor, or assignee until the court
27 determines whether the foreign corporation or its successor
28 requires a certificate of authority. If it so determines, the
29 court may further stay the proceeding until the foreign
30 corporation or its successor obtains the certificate.

31 4. A foreign corporation is liable for a civil penalty of
32 an amount not to exceed a total of one thousand dollars if it
33 transacts business in this state without a certificate of
34 authority. The attorney general may collect all penalties due
35 under this subsection.

1 5. Notwithstanding subsections 1 and 2, the failure of a
2 foreign corporation to obtain a certificate of authority does
3 not impair the validity of its corporate acts or prevent it
4 from defending any proceeding in this state.

5 Sec. 157. NEW SECTION. 504A.1503 APPLICATION FOR
6 CERTIFICATE OF AUTHORITY.

7 1. A foreign corporation may apply for a certificate of
8 authority to transact business in this state by delivering an
9 application to the secretary of state. The application must
10 set forth all of the following:

11 a. The name of the foreign corporation or, if its name is
12 unavailable for use in this state, a corporate name that
13 satisfies the requirements of section 504A.1506.

14 b. The name of the state or country under whose law it is
15 incorporated.

16 c. The date of incorporation and period of duration.

17 d. The address of its principal office.

18 e. The address of its registered office in this state and
19 the name of its registered agent at that office.

20 f. The names and usual business or home addresses of its
21 current directors and officers.

22 g. Whether the foreign corporation has members.

23 h. Whether the corporation, if it had been incorporated in
24 this state, would be a public benefit, mutual benefit, or
25 religious corporation.

26 2. The foreign corporation shall deliver the completed
27 application to the secretary of state, and shall also deliver
28 to the secretary of state a certificate of existence or a
29 document of similar import duly authenticated by the secretary
30 of state or other official having custody of corporate records
31 in the state or country under whose law it is incorporated
32 which is dated no earlier than ninety days prior to the date
33 the application is filed with the secretary of state.

34 Sec. 158. NEW SECTION. 504A.1504 AMENDED CERTIFICATE OF
35 AUTHORITY.

1 1. A foreign corporation authorized to transact business
2 in this state shall obtain an amended certificate of authority
3 from the secretary of state if it changes any of the
4 following:

- 5 a. Its corporate name.
- 6 b. The period of its duration.
- 7 c. The state or country of its incorporation.

8 2. The requirements of section 504A.1503 for obtaining an
9 original certificate of authority apply to obtaining an
10 amended certificate under this section.

11 Sec. 159. NEW SECTION. 504A.1505 EFFECT OF CERTIFICATE
12 OF AUTHORITY.

13 1. A certificate of authority authorizes the foreign
14 corporation to which it is issued to transact business in this
15 state subject, however, to the right of the state to revoke
16 the certificate as provided in this chapter.

17 2. A foreign corporation with a valid certificate of
18 authority has the same rights and has the same privileges as
19 and, except as otherwise provided by this chapter, is subject
20 to the same duties, restrictions, penalties, and liabilities
21 now or later imposed on a domestic corporation of like
22 character.

23 3. This chapter does not authorize this state to regulate
24 the organization or internal affairs of a foreign corporation
25 authorized to transact business in this state.

26 Sec. 160. NEW SECTION. 504A.1506 CORPORATE NAME OF
27 FOREIGN CORPORATION.

28 1. If the corporate name of a foreign corporation does not
29 satisfy the requirements of section 504A.401, the foreign
30 corporation, to obtain or maintain a certificate of authority
31 to transact business in this state, may use a fictitious name
32 to transact business in this state if the corporation's real
33 name is unavailable and it delivers to the secretary of state
34 for filing a copy of the resolution of its board of directors,
35 certified by its secretary, adopting the fictitious name.

1 2. Except as authorized by subsections 3 and 4, the
2 corporate name of a foreign corporation, including a
3 fictitious name, must be distinguishable upon the records of
4 the secretary of state from all of the following:

5 a. The corporate name of a nonprofit or business
6 corporation incorporated or authorized to transact business in
7 this state.

8 b. A corporate name reserved or registered under section
9 504A.402 or 504A.403 or section 490.402 or 490.403.

10 c. The fictitious name of another foreign business or
11 nonprofit corporation authorized to transact business in this
12 state.

13 3. A foreign corporation may apply to the secretary of
14 state for authorization to use in this state the name of
15 another corporation incorporated or authorized to transact
16 business in this state that is not distinguishable upon the
17 records of the secretary of state from the name applied for.
18 The secretary of state shall authorize use of the name applied
19 for if either of the following applies:

20 a. The other corporation consents to the use in writing
21 and submits an undertaking in a form satisfactory to the
22 secretary of state to change its name to a name that is
23 distinguishable upon the records of the secretary of state
24 from the name of the applying corporation.

25 b. The applicant delivers to the secretary of state a
26 certified copy of a final judgment of a court of competent
27 jurisdiction establishing the applicant's right to use the
28 name applied for in this state.

29 4. A foreign corporation may use in this state the name,
30 including the fictitious name, of another domestic or foreign
31 business or nonprofit corporation that is used in this state
32 if the other corporation is incorporated or authorized to
33 transact business in this state and the foreign corporation
34 has filed documentation satisfactory to the secretary of state
35 of the occurrence of any of the following:

1 a. The foreign corporation has merged with the other
2 corporation.

3 b. The foreign corporation has been formed by
4 reorganization of the other corporation.

5 c. The foreign corporation has acquired all or
6 substantially all of the assets, including the corporate name,
7 of the other corporation.

8 5. If a foreign corporation authorized to transact
9 business in this state changes its corporate name to one that
10 does not satisfy the requirements of section 504A.401, it
11 shall not transact business in this state under the changed
12 name until it adopts a name satisfying the requirements of
13 section 504A.401 and obtains an amended certificate of
14 authority under section 504A.1504.

15 Sec. 161. NEW SECTION. 504A.1507 REGISTERED OFFICE AND
16 REGISTERED AGENT OF FOREIGN CORPORATION.

17 Each foreign corporation authorized to transact business in
18 this state shall continuously maintain in this state both of
19 the following:

20 1. A registered office with the same address as that of
21 its registered agent.

22 2. A registered agent, who may be any of the following:

23 a. An individual who resides in this state and whose
24 office is identical to the registered office.

25 b. A domestic business or nonprofit corporation whose
26 office is identical to the registered office.

27 c. A foreign business or nonprofit corporation authorized
28 to transact business in this state whose office is identical
29 to the registered office.

30 Sec. 162. NEW SECTION. 504A.1508 CHANGE OF REGISTERED
31 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

32 1. A foreign corporation authorized to transact business
33 in this state may change its registered office or registered
34 agent by delivering to the secretary of state for filing a
35 statement of change that sets forth all of the following that

1 apply:

2 a. The name of its registered office or registered agent.

3 b. If the current registered office is to be changed, the
4 address of its new registered office.

5 c. If the current registered agent is to be changed, the
6 name of its new registered agent and the new agent's written
7 consent to the appointment, either on the statement or
8 attached to it.

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 a registered agent changes the address of its
13 business office, the agent may change the address of the
14 registered office of any foreign corporation for which the
15 agent is the registered agent by notifying the corporation in
16 writing of the change and signing either manually or in
17 facsimile and delivering to the secretary of state for filing
18 a statement of change 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 must be
28 signed either manually or in facsimile only by the registered
29 agent and must recite that a copy of the statement has been
30 mailed to each corporation named in the notice.

31 4. A corporation may also change its registered office or
32 registered agent in its biennial report as provided in section
33 504A.1613.

34 Sec. 163. NEW SECTION. 504A.1509 RESIGNATION OF
35 REGISTERED AGENT OF FOREIGN CORPORATION.

1 1. The registered agent of a foreign corporation may
2 resign as agent by signing and delivering to the secretary of
3 state for filing the original statement of resignation. The
4 statement of resignation may include a statement that the
5 registered office is also discontinued.

6 The registered agent shall send a copy of the statement of
7 resignation by certified mail to the corporation at its
8 principal office and to the registered office, if not
9 discontinued. The registered agent shall certify to the
10 secretary of state that the copies have been sent to the
11 corporation, including the date the copies were sent.

12 2. The agency appointment is terminated, and the
13 registered office discontinued if so provided, on the date on
14 which the statement is filed with the secretary of state.

15 Sec. 164. NEW SECTION. 504A.1510 SERVICE ON FOREIGN
16 CORPORATION.

17 1. The registered agent of a foreign corporation
18 authorized to transact business in this state is the
19 corporation's agent for service of process, notice, or demand
20 required or permitted by law to be served on the foreign
21 corporation.

22 2. A foreign corporation may be served by registered or
23 certified mail, return receipt requested, addressed to the
24 secretary of the foreign corporation at its principal office
25 shown in its application for a certificate of authority or in
26 its most recent biennial report filed under section 504A.1613
27 if any of the following conditions apply:

28 a. The foreign corporation has no registered agent or its
29 registered agent cannot with reasonable diligence be served.

30 b. The foreign corporation has withdrawn from transacting
31 business in this state under section 504A.1521.

32 c. The foreign corporation has had its certificate of
33 authority revoked under section 504A.1532.

34 3. Service is perfected under subsection 2 at the earliest
35 of any of the following:

1 a. The date the foreign corporation receives the mail.

2 b. The date shown on the return receipt, if signed on
3 behalf of the foreign corporation.

4 c. Five days after its deposit in the United States mail,
5 as evidenced by the postmark, if mailed postpaid and correctly
6 addressed.

7 4. This section does not prescribe the only means, or
8 necessarily the required means, of serving a foreign
9 corporation. A foreign corporation may also be served in any
10 other manner permitted by law.

11 PART 2

12 WITHDRAWAL

13 Sec. 165. NEW SECTION. 504A.1521 WITHDRAWAL OF FOREIGN
14 CORPORATION.

15 1. A foreign corporation authorized to transact business
16 in this state shall not withdraw from this state until it
17 obtains a certificate of withdrawal from the secretary of
18 state.

19 2. A foreign corporation authorized to transact business
20 in this state may apply for a certificate of withdrawal by
21 delivering an application to the secretary of state for
22 filing. The application shall set forth all of the following:

23 a. The name of the foreign corporation and the name of the
24 state or country under whose law it is incorporated.

25 b. That it is not transacting business in this state and
26 that it surrenders its authority to transact business in this
27 state.

28 c. That it revokes the authority of its registered agent
29 to accept service on its behalf and appoints the secretary of
30 state as its agent for service of process in any proceeding
31 based on a cause of action arising during the time it was
32 authorized to do business in this state.

33 d. A mailing address to which the secretary of state may
34 mail a copy of any process served on the secretary of state
35 under paragraph "c".

1 3. After the withdrawal of the corporation is effective,
2 service of process on the secretary of state under this
3 section is service on the foreign corporation. Upon receipt
4 of process, the secretary of state shall mail a copy of the
5 process to the foreign corporation at the mailing address set
6 forth in its application for withdrawal.

7

PART 3

8

REVOCAION OF CERTIFICATE OF AUTHORITY

9

Sec. 166. NEW SECTION. 504A.1531 GROUNDS FOR REVOCATION.

10 1. The secretary of state may commence a proceeding under
11 section 504A.1532 to revoke the certificate of authority of a
12 foreign corporation authorized to transact business in this
13 state if any of the following applies:

14 a. The foreign corporation does not deliver the biennial
15 report to the secretary of state in a form that meets the
16 requirements of section 504A.1613 within sixty days after it
17 is due.

18 b. The foreign corporation is without a registered agent
19 or registered office in this state for sixty days or more.

20 c. The foreign corporation does not inform the secretary
21 of state under section 504A.1508 or 504A.1509 that its
22 registered agent or registered office has changed, that its
23 registered agent has resigned, or that its registered office
24 has been discontinued within ninety days of the change,
25 resignation, or discontinuance.

26 d. An incorporator, director, officer, or agent of the
27 foreign corporation signed a document that such person knew
28 was false in any material respect with intent that the
29 document be delivered to the secretary of state for filing.

30 e. The secretary of state receives a duly authenticated
31 certificate from the secretary of state or other official
32 having custody of corporate records in the state or country
33 under whose law the foreign corporation is incorporated,
34 stating that it has been dissolved or disappeared as the
35 result of a merger.

1 2. The attorney general may commence a proceeding under
2 section 504A.1532 to revoke the certificate of authority of a
3 foreign corporation authorized to transact business in this
4 state if any of the following applies:

5 a. The corporation has continued to exceed or abuse the
6 authority conferred upon it by law.

7 b. The corporation would have been a public benefit
8 corporation had it been incorporated in this state and its
9 corporate assets in this state are being misapplied or wasted.

10 c. The corporation would have been a public benefit
11 corporation had it been incorporated in this state and it is
12 no longer able to carry out its purposes.

13 Sec. 167. NEW SECTION. 504A.1532 PROCEDURE FOR AND
14 EFFECT OF REVOCATION.

15 1. The secretary of state, upon determining that one or
16 more grounds exist under section 504A.1531 for revocation of a
17 certificate of authority, shall serve the foreign corporation
18 with written notice of that determination under section
19 504A.1510.

20 2. The attorney general, upon determining that one or more
21 grounds exist under section 504A.1531, subsection 2, for
22 revocation of a certificate of authority, shall request the
23 secretary of state to serve, and the secretary of state shall
24 serve, the foreign corporation with written notice of that
25 determination under section 504A.1510.

26 3. If the foreign corporation does not correct each ground
27 for revocation or demonstrate to the reasonable satisfaction
28 of the secretary of state or attorney general that each ground
29 for revocation determined by the secretary of state or
30 attorney general does not exist within sixty days after
31 service of the notice is perfected under section 504A.1510,
32 the secretary of state may revoke the foreign corporation's
33 certificate of authority by signing a certificate of
34 revocation that recites the ground or grounds for revocation
35 and its effective date. The secretary of state shall file the

1 original of the certificate and serve a copy on the foreign
2 corporation under section 504A.1510.

3 4. The authority of a foreign corporation to transact
4 business in this state ceases on the date shown on the
5 certificate revoking its certificate of authority.

6 5. The secretary of state's revocation of a foreign
7 corporation's certificate of authority appoints the secretary
8 of state the foreign corporation's agent for service of
9 process in any proceeding based on a cause of action that
10 arose during the time the foreign corporation was authorized
11 to transact business in this state. Service of process on the
12 secretary of state under this subsection is service on the
13 foreign corporation. Upon receipt of process, the secretary
14 of state shall mail a copy of the process to the secretary of
15 the foreign corporation at its principal office shown in its
16 most recent biennial report or in any subsequent
17 communications received from the corporation stating the
18 current mailing address of its principal office, or, if none
19 are on file, in its application for a certificate of
20 authority.

21 6. Revocation of a foreign corporation's certificate of
22 authority does not terminate the authority of the registered
23 agent of the corporation.

24 Sec. 168. NEW SECTION. 504A.1533 APPEAL FROM REVOCATION.

25 1. A foreign corporation may appeal the secretary of
26 state's revocation of its certificate of authority to the
27 district court within thirty days after the service of the
28 certificate of revocation is perfected under section 504A.1510
29 by petitioning to set aside the revocation and attaching to
30 the petition copies of its certificate of authority and the
31 secretary of state's certificate of revocation.

32 2. The court may summarily order the secretary of state to
33 reinstate the certificate of authority or may take any other
34 action the court considers appropriate.

35 3. The court's final decision may be appealed as in other

1 civil proceedings.

2 SUBCHAPTER XVI

3 RECORDS AND REPORTS

4 PART 1

5 RECORDS

6 Sec. 169. NEW SECTION. 504A.1601 CORPORATE RECORDS.

7 1. A corporation shall keep as permanent records minutes
8 of all meetings of its members and board of directors, a
9 record of all actions taken by the members or directors
10 without a meeting, and a record of all actions taken by
11 committees of the board of directors as authorized by section
12 504A.826, subsection 4.

13 2. A corporation shall maintain appropriate accounting
14 records.

15 3. A corporation or its agent shall maintain a record of
16 its members in a form that permits preparation of a list of
17 the names and addresses of all members, in alphabetical order
18 by class, showing the number of votes each member is entitled
19 to vote.

20 4. A corporation shall maintain its records in written
21 form or in another form capable of conversion into written
22 form within a reasonable time.

23 5. A corporation shall keep a copy of all of the following
24 records:

25 a. Its articles or restated articles of incorporation and
26 all amendments to them currently in effect.

27 b. Its bylaws or restated bylaws and all amendments to
28 them currently in effect.

29 c. Resolutions adopted by its board of directors relating
30 to the characteristics, qualifications, rights, limitations,
31 and obligations of members or any class or category of
32 members.

33 d. The minutes of all meetings of members and records of
34 all actions approved by the members for the past three years.

35 e. All written communications to members generally within

1 the past three years, including the financial statements
2 furnished for the past three years under section 504A.1611.

3 f. A list of the names and business or home addresses of
4 its current directors and officers.

5 g. Its most recent biennial report delivered to the
6 secretary of state under section 504A.1613.

7 Sec. 170. NEW SECTION. 504A.1602 INSPECTION OF RECORDS
8 BY MEMBERS.

9 1. Subject to subsection 5, a member is entitled to
10 inspect and copy, at a reasonable time and location specified
11 by the corporation, any of the records of the corporation
12 described in section 504A.1601, subsection 5, if the member
13 gives the corporation written notice or a written demand at
14 least five business days before the date on which the member
15 wishes to inspect and copy.

16 2. Subject to subsection 5, a member is entitled to
17 inspect and copy, at a reasonable time and reasonable location
18 specified by the corporation, any of the following records of
19 the corporation if the member meets the requirements of
20 subsection 3 and gives the corporation written notice at least
21 five business days before the date on which the member wishes
22 to inspect and copy:

23 a. Excerpts from any records required to be maintained
24 under section 504A.1601, subsection 1, to the extent not
25 subject to inspection under section 504A.1602, subsection 1.

26 b. Accounting records of the corporation.

27 c. The membership list.

28 3. A member may inspect and copy the records identified in
29 subsection 2 only if all of the following apply:

30 a. The member's demand is made in good faith and for a
31 proper purpose.

32 b. The member describes with reasonable particularity the
33 purpose of the demand and the records the member desires to
34 inspect.

35 c. The records are directly connected to the purpose

1 described.

2 d. The board consents, if consent is required by section
3 504A.1605.

4 4. This section does not affect either of the following:

5 a. The right of a member to inspect records under section
6 504A.711 or, if the member is in litigation with the
7 corporation, to the same extent as any other litigant.

8 b. The power of a court, independently of this chapter, to
9 compel the production of corporate records for examination.

10 5. The articles or bylaws of a religious corporation may
11 limit or abolish the right of a member under this section to
12 inspect and copy any corporate record.

13 Sec. 171. NEW SECTION. 504A.1603 SCOPE OF INSPECTION
14 RIGHT.

15 1. A member's agent or attorney has the same inspection
16 and copying rights as the member the agent or attorney
17 represents.

18 2. The right to copy records under section 504A.1602
19 includes, if reasonable, the right to receive copies made by
20 photographic, xerographic, or other means.

21 3. The corporation may impose a reasonable charge,
22 covering the costs of labor and material, for copies of any
23 documents provided to the member. The charge shall not exceed
24 the estimated cost of production or reproduction of the
25 records.

26 4. The corporation may comply with a member's demand to
27 inspect the record of members under section 504A.1602,
28 subsection 2, paragraph "c", by providing the member with a
29 list of its members that was compiled no earlier than the date
30 of the member's demand.

31 Sec. 172. NEW SECTION. 504A.1604 COURT-ORDERED
32 INSPECTION.

33 1. If a corporation does not allow a member who complies
34 with section 504A.1602, subsection 1, to inspect and copy any
35 records required by that subsection to be available for

1 inspection, the district court in the county where the
2 corporation's principal office is located or, if none is
3 located in this state, where its registered office is located,
4 may summarily order inspection and copying of the records
5 demanded at the corporation's expense upon application of the
6 member.

7 2. If a corporation does not within a reasonable time
8 allow a member to inspect and copy any other records, the
9 member who complies with section 504A.1602, subsections 2 and
10 3, may apply to the district court in the county where the
11 corporation's principal office is located or, if none is
12 located in this state, where its registered office is located,
13 for an order to permit inspection and copying of the records
14 demanded. The court shall dispose of an application under
15 this subsection on an expedited basis.

16 3. If the court orders inspection and copying of the
17 records demanded, it shall also order the corporation to pay
18 the member's costs, including reasonable attorney fees
19 incurred, to obtain the order unless the corporation proves
20 that it refused inspection in good faith because it had a
21 reasonable basis for doubt about the right of the member to
22 inspect the records demanded.

23 4. If the court orders inspection and copying of the
24 records demanded, it may impose reasonable restrictions on the
25 use or distribution of the records by the demanding member.

26 Sec. 173. NEW SECTION. 504A.1605 LIMITATIONS ON USE OF
27 CORPORATE RECORDS.

28 Without consent of the board, no corporate record may be
29 obtained or used by any person for any purpose unrelated to a
30 member's interest as a member. Without limiting the
31 generality of the foregoing, without the consent of the board,
32 corporate records including, without limitation, a membership
33 list or any part thereof, shall not be used for any of the
34 following:

35 1. To solicit money or property unless such money or

1 property will be used solely to solicit the votes of the
2 members in an election to be held by the corporation.

3 2. For any commercial purpose.

4 3. For sale to or purchase by any person.

5 4. For any purpose that is detrimental to the interests of
6 the corporation.

7 Sec. 174. NEW SECTION. 504A.1606 INSPECTION OF RECORDS
8 BY DIRECTORS.

9 1. A director of a corporation is entitled to inspect and
10 copy the books, records, and documents of the corporation at
11 any reasonable time to the extent reasonably related to the
12 performance of the director's duties as a director, including
13 duties as a member of a committee, but not for any other
14 purpose or in any manner that would violate any duty to the
15 corporation.

16 2. The district court of the county where the
17 corporation's principal office, or if none in this state, its
18 registered office, is located may order inspection and copying
19 of the books, records, and documents at the corporation's
20 expense, upon application of a director who has been refused
21 such inspection rights, unless the corporation establishes
22 that the director is not entitled to such inspection rights.
23 The court shall dispose of an application under this
24 subsection on an expedited basis.

25 3. If an order is issued, the court may include provisions
26 protecting the corporation from undue burden or expense, and
27 prohibiting the director from using information obtained upon
28 exercise of the inspection rights in a manner that would
29 violate a duty to the corporation, and may also order the
30 corporation to reimburse the director for the director's
31 costs, including reasonable counsel fees, incurred in
32 connection with the application.

33

PART 2

34

REPORTS

35

Sec. 175. NEW SECTION. 504A.1611 FINANCIAL STATEMENTS

1 FOR MEMBERS.

2 1. Except as provided in the articles or bylaws of a
3 religious corporation, a corporation upon written demand from
4 a member shall furnish that member the corporation's latest
5 annual financial statements, which may be consolidated or
6 combined statements of the corporation and one or more of its
7 subsidiaries or affiliates, as appropriate, that include a
8 balance sheet as of the end of the fiscal year and a statement
9 of operations for that year.

10 2. If annual financial statements are reported upon by a
11 public accountant, the accountant's report must accompany
12 them.

13 Sec. 176. NEW SECTION. 504A.1612 REPORT OF
14 INDEMNIFICATION TO MEMBERS.

15 If a corporation indemnifies or advances expenses to a
16 director under section 504A.852, 504A.853, 504A.854, or
17 504A.855 in connection with a proceeding by or in the right of
18 the corporation, the corporation shall report the
19 indemnification or advance in writing to the members with or
20 before the notice of the next meeting of members.

21 Sec. 177. NEW SECTION. 504A.1613 BIENNIAL REPORT FOR
22 SECRETARY OF STATE.

23 1. Each domestic corporation, and each foreign corporation
24 authorized to transact business in this state, shall deliver
25 to the secretary of state for filing a biennial report on a
26 form prescribed and furnished by the secretary of state that
27 sets forth all of the following:

28 a. The name of the corporation and the state or country
29 under whose law it is incorporated.

30 b. The address of the corporation's registered office and
31 the name of the corporation's registered agent at that office
32 in this state, together with the consent of any new registered
33 agent.

34 c. The address of the corporation's principal office.

35 d. The names and addresses of the president, secretary,

1 treasurer, and one member of the board of directors.

2 e. A brief description of the nature of the corporation's
3 activities.

4 f. Whether or not the corporation has members.

5 g. If the corporation is a domestic corporation, whether
6 the corporation is a public benefit, mutual benefit, or
7 religious corporation.

8 h. If the corporation is a foreign corporation, whether
9 the corporation would be a public benefit, mutual benefit, or
10 religious corporation had the corporation been incorporated in
11 this state.

12 2. The information in the biennial report must be current
13 on the date the biennial report is executed on behalf of the
14 corporation.

15 3. The first biennial report shall be delivered to the
16 secretary of state between January 1 and April 1 of the first
17 odd-numbered year following the calendar year in which a
18 domestic corporation was incorporated or a foreign corporation
19 was authorized to transact business. Subsequent biennial
20 reports must be delivered to the secretary of state between
21 January 1 and April 1 of the following odd-numbered calendar
22 years.

23 4. a. If a biennial report does not contain the
24 information required by this section, the secretary of state
25 shall promptly notify the reporting domestic or foreign
26 corporation in writing and return the report to the
27 corporation for correction.

28 b. A filing fee for the biennial report shall be
29 determined by the secretary of state.

30 c. For purposes of this section, each biennial report
31 shall contain information related to the two-year period
32 immediately preceding the calendar year in which the report is
33 filed.

34 5. The secretary of state may provide for the change of
35 registered office or registered agent on the form prescribed

1 by the secretary of state for the biennial report, provided
2 that the form contains the information required in section
3 504A.502 or 504A.508. If the secretary of state determines
4 that a biennial report does not contain the information
5 required by this section but otherwise meets the requirements
6 of section 504A.502 or 504A.508 for the purpose of changing
7 the registered office or registered agent, the secretary of
8 state shall file the statement of change of registered office
9 or registered agent, effective as provided in section
10 504A.114, before returning the biennial report to the
11 corporation as provided in this section. A statement of
12 change of registered office or agent pursuant to this
13 subsection shall be executed by a person authorized to execute
14 the biennial report.

15 SUBCHAPTER XVII

16 TRANSITION PROVISIONS

17 Sec. 178. NEW SECTION. 504A.1701 APPLICATION TO EXISTING
18 DOMESTIC CORPORATIONS.

19 A domestic corporation in existence on April 1, 2005, that
20 was incorporated under the statutes of this state as they
21 existed prior to July 1, 2004, is subject to this chapter on
22 and after April 1, 2005.

23 Sec. 179. NEW SECTION. 504A.1702 APPLICATION TO
24 QUALIFIED FOREIGN CORPORATIONS.

25 A foreign corporation authorized to transact business in
26 this state on the effective date of this Act is subject to
27 this chapter, but is not required to obtain a new certificate
28 of authority to transact business under this chapter.

29 Sec. 180. NEW SECTION. 504A.1703 SAVINGS PROVISIONS.

30 1. Except as provided in subsection 2, the repeal of a
31 statute by this Act does not affect any of the following:

32 a. The operation of the statute or any action taken under
33 it before its repeal.

34 b. Any ratification, right, remedy, privilege, obligation,
35 or liability acquired, accrued, or incurred under the statute

1 before its repeal.

2 c. Any violation of the statute or any penalty,
3 forfeiture, or punishment incurred because of the violation,
4 before its repeal.

5 d. Any proceeding, reorganization, or dissolution
6 commenced under the statute before its repeal, and the
7 proceeding, reorganization, or dissolution may be completed in
8 accordance with the statute as if it had not been repealed.

9 2. If a penalty or punishment imposed for violation of a
10 statute repealed by this Act is reduced by this chapter, the
11 penalty or punishment, if not already imposed, shall be
12 imposed in accordance with this chapter.

13 Sec. 181. NEW SECTION. 504A.1704 SEVERABILITY.

14 If any provision of this chapter or its application to any
15 person or circumstance is held invalid by a court of competent
16 jurisdiction, the invalidity does not affect other provisions
17 or applications of the chapter that can be given effect
18 without the invalid provision or application, and to this end
19 the provisions of the chapter are severable.

20 Sec. 182. NEW SECTION. 504A.1705 PUBLIC BENEFIT, MUTUAL
21 BENEFIT, AND RELIGIOUS CORPORATIONS.

22 On April 1, 2005, each domestic corporation existing on
23 April 1, 2005, that is or becomes subject to this chapter as
24 provided in section 504A.1701, shall be designated as a public
25 benefit, mutual benefit, or religious corporation as follows:

26 1. A corporation designated by statute as a public benefit
27 corporation, a mutual benefit corporation, or a religious
28 corporation is deemed to be the type of corporation designated
29 by that statute.

30 2. A corporation that does not come within subsection 1
31 but is organized primarily or exclusively for religious
32 purposes is a religious corporation.

33 3. A corporation that does not come within subsection 1 or
34 2 but which is recognized as exempt under section 501(c)(3) of
35 the Internal Revenue Code, or any successor section, is a

1 public benefit corporation.

2 4. A corporation that does not come within subsection 1,
3 2, or 3, but which is organized for a public or charitable
4 purpose and which upon dissolution must distribute its assets
5 to a public benefit corporation, the United States, a state,
6 or a person recognized as exempt under section 501(c)(3) of
7 the Internal Revenue Code, or any successor section, is a
8 public benefit corporation.

9 5. A corporation that does not come within subsection 1,
10 2, 3, or 4 is a mutual benefit corporation.

11 Sec. 183. Section 15E.64, subsection 2, unnumbered
12 paragraph 1, Code 2003, is amended to read as follows:

13 To facilitate the organization of an Iowa capital
14 investment corporation, both of the following persons shall
15 serve as incorporators as provided in section ~~504A-28~~
16 504A.201:

17 Sec. 184. Section 230A.12, unnumbered paragraph 1, Code
18 2003, is amended to read as follows:

19 Each community mental health center established or
20 continued in operation pursuant to section 230A.3, shall be
21 organized under ~~the-Iowa-nonprofit-corporation-Act-appearing~~
22 as chapter 504A, except that a community mental health center
23 organized under chapter 504 prior to July 1, 1974, shall not
24 be required by this chapter to adopt the Iowa nonprofit
25 corporation Act if it is not otherwise required to do so by
26 law. The board of directors of each such community mental
27 health center shall enter into an agreement with the county or
28 affiliated counties which are to be served by the center,
29 which agreement shall include but need not be limited to the
30 period of time for which the agreement is to be in force, what
31 services the center is to provide for residents of the county
32 or counties to be served, standards the center is to follow in
33 determining whether and to what extent persons seeking
34 services from the center shall be considered able to pay the
35 cost of the services received, and policies regarding

1 availability of the center's services to persons who are not
2 residents of the county or counties served by the center. The
3 board of directors, in addition to exercising the powers of
4 the board of directors of a nonprofit corporation may:

5 Sec. 185. Section 490.401, subsection 2, paragraph b, Code
6 2003, is amended to read as follows:

7 b. A corporate name reserved or registered under section
8 490.402, 490.403, or ~~504A-7~~ 504A.402.

9 Sec. 186. Section 497.22, unnumbered paragraph 1, Code
10 2003, is amended to read as follows:

11 ~~Sections-504A-83-and-504A-84-apply~~ Section 504A.1613
12 applies to a cooperative association organized under this
13 chapter in the same manner as ~~those-sections-apply that~~
14 section applies to a corporation organized under chapter 504A.
15 In addition to the information required to be set forth in the
16 biennial report under section ~~504A-83~~ 504A.1613, the
17 cooperative association shall also set forth the total amount
18 of business transacted, number of members, total expense of
19 operation, total amount of indebtedness, and total profits or
20 losses for each calendar or fiscal year of the two-year period
21 which ended immediately preceding the first day of January of
22 the year in which the report is filed.

23 Sec. 187. Section 498.24, unnumbered paragraph 1, Code
24 2003, is amended to read as follows:

25 ~~Sections-504A-83-and-504A-84-apply~~ Section 504A.1613
26 applies to a cooperative association organized under this
27 chapter in the same manner as ~~those-sections-apply that~~
28 section applies to a corporation organized under chapter 504A.
29 In addition to the information required to be set forth in the
30 biennial report under section ~~504A-83~~ 504A.1613, the
31 cooperative association shall also set forth the total amount
32 of business transacted, number of members, total expense of
33 operation, total amount of indebtedness, and total profits or
34 losses for each calendar or fiscal year of the two-year period
35 which ended immediately preceding the first day of January of

1 the year in which the report is filed.

2 Sec. 188. Section 499.49, Code 2003, is amended to read as
3 follows:

4 499.49 BIENNIAL REPORT.

5 ~~Sections 504A-83 and 504A-84 apply~~ Section 504A.1613
6 applies to a cooperative organized under this chapter in the
7 same manner as ~~those sections apply~~ that section applies to a
8 corporation organized under chapter 504A. In addition to the
9 information required to be set forth in the biennial report
10 under section ~~504A-83~~ 504A.1613, the cooperative shall also
11 set forth the number of members of the cooperative, the
12 percentage of the cooperative's business done with or for its
13 own members during each of the fiscal or calendar years of the
14 preceding two-year period, the percentage of the cooperative's
15 business done with or for each class of nonmembers specified
16 in section 499.3, and any other information deemed necessary
17 by the secretary of state to advise the secretary whether the
18 cooperative is actually functioning as a cooperative.

19 Sec. 189. Section 504A.102, subsection 2, paragraphs a and
20 b, Code 2003, are amended to read as follows:

21 a. The adoption of a resolution or resolutions at a
22 meeting of the board of directors upon receiving the vote of a
23 majority of the directors in office and of the members of the
24 association in the same manner as provided in section ~~504A-35~~
25 504A.1003. The resolution or resolutions shall recite that
26 the association voluntarily elects to be governed as a
27 corporation under this chapter. The resolution must designate
28 the address of the association's initial registered office and
29 the name of the association's registered agent or agents at
30 that office, if any.

31 b. The adoption of articles of incorporation in compliance
32 with section ~~504A-29~~ 504A.202 at a meeting of the board of
33 directors upon receiving the vote of a majority of the
34 directors in office and of the members of the association in
35 the same manner as provided in section ~~504A-35~~ 504A.1003. The

1 articles of incorporation may be a restatement, substitution,
2 or amendment of articles of incorporation adopted by the
3 association pursuant to section 176.3. The articles of
4 incorporation may be made part of the resolution or
5 resolutions adopted by the association pursuant to paragraph
6 "a" of this subsection.

7 Sec. 190. Section 504A.102, subsection 2, paragraph c,
8 subparagraphs (1) and (3), Code 2003, are amended to read as
9 follows:

10 (1) The association name as provided in the association's
11 articles of incorporation pursuant to section 176.3 and the
12 new corporation's corporate name, if different, as provided in
13 section ~~504A-6~~ 504A.401.

14 (3) The address of the new corporation's registered office
15 and the name of the new corporation's registered agent as
16 provided in section ~~504A-8~~ 504A.501.

17 Sec. 191. Section 504A.102, subsection 2, paragraph d,
18 unnumbered paragraph 1, Code 2003, is amended to read as
19 follows:

20 All of the following shall be delivered to the office of
21 the secretary of state for filing and recording as provided in
22 section ~~504A-30~~ 504A.111:

23 Sec. 192. Section 504A.102, subsection 3, Code 2003, is
24 amended by striking the subsection and inserting in lieu
25 thereof the following:

26 3. CERTIFICATE OF INCORPORATION. Unless a delayed
27 effective date is specified, the corporate existence begins
28 when the articles of incorporation are filed as provided in
29 section 504A.203.

30 Sec. 193. Section 504A.102, subsection 4, Code 2003, is
31 amended to read as follows:

32 4. LIABILITIES AND RIGHTS PRIOR TO THE ELECTION. An
33 association's election to be governed as a corporation under
34 this chapter does not affect any right accrued or established,
35 or any liability or penalty incurred, under the provisions of

1 chapter 176, prior to filing of the resolution or resolutions,
2 articles of incorporation, and instrument of verification by
3 the association as provided in ~~subsection-2~~ this chapter.

4 Sec. 194. Section 504A.102, subsection 5, Code 2003, is
5 amended to read as follows:

6 5. REPEAL. ~~This section is~~ Subsections 1, 2, and 3 of
7 this section are repealed on July 1, 2005.

8 Sec. 195. Section 534.501, subsection 4, Code 2003, is
9 amended to read as follows:

10 4. AMENDMENT PROCEDURE. The procedure for amending
11 articles of incorporation or adopting restated articles for
12 mutual associations is that specified in ~~section-504A-35~~
13 chapter 504A, subchapter 10, and for stock associations it is
14 that specified in section 490.726 and sections 490.1002
15 through 490.1005.

16 Sec. 196. Section 602.8102, subsection 70, Code 2003, is
17 amended to read as follows:

18 70. Certify a copy of a decree of dissolution of a
19 nonprofit corporation to the secretary of state and the
20 recorder in the county in which the corporation is located as
21 provided in section ~~504A-62~~ 504A.1434.

22 Sec. 197. Sections 504A.1 through 504A.101, Code 2003, are
23 repealed.

24 Sec. 198. EFFECTIVE DATE. This Act takes effect July 1,
25 2004.

26 EXPLANATION

27 This bill repeals Code sections 504A.1 through 504A.101,
28 relating to nonprofit corporations, and replaces them with the
29 revised model nonprofit corporation Act.

30 Subchapter I provides for filing requirements, forms
31 prescribed and furnished by the secretary of state, filing,
32 service, and copying fees, the effective date of filed
33 documents, correcting filed documents, the filing duty of the
34 secretary of state, the procedure for appealing from the
35 secretary of state's refusal to file a document, evidentiary

1 effect of a copy of a filed document, a certificate of
2 existence, a penalty for signing a false document, powers of
3 the secretary of state, notice requirements, judicial relief,
4 the role of the attorney general, and religious corporations.

5 Subchapter II provides for incorporators of a nonprofit
6 corporation, articles of incorporation, incorporation,
7 liability for preincorporation transactions, organization of a
8 nonprofit corporation, bylaws, and emergency bylaws and
9 powers.

10 Subchapter III provides for the general powers of a
11 nonprofit corporation, emergency powers of a nonprofit
12 corporation, and ultra vires.

13 Subchapter IV provides for corporate names, reserved names,
14 and registered names.

15 Subchapter V provides for registered offices and registered
16 agents of the corporation, the method of changing a registered
17 office or registered agent, resignation of registered agents,
18 and the method of service on the nonprofit corporation.

19 Subchapter VI provides for the admission of members,
20 consideration for admission, member requirements, differences
21 in rights and obligations of members, transfer of memberships,
22 a member's liability to third parties, a member's liability
23 for dues, assessments, and fees, a creditor's action against
24 members, resignation of members, termination, expulsion, or
25 suspension of members, purchase of memberships, derivative
26 suits, and delegates having some or all of the authority of
27 members.

28 Subchapter VII provides for annual and regular meetings,
29 special meetings, court-ordered meetings, action by written
30 consent, notice of meetings, waiver of notice, record dates,
31 determination of members entitled to notice and vote, action
32 by written ballot, a members' list for a meeting, voting
33 entitlement generally, quorum requirements, voting
34 requirements, proxies, cumulative voting for directors, other
35 methods of electing directors, a corporation's acceptance of

1 votes, and voting agreements.

2 Subchapter VIII provides for requirements for and duties of
3 the board of directors, qualifications of directors, number of
4 directors, election, designation, and appointment of
5 directors, terms of directors, staggered terms for directors,
6 resignation of directors, removal of directors elected by
7 members or directors, removal of designated or appointed
8 directors, removal of directors by judicial proceeding,
9 vacancy on the board of directors, compensation of directors,
10 regular and special meetings of the board, action without a
11 meeting of the board, call and notice of a meeting of the
12 board, waiver of notice of a meeting of the board, quorum and
13 voting at a meeting of the board, committees of the board,
14 general standards for directors, director conflicts of
15 interest, loans to or guarantees for directors and officers,
16 liability for unlawful distributions, required officers,
17 duties and authority of officers, standards of conduct for
18 officers, resignation and removal of officers, contract rights
19 of officers, officers' authority to execute documents,
20 authority of a nonprofit corporation to indemnify, mandatory
21 indemnification, advances for expenses of a director, court-
22 ordered indemnification, determination and authorization of
23 indemnification, indemnification of officers, employees, and
24 agents of the nonprofit corporation, and insurance purchased
25 and maintained by the nonprofit corporation.

26 Subchapter IX provides for personal liability and
27 limitations to the personal liability of a director, officer,
28 member, or volunteer of a nonprofit corporation.

29 Subchapter X provides for the authority to amend articles
30 of incorporation, amendment of the articles of incorporation
31 by the directors, amendment of the articles of incorporation
32 by directors and members, class voting by members on
33 amendments of the articles of incorporation, articles of
34 amendment, restated articles of incorporation, amendments of
35 the articles of incorporation pursuant to judicial

1 reorganization, effect of amendment and restatement, amendment
2 of the bylaws by directors, amendment of the bylaws by
3 directors and members, class voting by members on amendments
4 of the bylaws, approval of amendments of the bylaws and
5 articles of incorporation by third persons, and amendments
6 terminating members or redeeming or canceling memberships.

7 Subchapter XI provides for the approval of a plan of
8 merger, limitations on mergers by public benefit or religious
9 corporations, action on a merger plan by the board of
10 directors, members, and third persons, articles of merger,
11 effects of a merger, merger with a foreign corporation, and
12 bequests, devises, and gifts to a corporation involved in a
13 merger.

14 Subchapter XII provides for the sale of assets in the
15 regular course of activities and mortgage of assets and the
16 sale of assets other than in the regular course of activities
17 by nonprofit corporations.

18 Subchapter XIII provides for prohibited distributions and
19 authorized distributions by nonprofit corporations.

20 Subchapter XIV provides for dissolution by incorporators or
21 directors and third persons, dissolution by directors,
22 members, and third persons, notices to the attorney general,
23 articles of dissolution, revocation of dissolution, effects of
24 dissolution, known claims against a dissolved corporation,
25 unknown claims against a dissolved corporation, grounds for
26 administrative dissolution, procedure for and effect of
27 administrative dissolution, reinstatement following
28 administrative dissolution, appeal from denial of
29 reinstatement, grounds for judicial dissolution, procedure for
30 judicial dissolution, receivership or custodianship, decrees
31 of dissolution, and depositing assets with the treasurer of
32 state.

33 Subchapter XV provides for requiring an authority to
34 transact business, consequences of transacting business
35 without authority, an application for a certificate of

1 authority, an amended certificate of authority, the corporate
2 name of a foreign corporation, the registered office and
3 registered agent of a foreign corporation, change of a
4 registered office of a registered agent of a foreign
5 corporation, the resignation of a registered agent of a
6 foreign corporation, service on a foreign corporation, the
7 withdrawal of a foreign corporation, grounds for revocation of
8 a certificate of authority, the procedure and effect of
9 revocation of a certificate of authority, and appeal from a
10 revocation of a certificate of authority.

11 Subchapter XVI provides for corporate records, the
12 inspection of corporate records by members, the scope of
13 inspection rights, court-ordered inspections, financial
14 statements of a corporation upon demand by members, and a
15 biennial report for the secretary of state.

16 Subchapter XVII provides for the application of new Code
17 chapter 504A to existing corporations and qualified foreign
18 corporations, savings provisions, severability, and the
19 designation of public benefit, mutual benefit, and religious
20 corporations.

21 The bill provides conforming amendments.

22 Code section 504A.102 relating to farm aid associations is
23 amended to provide that any liabilities or rights of a farm
24 aid association that exist prior to the association's election
25 to be governed as a corporation under chapter 504A continue
26 after the July 1, 2005, repeal of other transition provisions
27 relating to farm aid associations.

28 The bill takes effect July 1, 2004, and is applicable to
29 new corporations incorporated after that date. Corporations
30 in existence prior to July 1, 2004, are subject to the bill on
31 and after April 1, 2005. All corporations that are or become
32 subject to this bill on April 1, 2005, must be designated as a
33 public benefit, mutual benefit, or religious corporation on
34 April 1, 2005.

35