

HOUSE BILL NO. 741

INTRODUCED BY CROMLEY, MAZUREK, J. RICE, MEASURE

IN THE HOUSE

FEBRUARY 11, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

FEBRUARY 21, 1991 POSTED ON ALTERNATIVE CONSENT CALENDAR.

FEBRUARY 23, 1991 THIRD READING, PASSED.
AYES, 97; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 18, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 20, 1991 SECOND READING, CONCURRED IN.

MARCH 21, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 741
 2 INTRODUCED BY Cowley Maguire Jira
 3 Meam
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 NONPROFIT CORPORATE LAW; AMENDING SECTIONS 15-1-101,
 6 33-17-211, 35-6-104, AND 35-6-201, MCA; REPEALING SECTIONS
 7 35-2-102 THROUGH 35-2-112, 35-2-201 THROUGH 35-2-211,
 8 35-2-301 THROUGH 35-2-304, 35-2-401 THROUGH 35-2-413,
 9 35-2-501 THROUGH 35-2-509, 35-2-601 THROUGH 35-2-607,
 10 35-2-701 THROUGH 35-2-706, 35-2-711 THROUGH 35-2-719,
 11 35-2-801 THROUGH 35-2-819, 35-2-901 THROUGH 35-2-903,
 12 35-2-1001, 35-2-1002, 35-2-1101 THROUGH 35-2-1106, AND
 13 35-2-1201 THROUGH 35-2-1203, MCA; AND PROVIDING AN EFFECTIVE
 14 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

15
 16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because
 18 it grants authority to the secretary of state to establish
 19 fees and mandate the use of forms. The fees established by
 20 the secretary of state must be commensurate with the cost of
 21 the service performed. The forms adopted should be based on
 22 forms recommended by this bill.

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. **Section 1.** Definitions. As used in

1 [sections 1 through 168], the following definitions apply:
 2 (1) "Approved by the members" means approved and
 3 ratified by the affirmative vote:
 4 (a) of a majority of the votes represented and voting:
 5 (i) at a meeting at which a quorum is present and the
 6 affirmative votes constitute a majority of the required
 7 quorum;
 8 (ii) by a written ballot or written consent in
 9 conformity with [sections 1 through 168]; or
 10 (iii) by the affirmative vote, written ballot, or
 11 written consent of the majority; and
 12 (b) that includes the votes of all the members of any
 13 class, unit, or grouping that may be required by the
 14 articles, bylaws, or [sections 1 through 168] for any
 15 specified member action.
 16 (2) "Articles of incorporation" or "articles" include
 17 amended and restated articles of incorporation and articles
 18 of merger.
 19 (3) "Board" or "board of directors" means the board of
 20 directors except that a person or group of persons are not
 21 the board of directors because of powers delegated to that
 22 person or group pursuant to [section 75].
 23 (4) "Bylaws" means the code, codes, or rules, other
 24 than the articles, adopted pursuant to [sections 1 through
 25 168] for the regulation or management of the affairs of the

1 corporation, regardless of the name or names by which the
2 code, codes, or rules are designated.

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

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

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

13 (8) "Deliver" includes mail.

14 (9) "Directors" means individuals:

15 (a) designated in the articles or bylaws or elected by
16 the incorporators and their successors; and

17 (b) elected or appointed by any other name or title to
18 act as members of the board.

19 (10) "Distribution" means the payment of a dividend or
20 any part of the income or profit of a corporation to its
21 members, directors, or officers.

22 (11) "Domestic corporation" means a corporation.

23 (12) "Effective date of notice" has the meaning provided
24 in [section 2(5)].

25 (13) "Employee" does not include an officer or director

1 who is not otherwise employed by the corporation.

2 (14) "Entity" includes:

3 (a) a corporation and foreign corporation;

4 (b) a business corporation and foreign business
5 corporation;

6 (c) a profit and nonprofit unincorporated association;

7 (d) a corporation sole;

8 (e) a business trust, an estate, a partnership, a
9 trust, and two or more persons having a joint or common
10 economic interest; and

11 (f) a state, the United States, and a foreign
12 government.

13 (15) "File", "filed", or "filing" means filed in the
14 office of the secretary of state.

15 (16) "Foreign corporation" means a corporation that is
16 organized under a law other than the law of this state and
17 that would be a nonprofit corporation if formed under the
18 laws of this state.

19 (17) "Governmental subdivision" includes an authority,
20 county, district, and municipality.

21 (18) "Includes" denotes a partial definition.

22 (19) "Individual" includes the estate of an incompetent
23 individual.

24 (20) "Means" denotes a complete definition.

25 (21) (a) "Member" means, without regard to what a person

1 is called in the articles or bylaws, a person or persons
 2 who, on more than one occasion and pursuant to a provision
 3 of a corporation's articles or bylaws, have the right to
 4 vote for the election of a director or directors.

5 (b) A person is not a member by virtue of any of the
 6 following:

7 (i) any rights the person has as a delegate;

8 (ii) any rights the person has to designate a director
 9 or directors; or

10 (iii) any rights the person has as a director.

11 (22) "Membership" refers to the rights and obligations a
 12 member or members have pursuant to a corporation's articles,
 13 bylaws, and [sections 1 through 168].

14 (23) "Mutual benefit corporation" means a domestic
 15 corporation designated as a mutual benefit corporation.

16 (24) "Notice" means that term as described in [section
 17 2].

18 (25) "Person" includes any individual or entity.

19 (26) "Principal office" means the office, in the state
 20 or out of the state, that is designated in the annual report
 21 filed pursuant to [section 168] as the place where the
 22 principal office of a domestic or foreign corporation is
 23 located.

24 (27) "Proceeding" includes a civil suit and a criminal,
 25 administrative, and investigatory action.

1 (28) "Public benefit corporation" means a domestic
 2 corporation designated as a public benefit corporation.

3 (29) "Record date" means the date established under
 4 [sections 39 through 74] on which a corporation determines
 5 the identity of its members for the purposes of [sections 1
 6 through 168].

7 (30) "Religious corporation" means a domestic
 8 corporation designated as a religious corporation.

9 (31) "Secretary" means the corporate officer to whom the
 10 board of directors has delegated responsibility under
 11 [section 95(2)] for custody of the minutes of the directors'
 12 and members' meetings and for authenticating the records of
 13 the corporation.

14 (32) "State", when referring to a part of the United
 15 States, includes:

16 (a) a state and commonwealth and their agencies and
 17 governmental subdivisions; and

18 (b) a territory and insular possession, their agencies,
 19 and governmental subdivisions of the United States.

20 (33) "United States" includes a district, an authority,
 21 a bureau, a commission, a department, and any other agency
 22 of the United States.

23 (34) "Vote" includes authorization by written ballot and
 24 written consent.

25 (35) (a) "Voting power" means the total number of votes

1 entitled to be cast for the election of directors at the
2 time the determination of voting power is made.

3 (b) The term excludes a vote that is contingent upon
4 the happening of a condition or event that has not occurred
5 at the time.

6 (c) When a class is entitled to vote as a class for
7 directors, the determination of voting power of the class
8 must be based on the percentage of the number of directors
9 the class is entitled to elect out of the total number of
10 authorized directors.

11 NEW SECTION. Section 2. Notice. (1) Notice under
12 [sections 1 through 168] must be in writing unless oral
13 notice is reasonable under the circumstances.

14 (2) (a) Notice may be communicated in person; by
15 telephone, telegraph, teletype, facsimile, or other form of
16 wire or wireless communication; or by mail or private
17 carrier.

18 (b) If these forms of personal notice are
19 impracticable, notice may be communicated by a newspaper of
20 general circulation in the area where it is published or by
21 radio, television, or other form of public broadcast
22 communication.

23 (3) Written notice by a domestic or foreign corporation
24 to its members, if in a comprehensible form, is effective
25 when mailed if it is mailed postpaid and correctly addressed

1 to the shareholder's address shown in the corporation's
2 current record of shareholders.

3 (4) Written notice to a domestic or foreign corporation
4 authorized to transact business in this state may be
5 addressed to:

6 (a) its registered agent at its registered office; or

7 (b) the corporation or its secretary at its principal
8 office shown in its most recent annual report or, in the
9 case of a foreign corporation that has not yet delivered an
10 annual report, in its application for a certificate of
11 authority.

12 (5) Except as provided in subsections (3) and (4),
13 written notice, if in a comprehensible form, is effective at
14 the earliest of the following:

15 (a) when received;

16 (b) 5 days after its deposit in the United States mail,
17 as evidenced by the postmark, if it is mailed postpaid and
18 with correct postage; or

19 (c) on the date shown on the return receipt, if it is
20 sent by certified mail, return receipt requested, and the
21 receipt is signed by or on behalf of the addressee.

22 (6) Oral notice is effective when communicated if it is
23 communicated in a comprehensible manner.

24 (7) If [sections 1 through 168] prescribe notice
25 requirements for particular circumstances, those

1 requirements govern. If the articles of incorporation or
2 bylaws prescribe notice requirements that are consistent
3 with this section or other provisions of [sections 1 through
4 168], those requirements govern.

5 NEW SECTION. **Section 3. Reservation of power to amend**
6 **or repeal.** The legislature has power to amend or repeal all
7 or part of [sections 1 through 168] at any time, and all
8 domestic and foreign corporations subject to [sections 1
9 through 168] are governed by the amendment or repeal.

10 NEW SECTION. **Section 4. Filing requirements.** All of
11 the following requirements must be met before a document is
12 entitled to be filed under this section by the secretary of
13 state:

14 (1) A document that is required or permitted by
15 [sections 1 through 168] to be filed in the office of the
16 secretary of state must satisfy the requirements of this
17 section and of any other section that adds to or varies
18 these requirements.

19 (2) The document must contain the information required
20 by [sections 1 through 168]. It may contain other
21 information as well.

22 (3) The document must be typewritten or printed.

23 (4) The document must be in the English language.
24 However, a corporate name need not be in English if it is
25 written in English letters or Arabic or Roman numerals. The

1 certificate of existence required of foreign corporations
2 need not be in English if it is accompanied by a reasonably
3 authenticated English translation.

4 (5) The document must be executed:

5 (a) by the presiding officer of its board of directors,
6 its president, or another of its officers;

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

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

12 (6) The person executing the document shall sign it and
13 state beneath or opposite the signature his name and the
14 capacity in which the person signs. The document may but
15 need not contain the corporate seal, an attestation by the
16 secretary or an assistant secretary, or an acknowledgment,
17 verification, or proof.

18 (7) The document must be in or on the prescribed form
19 if the secretary of state has prescribed a mandatory form
20 for a document under [section 6].

21 (8) The document must be delivered to the office of the
22 secretary of state for filing and must be accompanied by:

23 (a) one copy, except as provided in [sections 36 and
24 155];

25 (b) the correct filing fee; and

1 (c) any franchise tax, license fee, or penalty required
2 by [sections 1 through 168], rules promulgated under
3 [sections 1 through 168], or other law.

4 NEW SECTION. Section 5. Facsimile filing. (1) The
5 secretary of state shall treat a facsimile copy of a
6 document that is required or permitted to be filed under
7 [sections 4 through 14] and the signatures on the facsimile
8 copy in the same manner as an original for purposes of
9 [sections 4 through 14] provided that the secretary of state
10 receives the original document within 5 working days of the
11 receipt of the facsimile copy. If all other requirements are
12 met, the date of filing relates back to the date of receipt
13 of the facsimile copy.

14 (2) A facsimile copy is entitled to be filed under this
15 section if it is:

16 (a) produced by a method of transmission of images in
17 which the image is scanned at the transmitter; and

18 (b) legible and the same size as the original.

19 (3) During the 5-day period referred to in subsection
20 (1), the recorded facsimile copy constitutes constructive
21 notice for all purposes of the original document.

22 (4) If the original document is not received within 5
23 working days of receipt of the facsimile copy as provided in
24 subsection (1), the filing of the facsimile copy is void.

25 (5) A person who files a false document by facsimile

1 copy is liable to an aggrieved party for three times the
2 amount of damages resulting from the filing of the false
3 document.

4 NEW SECTION. Section 6. Forms. (1) The secretary of
5 state may by rule prescribe and furnish on request forms or
6 computer formats for:

7 (a) an application for a certificate of existence;

8 (b) a foreign corporation's application for a
9 certificate of authority to transact business in this state;

10 (c) a foreign corporation's application for a
11 certificate of withdrawal;

12 (d) the annual report; and

13 (e) other documents required or permitted to be filed
14 by [sections 1 through 168].

15 (2) If the secretary of state so requires, use of any
16 of the forms or formats listed in subsection (1) is
17 mandatory.

18 (3) The secretary of state may by rule prescribe and
19 furnish on request forms or computer formats for other
20 documents required or permitted to be filed by [sections 1
21 through 168], but their use is not mandatory.

22 NEW SECTION. Section 7. Fees for filing, copying, and
23 services. (1) The secretary of state shall establish by rule
24 fees for filing documents and issuing certificates as
25 required by [sections 1 through 168].

1 (2) The secretary of state shall by rule establish fees
2 for copying documents, priority handling, transmitting, or
3 filing facsimile copies and for providing computer-generated
4 information.

5 (3) The fees presented under this section must be
6 reasonably related to the costs of processing the documents
7 and preparing and providing the services. The secretary of
8 state shall maintain records sufficient to support the fees
9 established under this section.

10 NEW SECTION. Section 8. Effective date of document.

11 (1) Except as provided in subsection (2), a document is
12 effective:

13 (a) at the time of filing on the date it is filed, as
14 evidenced by the secretary of state's endorsement on the
15 original document; or

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

18 (2) A document may specify a delayed effective time and
19 date, and if it does so the document becomes effective at
20 the time and date specified. If a delayed effective date but
21 no time is specified, the document is effective at the close
22 of business on that date. A delayed effective date for a
23 document may not be later than 90 days after the date it is
24 filed.

25 NEW SECTION. Section 9. Correcting filed document. (1)

1 A domestic or foreign corporation may correct a document
2 filed by the secretary of state if the document:

3 (a) contains an incorrect statement; or

4 (b) was defectively executed, attested, sealed,
5 verified, or acknowledged.

6 (2) A document is corrected:

7 (a) by preparing articles of correction that:

8 (i) describe the document, including its filing date,
9 or have attached a copy of the document;

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

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

15 (b) by delivering the articles of correction to the
16 secretary of state.

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

22 NEW SECTION. Section 10. Filing duty of secretary of
23 state. (1) If a document delivered to the office of the
24 secretary of state for filing satisfies the applicable
25 requirements of [sections 4 and 5], the secretary of state

1 shall file it.

2 (2) The secretary of state shall file a document by
3 stamping or otherwise endorsing "Filed", together with the
4 secretary of state's name, official title, and the date and
5 the time of receipt, on the original, the copy of the
6 document, and the receipt for the filing fee. Except as
7 provided in [sections 37 and 156], after filing a document,
8 the secretary of state shall deliver the document copy to
9 the domestic or foreign corporation or its representative,
10 together with the filing fee receipt or acknowledgment of
11 receipt if no fee is required.

12 (3) Upon refusing to file a document, the secretary of
13 state shall return it to the domestic or foreign corporation
14 or its representative within 10 days after the document was
15 delivered, together with a brief written explanation of the
16 reason or reasons for the refusal.

17 (4) The secretary of state's duty concerning the
18 documents under this section is ministerial. Filing or
19 refusal to file a document does not:

20 (a) affect the validity or invalidity of the document
21 in whole or in part;

22 (b) relate to the correctness or incorrectness of
23 information contained in the document; or

24 (c) create a presumption that the document is valid or
25 invalid or that information contained in the document is

1 correct or incorrect.

2 NEW SECTION. **Section 11. Appeal from secretary of**
3 **state's refusal to file document.** (1) If the secretary of
4 state refuses to file a document delivered for filing to the
5 secretary of state's office, the domestic or foreign
6 corporation may appeal the refusal to the district court for
7 the first judicial district. The appeal is commenced by
8 petitioning the court to compel the filing of the document
9 and by attaching to the petition the document and the
10 secretary of state's explanation of the refusal to file.

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

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

16 NEW SECTION. **Section 12. Evidentiary effect of copy of**
17 **filed document.** A certificate attached to a copy of a
18 document, bearing the secretary of state's signature, which
19 may be in facsimile, and the seal of this state, is
20 conclusive evidence that the original document is on file
21 with the secretary of state.

22 NEW SECTION. **Section 13. Certificate of existence.** (1)
23 A person may apply to the secretary of state to furnish a
24 certificate of existence for a domestic or foreign
25 corporation.

1 (2) The certificate of existence must set forth:
 2 (a) the domestic corporation's corporate name or the
 3 foreign corporation's corporate name used in this state;
 4 (b) (i) that the domestic corporation is incorporated
 5 under the laws of this state, the date of its incorporation,
 6 and the period of its duration if less than perpetual; or
 7 (ii) that the foreign corporation is authorized to
 8 transact business in this state;
 9 (c) that all fees, taxes, and penalties owed to this
 10 state have been paid, if:
 11 (i) payment is reflected in the records of the
 12 secretary of state; and
 13 (ii) nonpayment affects the good standing of the
 14 domestic or foreign corporation;
 15 (d) that its most recent annual report required by
 16 [section 168] has been delivered to the secretary of state;
 17 (e) that articles of dissolution have not been filed;
 18 and
 19 (f) other facts of record in the office of the
 20 secretary of state that may be requested by the applicant.
 21 (3) Subject to any qualification stated in the
 22 certificate, a certificate of existence issued by the
 23 secretary of state may be relied upon as conclusive evidence
 24 that the domestic or foreign corporation is in good standing
 25 in this state.

1 NEW SECTION. Section 14. Penalty for signing false
 2 documents. (1) The execution of any document that must be
 3 filed with the secretary of state under [sections 4 through
 4 14] constitutes an affirmation, under the penalties of false
 5 swearing, by each person executing the document that the
 6 facts stated in the document are true.

7 (2) The secretary of state shall provide for the
 8 printing of a warning to this effect on each form prescribed
 9 by the secretary of state under [sections 1 through 168].

10 NEW SECTION. Section 15. Secretary of state -- powers
 11 -- rulemaking. (1) The secretary of state has the power
 12 reasonably necessary to perform the duties required of the
 13 secretary of state's office by [sections 1 through 168].

14 (2) The secretary of state may adopt rules to perform
 15 the duties required of the secretary of state under
 16 [sections 1 through 168], including establishing necessary
 17 fees.

18 NEW SECTION. Section 16. Designation of status of
 19 nonprofit corporations. (1) A domestic corporation must be
 20 designated as either a public benefit, mutual benefit, or
 21 religious corporation. The specific designation of a
 22 corporation is as follows:

23 (a) A corporation designated by its articles of
 24 incorporation as a public benefit corporation, a mutual
 25 benefit corporation, or a religious corporation is the type

1 of corporation designated by its articles of incorporation.

2 (b) A corporation that is not designated by its
3 articles of incorporation as a public benefit corporation, a
4 mutual benefit corporation, or religious corporation is the
5 type of corporation designated in the annual report filed in
6 1995.

7 (2) A foreign corporation must be designated as either
8 a foreign public benefit, foreign mutual benefit, or foreign
9 religious corporation. The specific designation of a
10 corporation is as follows:

11 (a) A foreign corporation designated by its articles of
12 incorporation as a public benefit corporation, mutual
13 benefit corporation, or religious corporation is the type of
14 foreign corporation designated by its articles of
15 incorporation.

16 (b) A foreign corporation not designated as provided in
17 subsection (2)(a), but designated in its application for a
18 certificate of authority, or any amendments of the
19 application, as a public benefit corporation, mutual benefit
20 corporation, or religious corporation is the type of foreign
21 corporation it designated in its application for a
22 certificate of authority.

23 (c) A foreign corporation not designated as provided in
24 subsection (2)(a) or (2)(b) is the type of corporation it
25 designated in the annual report filed in 1995.

1 (3) A domestic or foreign corporation not designated as
2 provided in subsections (1) and (2) must be designated
3 pursuant to [section 173].

4 NEW SECTION. **Section 17. Private foundations.** (1)
5 Except as otherwise determined by a court of competent
6 jurisdiction, a corporation that is a private foundation as
7 defined in section 509(a) of the Internal Revenue Code of
8 1986:

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

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

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

16 (d) may not make any taxable investments or
17 expenditures as provided in sections 4944 and 4945 of the
18 Internal Revenue Code; and

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

21 (2) All references in this section to sections of the
22 Internal Revenue Code are to sections of the Internal
23 Revenue Code of 1986, as amended from time to time, or to
24 corresponding provisions of subsequent internal revenue laws
25 of the United States.

1 NEW SECTION. Section 18. Judicial relief. (1) If for
 2 any reason it is impractical or impossible for a corporation
 3 to call or conduct a meeting of its members, delegates, or
 4 directors or to otherwise obtain their consent, in the
 5 manner prescribed by its articles, bylaws, or [sections 1
 6 through 168], then upon petition of a director, officer,
 7 delegate, member, or the attorney general, the state
 8 district court for the judicial district in which the
 9 registered office is located may order that a meeting be
 10 called or that a written ballot or other form of obtaining
 11 the vote of members, delegates, or directors be authorized,
 12 in the manner the court finds fair and equitable under the
 13 circumstances.

14 (2) In an order issued pursuant to this section, the
 15 court shall provide for a method of notice reasonably
 16 designed to give actual notice to all persons who would be
 17 entitled to notice of a meeting held pursuant to the
 18 articles, bylaws, and [sections 1 through 168], whether or
 19 not the method results in actual notice to all persons
 20 entitled to notice or conforms to the notice requirements
 21 that would otherwise apply. In a proceeding under this
 22 section, the court may determine who the members or
 23 directors are.

24 (3) The order issued pursuant to this section may
 25 dispense with any requirement relating to the holding of or

1 voting at meetings or obtaining votes, including any
 2 requirement as to quorums or as to the number or percentage
 3 of votes needed for approval, that would otherwise be
 4 imposed by the articles, bylaws, or [sections 1 through
 5 168].

6 (4) Whenever practical, an order issued pursuant to
 7 this section must limit the subject matter of meetings or
 8 other forms of consent authorized to approve items,
 9 including amendments to the articles or bylaws, the
 10 resolution of which will or may enable the corporation to
 11 continue managing its affairs without further resort to this
 12 section. However, an order under this section may also
 13 authorize the obtaining of votes and approvals necessary for
 14 dissolution, merger, or sale of assets.

15 (5) A meeting or other method of obtaining the vote of
 16 members, delegates, or directors that is conducted pursuant
 17 to an order issued under this section and that complies with
 18 all the provisions of the order is for all purposes a valid
 19 meeting or vote, and has the same force and effect as if it
 20 complied with every requirement imposed by the articles,
 21 bylaws, and [sections 1 through 168].

22 NEW SECTION. Section 19. Attorney general. (1) Notice
 23 must be given to the attorney general of the commencement of
 24 any proceeding that [sections 1 through 168] authorizes the
 25 attorney general to bring but that has been commenced by

1 another person.

2 (2) Whenever a provision of [sections 1 through 168]
3 requires that notice be given to the attorney general before
4 or after commencing a proceeding or permits the attorney
5 general to commence a proceeding if no proceeding has been
6 commenced, the attorney general may take appropriate action
7 including but not limited to seeking injunctive relief. If a
8 proceeding has been commenced by a person other than the
9 attorney general, the attorney general may intervene, as of
10 right, in the proceeding.

11 NEW SECTION. Section 20. Religious corporations --
12 constitutional protections. If the religious doctrine
13 governing the affairs of a religious corporation is
14 inconsistent with the provisions of [sections 1 through 168]
15 on the same subject, the religious doctrine controls to the
16 extent required by the United States or the Montana
17 constitutions.

18 NEW SECTION. Section 21. Incorporators. One or more
19 persons may act as the incorporator or incorporators of a
20 corporation by delivering articles of incorporation to the
21 secretary of state for filing.

22 NEW SECTION. Section 22. Articles of incorporation.
23 (1) The articles of incorporation must set forth:
24 (a) a corporate name for the corporation that satisfies
25 the requirements of [section 31];

1 (b) a statement that:

- 2 (i) the corporation is a public benefit corporation;
3 (ii) the corporation is a mutual benefit corporation; or
4 (iii) the corporation is a religious corporation;
5 (c) (i) the street address of the corporation's initial
6 registered office and, if different, the mailing address;
7 and
8 (ii) the name of its initial registered agent at that
9 office;
10 (d) the name and address of each incorporator;
11 (e) whether or not the corporation will have members;
12 and
13 (f) provisions consistent with law regarding the
14 distribution of assets on dissolution.

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

- 16 (a) the purpose or purposes for which the corporation
17 is organized, which may be, either alone or in combination
18 with other purposes, the transaction of any lawful activity;
19 (b) the names and addresses of the individuals who are
20 to serve as the initial directors;
21 (c) provisions consistent with law regarding:
22 (i) managing and regulating the affairs of the
23 corporation;
24 (ii) defining, limiting, and regulating the powers of
25 the corporation, its board of directors, its members, or any

1 class of members; and

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

5 (d) any provision that under [sections 1 through 168]
6 is required or permitted to be set forth in the bylaws; and

7 (e) provisions eliminating or limiting the personal
8 liability of a director to the corporation or members of the
9 corporation for monetary damages for breach of a director's
10 duties to the corporation and its members, provided that the
11 provision may not eliminate or limit the liability of a
12 director:

13 (i) for a breach of the director's duty of loyalty to
14 the corporation or its members;

15 (ii) for acts or omissions not in good faith or that
16 involve intentional misconduct or a knowing violation of
17 law;

18 (iii) for a transaction from which a director derived an
19 improper personal economic benefit; or

20 (iv) under [sections 92 through 94].

21 (3) A provision referred to in subsection (2)(e) may
22 not eliminate or limit the liability of a director for any
23 act or omission occurring prior to the date when the
24 provision becomes effective.

25 (4) Each incorporator and director named in the

1 articles shall sign the articles.

2 (5) The articles of incorporation need not set forth
3 any of the corporate powers enumerated in [sections 1
4 through 168].

5 NEW SECTION. Section 23. Incorporation. (1) Unless a
6 delayed effective date is specified, the corporate existence
7 begins when the articles of incorporation are filed by the
8 secretary of state.

9 (2) The secretary of state's filing of the articles of
10 incorporation is conclusive proof that the incorporators
11 have satisfied all conditions precedent to incorporation
12 except in a proceeding by the state to cancel or revoke the
13 incorporation or involuntarily dissolve the corporation.

14 NEW SECTION. Section 24. Liability for
15 preincorporation transactions. A person who purports to act
16 as or on behalf of a corporation but who knows that there
17 was no incorporation under [sections 1 through 168] is
18 jointly and severally liable for all liabilities created
19 while so acting.

20 NEW SECTION. Section 25. Organization of corporation.

21 (1) After incorporation:

22 (a) if initial directors are named in the articles of
23 incorporation, the initial directors shall hold an
24 organizational meeting, at the call of a majority of the
25 directors, to complete the organization of the corporation

1 by appointing officers, adopting bylaws, and carrying on any
2 other business brought before the meeting; or

3 (b) if initial directors are not named in the articles,
4 the incorporator or incorporators shall hold an
5 organizational meeting at the call of a majority of the
6 incorporators:

7 (i) to elect directors and complete the organization of
8 the corporation; or

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

11 (2) Action required or permitted by [sections 1 through
12 168] to be taken by incorporators at an organizational
13 meeting may be taken without a meeting if the action taken
14 is evidenced by one or more written consents describing the
15 action taken and signed by each incorporator.

16 (3) An organizational meeting may be held in the state
17 or out of the state in accordance with [section 85].

18 NEW SECTION. Section 26. Bylaws. (1) The incorporators
19 or board of directors of a corporation shall adopt bylaws
20 for the corporation.

21 (2) The bylaws may contain any provision for regulating
22 and managing the affairs of the corporation consistent with
23 law or the articles of incorporation.

24 NEW SECTION. Section 27. Emergency bylaws and powers.

25 (1) Unless the articles provide otherwise, the directors of

1 a corporation may adopt, amend, or repeal bylaws to be
2 effective only in an emergency as defined in subsection (4).
3 The emergency bylaws, which are subject to amendment or
4 repeal by the members, may provide special procedures
5 necessary for managing the corporation during the emergency,
6 including:

7 (a) how to call a meeting of the board;

8 (b) quorum requirements for the meeting; and

9 (c) designation of additional or substitute directors.

10 (2) All provisions of the regular bylaws consistent
11 with the emergency bylaws remain in effect during the
12 emergency. The emergency bylaws are not in effect after the
13 emergency ends.

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

16 (a) binds the corporation; and

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

19 (4) For purposes of this section, an emergency exists
20 if a quorum of the corporation's directors cannot readily be
21 assembled because of some catastrophic event.

22 NEW SECTION. Section 28. Purposes. (1) A corporation
23 incorporated under [sections 1 through 168] has the purpose
24 of engaging in any lawful activity unless a more limited
25 purpose is set forth in the articles of incorporation.

1 (2) A corporation engaging in an activity that is
 2 subject to regulation under another statute of this state
 3 may incorporate under [sections 1 through 168] only if the
 4 incorporation under [sections 1 through 168] is not
 5 prohibited by the other statute. The corporation is subject
 6 to all limitations of the other statute.

7 **NEW SECTION. Section 29. General powers.** (1) Unless
 8 its articles of incorporation provide otherwise, a
 9 corporation has perpetual duration and succession in its
 10 corporate name and has the same powers as an individual to
 11 do all things necessary or convenient to carry out its
 12 affairs including, without limitation, power:

13 (a) to sue and be sued, complain, and defend in its
 14 corporate name;

15 (b) to have a corporate seal, which may be altered at
 16 will, and to use it or a facsimile of the seal by
 17 impressing, affixing, or in any other manner reproducing it;

18 (c) to make and amend bylaws, consistent with its
 19 articles of incorporation or with the laws of this state,
 20 for regulating and managing the affairs of the corporation;

21 (d) to purchase, receive, lease, or otherwise acquire
 22 and to own, hold, improve, use, and otherwise deal with real
 23 or personal property or any legal or equitable interest in
 24 property, wherever located;

25 (e) to sell, convey, mortgage, pledge, lease, exchange,

1 and otherwise dispose of all or any part of its property;

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

7 (g) to make contracts and guaranties; to incur
 8 liabilities; to borrow money; to issue notes, bonds, and
 9 other obligations; and to secure any of its obligations by
 10 mortgage or pledge of any of its property, franchises, or
 11 income;

12 (h) to lend money, invest and reinvest its funds, and
 13 receive and hold real and personal property as security for
 14 repayment, except as limited by [section 93];

15 (i) to be a promoter, partner, member, associate, or
 16 manager of any partnership, joint venture, trust, or other
 17 entity;

18 (j) to conduct its activities, locate offices, and
 19 exercise the powers granted by [sections 1 through 168] in
 20 the state or out of the state;

21 (k) to elect or appoint directors, officers, employees,
 22 and agents of the corporation; to define their duties; and
 23 to fix their compensation;

24 (l) to pay pensions and establish pension plans,
 25 pension trusts, and other benefit and incentive plans for

1 any or all of its current or former directors, officers,
2 employees, and agents;

3 (m) to make donations consistent with law for the
4 public welfare or for charitable, religious, scientific, or
5 educational purposes and for other purposes that further the
6 corporate interest;

7 (n) to impose dues, assessments, admission, and
8 transfer fees upon its members;

9 (o) to establish conditions for admission of members,
10 admit members, and issue memberships;

11 (p) to carry on a business; or

12 (q) to do all things necessary or convenient consistent
13 with law to further the activities and affairs of the
14 corporation.

15 (2) A corporation may not have or issue shares of
16 stock.

17 NEW SECTION. **Section 30.** Ultra vires. (1) Except as
18 provided in subsection (2), the validity of corporate action
19 may not be challenged on the ground that the corporation
20 lacks or lacked power to act.

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

1 (3) (a) A corporation's power to act may be challenged
2 in a proceeding against an incumbent or former director,
3 officer, employee, or agent of the corporation.

4 (b) The proceeding may be brought:

5 (i) by a director;

6 (ii) by the corporation, directly, derivatively, or
7 through a receiver, a trustee, or other legal
8 representative; or

9 (iii) in the case of a public benefit corporation, by
10 the attorney general.

11 NEW SECTION. **Section 31.** Corporate name. (1) A
12 corporate name may not contain language stating or implying
13 that the corporation is organized for a purpose other than
14 that permitted by [section 28] and its articles of
15 incorporation.

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

19 (a) the corporate name of a nonprofit or business
20 corporation incorporated or authorized to do business in
21 this state;

22 (b) a corporate name reserved or registered under
23 [sections 32 or 33] or Title 35, chapter 1;

24 (c) the fictitious name of a foreign business or
25 nonprofit corporation authorized to transact business in

1 this state because its real name is unavailable;

2 (d) the corporate name of a domestic business or
3 nonprofit corporation that has been dissolved, but only
4 distinguishable for a period of 120 days after the effective
5 date of the dissolution; or

6 (e) any assumed business name, limited partnership
7 name, trademark, or service mark registered or reserved with
8 the secretary of state.

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

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

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

23 (4) A corporation may use the name, including the
24 fictitious name, of another domestic or foreign business or
25 nonprofit corporation that is used in this state if the

1 other corporation is incorporated or authorized to do
2 business in this state and the proposed user corporation:

3 (a) has merged with the other corporation;

4 (b) has been formed by reorganization of the other
5 corporation; or

6 (c) has acquired all or substantially all of the
7 assets, including the corporate name, of the other
8 corporation.

9 (5) [Sections 1 through 168] do not control the use of
10 fictitious names.

11 **NEW SECTION. Section 32. Reserved name.** (1) A person
12 may reserve the exclusive use of a corporate name, including
13 a fictitious name for a foreign corporation whose corporate
14 name is not available, by delivering an application to the
15 secretary of state for filing. Upon finding that the
16 corporate name applied for is available, the secretary of
17 state shall reserve the name for the applicant's exclusive
18 use for a nonrenewable 120-day period.

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

23 **NEW SECTION. Section 33. Registered name of foreign**
24 **corporation.** (1) A foreign corporation may register its
25 corporate name, or its corporate name with any change

1 required by [section 152], if the name is distinguishable in
2 the records of the secretary of state from:

3 (a) the corporate name of a nonprofit or business
4 corporation incorporated or authorized to do business in
5 this state; and

6 (b) a corporate name reserved under [section 32], Title
7 35, chapter 1, or registered under this section.

8 (2) A foreign corporation shall register its corporate
9 name, or its corporate name with any change required by
10 [section 152], by delivering to the secretary of state, for
11 filing, an application:

12 (a) setting forth its corporate name or its corporate
13 name with any change required by [section 152], the state or
14 country, the date of its incorporation, and a brief
15 description of the nature of the activities in which it is
16 engaged; and

17 (b) accompanied by a certificate of existence, or a
18 similar document, from the state or country of
19 incorporation.

20 (3) The name is registered for the applicant's
21 exclusive use on the effective date of the application.

22 (4) A foreign corporation whose registration is
23 effective may renew it for successive years by delivering to
24 the secretary of state, for filing, a renewal application
25 that complies with the requirements of subsection (2). The

1 renewal application must be delivered between October 1 and
2 December 31 of the preceding year. The renewal application
3 renews the registration for the following calendar year.

4 (5) A foreign corporation whose registration is
5 effective may continue to qualify as a foreign corporation
6 under that name or consent in writing to the use of that
7 name by a corporation later incorporated under [sections 1
8 through 168] or by another foreign corporation later
9 authorized to transact business in this state. The
10 registration terminates when the foreign corporation is
11 incorporated as a domestic corporation or the foreign
12 corporation qualifies or consents to the qualification of
13 another foreign corporation under the registered name.

14 NEW SECTION. **Section 34.** Registered name and
15 registered agent. Each corporation shall continuously
16 maintain in this state:

17 (1) a registered office with the same address as that
18 of the registered agent; and

19 (2) a registered agent, who must be one of the
20 following:

21 (a) an individual who resides in this state and whose
22 office is identical to the registered office;

23 (b) a domestic business or nonprofit corporation whose
24 office is identical to the registered office; or

25 (c) a foreign business or nonprofit corporation

1 authorized to transact business in this state whose office
2 is identical to the registered office.

3 NEW SECTION. **Section 35. Change of registered office**
4 **or registered agent.** (1) A corporation may change its
5 registered office or registered agent by delivering to the
6 secretary of state, for filing, a statement of change that
7 sets forth:

- 8 (a) the name of the corporation;
- 9 (b) the street address of its current registered office
10 and, if different, the mailing address;
- 11 (c) if the current registered office is to be changed,
12 the street address of the new registered office, and, if
13 different, the mailing address;
- 14 (d) the name of its current registered agent;
- 15 (e) if the current registered agent is to be changed,
16 the name of the new registered agent and the new agent's
17 written consent to the appointment, either on the statement
18 or attached to it; and
- 19 (f) that after the change or changes are made, the
20 street addresses of its registered office and the office of
21 its registered agent will be identical.

22 (2) If the street address of a registered agent's
23 office is changed, the registered agent may change the
24 street address of the registered office of any corporation
25 for which the registered agent is the registered agent by

1 notifying the corporation in writing of the change and by
2 signing, either manually or in facsimile, and delivering to
3 the secretary of state, for filing, a statement that
4 complies with the requirements of subsection (1) and that
5 states that the corporation has been notified of the change.

6 NEW SECTION. **Section 36. Resignation of registered**
7 **agent.** (1) A registered agent may resign as registered agent
8 by signing and delivering to the secretary of state, for
9 filing, the original and two copies of a statement of
10 resignation. The statement may include a statement that the
11 registered office is also discontinued.

12 (2) After filing the statement, the secretary of state
13 shall mail one copy to the registered office, if not
14 discontinued, and the other copy to the corporation at its
15 principal office as shown in the most recent annual report
16 filed pursuant to [section 168].

17 (3) The agency appointment is terminated, and the
18 registered office discontinued, if so provided, 31 days
19 after the date on which the statement was filed.

20 NEW SECTION. **Section 37. Service of process on**
21 **corporation.** (1) Service of process on a corporation must be
22 made upon the persons and in the manner provided by the
23 Montana Rules of Civil Procedure.

24 (2) The following are to be considered trustees for the
25 corporation and its members, for the purpose of service or

1 demand, on a corporation dissolved pursuant to [sections 34
2 through 57]:

3 (a) in the case of a dissolution, any one of those
4 persons designated as trustees for service of process
5 pursuant to a filing made with the secretary of state or, if
6 no filing is made, any one of the directors or officers of
7 the corporation listed in the annual report most recently
8 filed with the secretary of state; or

9 (b) in the case of an involuntary dissolution or
10 expiration of a corporation's term:

11 (i) any one of those persons designated as receiver by
12 a court of competent jurisdiction; or

13 (ii) any one of the directors or officers of the
14 corporation listed in the annual report most recently filed
15 with the secretary of state.

16 NEW SECTION. Section 38. Demand on or notice to
17 corporation. (1) This section applies when a demand or
18 notice is required or permitted by law, but the demand or
19 notice is not required to be served in accordance with the
20 Montana Rules of Civil Procedure.

21 (2) A corporation's registered agent is the
22 corporation's agent for demand or notice required or
23 permitted by law.

24 (3) If a corporation has no registered agent or the
25 agent cannot with reasonable diligence be served, the demand

1 may be made or the corporation may be notified by certified
2 mail, return receipt requested, addressed to the secretary
3 of the corporation at its principal office. The demand or
4 notice is perfected under this subsection at the earliest
5 of:

6 (a) the date the corporation receives the mail;
7 (b) the date shown on the return receipt, if signed on
8 behalf of the corporation; or
9 (c) 5 days after its deposit in the United States mail
10 if it is mailed postpaid and correctly addressed.

11 NEW SECTION. Section 39. Admission. (1) The articles
12 or bylaws may establish criteria or procedures for admission
13 of members.

14 (2) A person may not be admitted as a member without
15 his consent.

16 NEW SECTION. Section 40. Consideration. Except as
17 provided in its articles or bylaws, a corporation may admit
18 members for no consideration or for consideration determined
19 by the board.

20 NEW SECTION. Section 41. No requirement of members. A
21 corporation is not required to have members.

22 NEW SECTION. Section 42. Differences in rights and
23 obligations of members. All members have the same rights and
24 obligations with respect to voting, dissolution, redemption,
25 and transfer unless the articles or bylaws establish classes

1 of membership with different rights or obligations. All
 2 members have the same rights and obligations with respect to
 3 any other matters, except as set forth in or authorized by
 4 the articles or bylaws.

5 NEW SECTION. **Section 43.** Transfers. (1) Except as set
 6 forth in or authorized by the articles or bylaws, a member
 7 of a mutual benefit corporation may not transfer a
 8 membership or any right arising from a membership.

9 (2) A member of a public benefit or religious
 10 corporation may not transfer a membership or any right
 11 arising from a membership.

12 (3) When transfer rights have been provided, a
 13 restriction on them is not binding on a member holding a
 14 membership issued prior to the adoption of the restriction
 15 unless the restriction is approved by the members and the
 16 affected member.

17 NEW SECTION. **Section 44.** Member's liability to third
 18 parties. A member of a corporation is not, as a member,
 19 personally liable for the acts, debts, liabilities, or
 20 obligations of the corporation.

21 NEW SECTION. **Section 45.** Member's liability for dues,
 22 assessments, and fees. A member may become liable to the
 23 corporation for dues, assessments, or fees. However, an
 24 article or bylaw provision or a resolution adopted by the
 25 board authorizing or imposing dues, assessments, or fees

1 does not, of itself, create liability.

2 NEW SECTION. **Section 46.** Creditor's action against
 3 member. (1) A proceeding may not be brought by a creditor to
 4 reach the liability, if any, of a member to the corporation
 5 unless final judgment has been rendered in favor of the
 6 creditor against the corporation and execution has been
 7 returned unsatisfied in whole or in part or unless further
 8 proceeding would be useless.

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

15 NEW SECTION. **Section 47.** Resignation. (1) A member may
 16 resign at any time.

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

21 NEW SECTION. **Section 48.** Termination, expulsion, and
 22 suspension. (1) A member of a public benefit corporation or
 23 mutual benefit corporation may not be expelled or suspended
 24 and membership in these corporations may not be terminated
 25 or suspended except pursuant to a procedure that is fair and

1 reasonable and is carried out in good faith.

2 (2) A procedure is fair and reasonable when either:

3 (a) the articles or bylaws set forth a procedure that
4 provides:

5 (i) not less than 15 days' prior written notice of the
6 expulsion, suspension, or termination and the reasons for
7 it; and

8 (ii) an opportunity for the member to be heard, orally
9 or in writing, not less than 5 days before the effective
10 date of the expulsion, suspension, or termination by a
11 person or persons authorized to decide that the proposed
12 expulsion, termination, or suspension not take place; or

13 (b) it takes into consideration all relevant facts and
14 circumstances.

15 (3) A written notice given by mail must be given by
16 first-class or certified mail sent to the last address of
17 the member shown on the corporation's records.

18 (4) A proceeding that challenges an expulsion,
19 suspension, or termination, including a proceeding in which
20 defective notice is alleged, must be commenced within 1 year
21 after the effective date of the expulsion, suspension, or
22 termination.

23 (5) A member who has been expelled or suspended may be
24 liable to the corporation for dues, assessments, or fees as
25 a result of obligations incurred or commitments made prior

1 to the expulsion or suspension.

2 NEW SECTION. **Section 49. Purchase of memberships.** (1)

3 A public benefit corporation or religious corporation may
4 not purchase any of its memberships or any right arising
5 from membership.

6 (2) A mutual benefit corporation may purchase the
7 membership of a member who resigns or whose membership is
8 terminated for the amount and pursuant to the conditions set
9 forth in or authorized by its articles or bylaws. A payment
10 may not be made in violation of [sections 132 and 133].

11 NEW SECTION. **Section 50. Standing.** (1) For purposes of
12 [sections 50 through 56], "derivative proceeding" means a
13 civil suit in the right of a domestic corporation or, to the
14 extent provided in [section 56], in the right of a foreign
15 corporation.

16 (2) A derivative proceeding may be commenced or
17 maintained by a complainant who is:

18 (a) a director at the time of the bringing of the
19 proceeding; or

20 (b) a member or members having 5% or more of the voting
21 power or by 50 members, whichever is less. Each member must
22 be a member at the time of the proceeding, including the
23 time of the complained act or omission.

24 NEW SECTION. **Section 51. Demand.** A complainant may not
25 commence a derivative proceeding until:

1 (1) a written demand has been made upon the corporation
2 to take suitable action;

3 (2) 90 days have expired from the date the demand was
4 made, unless the complainant has earlier been notified that
5 the demand has been rejected by the corporation or unless
6 irreparable injury to the corporation would result by
7 waiting for the expiration of the 90-day period; and

8 (3) the complainant has notified the attorney general
9 prior to commencing a proceeding if the proceeding involves
10 a public benefit corporation or assets held in charitable
11 trust by a mutual benefit corporation. Notification of the
12 attorney general must be made by mailing the attorney
13 general a copy of the complaint.

14 NEW SECTION. Section 52. Stay of proceedings. If the
15 corporation commences an inquiry into the allegations made
16 in the demand or complaint, the court may stay any
17 derivative proceeding for any period the court considers
18 appropriate.

19 NEW SECTION. Section 53. Dismissal. (1) The court
20 shall dismiss a derivative proceeding on motion by the
21 corporation if one of the groups specified in subsections
22 (2) or (6) has determined in good faith, after conducting a
23 reasonable inquiry upon which its conclusions are based,
24 that the maintenance of the derivative proceeding is not in
25 the best interests of the corporation.

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

3 (a) a majority vote of independent directors present at
4 a meeting of the board of directors if independent directors
5 constitute a quorum; or

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

11 (3) None of the following may by itself cause a
12 director to be considered not independent for purposes of
13 this section:

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

17 (b) the naming of the director as a defendant in the
18 derivative proceeding or as a defendant against whom action
19 is demanded; or

20 (c) the approval by the director of the act being
21 challenged in the derivative proceeding or demand if the act
22 did not result in 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
25 complainant, the complaint must allege with particularity

1 facts establishing either that a majority of the board of
2 directors did not consist of independent directors at the
3 time the determination was made or, that the requirements of
4 subsection (1) have not been met.

5 (5) If a majority of the board of directors does not
6 consist of independent directors at the time the
7 determination is made, the corporation has the burden of
8 proving that the requirements of subsection (1) have been
9 met. If a majority of the board of directors consists of
10 independent directors at the time the determination is made,
11 the complainant has the burden of proving that the
12 requirements of subsection (1) have not been met.

13 (6) Upon motion by the corporation, the court may
14 appoint a panel of one or more independent persons to make a
15 determination of whether the maintenance of the derivative
16 proceeding is in the best interests of the corporation. In
17 this case, the plaintiff has the burden of proving that the
18 requirements of subsection (1) have not been met.

19 NEW SECTION. Section 54. Discontinuance or settlement
20 -- notice. A derivative proceeding may not be discontinued
21 or settled without the court's approval. If the court
22 determines that a proposed discontinuance or settlement will
23 substantially affect the interests of the corporation's
24 members or a class of members, the court shall direct that
25 notice be given to the members affected.

1 NEW SECTION. Section 55. Payment of expenses. On
2 termination of the derivative proceeding, the court may
3 order:

4 (1) the corporation to pay the complainant's reasonable
5 expenses, including attorney fees, incurred in the
6 proceeding if it finds that the proceeding has resulted in a
7 substantial benefit to the corporation; or

8 (2) the complainant to pay any defendant's reasonable
9 expenses, including attorney fees, incurred in defending the
10 proceeding if it finds that the proceeding was commenced or
11 maintained without reasonable cause or for an improper
12 purpose.

13 NEW SECTION. Section 56. Applicability to foreign
14 corporations. In a derivative proceeding in the right of a
15 foreign corporation, the matter covered by [sections 50
16 through 56] is governed by the laws of the jurisdiction of
17 incorporation of the foreign corporation, except for
18 [sections 52, 54, and 55].

19 NEW SECTION. Section 57. Delegates. (1) A corporation
20 may provide in its articles or bylaws for delegates who have
21 some or all of the authority of members.

22 (2) The articles or bylaws may set forth provisions
23 relating to:

24 (a) the characteristics, qualifications, rights,
25 limitations, and obligations of delegates including their

1 selection and removal;

2 (b) calling, noticing, holding, and conducting meetings
3 of delegates; and

4 (c) carrying on corporate activities during and between
5 meetings of delegates.

6 NEW SECTION. Section 58. Annual and regular meetings.

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

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

13 (3) Annual and regular membership meetings may be held
14 in the state or out of the state, at the place stated in or
15 fixed in accordance with the bylaws. If a place is not
16 stated in or fixed in accordance with the bylaws, annual and
17 regular meetings must be held at the corporation's principal
18 office.

19 (4) At the annual meeting:

20 (a) the president and chief financial officer shall
21 report on the activities and financial condition of the
22 corporation; and

23 (b) the members shall consider and act upon other
24 matters that are raised consistent with the notice and
25 voting requirements of [sections 62 and 69(2)].

1 (5) At regular meetings, the members shall consider and
2 act upon matters raised consistent with the notice and
3 voting requirements of [sections 62 and 69(2)].

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

7 (7) If the corporation has 50 or fewer members and if
8 permitted by the bylaws, members may participate in a
9 meeting of the members by means of a conference telephone
10 call or similar communication equipment through which all
11 persons participating in the meeting can hear each other at
12 the same time. Participation in this manner constitutes
13 presence in person at a meeting.

14 NEW SECTION. Section 59. Special meeting. (1) A
15 corporation with members shall hold a special meeting of
16 members:

17 (a) on the call of its board or of the person
18 authorized to do so by the articles or bylaws; or

19 (b) except as provided in the articles or bylaws of a
20 religious corporation, if the holders of at least 5% of the
21 voting power of any corporation sign, date, and deliver to
22 any corporate officer one or more written demands for the
23 meeting that describe the purpose or purposes for which it
24 is to be held.

25 (2) For purposes of determining whether the 5%

1 requirement of subsection (1) has been met, the record date
2 is at the close of business on the 30th day before delivery
3 of the demand or demands for a special meeting to any
4 corporate officer.

5 (3) If a notice for a special meeting demanded under
6 subsection (1)(b) is not given pursuant to [section 62]
7 within 30 days after the date the written demand is
8 delivered to a corporate officer, regardless of the
9 requirements of subsection (4), a person signing the demand
10 or demands may set the time and place of the meeting and
11 give notice pursuant to [section 62].

12 (4) Special meetings of members may be held in the
13 state or out of the state, at the place stated in or fixed
14 in accordance with the bylaws. If a place is not stated or
15 fixed in accordance with the bylaws, special meetings must
16 be held at the corporation's principal office.

17 (5) Only those matters that are within the purpose or
18 purposes described in the meeting notice required by
19 [section 62] may be conducted at a special meeting of
20 members.

21 **NEW SECTION. Section 60. Court-ordered meeting.** (1)
22 The district court for the judicial district of the county
23 where a corporation's principal office is located, or, if
24 the principal office is not located in this state, where its
25 registered office is located may summarily order a meeting

1 to be held:

2 (a) on application of a member or other person entitled
3 to participate in an annual or regular meeting and, in the
4 case of a public benefit corporation, the attorney general,
5 if an annual meeting was not held within the earlier of 6
6 months after the end of the corporation's fiscal year or 15
7 months after its last annual meeting;

8 (b) on application of a member or other person entitled
9 to participate in a regular meeting and, in the case of a
10 public benefit corporation, the attorney general, if a
11 regular meeting is not held within 40 days after the date it
12 was required to be held; or

13 (c) on application of a member who signed a demand for
14 a special meeting valid under [section 59], a person
15 entitled to call a special meeting and, in the case of a
16 public benefit corporation, the attorney general, if:

17 (i) notice of the special meeting was not given within
18 30 days after the date the demand was delivered to a
19 corporate officer; or

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

22 (2) The court may fix the time and place of the
23 meeting, specify a record date for determining members
24 entitled to notice of and to vote at the meeting, prescribe
25 the form and content of the meeting notice, fix the quorum

1 required for specific matters to be considered at the
 2 meeting or direct that the votes represented at the meeting
 3 constitute a quorum for action on those matters, and enter
 4 other orders necessary to accomplish the purpose or purposes
 5 of the meeting.

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

9 NEW SECTION. **Section 61. Action by written consent.**

10 (1) Unless limited or prohibited by the articles or bylaws,
 11 action required or permitted by [sections 1 through 168] to
 12 be approved by the members may be approved without a meeting
 13 of members if the action is approved by members holding at
 14 least 80% of the voting power. The action must be evidenced
 15 by one or more written consents that describe the action
 16 taken, be signed by those members representing at least 80%
 17 of the voting power, and be delivered to the corporation for
 18 inclusion in the minutes or filing with the corporate
 19 records.

20 (2) If not otherwise determined under [sections 60 or
 21 64], the record date for determining members entitled to
 22 take action without a meeting is the date the first member
 23 signs the consent under subsection (1).

24 (3) A consent signed under this section has the effect
 25 of a meeting vote and may be described as a vote in any

1 document filed with the secretary of state.

2 (4) Written notice of member approval pursuant to this
 3 section must be given to all members who have not signed the
 4 written consent. If written notice is required, member
 5 approval pursuant to this section is effective 10 days after
 6 written notice is given.

7 NEW SECTION. **Section 62. Notice of meeting.** (1) A
 8 corporation shall give notice consistent with its bylaws of
 9 meetings of members in a fair and reasonable manner.

10 (2) Any notice that conforms to the requirements of
 11 subsection (3) is fair and reasonable, but other means of
 12 giving notice may also be fair and reasonable when all the
 13 circumstances are considered. However, notice of matters
 14 referred to in subsection (3)(b) must be given as specified
 15 in subsection (3).

16 (3) Notice is fair and reasonable if:

17 (a) the corporation notifies its members of the place,
 18 date, and time of each annual, regular, and special meeting
 19 of members not less than 10 days before the meeting date or,
 20 if notice is mailed by certified mail, not less than 30 or
 21 more than 60 days before the meeting date;

22 (b) notice of an annual or regular meeting includes a
 23 description of any matter or matters that must be approved
 24 by the members under [sections 92, 107, 112, 119, 126, 131,
 25 134, or 135]; and

1 (c) notice of a special meeting includes a description
2 of the matter or matters for which the meeting is called.

3 (4) Unless the bylaws require otherwise, if an annual,
4 regular, or special meeting of members is adjourned to a
5 different date, time, or place, notice need not be given of
6 the new date, time, or place, if the new date, time, or
7 place is announced at the meeting before adjournment. If a
8 new record date for the adjourned meeting is or must be
9 fixed under [section 64], notice of the adjourned meeting
10 must be given under this section to the members of record as
11 of the new record date.

12 (5) When giving notice of an annual, regular, or
13 special meeting of members, a corporation shall give notice
14 of a matter a member intends to raise at the meeting if:

15 (a) requested in writing to do so by a person entitled
16 to call a special meeting; and

17 (b) the request is received by the secretary or
18 president of the corporation at least 10 days before the
19 corporation gives notice of the meeting.

20 NEW SECTION. Section 63. waiver of notice. (1) A
21 member may waive a notice required by [sections 1 through
22 168], the articles, or bylaws before or after the date and
23 time stated in the notice. The waiver must be in writing, be
24 signed by the member entitled to the notice, and be
25 delivered to the corporation for inclusion in the minutes or

1 filing with the corporate records.

2 (2) A member's attendance at a meeting:

3 (a) waives objection to lack of notice or defective
4 notice of the meeting unless the member, at the beginning of
5 the meeting, objects to holding the meeting or transacting
6 business at the meeting; and

7 (b) waives objection to consideration of a particular
8 matter at the meeting that is not within the purpose or
9 purposes described in the meeting notice unless the member
10 objects to considering the matter when it is presented.

11 NEW SECTION. Section 64. Record date -- determining
12 members entitled to notice and vote. (1) The bylaws of a
13 corporation may fix or provide the manner of fixing a date
14 as the record date for determining the members entitled to
15 notice of a members' meeting. If the bylaws do not fix or
16 provide for fixing a record date, the board may fix a future
17 date as the record date. If a record date is not fixed,
18 members are entitled to notice of the meeting:

19 (a) at the close of business on the business day
20 preceding the day on which notice is given; or

21 (b) if notice is waived, at the close of business on
22 the business day preceding the day on which the meeting is
23 held.

24 (2) The bylaws of a corporation may fix or provide the
25 manner of fixing a date as the record date for determining

1 the members entitled to vote at a members' meeting. If the
2 bylaws do not fix or provide for fixing a record date, the
3 board may fix a future date as the record date. If a record
4 date is not fixed, members on the date of the meeting who
5 are otherwise eligible to vote are entitled to vote at the
6 meeting.

7 (3) The bylaws may fix or provide the manner for
8 determining a date as the record date for the purpose of
9 determining the members entitled to exercise any rights in
10 respect of any other lawful action. If the bylaws do not fix
11 or provide for fixing a record date, the board may fix in
12 advance the record date. If a record date is not fixed,
13 members are entitled to exercise the rights at the close of
14 business on the day on which the board adopts the resolution
15 relating to it or 60 days prior to the date of other action,
16 whichever is later.

17 (4) A record date fixed under this section may not be
18 more than 70 days before the meeting or action requiring a
19 determination of members occurs.

20 (5) A determination of members entitled to notice of or
21 to vote at a membership meeting is effective for any
22 adjournment of the meeting unless the board fixes a new date
23 for determining the right to notice or the right to vote,
24 which it must do if the meeting is adjourned to a date more
25 than 70 days after the record date for determining members

1 entitled to notice of the original meeting.

2 (6) If a court orders a meeting adjourned to a date
3 more than 120 days after the date fixed for the original
4 meeting, it may provide that the original record date for
5 notice or voting continues in effect or it may fix a new
6 record date for notice or voting.

7 NEW SECTION. **Section 65. Action by written ballot.** (1)
8 Unless prohibited or limited by the articles or bylaws, any
9 action that may be taken at any annual, regular, or special
10 meeting of members may be taken without a meeting if the
11 corporation delivers a written ballot to every member
12 entitled to vote on the matter.

13 (2) A written ballot must:

14 (a) set forth each proposed action; and
15 (b) provide an opportunity to vote for or against each
16 proposed action.

17 (3) Approval by written ballot pursuant to this section
18 is valid only when:

19 (a) the number of votes cast by ballot equals or
20 exceeds the quorum required to be present at a meeting
21 authorizing the action; and

22 (b) the number of approvals equals or exceeds the
23 number of votes that would be required to approve the matter
24 at a meeting at which the total number of votes cast was the
25 same as the number of votes cast by ballot.

- 1 (4) All solicitations for votes by written ballot must:
- 2 (a) indicate the number of responses needed to meet the
- 3 quorum requirements;
- 4 (b) state the percentage of approvals necessary to
- 5 approve each matter other than election of directors; and
- 6 (c) specify the time by which a ballot must be received
- 7 by the corporation in order to be counted.
- 8 (5) Except as otherwise provided in the articles or
- 9 bylaws, a written ballot may not be revoked.

10 NEW SECTION. **Section 66. Members' list for meeting.**

11 (1) After fixing a record date for a notice of a meeting, a

12 corporation shall prepare an alphabetical list of the names

13 of all its members who are entitled to notice of the

14 meeting. The list must show the address and number of votes

15 each member is entitled to vote at the meeting. The

16 corporation shall prepare, on a current basis through the

17 time of the membership meeting, a list of members, if any,

18 who are entitled to vote at the meeting but not entitled to

19 notice of the meeting. This list must be prepared on the

20 same basis and be part of the list of members.

- 21 (2) The list of members must be available:
- 22 (a) for inspection by any member for the purpose of
- 23 communication with other members concerning the meeting,
- 24 beginning 2 business days after notice is given of the
- 25 meeting for which the list was prepared and continuing

- 1 through the meeting; and
- 2 (b) at the corporation's principal office or at a
- 3 reasonable place identified in the meeting notice in the
- 4 city where the meeting will be held. A member, a member's
- 5 agent, or a member's attorney is entitled, on written
- 6 demand, to inspect and, subject to the limitations of
- 7 [sections 162(3) and 165] to copy the list, at a reasonable
- 8 time and at the member's expense, during the period it is
- 9 available for inspection.

10 (3) The corporation shall make the list of members

11 available at the meeting, and any member, a member's agent,

12 or a member's attorney is entitled to inspect the list at

13 any time during the meeting or any adjournment.

14 (4) If the corporation refuses to allow a member, a

15 member's agent, or a member's attorney to inspect the list

16 of members before or at the meeting or to copy the list as

17 permitted by subsection (2), the district court for the

18 judicial district of the county where a corporation's

19 principal office or, if the principal office is not located

20 in this state, where its registered office is located, on

21 application of the member, may summarily order the

22 inspection or copying at the corporation's expense, may

23 postpone the meeting for which the list was prepared until

24 the inspection or copying is complete, and may order the

25 corporation to pay the member's costs, including reasonable

1 attorney fees, incurred to obtain the order.

2 (5) Unless a written demand to inspect and copy a
3 membership list has been made under subsection (2) prior to
4 the membership meeting and a corporation improperly refuses
5 to comply with the demand, refusal or failure to comply with
6 this section does not affect the validity of action taken at
7 the meeting.

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

11 NEW SECTION. **Section 67.** Voting entitlement generally.

12 (1) Unless the articles or bylaws provide otherwise, each
13 member is entitled to one vote on each matter voted on by
14 the members.

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

19 (a) if only one votes, the act binds all; and

20 (b) if more than one votes, the vote is divided on a
21 pro rata basis.

22 NEW SECTION. **Section 68.** Quorum requirements. (1)

23 Unless [sections 1 through 168], the articles, or bylaws
24 provide for a higher or lower quorum, 10% of the votes
25 entitled to be cast on a matter must be represented at a

1 meeting of members to constitute a quorum on that matter.

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

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

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

11 NEW SECTION. **Section 69.** Voting requirements. (1)

12 Unless [sections 1 through 168], the articles, or bylaws
13 require a greater vote or voting by class, if a quorum is
14 present, the affirmative vote of the votes represented and
15 voting, if they are a majority of the required quorum, is
16 the act of the members.

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

20 NEW SECTION. **Section 70.** Proxies. (1) Unless the

21 articles or bylaws prohibit or limit proxy voting, a member
22 may appoint a proxy to vote or otherwise act for the member
23 by signing an appointment form, either personally or by an
24 attorney-in-fact.

25 (2) An appointment of a proxy is effective when

1 received by the secretary or other officer or agent
2 authorized to tabulate votes. An appointment is valid for 11
3 months unless a different period is expressly provided in
4 the appointment form. However, a proxy is not valid for more
5 than 3 years from its date of execution.

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

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

14 (5) Appointment of a proxy is revoked by the person
15 appointing the proxy:

16 (a) attending any meeting and voting in person; or

17 (b) signing and delivering to the secretary or other
18 officer or agent authorized to tabulate proxy votes either a
19 writing stating that the appointment of the proxy is revoked
20 or a subsequent appointment form.

21 (6) Subject to [section 73] and any express limitation
22 on the proxy's authority appearing on the face of the
23 appointment form, a corporation is entitled to accept the
24 proxy's vote or other action as that of the member who made
25 the appointment.

1 NEW SECTION. **Section 71. Cumulative voting for**
2 **directors -- exception.** (1) If the articles or bylaws
3 provide for cumulative voting by members, members may so
4 vote by multiplying the number of votes the members are
5 entitled to cast by the number of directors for whom they
6 are entitled to vote and casting the product for a single
7 candidate or distributing the product among two or more
8 candidates.

9 (2) Cumulative voting is not authorized at a particular
10 meeting unless:

11 (a) the meeting notice or statement accompanying the
12 notice states that cumulative voting will take place; or

13 (b) a member gives notice during the meeting and before
14 the vote is taken of the member's intent to cumulate votes.
15 If one member gives this notice, all other members
16 participating in the election are entitled to cumulate their
17 votes without giving further notice.

18 (3) A director elected by cumulative voting may be
19 removed by the members without cause if the requirements of
20 [section 80] are met unless the votes cast against removal
21 or not consenting in writing to removal would be sufficient
22 to elect the director if voted cumulatively at an election
23 at which the same total number of votes were cast or, if the
24 action is taken by written ballot, all memberships entitled
25 to vote were voted, and if the entire number of directors

1 authorized at the time of the director's most recent
2 election were then being elected.

3 (4) Members may not cumulatively vote if the directors
4 and members are identical.

5 NEW SECTION. Section 72. Other methods of electing
6 directors. A corporation may provide in its articles or
7 bylaws for election of directors by members or delegates:

8 (1) on the basis of chapter or other organizational
9 unit;

10 (2) by region or other geographic unit;

11 (3) by preferential voting; or

12 (4) by any other reasonable method.

13 NEW SECTION. Section 73. Corporation's acceptance of
14 votes. (1) If the name signed on a vote, consent, waiver, or
15 proxy appointment corresponds to the name of a member, the
16 corporation, if acting in good faith, is entitled to accept
17 the vote, consent, waiver, or proxy appointment and give it
18 effect as the act of the member.

19 (2) If the name signed on a vote, consent, waiver, or
20 proxy appointment does not correspond to the record name of
21 a member, the corporation, if acting in good faith, is
22 nevertheless entitled to accept the vote, consent, waiver,
23 or proxy appointment and give it effect as the act of the
24 member if:

25 (a) the member is an entity and the name signed

1 purports to be that of an attorney-in-fact of the member
2 and, if the corporation requests, evidence acceptable to the
3 corporation of the signatory's authority to sign for the
4 member has been presented with respect to the vote, consent,
5 waiver, or proxy appointment;

6 (b) the name signed purports to be that of an
7 attorney-in-fact of the member and, if the corporation
8 requests, evidence acceptable to the corporation of the
9 signatory's authority to sign for the member has been
10 presented with respect to the vote, consent, waiver, or
11 proxy appointment;

12 (c) two or more persons hold the membership as
13 cotenants or fiduciaries and:

14 (i) the name signed purports to be the name of at least
15 one of the coholders; and

16 (ii) the person signing appears to be acting on behalf
17 of all the coholders; or

18 (d) in the case of a mutual benefit corporation:

19 (i) the name signed purports to be that of an
20 administrator, executor, guardian, or conservator
21 representing the member and, if the corporation requests,
22 evidence of fiduciary status acceptable to the corporation
23 has been presented with respect to the vote, consent,
24 waiver, or proxy appointment; or

25 (ii) the name signed purports to be that of a receiver

1 or trustee in bankruptcy of the member and, if the
2 corporation requests, evidence of this status acceptable to
3 the corporation has been presented with respect to the vote,
4 consent, waiver, or proxy appointment.

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

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

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

20 NEW SECTION. **Section 74.** Voting agreements. (1) Two or
21 more members may provide for the manner in which they will
22 vote by signing an agreement for that purpose. Voting
23 agreements may be valid for a period of up to 10 years. For
24 public benefit corporations, voting agreements must have a
25 reasonable purpose consistent with the corporation's public

1 or charitable purposes.

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

4 NEW SECTION. **Section 75.** Requirement for and duties of
5 board. (1) Each corporation must have a board of directors.

6 (2) Except as provided in [sections 1 through 168] or
7 subsection (3), all corporate powers are exercised by or
8 under the authority of the board, and the affairs of the
9 corporation managed under the direction of its board.

10 (3) The articles may authorize a person or persons to
11 exercise some or all of the powers that would otherwise be
12 exercised by a board. To the extent authorized, a person
13 authorized under this subsection has the duties and
14 responsibilities of the directors and the directors must be
15 relieved from the duties and responsibilities to that
16 extent.

17 NEW SECTION. **Section 76.** Qualifications and numbers of
18 directors. (1) All directors must be individuals. The
19 articles or bylaws may prescribe other qualifications for
20 directors.

21 (2) A board of directors must consist of three or more
22 individuals, with the number specified in or fixed in
23 accordance with the articles or bylaws.

24 (3) The number of directors may be increased or
25 decreased, but to not fewer than three, from time to time by

1 amendment to or in the manner prescribed in the articles or
2 bylaws.

3 NEW SECTION. Section 77. Election, designation and
4 appointment of directors. (1) If the corporation has
5 members, all the directors except the initial directors must
6 be elected at the first annual meeting of members and at
7 each annual meeting thereafter unless the articles or bylaws
8 provide some other time or method of election or provide
9 that some of the directors are appointed by some other
10 person or are designated.

11 (2) If the corporation does not have members, all the
12 directors except the initial directors must be elected,
13 appointed, or designated as provided in the articles or
14 bylaws. If a method of designation or appointment is not set
15 forth in the articles or bylaws, the directors, other than
16 the initial directors, must be elected by the board.

17 NEW SECTION. Section 78. Terms of directors generally
18 -- staggered terms. (1) The articles or bylaws must specify
19 the terms of directors. Except for designated or appointed
20 directors, the terms of directors may not exceed 5 years. In
21 the absence of any term specified in the articles or bylaws,
22 the term of each director is 1 year. Directors may be
23 elected for successive terms.

24 (2) A decrease in the number of directors or term of
25 office does not shorten an incumbent director's term.

1 (3) Except as provided in the articles or bylaws:

2 (a) the term of a director filling a vacancy in the
3 office of a director elected by members expires at the next
4 election of directors by members; and

5 (b) the term of a director filling any other vacancy
6 expires at the end of the unexpired term that the director
7 is filling.

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

12 (5) The articles or bylaws may provide for staggering
13 the terms of directors by dividing the total number of
14 directors into groups. The terms of office of the groups
15 need not be uniform.

16 NEW SECTION. Section 79. Resignation of directors. (1)
17 A director may resign at any time by delivering written
18 notice to the board of directors, its presiding officer, the
19 president, or the secretary.

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

1 NEW SECTION. Section 80. Removal of directors elected
 2 by members or directors. (1) The members may remove one or
 3 more directors elected by them without cause.

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

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

13 (4) If cumulative voting is authorized, a director may
 14 not be removed:

15 (a) if the number of votes sufficient to elect the
 16 director under cumulative voting is voted against the
 17 director's removal; or

18 (b) if the director was elected by a class, chapter,
 19 unit, or grouping of members and the number of votes of that
 20 class, chapter, unit, or grouping of members sufficient to
 21 elect the director under cumulative voting is voted against
 22 the director's removal.

23 (5) A director elected by members may be removed by the
 24 members only at a meeting called for the purpose of removing
 25 the director. The meeting notice must state that the purpose

1 or one of the purposes of the meeting is removal of the
 2 director.

3 (6) In computing whether a director is protected from
 4 removal under subsections (2) through (4), it should be
 5 assumed that the votes against removal are cast in an
 6 election for the number of directors of the class to which
 7 the director to be removed belonged on the date of that
 8 director's election.

9 (7) An entire board of directors may be removed under
 10 subsections (1) through (5).

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

17 (9) If, at the beginning of a director's term on the
 18 board, the articles or bylaws provide that the director may
 19 be removed for missing a specified number of board meetings,
 20 the board may remove the director for failing to attend the
 21 specified number of meetings. The director may be removed
 22 only if a majority of the directors then in office vote for
 23 the removal.

24 (10) The articles or bylaws of a religious corporation
 25 may:

1 (a) limit the application of this section; and
 2 (b) set forth the vote and procedures by which the
 3 board or any person may remove with or without cause a
 4 director elected by the members of the board.

5 NEW SECTION. **Section 81. Removal of designated or**
 6 **appointed directors.** (1) A designated director may be
 7 removed by an amendment to the articles or bylaws deleting
 8 or changing the designation.

9 (2) Except as otherwise provided in the articles or
 10 bylaws, an appointed director may be removed without cause
 11 by the person appointing the director. The person removing
 12 the director shall do so by giving written notice of the
 13 removal to the director and either the presiding officer of
 14 the board or the corporation's president or secretary. The
 15 removal of an appointed director is effective when the
 16 notice is effective unless the notice specifies a future
 17 effective date.

18 NEW SECTION. **Section 82. Removal of directors by**
 19 **judicial proceeding.** (1) The district court for the judicial
 20 district of the county where a corporation's principal
 21 office is located or, if the principal office is not located
 22 in the state, the county where its registered office is
 23 located may remove any director of the corporation from
 24 office in a proceeding commenced by the corporation, by its
 25 members holding at least 10% of the voting power of any

1 class, or by the attorney general in the case of a public
 2 benefit corporation, if the court finds that:

3 (a) (i) the director engaged in fraudulent or dishonest
 4 conduct or in gross abuse of authority or discretion, with
 5 respect to the corporation; or

6 (ii) a final judgment has been entered finding that the
 7 director has violated a duty set forth in [sections 91
 8 through 94]; and

9 (b) removal is in the best interest of the corporation.

10 (2) The court that removes a director may bar the
 11 director from serving on the board for a period prescribed
 12 by the court.

13 (3) If members or the attorney general commence a
 14 proceeding under subsection (1), the corporation must be
 15 made a party defendant.

16 (4) If a public benefit corporation or its members
 17 commence a proceeding under subsection (1), they shall give
 18 the attorney general written notice of the proceeding.

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

21 NEW SECTION. **Section 83. Vacancy on board.** (1) Unless
 22 the articles or bylaws provide otherwise and except as
 23 provided in subsections (2) and (3), if a vacancy occurs on
 24 a board of directors, including a vacancy resulting from an
 25 increase in the number of directors:

1 (a) (i) the members, if any, may fill the vacancy; or
 2 (ii) if the vacant office was held by a director elected
 3 by a class, chapter, organizational unit or by region or
 4 other geographic grouping, only members of the class,
 5 chapter, unit, or grouping are entitled to vote to fill the
 6 vacancy if it is filled by the members;

7 (b) the board of directors may fill the vacancy; or

8 (c) if the directors remaining in office constitute
 9 fewer than a quorum of the board, they may fill the vacancy
 10 by the affirmative vote of a majority of all the directors
 11 remaining in office.

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

15 (3) If a vacant office was held by a designated
 16 director, the vacancy must be filled as provided in the
 17 articles or bylaws. In the absence of an applicable article
 18 or bylaw provision, the vacancy may not be filled by the
 19 board.

20 (4) A vacancy that will occur at a specific later date,
 21 by reason of a resignation effective at a later date under
 22 [section 79(2)] or otherwise, may be filled before the
 23 vacancy occurs. However, the new director may not take
 24 office until the vacancy occurs.

25 NEW SECTION. **Section 84.** Compensation of directors.

1 Unless the articles or bylaws provide otherwise, the board
 2 of directors may fix the compensation of directors.

3 NEW SECTION. **Section 85.** Regular and special meetings.

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

7 (2) A board of directors may hold regular or special
 8 meetings in the state or out of the state.

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

17 NEW SECTION. **Section 86.** Action without meeting. (1)

18 Unless the articles or bylaws provide otherwise, action
 19 required or permitted by [sections 1 through 168] to be
 20 taken at a board of directors' meeting may be taken without
 21 a meeting if the action is taken by all members of the
 22 board. The action must be evidenced by one or more written
 23 consents describing the action taken, be signed by each
 24 director, and be included in the minutes filed with the
 25 corporate records reflecting the action taken.

1 (2) Action taken under this section is effective when
2 the last director signs the consent unless the consent
3 specifies a different effective date.

4 (3) A consent signed under this section has the effect
5 of a meeting vote and may be described as a vote in any
6 document.

7 **NEW SECTION. Section 87. Call and notice of meetings.**

8 (1) Unless the articles or bylaws provide otherwise or
9 unless the provisions of subsection (3) apply, regular
10 meetings of the board may be held without notice.

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

15 (3) In a corporation without members, any board action
16 to remove a director or to approve a matter that would
17 require approval by the members if the corporation had
18 members is not valid unless each director is given at least
19 7 days' written notice that the matter will be voted upon at
20 a directors' meeting or unless notice is waived pursuant to
21 [section 88].

22 (4) Unless the articles or bylaws provide otherwise,
23 the presiding officer of the board, the president, or 20% of
24 the directors then in office may call and give notice of a
25 meeting of the board.

1 **NEW SECTION. Section 88. Waiver of notice.** (1) A
2 director may at any time waive a notice required by
3 [sections 1 through 168], the articles, or bylaws. Except as
4 provided in subsection (2), the waiver must be in writing,
5 be signed by the director entitled to the notice, and be
6 filed with the minutes or the corporate records.

7 (2) A director's attendance at or participation in a
8 meeting waives any required notice of the meeting unless the
9 director, upon arriving at the meeting or prior to the vote
10 on a matter not noticed in conformity with [sections 1
11 through 168], the articles, or bylaws, objects to lack of
12 notice and does not vote for or assent to that action.

13 **NEW SECTION. Section 89. Quorum and voting.** (1) Except
14 as otherwise provided in [sections 1 through 168], the
15 articles, or bylaws, a quorum of a board of directors
16 consists of a majority of the directors in office
17 immediately before a meeting begins. In no event may the
18 articles or bylaws authorize a quorum of fewer than the
19 greater of one-third of the number of directors in office or
20 two directors.

21 (2) If a quorum is present when a vote is taken, the
22 affirmative vote of a majority of directors present is the
23 act of the board unless [sections 1 through 168], the
24 articles, or bylaws require the vote of a greater number of
25 directors.

1 NEW SECTION. Section 90. Committees of the board. (1)
 2 Unless prohibited or limited by the articles or bylaws, a
 3 board of directors may create one or more committees of the
 4 board and appoint members of the board to serve on them.
 5 Each committee must have two or more directors who serve at
 6 the pleasure of the board.

7 (2) The creation of a committee and appointment of
 8 members to it must be approved by the greater of:

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

11 (b) the number of directors required by the articles or
 12 bylaws to take action under [section 89].

13 (3) [Sections 85 through 89], which govern meetings,
 14 action without meetings, notice, waiver of notice, and
 15 quorum and voting requirements of the board, apply to
 16 committees of the board and their members.

17 (4) To the extent specified by the board of directors
 18 or in the articles or bylaws, each committee of the board
 19 may exercise the board's authority under [section 75].

20 (5) A committee of the board may not:

21 (a) authorize distributions;

22 (b) approve or recommend to members dissolution,
 23 merger, or the sale, pledge, or transfer of all or
 24 substantially all of the corporation's assets;

25 (c) elect, appoint, or remove directors or fill

1 vacancies on the board or on any of its committees; or

2 (d) adopt, amend, or repeal the articles or bylaws.

3 (6) The creation of, delegation of authority to, or
 4 action by a committee does not by itself constitute
 5 compliance by a director with the standards of conduct
 6 described in [section 91].

7 NEW SECTION. Section 91. General standards for
 8 directors. (1) A director shall discharge his duties as a
 9 director, including his duties as a member of a committee:

10 (a) in good faith;

11 (b) with the care an ordinarily prudent person in a
 12 similar position would exercise under similar circumstances;
 13 and

14 (c) in a manner the director reasonably believes to be
 15 in the best interests of the corporation.

16 (2) In discharging his duties, a director is entitled
 17 to rely on information, opinions, reports, or statements,
 18 including financial statements and other financial data, if
 19 prepared or presented by:

20 (a) one or more officers or employees of the
 21 corporation whom the director reasonably believes to be
 22 reliable and competent in the matters presented;

23 (b) attorneys, public accountants, or other persons
 24 with regard to matters the director reasonably believes are
 25 within the person's professional or expert competence;

1 (c) a committee of the board of which the director is
2 not a member, as to matters within its jurisdiction, if the
3 director reasonably believes the committee merits
4 confidence; or

5 (d) in the case of religious corporations, religious
6 authorities, ministers, priests, rabbis, or other persons
7 whose position or duties in the religious organization the
8 director believes justify reliance and confidence and whom
9 the director believes to be reliable and competent in the
10 matters presented.

11 (3) A director is not acting in good faith if the
12 director has knowledge concerning the matter in question
13 that makes reliance otherwise permitted by subsection (2)
14 unwarranted.

15 (4) A director is not liable to the corporation, any
16 member, or any other person for any action taken or not
17 taken as a director if the director acted in compliance with
18 this section.

19 (5) A director may not be a trustee with respect to the
20 corporation or with respect to any property held or
21 administered by the corporation, including but not limited
22 to property that may be subject to restrictions imposed by
23 the donor or transferor of the property.

24 (6) [Sections 1 through 168] do not modify any
25 limitation of liability of directors provided by Title 27.

1 NEW SECTION. **Section 92.** Director conflict of
2 interest. (1) A conflict of interest transaction is a
3 transaction with the corporation in which a director of the
4 corporation has a direct or indirect interest. A conflict of
5 interest transaction is not voidable or the basis for
6 imposing liability on the director if the transaction was
7 fair at the time it was entered into or is approved as
8 provided in subsections (2) or (3).

9 (2) A transaction in which a director of a public
10 benefit corporation or religious corporation has a conflict
11 of interest may be approved:

12 (a) in advance by the vote of the board of directors or
13 a committee of the board if:

14 (i) the material facts of the transaction and the
15 director's interest are disclosed or known to the board or
16 committee of the board; and

17 (ii) the directors approving the transaction in good
18 faith reasonably believe that the transaction is fair to the
19 corporation; or

20 (b) before or after it is consummated by obtaining
21 approval of:

22 (i) the attorney general; or

23 (ii) a state district court in an action in which the
24 attorney general is joined as a party.

25 (3) A transaction in which a director of a mutual

1 benefit corporation has a conflict of interest may be
2 approved if:

3 (a) the material facts of the transaction and the
4 director's interest were disclosed or known to the board of
5 directors or a committee of the board and the board or
6 committee of the board authorized, approved, or ratified the
7 transaction; or

8 (b) the material facts of the transaction and the
9 director's interest were disclosed or known to the members
10 and they authorized, approved, or ratified the transaction.

11 (4) For purposes of this section, a director of the
12 corporation has an indirect interest in a transaction if:

13 (a) another entity in which the director has a material
14 interest or in which the director is a general partner is a
15 party to the transaction; or

16 (b) another entity of which the director is a director,
17 officer, or trustee is a party to the transaction.

18 (5) For purposes of subsections (2) and (3), a conflict
19 of interest transaction is authorized, approved, or
20 ratified, if it receives the affirmative vote of a majority
21 of the directors on the board or on the committee who have
22 no direct or indirect interest in the transaction. However,
23 a transaction may not be authorized, approved, or ratified
24 under this section by a single director. If a majority of
25 the directors on the board who have no direct or indirect

1 interest in the transaction vote to authorize, approve, or
2 ratify the transaction, a quorum is present for the purpose
3 of taking action under this section. The presence of or a
4 vote cast by a director with a direct or indirect interest
5 in the transaction does not affect the validity of any
6 action taken under subsections (2)(a) or (3)(a) if the
7 transaction is otherwise approved as provided in subsection
8 (2) or (3).

9 (6) For purposes of subsection (3)(b), a conflict of
10 interest transaction is authorized, approved, or ratified by
11 the members if it receives a majority of the votes entitled
12 to be counted under this subsection. Votes cast by or voted
13 under the control of a director who has a direct or indirect
14 interest in the transaction and votes cast by or voted under
15 the control of an entity described in subsection (4)(a) may
16 not be counted in a vote of members to determine whether to
17 authorize, approve, or ratify a conflict of interest
18 transaction under subsection (3)(b). The vote of these
19 members, however, is counted in determining whether the
20 transaction is approved under other sections of [sections 1
21 through 168]. A majority of the voting power, whether or not
22 present, that is entitled to be counted in a vote on the
23 transaction under this subsection constitutes a quorum for
24 the purpose of taking action under this section.

25 (7) The articles, bylaws, or a resolution of the board

1 may impose additional requirements on conflict of interest
2 transactions.

3 NEW SECTION. Section 93. Loans to or guaranties for
4 directors and officers. (1) A corporation may not lend money
5 to or guarantee the obligation of a director or officer of
6 the corporation.

7 (2) The fact that a loan or guaranty is made in
8 violation of this section does not affect the borrower's
9 liability on the loan.

10 NEW SECTION. Section 94. Liability for unlawful
11 distributions. (1) Unless a director complies with the
12 applicable standards of conduct described in [section 91], a
13 director who votes for or assents to a distribution made in
14 violation of [sections 1 through 168] is personally liable
15 to the corporation for the amount of the distribution that
16 exceeds what could have been distributed without violating
17 [sections 1 through 168].

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

20 (a) from every other director who voted for or assented
21 to the distribution and who did not comply with the
22 applicable standards of conduct described in [section 91];
23 and

24 (b) from each person who received an unlawful
25 distribution for the amount of the distribution whether or

1 not the person receiving the distribution knew it was made
2 in violation of [sections 1 through 168].

3 NEW SECTION. Section 95. Required officers. (1) Unless
4 otherwise provided in the articles or bylaws, a corporation
5 has a president, a secretary, a treasurer, and any other
6 officers appointed by the board.

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

11 (3) A person may simultaneously hold more than one
12 office in a corporation.

13 NEW SECTION. Section 96. Duties and authority of
14 officers. Each officer has the authority and shall perform
15 the duties set forth in the bylaws or, to the extent
16 consistent with the bylaws, the duties and authority
17 prescribed in a resolution of the board or by direction of
18 an officer authorized by the board to prescribe the duties
19 and authority of other officers.

20 NEW SECTION. Section 97. Standards of conduct for
21 officers. (1) An officer with discretionary authority shall
22 discharge his duties under that authority:

23 (a) in good faith;

24 (b) with the care an ordinarily prudent person in a
25 similar position would exercise under similar circumstances;

1 and

2 (c) in a manner the officer reasonably believes to be
3 in the best interests of the corporation and its members, if
4 any.

5 (2) In discharging his duties, an officer is entitled
6 to rely on information, opinions, reports, or statements,
7 including financial statements and other financial data, if
8 prepared or presented by:

9 (a) one or more officers or employees of the
10 corporation who the officer reasonably believes to be
11 reliable and competent in the matters presented;

12 (b) attorneys, public accountants, or other persons as
13 to matters the officer reasonably believes are within the
14 person's professional or expert competence; or

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

21 (3) An officer is not acting in good faith if the
22 officer has knowledge concerning the matter in question that
23 makes reliance otherwise permitted by subsection (2)
24 unwarranted.

25 (4) An officer is not liable to the corporation, any

1 member, or any other person for an action taken or not taken
2 as an officer if the officer acted in compliance with this
3 section.

4 (5) [Sections 75 through 109] do not modify any
5 limitation of liability of officers provided by Title 27.

6 NEW SECTION. **Section 98. Resignation and removal of**
7 **officers.** (1) An officer may resign at any time by
8 delivering notice to the corporation. A resignation is
9 effective when the notice is effective unless the notice
10 specifies a future effective date. If a resignation is made
11 effective at a future date and the corporation accepts the
12 future effective date, its board of directors may fill the
13 pending vacancy before the effective date if the board
14 provides that the successor does not take office until the
15 effective date.

16 (2) A board may remove any officer at any time, with or
17 without cause.

18 NEW SECTION. **Section 99. Contract rights of officers.**
19 (1) The appointment of an officer does not of itself create
20 contract rights.

21 (2) An officer's removal does not affect the officer's
22 contract rights, if any, with the corporation. An officer's
23 resignation does not affect the corporation's contract
24 rights, if any, with the officer.

25 NEW SECTION. **Section 100. Officers' authority to**

1 execute documents. A contract or other instrument in writing
 2 executed or entered into between a corporation and any other
 3 person is not invalidated as to the corporation by a lack of
 4 authority of the signing officers in the absence of actual
 5 knowledge on the part of the other person that the signing
 6 officers did not have authority to execute the contract or
 7 other instrument if it is signed by:

8 (1) the presiding officer of the board and the
 9 president; or

10 (2) one person from each of the following:

11 (a) the presiding officer of the board or the
 12 president; and

13 (b) a vice president, the secretary, treasurer, or
 14 executive director.

15 **NEW SECTION. Section 101.** Definitions. As used in
 16 [sections 101 through 109], the following definitions apply:

17 (1) "Corporation" includes any domestic or foreign
 18 predecessor entity of a corporation in a merger or other
 19 transaction in which the predecessor's existence ceased upon
 20 consummation of the transaction.

21 (2) (a) "Director" means an individual who is or was a
 22 director of a corporation or an individual who, while a
 23 director of a corporation, is or was serving at the
 24 corporation's request as a director, officer, partner,
 25 trustee, employee, or agent of another foreign or domestic

1 business or nonprofit corporation, partnership, joint
 2 venture, trust, employee benefit plan, or other enterprise.
 3 A director is considered to be serving an employee benefit
 4 plan at the corporation's request if the director's duties
 5 to the corporation also impose duties on, or otherwise
 6 involve services by, the director to the plan or the
 7 participants in or beneficiaries of the plan.

8 (b) Director includes, unless the context requires
 9 otherwise, the estate or personal representative of a
 10 director.

11 (3) "Expenses" include attorney fees.

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

16 (5) (a) "Official capacity" means:

17 (i) when used with respect to a director, the office of
 18 director in a corporation; or

19 (ii) when used with respect to an individual other than
 20 a director, as contemplated in [section 107], the office in
 21 a corporation held by the officer or the employment or
 22 agency relationship undertaken by the employee or agent on
 23 behalf of the corporation.

24 (b) Official capacity does not include service for any
 25 other foreign or domestic business or nonprofit corporation

1 or any partnership, joint venture, trust, employee benefit
2 plan, or other enterprise.

3 (6) "Party" includes an individual who was, is, or is
4 threatened to be made a named defendant or respondent in a
5 proceeding.

6 (7) "Proceeding" means any threatened, pending, or
7 completed action, suit, or proceeding, whether civil,
8 criminal, administrative, or investigative and whether
9 formal or informal.

10 NEW SECTION. Section 102. Authority to indemnify. (1)
11 Except as provided in subsection (4), an individual made a
12 party to a proceeding because the individual is or was a
13 director may be indemnified against liability incurred in
14 the proceeding if the individual:

15 (a) conducted himself in good faith;

16 (b) reasonably believed:

17 (i) in the case of conduct in his official capacity
18 with the corporation, that his conduct was in its best
19 interests; and

20 (ii) in all other cases, that his conduct was at least
21 not opposed to its best interests; and

22 (c) in the case of any criminal proceeding, had no
23 reasonable cause to believe his conduct was unlawful.

24 (2) A director's conduct with respect to an employee
25 benefit plan for a purpose the director reasonably believed

1 to be in the interests of the participants in and
2 beneficiaries of the plan is conduct that satisfies the
3 requirements of subsection (1)(b)(ii).

4 (3) The termination of a proceeding by judgment, order,
5 settlement, conviction, or upon a plea of nolo contendere or
6 its equivalent is not, of itself, a determination that the
7 director did not meet the standard of conduct described in
8 this section.

9 (4) A corporation may not indemnify a director under
10 this section:

11 (a) in connection with a proceeding by or in the right
12 of the corporation in which the director was adjudged liable
13 to the corporation; or

14 (b) in connection with any other proceeding that
15 charges improper personal benefit to the director, whether
16 or not involving action in his official capacity, in which
17 the director was adjudged liable on the basis that personal
18 benefit was improperly received by the director.

19 (5) Indemnification permitted under this section in
20 connection with a proceeding by or in the right of the
21 corporation is limited to reasonable expenses incurred in
22 connection with the proceeding.

23 NEW SECTION. Section 103. Mandatory indemnification.
24 Unless limited by its articles of incorporation, a
25 corporation shall indemnify a director who was wholly

1 successful, on the merits or otherwise, in the defense of
 2 any proceeding to which the director was a party because he
 3 is or was a director of the corporation, against reasonable
 4 expenses actually incurred by the director in connection
 5 with the proceeding.

6 NEW SECTION. Section 104. Advance for expenses. (1) A
 7 corporation may pay for or reimburse the reasonable expenses
 8 incurred by a director who is a party to a proceeding in
 9 advance of final disposition of the proceeding if:

10 (a) the director furnishes the corporation a written
 11 affirmation of his good faith belief that he has met the
 12 standard of conduct described in [section 102];

13 (b) the director furnishes the corporation a written
 14 undertaking, executed personally or on the director's
 15 behalf, to repay the advance if it is ultimately determined
 16 that the director did not meet the standard of conduct; and

17 (c) a determination is made that the facts then known
 18 to those making the determination would not preclude
 19 indemnification under [sections 101 through 109].

20 (2) The undertaking required by subsection (1)(b) must
 21 be an unlimited general obligation of the director but need
 22 not be secured and may be accepted without reference to
 23 financial ability to make repayment.

24 (3) Determinations and authorizations of payments under
 25 this section must be made in the manner specified in

1 [section 106].

2 NEW SECTION. Section 105. Court-ordered
 3 indemnification. Unless limited by a corporation's articles
 4 of incorporation, a director of the corporation who is a
 5 party to a proceeding may apply for indemnification to the
 6 court conducting the proceeding or to another court of
 7 competent jurisdiction. On receipt of an application, the
 8 court, after giving any notice the court considers
 9 necessary, may order indemnification in the amount it
 10 considers proper if it determines that the director:

11 (1) is entitled to mandatory indemnification under
 12 [section 103], in which case the court shall also order the
 13 corporation to pay the director's reasonable expenses
 14 incurred to obtain court-ordered indemnification; or

15 (2) is fairly and reasonably entitled to
 16 indemnification in view of all the relevant circumstances,
 17 whether or not the director met the standard of conduct set
 18 forth in [section 102(1)] or was adjudged liable as
 19 described in [section 102(4)]. If the director was adjudged
 20 liable, indemnification is limited to reasonable expenses
 21 incurred.

22 NEW SECTION. Section 106. Determination and
 23 authorization of indemnification. (1) A corporation may not
 24 indemnify a director under [section 102] unless it is
 25 authorized in the specific case after a determination has

1 been made that indemnification of the director is
2 permissible in the circumstances because the director has
3 met the standard of conduct set forth in [section 102].

4 (2) The determination must be made:

5 (a) by the board of directors by majority vote of a
6 quorum consisting of directors not at the time parties to
7 the proceeding;

8 (b) if a quorum cannot be obtained under subsection
9 (2)(a), by majority vote of a committee designated by the
10 board of directors consisting solely of two or more
11 directors not at the time parties to the proceeding;

12 (c) by special legal counsel:

13 (i) selected by the board of directors or its committee
14 in the manner prescribed in subsection (2)(a) or (2)(b); or

15 (ii) if a quorum of the board cannot be obtained under
16 subsection (2)(a) and a committee cannot be designated under
17 subsection (2)(b), selected by majority vote of the full
18 board, in which selected directors who are parties may
19 participate; or

20 (d) by the members of a mutual benefit corporation.
21 However, directors who are at the time parties to the
22 proceeding may not vote on the determination.

23 (3) Authorization of indemnification and evaluation as
24 to reasonableness of expenses must be made in the same
25 manner as the determination that indemnification is

1 permissible, except that if the determination is made by
2 special legal counsel, authorization of indemnification and
3 evaluation as to reasonableness of expenses must be made by
4 those entitled under subsection (2)(c) to select counsel.

5 (4) A director of a public benefit corporation may not
6 be indemnified until 20 days after the effective date of
7 written notice to the attorney general of the proposed
8 indemnification.

9 **NEW SECTION. Section 107. Indemnification of officers,**
10 **employees, and agents.** Unless limited by a corporation's
11 articles of incorporation:

12 (1) an officer of the corporation who is not a director
13 is entitled to mandatory indemnification under [section 103]
14 and is entitled to apply for court-ordered indemnification
15 under [section 105] to the same extent as a director;

16 (2) the corporation may indemnify and advance expenses
17 under [sections 101 through 109] to an officer, employee, or
18 agent of the corporation who is not a director to the same
19 extent as to a director; and

20 (3) a corporation may also indemnify and advance
21 expenses to an officer, employee, or agent who is not a
22 director to the extent, consistent with public policy, that
23 may be provided by its articles of incorporation, bylaws,
24 general or specific action of its board of directors, or
25 contract.

1 NEW SECTION. **Section 108.** Insurance. A corporation may
 2 purchase and maintain insurance on behalf of an individual
 3 who is or was a director, officer, employee, or agent of the
 4 corporation or who, while a director, officer, employee, or
 5 agent of the corporation, is or was serving at the request
 6 of the corporation as a director, officer, partner, trustee,
 7 employee, or agent of another foreign or domestic business
 8 or nonprofit corporation, partnership, joint venture, trust,
 9 employee benefit plan, or other enterprise, against
 10 liability asserted against or incurred by him in that
 11 capacity or arising from his status as a director, officer,
 12 employee, or agent, whether or not the corporation would
 13 have power to indemnify the person against the same
 14 liability under [sections 102 or 103].

15 NEW SECTION. **Section 109.** Application. (1) A provision
 16 treating a corporation's indemnification of or advance for
 17 expenses to directors that is contained in its articles of
 18 incorporation, its bylaws, a resolution of its members or
 19 board of directors, a contract, or other instrument is valid
 20 only if and to the extent the provision is consistent with
 21 [sections 101 through 109]. If articles of incorporation
 22 limit indemnification or advance for expenses,
 23 indemnification and advance for expenses are valid only to
 24 the extent consistent with the articles.

25 (2) [Sections 101 through 109] do not limit a

1 corporation's power to pay or reimburse expenses incurred by
 2 a director in connection with appearing as a witness in a
 3 proceeding at a time when the director has not been made a
 4 named defendant or respondent to the proceeding.

5 NEW SECTION. **Section 110.** Authority to amend. A
 6 corporation may amend its articles of incorporation at any
 7 time to add or change a provision that is required or
 8 permitted in the articles or to delete a provision not
 9 required in the articles. Whether a provision is required or
 10 permitted in the articles is determined as of the effective
 11 date of the amendment.

12 NEW SECTION. **Section 111.** Amendment by directors. (1)
 13 Unless the articles provide otherwise, a corporation's board
 14 of directors may adopt one or more amendments to the
 15 corporation's articles without member approval:

16 (a) to extend the duration of the corporation if it was
 17 incorporated at a time when limited duration was required by
 18 law;

19 (b) to delete the names and addresses of the initial
 20 directors;

21 (c) to delete the name and address of the initial
 22 registered agent or registered office if a statement of
 23 change is on file with the secretary of state;

24 (d) to change the corporate name by substituting the
 25 word "corporation", "incorporated", "company", "limited", or

1 the abbreviation "corp.", "inc.", "co.", or "ltd." for a
 2 similar word or abbreviation in the name or by adding,
 3 deleting, or changing a geographical attribution to the
 4 name; or

5 (e) to make any other change expressly permitted by
 6 [sections 1 through 168] to be made by action of the board
 7 of directors.

8 (2) If a corporation has no members, its incorporators,
 9 until directors have been chosen, and later its board of
 10 directors may adopt one or more amendments to the
 11 corporation's articles subject to any approval required
 12 pursuant to [section 121]. The corporation shall provide
 13 notice of any meeting at which an amendment is to be voted
 14 upon. The notice must be in accordance with [section 87(3)].
 15 The notice must also state that the purpose or one of the
 16 purposes of the meeting is to consider a proposed amendment
 17 to the articles and must contain or be accompanied by a copy
 18 or summary of the amendment or state the general nature of
 19 the amendment. The amendment must be approved by a majority
 20 of the directors in office at the time the amendment is
 21 adopted.

22 NEW SECTION. Section 112. Amendment by directors and
 23 members. (1) Unless [sections 1 through 168], the articles,
 24 the bylaws, the members acting pursuant to subsection (2),
 25 or the board of directors acting pursuant to subsection (3)

1 require a greater vote or voting by class to be adopted, an
 2 amendment to a corporation's articles must be approved:

3 (a) by the board if the corporation is a public benefit
 4 corporation or religious corporation and the amendment does
 5 not relate to the number of directors, the composition of
 6 the board, the term of office of directors, or the method or
 7 way in which directors are elected or selected;

8 (b) except as provided in [section 111(1)], by the
 9 members by two-thirds of the votes cast or a majority of the
 10 voting power, whichever is less; and

11 (c) in writing by any person or persons whose approval
 12 is required by a provision of the articles, as authorized by
 13 [section 121].

14 (2) The members may condition the amendment's adoption
 15 on receipt of a higher percentage of affirmative votes or on
 16 any other basis.

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

22 (4) If the board or the members seek to have the
 23 amendment approved by the members at a membership meeting,
 24 the corporation shall give notice to its members of the
 25 proposed membership meeting in writing in accordance with

1 [section 62]. The notice must state that the purpose or one
 2 of the purposes of the meeting is to consider the proposed
 3 amendment and must contain or be accompanied by a copy or
 4 summary of the amendment.

5 (5) If the board or the members seek to have the
 6 amendment approved by the members by written consent or
 7 written ballot, the material soliciting the approval must
 8 contain or be accompanied by a copy or summary of the
 9 amendment.

10 NEW SECTION. Section 113. Class voting by members on
 11 amendments. (1) The members of a class in a public benefit
 12 corporation are entitled to vote as a class on a proposed
 13 amendment to the articles if the amendment would change the
 14 rights of that class as to voting in a manner different from
 15 the manner in which the amendment affects another class or
 16 members of another class.

17 (2) The members of a class in a mutual benefit
 18 corporation are entitled to vote as a class on a proposed
 19 amendment to the articles if the amendment would:

20 (a) affect the rights, privileges, preferences,
 21 restrictions, or conditions of that class as to voting,
 22 dissolution, redemption, or transfer of memberships in a
 23 manner different from the manner in which the amendment
 24 would affect another class;

25 (b) change the rights, privileges, preferences,

1 restrictions, or conditions of that class as to voting,
 2 dissolution, redemption, or transfer by changing the rights,
 3 privileges, preferences, restrictions, or conditions of
 4 another class;

5 (c) increase or decrease the number of memberships
 6 authorized for that class;

7 (d) increase the number of memberships authorized for
 8 another class;

9 (e) cause an exchange, reclassification, or termination
 10 of the memberships of that class; or

11 (f) authorize a new class of memberships.

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

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

21 (5) Except as provided in the articles or bylaws of a
 22 religious corporation, if a class vote is required to
 23 approve an amendment to the articles of a corporation, the
 24 amendment must be approved by the members of the class by
 25 two-thirds of the votes cast by the class or a majority of

1 the voting power of the class, whichever is less.

2 (6) A class of members of a public benefit corporation
3 or mutual benefit corporation is entitled to the voting
4 rights granted by this section although the articles and
5 bylaws provide that the class may not vote on the proposed
6 amendment.

7 NEW SECTION. Section 114. Articles of amendment. A
8 corporation that amends its articles shall deliver to the
9 secretary of state, for filing, articles of amendment
10 setting forth:

- 11 (1) the name of the corporation;
12 (2) the text of each amendment adopted;
13 (3) the date of each amendment's adoption;
14 (4) if approval of members was not required, a
15 statement to that effect and a statement that the amendment
16 was approved by a sufficient vote of the board of directors
17 or incorporators;
18 (5) if approval by members was required:
19 (a) the designation, number of memberships outstanding,
20 number of votes entitled to be cast by each class entitled
21 to vote separately on the amendment, and number of votes of
22 each class indisputably voting on the amendment; and
23 (b) (i) either the total number of votes cast for and
24 against the amendment by each class entitled to vote
25 separately on the amendment or the total number of

1 undisputed votes cast for the amendment by each class; and

2 (ii) a statement that the number cast for the amendment
3 by each class was sufficient for approval by that class; and

4 (6) if approval of the amendment by some person or
5 persons other than the members, the board, or the
6 incorporators is required pursuant to [section 121], a
7 statement that the approval was obtained.

8 NEW SECTION. Section 115. Restated articles of
9 incorporation. (1) A corporation's board of directors may
10 restate its articles of incorporation at any time, with or
11 without approval by members or any other person.

12 (2) The restatement may include one or more amendments
13 to the articles. If the restatement includes an amendment
14 requiring approval by the members or any other person, it
15 must be adopted as provided in [section 112].

16 (3) If the restatement includes an amendment requiring
17 approval by members, the board must submit the restatement
18 to the members for their approval.

19 (4) If the board seeks to have the restatement approved
20 by the members at a membership meeting, the corporation
21 shall notify each of its members of the proposed membership
22 meeting in writing in accordance with [section 62]. The
23 notice must also state that the purpose or one of the
24 purposes of the meeting is to consider the proposed
25 restatement and must contain or be accompanied by a copy or

1 summary of the restatement that identifies any amendments or
2 other change that the restatement would make in the
3 articles.

4 (5) If the board seeks to have the restatement approved
5 by the members by written ballot or written consent, the
6 material soliciting the approval must contain or be
7 accompanied by a copy or summary of the restatement that
8 identifies any amendments or other change it would make in
9 the articles.

10 (6) A restatement requiring approval by the members
11 must be approved by the same vote as an amendment to
12 articles under [section 112].

13 (7) If the restatement includes an amendment that
14 requires approval pursuant to [section 121], the board must
15 submit the restatement for this approval.

16 (8) A corporation that restates its articles shall
17 deliver to the secretary of state, for filing, articles of
18 restatement setting forth the name of the corporation and
19 the text of the restated articles of incorporation, together
20 with a certificate setting forth:

21 (a) whether the restatement contains an amendment to
22 the articles requiring approval by the members or any other
23 person other than the board of directors and, if it does
24 not, that the board of directors adopted the restatement; or

25 (b) if the restatement contains an amendment to the

1 articles requiring approval by the members, the information
2 required by [section 114]; and

3 (c) if the restatement contains an amendment to the
4 articles requiring approval by a person whose approval is
5 required pursuant to [section 121], a statement that the
6 approval was obtained.

7 (9) Adopted restated articles of incorporation
8 supersede the original articles of incorporation and all
9 amendments to them.

10 (10) The secretary of state may certify restated
11 articles of incorporation as the articles of incorporation
12 currently in effect without including the certificate
13 information required by subsection (8).

14 NEW SECTION. **Section 116.** Amendment pursuant to
15 **judicial reorganization.** (1) A corporation's articles may be
16 amended without board approval, approval by the members, or
17 approval required pursuant to [section 121] if necessary to
18 carry out a plan of reorganization ordered or decreed by a
19 court of competent jurisdiction under federal statute if the
20 articles, after amendment, contain only provisions required
21 or permitted by [section 22].

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

25 (a) the name of the corporation;

- 1 (b) the text of each amendment approved by the court;
- 2 (c) the date of the court's order or decree approving
- 3 the articles of amendment;
- 4 (d) the title of the reorganization proceeding in which
- 5 the order or decree was entered; and
- 6 (e) a statement that the court had jurisdiction of the
- 7 proceeding under federal statute.
- 8 (3) This section does not apply after entry of a final
- 9 decree in the reorganization proceeding even though the
- 10 court retains jurisdiction of the proceeding for limited
- 11 purposes unrelated to consummation of the reorganization
- 12 plan.

13 **NEW SECTION. Section 117. Effect of amendment and**

14 **restatement.** An amendment to articles of incorporation does

15 not affect a cause of action existing against or in favor of

16 the corporation, a proceeding to which the corporation is a

17 party, any requirement or limitation imposed upon the

18 corporation, or any property held by it by virtue of any

19 trust upon which the property is held by the corporation, or

20 the existing rights of persons other than members of the

21 corporation. An amendment changing a corporation's name does

22 not abate a proceeding brought by or against the corporation

23 in its former name.

24 **NEW SECTION. Section 118. Amendment by directors.** If a

25 corporation does not have members, its incorporators, until

1 directors have been chosen, and later its board of directors

2 may adopt one or more amendments to the corporation's bylaws

3 subject to any approval required pursuant to [section 121].

4 The corporation shall provide notice of any meeting of

5 directors at which an amendment is to be approved. The

6 notice must be in accordance with [section 87(3)]. The

7 notice must also state that the purpose or one of the

8 purposes of the meeting is to consider a proposed amendment

9 to the bylaws and contain or be accompanied by a copy or

10 summary of the amendment or state the general nature of the

11 amendment. The amendment must be approved by a majority of

12 the directors in office at the time the amendment is

13 adopted.

14 **NEW SECTION. Section 119. Amendment by directors and**

15 **members.** (1) Unless [sections 1 through 168], the articles,

16 the bylaws, the members acting pursuant to subsection (2),

17 or the board of directors acting pursuant to subsection (3)

18 require a greater vote or voting by class to be adopted, an

19 amendment to a corporation's bylaws must be approved:

20 (a) by the board if the corporation is a public benefit

21 corporation or religious corporation and the amendment does

22 not relate to the number of directors, the composition of

23 the board, the term of office of directors, or the method or

24 way in which directors are elected or selected;

25 (b) by the members by two-thirds of the votes cast or a

1 majority of the voting power, whichever is less; or

2 (c) in writing by any person or persons whose approval
3 is required by a provision of the articles, as authorized by
4 [section 121].

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

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

13 (4) If the board or the members seek to have the
14 amendment approved by the members at a membership meeting,
15 the corporation shall give notice to its members of the
16 proposed membership meeting in writing in accordance with
17 [section 62]. The notice must also state that the purpose,
18 or one of the purposes, of the meeting is to consider the
19 proposed amendment and must contain or be accompanied by a
20 copy or summary of the amendment.

21 (5) If the board or the members seek to have the
22 amendment approved by the members by written consent or
23 written ballot, the material soliciting the approval must
24 contain or be accompanied by a copy or summary of the
25 amendment.

1 NEW SECTION. **Section 120.** Class voting by members on
2 **amendments.** (1) The members of a class in a public benefit
3 corporation are entitled to vote as a class on a proposed
4 amendment to the bylaws if the amendment would change the
5 rights of that class as to voting in a manner different from
6 the manner in which the amendment would affect another
7 class or members of another class.

8 (2) Members of a class in a mutual benefit corporation
9 are entitled to vote as a class on a proposed amendment to
10 the bylaws if the amendment would:

11 (a) affect the rights, privileges, preferences,
12 restrictions, or conditions of that class as to voting,
13 dissolution, redemption, or transfer of memberships in a
14 manner different from the manner in which the amendment
15 would affect another class;

16 (b) change the rights, privileges, preferences,
17 restrictions, or conditions of that class as to voting,
18 dissolution, redemption, or transfer by changing the rights,
19 privileges, preferences, restrictions, or conditions of
20 another class;

21 (c) increase or decrease the number of memberships
22 authorized for that class;

23 (d) increase the number of memberships authorized for
24 another class;

25 (e) cause an exchange, reclassification, or termination

1 of all or part of the memberships of that class; or

2 (f) authorize a new class of memberships.

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

7 (4) If a class is to be divided into two or more
8 classes as a result of an amendment to the bylaws, the
9 amendment must be approved by the members of each class that
10 would be created by the amendment.

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

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

20 NEW SECTION. Section 121. Approval by third persons.

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

1 NEW SECTION. Section 122. Amendment terminating

2 members or redeeming or canceling memberships. (1) Any
3 amendment to the articles or bylaws of a public benefit
4 corporation or mutual benefit corporation that would
5 terminate all members or any class of members or redeem or
6 cancel all memberships or any class of memberships must meet
7 the requirements of [sections 1 through 168] and this
8 section.

9 (2) Before adopting a resolution proposing an amendment
10 described in subsection (1), the board of a mutual benefit
11 corporation shall give notice of the general nature of the
12 amendment to the members.

13 (3) After adopting a resolution proposing an amendment
14 described in subsection (1), the notice to members proposing
15 the amendment must include one statement of up to 500 words
16 opposing the proposed amendment if the statement is
17 submitted by any five members or members having 3% or more
18 of the voting power, whichever is less, not later than 20
19 days after the board has voted to submit the amendment to
20 the members for their approval. In public benefit
21 corporations, the production and mailing costs must be paid
22 by the corporation.

23 (4) Any amendment under this section must be approved
24 by the members by two-thirds of the votes cast by each
25 class.

1 (5) The provisions of [section 48] do not apply to any
2 amendment that meets the requirements of [sections 1 through
3 168] and this section.

4 NEW SECTION. **Section 123.** Approval of plan of merger.

5 (1) Subject to the limitations set forth in [section 124],
6 profit corporations may merge into a business or nonprofit
7 corporation if the plan of merger is approved as provided in
8 [section 125].

9 (2) The plan of merger must set forth:

10 (a) the name of each corporation planning to merge and
11 the name of the surviving corporation into which each plans
12 to merge;

13 (b) the terms and conditions of the planned merger;

14 (c) the manner and basis, if any, of converting the
15 memberships of each public benefit or religious corporation
16 into memberships of the surviving corporation; and

17 (d) if the merger involves a mutual benefit
18 corporation, the manner and basis, if any, of converting
19 memberships of each merging corporation into memberships,
20 obligations, or securities of the surviving or any other
21 corporation or into cash or other property in whole or part.

22 (3) The plan of merger may set forth:

23 (a) any amendments to the articles of incorporation or
24 bylaws of the surviving corporation to be effected by the
25 planned merger; and

1 (b) other provisions relating to the planned merger.

2 NEW SECTION. **Section 124.** Limitations on mergers by

3 public benefit or religious corporations. (1) Without the
4 prior approval of the district court for the judicial
5 district in which the corporation's registered office is
6 located, in a proceeding of which the attorney general has
7 been given written notice, a public benefit corporation or
8 religious corporation may merge only with:

9 (a) a public benefit corporation or religious
10 corporation;

11 (b) a foreign corporation that would qualify under
12 [sections 1 through 168] as a public benefit corporation or
13 religious corporation;

14 (c) a wholly owned foreign or domestic business or
15 mutual benefit corporation, if the public benefit
16 corporation or religious corporation is the surviving
17 corporation and continues to be a public benefit corporation
18 or religious corporation after the merger; or

19 (d) a business or mutual benefit corporation, provided
20 that:

21 (i) on or prior to the effective date of the merger,
22 assets with a value equal to the greater of the fair market
23 value of the net tangible and intangible assets, including
24 good will, of the public benefit corporation or the fair
25 market value of the public benefit corporation if it were to

1 be operated as a business concern are transferred or
 2 conveyed to one or more persons who would have received its
 3 assets under [section 139 (1)(e) and (f)] had it dissolved;

4 (ii) it shall return, transfer, or convey any assets
 5 held by it upon condition requiring return, transfer, or
 6 conveyance in case of merger, in accordance with the
 7 condition; and

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

13 (2) At least 20 days before consummation of any merger
 14 of a public benefit corporation or a religious corporation
 15 pursuant to subsection (1)(d), notice, including a copy of
 16 the proposed plan of merger, must be delivered to the
 17 attorney general.

18 (3) Without the prior written consent of the attorney
 19 general or of the district court in a proceeding in which
 20 the attorney general has been given notice, a member of a
 21 public benefit corporation or religious corporation may not
 22 receive or keep anything as a result of a merger other than
 23 a membership in the surviving public benefit corporation or
 24 religious corporation. The court shall approve the
 25 transaction if it is in the public interest.

1 NEW SECTION. **Section 125. Action on plan by board,**
 2 **members, and third persons.** (1) Unless [sections 1 through
 3 168], the articles, the bylaws, or the board of directors or
 4 members, acting pursuant to subsection (3), require a
 5 greater vote or voting by class to be adopted, a plan of
 6 merger must be approved:

7 (a) by the board;

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

11 (c) in writing by any person or persons whose approval
 12 is required by a provision of the articles, as authorized by
 13 [section 121], for an amendment to the articles or bylaws.

14 (2) If the corporation does not have members, the
 15 merger must be approved by a majority of the directors in
 16 office at the time the merger is approved. In addition, the
 17 corporation shall provide notice, in accordance with
 18 [section 87(3)], of any directors' meeting at which approval
 19 is to be obtained. The notice must also state that the
 20 purpose or one of the purposes of the meeting is to consider
 21 the proposed merger.

22 (3) The board may condition its submission of the
 23 proposed merger and the members may condition their approval
 24 of the merger on receipt of a higher percentage of
 25 affirmative votes or on any other basis.

1 (4) If the board seeks to have the plan approved by the
 2 members at a membership meeting, the corporation shall give
 3 notice to its members of the proposed membership meeting in
 4 accordance with [section 62]. The notice must state that the
 5 purpose or one of the purposes of the meeting is to consider
 6 the plan of merger and contain or be accompanied by a copy
 7 or summary of the plan. The copy or summary of the plan for
 8 members of the surviving corporation must include any
 9 provision that, if contained in a proposed amendment to the
 10 articles of incorporation or bylaws, would entitle members
 11 to vote on the provision. The copy or summary of the plan
 12 for members of the disappearing corporation must include a
 13 copy or summary of the articles and bylaws that will be in
 14 effect immediately after the merger takes effect.

15 (5) If the board seeks to have the plan approved by the
 16 members by written consent or written ballot, the material
 17 soliciting the approval must contain or be accompanied by a
 18 copy or summary of the plan. The copy or summary of the plan
 19 for members of the surviving corporation must include any
 20 provision that, if contained in a proposed amendment to the
 21 articles of incorporation or bylaws, would entitle members
 22 to vote on the provision. The copy or summary of the plan
 23 for members of the disappearing corporation must include a
 24 copy or summary of the articles and bylaws that will be in
 25 effect immediately after the merger takes effect.

1 (6) Voting by a class of members is required on a plan
 2 of merger if the plan contains a provision that, if
 3 contained in a proposed amendment to articles of
 4 incorporation or bylaws, would entitle the class of members
 5 to vote as a class on the proposed amendment under [sections
 6 113 or 120]. The plan is approved by a class of members by
 7 two-thirds of the votes cast by the class or a majority of
 8 the voting power of the class, whichever is less.

9 (7) After a merger is adopted and at any time before
 10 articles of merger are filed, the planned merger may be
 11 abandoned, subject to any contractual rights, without
 12 further action by members or other persons who approved the
 13 plan in accordance with the procedure set forth in the plan
 14 of merger or, if no procedure is set forth, in the manner
 15 determined by the board of directors.

16 NEW SECTION. **Section 126.** Articles of merger. After a
 17 plan of merger is approved by the board of directors and, if
 18 required by [section 125], by the members and any other
 19 persons, the surviving or acquiring corporation shall
 20 deliver to the secretary of state, for filing, articles of
 21 merger setting forth:

- 22 (1) the plan of merger;
 23 (2) if approval of members was not required, a
 24 statement to that effect and a statement that the plan was
 25 approved by a sufficient vote of the board of directors;

1 (3) if approval by members was required:

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

6 (b) (i) either the total number of votes cast for and
7 against the plan by each class entitled to vote separately
8 on the plan or the total number of undisputed votes cast for
9 the plan by each class; and

10 (ii) a statement that the number cast for the plan by
11 each class was sufficient for approval by that class;

12 (4) if approval of the plan by some person or persons
13 other than the members or the board is required pursuant to
14 [section 125(1)(c)], a statement that the approval was
15 obtained.

16 **NEW SECTION. Section 127. Effect of merger.** When a
17 merger takes effect:

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

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

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

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

7 (5) the articles of incorporation and bylaws of the
8 surviving corporation are amended to the extent provided in
9 the plan of merger.

10 **NEW SECTION. Section 128. Merger with foreign**
11 **corporation.** (1) Except as provided in [section 124], one or
12 more foreign business or nonprofit corporations may merge
13 with one or more domestic nonprofit corporations if:

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

18 (b) the foreign corporation complies with [section 126]
19 if it is the surviving corporation of the merger; and

20 (c) each domestic nonprofit corporation complies with
21 the applicable provisions of [sections 123 through 125] and,
22 if it is the surviving corporation of the merger, with the
23 provisions of [section 126].

24 (2) When the merger takes effect, the surviving foreign
25 business or nonprofit corporation is considered to have

1 irrevocably appointed the secretary of state as its agent
2 for service of process in any proceeding brought against it.

3 NEW SECTION. Section 129. Bequests, devises, and
4 gifts. A bequest, devise, gift, grant, or promise contained
5 in a will or other instrument of donation, subscription, or
6 conveyance that is made to a constituent corporation and
7 that takes effect or remains payable after the merger inures
8 to the surviving corporation unless the will or other
9 instrument specifically provides otherwise.

10 NEW SECTION. Section 130. Sale of assets in regular
11 course of activities -- mortgage of assets. (1) A
12 corporation may on the terms and conditions and for the
13 consideration determined by the board of directors:

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

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

21 (2) Unless the articles require it, approval of the
22 members or any other person of a transaction described in
23 subsection (1) is not required.

24 (3) Unless the articles provide otherwise, approval of
25 a transaction described in subsection (1)(a) is required by

1 a vote of a majority of the directors in office at the time
2 the transaction is approved.

3 NEW SECTION. Section 131. Sale of assets other than in
4 regular course of activities. (1) A corporation may sell,
5 lease, exchange, or otherwise dispose of all or
6 substantially all of its property, which may include the
7 good will, other than in the usual and regular course of its
8 activities on the terms and conditions and for the
9 consideration determined by the corporation's board if the
10 proposed transaction is approved as required by subsection
11 (2).

12 (2) Unless [sections 1 through 168], the articles,
13 bylaws, or the board of directors or members, acting
14 pursuant to subsection (4), require a greater vote or voting
15 by class, the proposed transaction to be authorized must be
16 approved:

17 (a) by the board;

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

20 (c) in writing by any person or persons whose approval
21 is required by a provision of the articles, as authorized by
22 [section 121], for an amendment to the articles or bylaws.

23 (3) If the corporation does not have members, the
24 transaction must be approved by a vote of a majority of the
25 directors in office at the time the transaction is approved.

1 In addition, the corporation shall provide notice, in
 2 accordance with [section 87(3)], of any directors' meeting
 3 at which approval is to be obtained. The notice must also
 4 state that the purpose or one of the purposes of the meeting
 5 is to consider the sale, lease, exchange, or other
 6 disposition of all or substantially all of the property or
 7 assets of the corporation and must contain or be accompanied
 8 by a copy or summary of a description of the transaction.

9 (4) The board may condition its submission of the
 10 proposed transaction and the members may condition their
 11 approval of the transaction on receipt of a higher
 12 percentage of affirmative votes or on any other basis.

13 (5) If the corporation seeks to have the transaction
 14 approved by the members at a membership meeting, the
 15 corporation shall give notice to its members of the proposed
 16 membership meeting in accordance with [section 62]. The
 17 notice must state that the purpose or one of the purposes of
 18 the meeting is to consider the sale, lease, exchange, or
 19 other disposition of all or substantially all of the
 20 property or assets of the corporation and must contain or be
 21 accompanied by a copy or summary of a description of the
 22 transaction.

23 (6) If the board needs to have the transaction approved
 24 by the members by written consent or written ballot, the
 25 material soliciting the approval must contain or be

1 accompanied by a copy or summary of a description of the
 2 transaction.

3 (7) A public benefit corporation or religious
 4 corporation must give written notice to the attorney general
 5 20 days before it sells, leases, exchanges, or otherwise
 6 disposes of all or substantially all of its property if the
 7 transaction is not in the usual and regular course of its
 8 activities unless the attorney general has given the
 9 corporation a written waiver of this subsection.

10 (8) After a sale, lease, exchange, or other disposition
 11 of property is authorized, the transaction may be abandoned,
 12 subject to any contractual rights, without further action by
 13 the members or any other person who approved the transaction
 14 in accordance with the procedure set forth in the resolution
 15 proposing the transaction or, if no procedure is set forth,
 16 in the manner determined by the board of directors.

17 NEW SECTION. **Section 132. Prohibited distributions.**
 18 Except as authorized by [section 133], a corporation may not
 19 make any distributions.

20 NEW SECTION. **Section 133. Authorized distributions.**
 21 (1) A mutual benefit corporation may purchase its
 22 memberships if after the purchase is completed:

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

25 (b) the corporation's total assets would at least equal

1 the sum of its total liabilities.

2 (2) Corporations may make distributions upon
3 dissolution in conformity with [sections 134 through 146].

4 **NEW SECTION. Section 134. Dissolution by incorporators**
5 **or directors and third persons.** (1) A majority of the
6 incorporators or directors of a corporation that does not
7 have members may, subject to any approval required by the
8 articles or bylaws, dissolve the corporation by delivering
9 to the secretary of state articles of dissolution.

10 (2) The corporation shall give notice of any meeting at
11 which dissolution will be approved. The notice must be in
12 accordance with [section 87(3)]. The notice must also state
13 that the purpose or one of the purposes of the meeting is to
14 consider dissolution of the corporation.

15 (3) In approving dissolution, the incorporators or
16 directors shall adopt a plan of dissolution indicating to
17 whom the assets owned or held by the corporation will be
18 distributed after all creditors have been paid.

19 **NEW SECTION. Section 135. Dissolution by directors,**
20 **members, and third persons.** (1) Unless [sections 1 through
21 168], the articles, bylaws, or the board of directors or
22 members, acting pursuant to subsection (1)(c), require a
23 greater vote or voting by class, dissolution is authorized
24 if it is approved:

25 (a) by the board;

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

4 (c) in writing, by any person or persons whose approval
5 is required by a provision of the articles, as authorized by
6 [section 121], for an amendment to the articles or bylaws.

7 (2) If the corporation does not have members,
8 dissolution must be approved by a vote of a majority of the
9 directors in office at the time the transaction is approved.
10 In addition, the corporation shall provide notice of any
11 directors' meeting at which approval is to be obtained in
12 accordance with [section 87(3)]. The notice must also state
13 that the purpose or one of the purposes of the meeting is to
14 consider dissolution of the corporation and contain or be
15 accompanied by a copy or summary of the plan of dissolution.

16 (3) The board may condition its submission of the
17 proposed dissolution, and the members may condition their
18 approval of the dissolution on receipt of a higher
19 percentage of affirmative votes or on any other basis.

20 (4) If the board seeks to have dissolution approved by
21 the members at a membership meeting, the corporation shall
22 give notice to its members of the proposed membership
23 meeting in accordance with [section 62]. The notice must
24 state that the purpose or one of the purposes of the meeting
25 is to consider dissolving the corporation and must contain

1 or be accompanied by a copy or summary of the plan of
2 dissolution.

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

7 (6) The plan of dissolution must indicate to whom the
8 assets owned or held by the corporation will be distributed
9 after all creditors have been paid.

10 NEW SECTION. Section 136. Notices to the attorney
11 general. (1) A public benefit corporation or religious
12 corporation shall give the attorney general written notice
13 that it intends to dissolve at or before the time it
14 delivers articles of dissolution to the secretary of state.
15 The notice must include a copy or summary of the plan of
16 dissolution.

17 (2) Assets may not be transferred or conveyed by a
18 public benefit corporation or religious corporation as part
19 of the dissolution process until 20 days after it has given
20 the written notice required by subsection (1) to the
21 attorney general or until the attorney general has consented
22 in writing to the dissolution or indicated in writing that
23 he will not take action in respect to the transfer or
24 conveyance, whichever is earlier.

25 (3) When all or substantially all of the assets of a

1 public benefit corporation have been transferred or conveyed
2 following approval of dissolution, the board shall deliver
3 to the attorney general a list showing those, other than
4 creditors, to whom the assets were transferred or conveyed.
5 The list must indicate the address of each person, other
6 than creditors, who received assets and indicate what assets
7 each received.

8 NEW SECTION. Section 137. Articles of dissolution. (1)
9 At any time after dissolution is authorized, the corporation
10 may dissolve by delivering to the secretary of state
11 articles of dissolution setting forth:
12 (a) the name of the corporation;
13 (b) the date dissolution was authorized;
14 (c) a statement that dissolution was approved by a
15 sufficient vote of the board;
16 (d) if approval of members was not required, a
17 statement to that effect and a statement that dissolution
18 was approved by a sufficient vote of the board of directors
19 or incorporators;
20 (e) if approval by members was required:
21 (i) the designation, number of memberships outstanding,
22 number of votes entitled to be cast by each class entitled
23 to vote separately on dissolution, and number of votes of
24 each class indisputably voting on dissolution; and
25 (ii) (A) either the total number of votes cast for and

1 against dissolution by each class entitled to vote
2 separately on dissolution or the total number of undisputed
3 votes cast for dissolution by each class; and

4 (B) a statement that the number cast for dissolution by
5 each class was sufficient for approval by that class;

6 (f) if approval of dissolution by some person or
7 persons other than the members, the board, or the
8 incorporators is required pursuant to [section 135(1)(c)], a
9 statement that the approval was obtained; and

10 (g) if the corporation is a public benefit or religious
11 corporation, that the notice to the attorney general
12 required by [section 136(1)] has been given.

13 (2) A corporation is dissolved upon the effective date
14 of its articles of dissolution.

15 **NEW SECTION. Section 138. Revocation of dissolution.**

16 (1) A corporation may revoke its dissolution within 120 days
17 of its effective date.

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

24 (3) After the revocation of dissolution is authorized,
25 the corporation may revoke the dissolution by delivering to

1 the secretary of state, for filing, articles of revocation
2 of dissolution, together with a copy of its articles of
3 dissolution, that set forth:

4 (a) the name of the corporation;

5 (b) the effective date of the dissolution that was
6 revoked;

7 (c) the date that the revocation of dissolution was
8 authorized;

9 (d) if the corporation's board of directors or
10 incorporators revoked the dissolution, a statement to that
11 effect;

12 (e) if the corporation's board of directors revoked a
13 dissolution authorized by the members alone or in
14 conjunction with another person or persons, a statement that
15 revocation was permitted by action by the board of directors
16 alone pursuant to that authorization; and

17 (f) if member or third person action was required to
18 revoke the dissolution, the information required by [section
19 137 (1)(e) and (1)(f)].

20 (4) Revocation of dissolution is effective upon the
21 effective date of the articles of revocation of dissolution.

22 (5) When the revocation of dissolution is effective, it
23 relates back to and takes effect as of the effective date of
24 the dissolution and the corporation may resume carrying on
25 its activities as if dissolution had never occurred.

1 **NEW SECTION. Section 139.** Effect of dissolution. (1) A
 2 dissolved corporation continues its corporate existence but
 3 may not carry on any activities except those appropriate to
 4 wind up and liquidate its affairs, including:

5 (a) preserving and protecting its assets and minimizing
 6 its liabilities;

7 (b) discharging or making provision for discharging its
 8 liabilities and obligations;

9 (c) disposing of its properties that will not be
 10 distributed in kind;

11 (d) returning, transferring, or conveying assets held
 12 by the corporation upon a condition requiring return,
 13 transfer, or conveyance in accordance with the condition;

14 (e) transferring, subject to any contractual or legal
 15 requirements, its assets as provided in or authorized by its
 16 articles of incorporation or bylaws;

17 (f) if the corporation is a public benefit corporation
 18 or religious corporation and provision has not been made in
 19 its articles or bylaws for distribution of assets on
 20 dissolution, transferring, subject to any contractual or
 21 legal requirement, its assets:

22 (i) to one or more persons described in section
 23 501(c)(3) of the Internal Revenue Code; or

24 (ii) if the dissolved corporation is not described in
 25 section 501(c)(3) of the Internal Revenue Code, to one or

1 more public benefit corporations or religious corporations;

2 (g) if the corporation is a mutual benefit corporation
 3 and provision has not been made in its articles or bylaws
 4 for distribution of assets on dissolution, transferring its
 5 assets to its members or, if it does not have members, to
 6 those persons whom the corporation holds itself out as
 7 benefitting or serving; and

8 (h) doing every other act necessary to wind up and
 9 liquidate its assets and affairs.

10 (2) Dissolution of a corporation does not:

11 (a) transfer title to the corporation's property;

12 (b) subject its directors or officers to standards of
 13 conduct different from those prescribed in [sections 75
 14 through 109];

15 (c) change quorum or voting requirements for its board
 16 or members; change provisions for selection, resignation, or
 17 removal of its directors or officers, or both; or change
 18 provisions for amending its bylaws;

19 (d) prevent commencement of a proceeding by or against
 20 the corporation in its corporate name;

21 (e) abate or suspend a proceeding pending by or against
 22 the corporation on the effective date of dissolution; or

23 (f) terminate the authority of the registered agent.

24 **NEW SECTION. Section 140.** Known claims against
 25 dissolved corporation. (1) A dissolved corporation shall

1 dispose of the known claims against it by following the
2 procedure described in this section.

3 (2) The dissolved corporation shall notify its known
4 claimants in writing of the dissolution at any time after
5 its effective date. The written notice must:

6 (a) describe information that must be included in a
7 claim;

8 (b) provide a mailing address where a claim may be
9 sent;

10 (c) state the deadline, which may not be fewer than 120
11 days from the effective date of the written notice, by which
12 the dissolved corporation must receive the claim; and

13 (d) state that the claim will be barred if not received
14 by the deadline.

15 (3) A claim against the dissolved corporation is
16 barred:

17 (a) if a claimant who was given written notice under
18 subsection (2) does not deliver the claim to the dissolved
19 corporation by the deadline; or

20 (b) if a claimant whose claim was rejected by the
21 dissolved corporation does not commence a proceeding to
22 enforce the claim within 90 days from the effective date of
23 the rejection notice.

24 (4) For purposes of this section, "claim" does not
25 include a contingent liability or a claim based on an event

1 occurring after the effective date of dissolution.

2 NEW SECTION. **Section 141.** Unknown claims against
3 dissolved corporations. (1) The dissolution of a
4 corporation, including by the expiration of its term, does
5 not take away or impair any remedy available to or against
6 the corporation, its officers, directors, or members for any
7 claim or right, whether or not the claim or right existed or
8 accrued prior to the dissolution. Any action or proceeding
9 by or against the corporation referred to in this subsection
10 may be prosecuted or defended by the corporation in its
11 corporate name. Members, directors, and officers may take
12 corporate or other action as is appropriate to protect a
13 remedy, right, or claim.

14 (2) A claim may be enforced under this section or
15 [section 140]:

16 (a) against the dissolved corporation, to the extent of
17 its undistributed assets; or

18 (b) if the assets have been distributed in liquidation,
19 against a member of the dissolved corporation to the extent
20 of the member's pro rata share of the claim or the corporate
21 assets distributed to him in liquidation, whichever is less.
22 However, a member's total liability for all claims under
23 this section may not exceed the total amount of assets
24 distributed to the member.

25 (3) Subsections (1) and (2) apply to a foreign

1 corporation transacting business in this state, and its
2 members, for any claims otherwise arising or accruing under
3 Montana law.

4 NEW SECTION. Section 142. Grounds for judicial
5 dissolution. (1) The district court may dissolve a
6 corporation:

7 (a) in a proceeding by the attorney general if it is
8 established that:

9 (i) the corporation obtained its articles of
10 incorporation through fraud;

11 (ii) the corporation has continued to exceed or abuse
12 the authority conferred upon it by law;

13 (iii) the corporation is a public benefit corporation
14 and the corporate assets are being misapplied or wasted; or

15 (iv) the corporation is a public benefit corporation and
16 is no longer able to carry out its purposes;

17 (b) in a proceeding by 50 members or members holding 5%
18 of the voting power, whichever is less, or by a director or
19 any person specified in the articles, except as provided in
20 the articles or bylaws of a religious corporation, if it is
21 established that:

22 (i) the directors are deadlocked in the management of
23 the corporate affairs and the members, if any, are unable to
24 breach the deadlock;

25 (ii) the directors or those in control of the

1 corporation have acted, are acting, or will act in a manner
2 that is illegal, oppressive, or fraudulent;

3 (iii) the members are deadlocked in voting power and
4 have failed, for a period that includes at least two
5 consecutive annual meeting dates, to elect successors to
6 directors whose terms have or would otherwise have expired;

7 (iv) the corporate assets are being misapplied or
8 wasted; or

9 (v) the corporation is a public benefit corporation or
10 religious corporation and is no longer able to carry out its
11 purposes;

12 (c) in a proceeding by a creditor if it is established
13 that:

14 (i) the creditor's claim has been reduced to judgment,
15 the execution on the judgment returned unsatisfied, and the
16 corporation is insolvent; or

17 (ii) the corporation has admitted in writing that the
18 creditor's claim is due and owing and the corporation is
19 insolvent; or

20 (d) in a proceeding by the corporation to have its
21 voluntary dissolution continued under court supervision.

22 (2) Prior to dissolving a corporation, the court shall
23 consider whether:

24 (a) there are reasonable alternatives to dissolution;

25 (b) dissolution is in the public interest, if the

1 corporation is a public benefit corporation; and
 2 (c) dissolution is the best way of protecting the
 3 interests of members if the corporation is a mutual benefit
 4 corporation.
 5 NEW SECTION. Section 143. Procedure for judicial
 6 dissolution. (1) Venue for a proceeding by the attorney
 7 general to dissolve a corporation lies in the district court
 8 for the first judicial district. Venue for a proceeding
 9 brought by any other party named in [section 142] lies in
 10 the judicial district for the county where a corporation's
 11 principal office or, if the principal office is not located
 12 in this state, the county where its registered office is or
 13 was last located.
 14 (2) It is not necessary to make directors or members
 15 parties to a proceeding to dissolve a corporation unless
 16 relief is sought against them individually.
 17 (3) In a proceeding brought to dissolve a corporation,
 18 a court may issue injunctions, appoint a receiver or
 19 custodian pendente lite with all powers and duties the court
 20 directs, take other action required to preserve the
 21 corporate assets wherever located, and carry on the
 22 activities of the corporation until a full hearing can be
 23 held.
 24 (4) A person other than the attorney general who brings
 25 an involuntary dissolution proceeding for a public benefit

1 corporation or religious corporation shall give written
 2 notice of the proceeding to the attorney general who may
 3 intervene.
 4 NEW SECTION. Section 144. Receivership or
 5 custodianship. (1) A court in a judicial proceeding brought
 6 to dissolve a public benefit corporation or mutual benefit
 7 corporation may appoint one or more receivers to wind up and
 8 liquidate the affairs of the corporation or one or more
 9 custodians to manage the affairs of the corporation. The
 10 court shall hold a hearing, after notifying all parties to
 11 the proceeding and any interested persons designated by the
 12 court, before appointing a receiver or custodian. The court
 13 appointing a receiver or custodian has exclusive
 14 jurisdiction over the corporation and all of its property,
 15 wherever located.
 16 (2) The court may appoint, as a receiver or custodian,
 17 an individual authorized to transact business in this state
 18 or a domestic or foreign business or nonprofit corporation
 19 authorized to transact business in this state. The court may
 20 require the receiver or custodian to post bond, with or
 21 without sureties, in an amount the court directs.
 22 (3) The court shall describe the powers and duties of
 23 the receiver or custodian in its appointing order, which may
 24 be amended from time to time. Among other powers:
 25 (a) the receiver:

1 (i) may, if authorized by the court, dispose of all or
2 any part of the assets of the corporation wherever located,
3 at a public or private sale, subject to any trust and other
4 restrictions that would be applicable to the corporation;
5 and

6 (ii) may sue and defend in the receiver's or custodian's
7 name as receiver or custodian of the corporation in all
8 courts of this state; and

9 (b) the custodian may exercise all the powers of the
10 corporation through or in place of its board of directors or
11 officers to the extent necessary to manage the affairs of
12 the corporation in the best interests of its members and
13 creditors.

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

19 (5) From time to time during the receivership or
20 custodianship, the court may order compensation paid and
21 expense disbursements or reimbursements made to the receiver
22 or custodian and the receiver or custodian's counsel from
23 the assets of the corporation or proceeds from the sale of
24 the assets.

25 NEW SECTION. Section 145. Decree of dissolution. (1)

1 If after a hearing the court determines that one or more
2 grounds for judicial dissolution described in [section 142]
3 exist, it may enter a decree dissolving the corporation and
4 specifying the effective date of the dissolution, and the
5 clerk of the court shall deliver a certified copy of the
6 decree to the secretary of state, who shall file it.

7 (2) After entering the decree of dissolution, the court
8 shall direct the winding up and liquidation of the
9 corporation's affairs in accordance with [section 139] and
10 the notification of its claimants in accordance with
11 [sections 140 and 141].

12 NEW SECTION. Section 146. Deposit with state
13 treasurer. Assets of a dissolved corporation that should be
14 transferred to a creditor, claimant, or member of the
15 corporation who cannot be found or who is not competent to
16 receive them must be reduced to cash, subject to known trust
17 restrictions, and deposited with the state treasurer for
18 safekeeping. However, in the state treasurer's discretion,
19 property may be received and held in kind. When the
20 creditor, claimant, or member furnishes satisfactory proof
21 of entitlement to the amount deposited or property held in
22 kind, the state treasurer shall deliver to the creditor,
23 claimant, member, or other person as his representative that
24 amount or property.

25 NEW SECTION. Section 147. Authority to transact

1 **business required.** (1) A foreign corporation may not
 2 transact business in this state until it obtains a
 3 certificate of authority from the secretary of state.

4 (2) The following activities, among others, do not
 5 constitute transacting business within the meaning of
 6 subsection (1):

7 (a) maintaining, defending, or settling any proceeding;

8 (b) holding meetings of the board of directors or
 9 members or carrying on other activities concerning internal
 10 corporate affairs;

11 (c) maintaining bank accounts;

12 (d) maintaining offices or agencies for the transfer,
 13 exchange, and registration of memberships or securities or
 14 maintaining trustees or depositaries with respect to those
 15 securities;

16 (e) selling through independent contractors;

17 (f) soliciting or obtaining orders, whether by mail or
 18 through employees or agents or otherwise, if the orders
 19 require acceptance outside this state before they become
 20 contracts;

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

23 (h) securing or collecting debts or enforcing mortgages
 24 and security interests in property securing the debts;

25 (i) owning real or personal property;

1 (i) that is acquired incident to activities described
 2 in subsection (2)(h) if the property is disposed of within 5
 3 years after the date of acquisition; or

4 (ii) that does not produce income or is not used in the
 5 performance of a corporate function;

6 (j) conducting an isolated transaction that is
 7 completed within 30 days and that is not a transaction in
 8 the course of repeated transactions of a similar nature; or

9 (k) transacting business in interstate commerce.

10 (3) The list of activities in subsection (2) is not
 11 exhaustive.

12 **NEW SECTION. Section 148. Consequences of transacting**
 13 **business without authority.** (1) A foreign corporation
 14 transacting business in this state without a certificate of
 15 authority may not maintain a proceeding in any court in this
 16 state until it obtains a certificate of authority.

17 (2) The successor to a foreign corporation that
 18 transacted business in this state without a certificate of
 19 authority and the assignee of a cause of action arising out
 20 of that business may not maintain a proceeding on that cause
 21 of action in any court in this state until the foreign
 22 corporation or its successor obtains a certificate of
 23 authority.

24 (3) A court may stay a proceeding commenced by a
 25 foreign corporation, its successor, or its assignee until it

1 determines whether the foreign corporation, its successor,
2 or its assignee requires a certificate of authority. If it
3 determines that a certificate is required, the court may
4 further stay the proceeding until the foreign corporation,
5 its successor, or its assignee obtains the certificate.

6 (4) A foreign corporation is liable for a civil penalty
7 of \$5 for each day, but not to exceed a total of \$1,000 for
8 each year, that it transacts business in this state without
9 a certificate of authority. The attorney general may collect
10 all penalties due under this subsection.

11 (5) Notwithstanding the provisions of subsections (1)
12 and (2), the failure of a foreign corporation to obtain a
13 certificate of authority does not impair the validity of its
14 corporate acts or prevent it from defending any proceeding
15 in this state.

16 NEW SECTION. Section 149. Application for certificate
17 of authority. (1) A foreign corporation may apply for a
18 certificate of authority to transact business in this state
19 by delivering an application to the secretary of state. The
20 application must set forth:

21 (a) the name of the foreign corporation or, if its name
22 is unavailable for use in this state, a corporate name that
23 satisfies the requirements of [section 152];

24 (b) the name of the state or country under whose law it
25 is incorporated;

1 (c) the date of incorporation and period of duration;

2 (d) the street address and, if different, the mailing
3 address of its principal office;

4 (e) the street address and, if different, the mailing
5 address of its registered office in this state and the name
6 of its registered agent at that office;

7 (f) the names and usual business or home addresses of
8 its current directors and officers;

9 (g) whether the foreign corporation has members;

10 (h) whether the corporation, if it had been
11 incorporated in this state, would be a public benefit
12 corporation, mutual benefit corporation, or religious
13 corporation; and

14 (i) the purpose or purposes of the corporation that it
15 proposes to pursue in the transaction of business in this
16 state.

17 (2) The foreign corporation shall deliver with the
18 completed application a certificate of existence or a
19 similar document authenticated by the secretary of state or
20 other official having custody of corporate records in the
21 state or country under whose law the foreign corporation is
22 incorporated.

23 NEW SECTION. Section 150. Amended certificate of
24 authority. (1) A foreign corporation authorized to transact
25 business in this state shall obtain an amended certificate

1 of authority from the secretary of state if it changes:

- 2 (a) its corporate name;
- 3 (b) the period of its duration;
- 4 (c) the state or country of its incorporation; or
- 5 (d) its designation as a public benefit corporation,
- 6 mutual benefit corporation, or religious corporation.

7 (2) The requirements of [section 149] for obtaining an

8 original certificate of authority apply to obtaining an

9 amended certificate under this section.

10 NEW SECTION. Section 151. Effect of certificate of

11 authority. (1) A certificate of authority authorizes the

12 foreign corporation to which it is issued the right to

13 transact business in this state subject, however, to the

14 right of the state to revoke the certificate as provided in

15 [sections 1 through 168].

16 (2) A foreign corporation with a valid certificate of

17 authority has the same rights and enjoys the same privileges

18 as a domestic corporation of a similar character and, except

19 as otherwise provided by [sections 1 through 168], is

20 subject to the same duties, restrictions, penalties, and

21 liabilities now or later imposed on a domestic corporation

22 of a similar character.

23 (3) [Sections 1 through 168] do not authorize this

24 state to regulate the organization or internal affairs of a

25 foreign corporation authorized to transact business in this

1 state.

2 NEW SECTION. Section 152. Corporate name of foreign

3 corporation. (1) If the corporate name of a foreign

4 corporation does not satisfy the requirements of [section

5 31], the foreign corporation, to obtain or maintain a

6 certificate of authority to transact business in this state,

7 may use a fictitious name to transact business in this state

8 if:

- 9 (a) its real name is unavailable; and
- 10 (b) it delivers to the secretary of state, for filing,
- 11 a copy of the resolution of its board of directors,
- 12 certified by its secretary, adopting the fictitious name.

13 (2) Except as authorized by subsections (3) and (4),

14 the corporate name, including a fictitious name, of a

15 foreign corporation must be distinguishable in the records

16 of the secretary of state from:

- 17 (a) the corporate name of a nonprofit or business
- 18 corporation incorporated or authorized to transact business
- 19 in this state;

20 (b) a corporate name reserved or registered under

21 [sections 32 or 33] or 35-1-302 or 35-1-303;

22 (c) the fictitious name of another foreign business or

23 nonprofit corporation authorized to transact business in

24 this state;

25 (d) the corporate name of a domestic corporation that

1 has dissolved, but distinguishable only for a period of 120
2 days after the effective date of dissolution; and

3 (e) any assumed business name, limited partnership
4 name, trademark, or service mark registered or reserved with
5 the secretary of state.

6 (3) A foreign corporation may apply to the secretary of
7 state for authorization to use in this state the name of
8 another corporation, incorporated or authorized to transact
9 business in this state, that is not distinguishable in the
10 records of the secretary of state from the name applied for.
11 The secretary of state shall authorize use of the name
12 applied for if:

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

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

22 (4) A foreign corporation may use in this state the
23 name, including the fictitious name, of another domestic or
24 foreign business or nonprofit corporation that is used in
25 this state if the other corporation is incorporated or

1 authorized to transact business in this state and the
2 foreign corporation:

3 (a) has merged with the other corporation;

4 (b) has been formed by reorganization of the other
5 corporation; or

6 (c) has acquired all or substantially all of the
7 assets, including the corporate name, of the other
8 corporation.

9 (5) If a foreign corporation authorized to transact
10 business in this state changes its corporate name to one
11 that does not satisfy the requirements of [section 31], it
12 may not transact business in this state under the changed
13 name until it adopts a name satisfying the requirements of
14 [section 31] and obtains an amended certificate of authority
15 under [section 150].

16 **NEW SECTION. Section 153.** Registered office and
17 registered agent of foreign corporation. Each foreign
18 corporation authorized to transact business in this state
19 shall continuously maintain in this state:

20 (1) a registered office with the same address as that
21 of its registered agent; and

22 (2) a registered agent who may be:

23 (a) an individual who resides in this state and whose
24 office is identical with the registered office;

25 (b) a domestic business or nonprofit corporation whose

1 office is identical with the registered office; or
 2 (c) a foreign business or nonprofit corporation
 3 authorized to transact business in this state whose office
 4 is identical with the registered office.

5 **NEW SECTION. Section 154.** Change of registered office
 6 or registered agent of foreign corporation. (1) A foreign
 7 corporation authorized to transact business in this state
 8 may change its registered office or registered agent by
 9 delivering to the secretary of state, for filing, a
 10 statement of change that sets forth:
 11 (a) the name of the foreign corporation;
 12 (b) the street address and, if different, the mailing
 13 address of its current registered office;
 14 (c) if the current registered office is to be changed,
 15 the street address and, if different, the mailing address of
 16 its new registered office;
 17 (d) the name of its current registered agent;
 18 (e) if the current registered agent is to be changed,
 19 the name of its new registered agent and the new agent's
 20 written consent to the appointment, either on the statement
 21 or attached to it; and
 22 (f) the fact that after the change or changes are made,
 23 the street addresses of its registered office and the office
 24 of its registered agent will be identical.
 25 (2) If a registered agent changes the street address of

1 its business office, the agent may change the address of the
 2 registered office of any foreign corporation for which the
 3 agent is the registered agent by notifying the corporation
 4 in writing of the change and signing, either manually or in
 5 facsimile, and delivering to the secretary of state, for
 6 filing, a statement of change that complies with the
 7 requirements of subsection (1) and that states that the
 8 corporation has been notified of the change.

9 **NEW SECTION. Section 155.** Resignation of registered
 10 agent of foreign corporation. (1) The registered agent of a
 11 foreign corporation may resign as agent by signing and
 12 delivering to the secretary of state, for filing, the
 13 original and two copies of a statement of resignation. The
 14 statement of resignation may include a statement that the
 15 registered office is also discontinued.

16 (2) After filing the statement, the secretary of state
 17 shall attach the filing receipt to one copy and mail the
 18 copy and receipt to the registered office if the office has
 19 not been discontinued. The secretary of state shall mail the
 20 other copy to the foreign corporation at its principal
 21 office address shown in its most recent annual report.

22 (3) The agency is terminated, and the registered office
 23 discontinued if so provided, 31 days after the date on which
 24 the statement was filed.

25 **NEW SECTION. Section 156.** Service of process on

1 foreign corporations. Service of process on a foreign
2 corporation must be effected upon the persons and in the
3 manner provided for by the Montana Rules of Civil Procedure.

4 NEW SECTION. Section 157. Withdrawal of foreign
5 corporation. (1) A foreign corporation authorized to
6 transact business in this state may not withdraw from this
7 state until it obtains a certificate of withdrawal from the
8 secretary of state.

9 (2) A foreign corporation authorized to transact
10 business in this state may apply for a certificate of
11 withdrawal by delivering an application to the secretary of
12 state for filing. The application must set forth:

13 (a) the name of the foreign corporation and the name of
14 the state or country under whose law it is incorporated;

15 (b) the fact that it is not transacting business in
16 this state and that it surrenders its authority to transact
17 business in this state;

18 (c) the fact that it revokes the authority of its
19 registered agent to accept service on its behalf and
20 appoints the secretary of state as its agent for service of
21 process in any proceeding based on a cause of action arising
22 during the time it was authorized to do business in this
23 state;

24 (d) a mailing address to which the secretary of state
25 may mail a copy of any process served on him under

1 subsection (2)(c); and

2 (e) a commitment to notify the secretary of state, in
3 the future, of any change in the mailing address.

4 NEW SECTION. Section 158. Grounds for revocation. (1)
5 The secretary of state may commence a proceeding under
6 [section 159] to revoke the certificate of authority of a
7 foreign corporation authorized to transact business in this
8 state if:

9 (a) the foreign corporation does not deliver the annual
10 report to the secretary of state within 90 days after it is
11 due;

12 (b) the foreign corporation does not pay within 90 days
13 after they are due any franchise taxes or penalties imposed
14 by [sections 1 through 168] or other law;

15 (c) the foreign corporation is without a registered
16 agent or registered office in this state for 90 days or
17 more;

18 (d) the foreign corporation does not inform the
19 secretary of state under [sections 154 or 155] that its
20 registered agent or registered office has changed, that its
21 registered agent has resigned, or that its registered office
22 has been discontinued, within 90 days of the change,
23 resignation, or discontinuance;

24 (e) an incorporator, director, officer, or agent of the
25 foreign corporation signed a document that the person knew

1 was false in any material respect, with the intent that the
2 document be delivered to the secretary of state for filing;
3 or

4 (f) the secretary of state receives a duly
5 authenticated certificate from the secretary of state or
6 other official having custody of corporate records in the
7 state or country under whose law the foreign corporation is
8 incorporated, which certificate states that the foreign
9 corporation has been dissolved or disappeared as the result
10 of a merger.

11 (2) The attorney general may commence a proceeding
12 under [section 159] to revoke the certificate of authority
13 of a foreign corporation authorized to transact business in
14 this state if:

15 (a) the corporation has continued to exceed or abuse
16 the authority conferred upon it by law;

17 (b) the corporation is designated as a foreign public
18 benefit corporation and its corporation assets in this state
19 are being misapplied or wasted; or

20 (c) the corporation is designated as a foreign public
21 benefit corporation and it is no longer able to carry out
22 its purpose.

23 NEW SECTION. Section 159. Procedure for and effect of
24 revocation. (1) The secretary of state upon determining that
25 one or more grounds exist under [section 158] for revocation

1 of a certificate of authority shall serve the foreign
2 corporation with written notice of that determination under
3 [section 156].

4 (2) The attorney general, upon determining that one or
5 more grounds exist under [section 158(2)] for revocation of
6 a certificate of authority, shall request the secretary of
7 state to serve, and the secretary of state shall serve, the
8 foreign corporation with written notice of that
9 determination under [section 156].

10 (3) If the foreign corporation does not correct each
11 ground for revocation or demonstrate to the reasonable
12 satisfaction of the secretary of state or attorney general
13 that each ground for revocation determined by the secretary
14 of state or attorney general does not exist within 60 days
15 after service of the notice is perfected under [section
16 156], the secretary of state may revoke the foreign
17 corporation's certificate of authority by signing a
18 certificate of revocation that states the ground or grounds
19 for revocation and the effective date of the revocation. The
20 secretary of state shall file the original of the
21 certificate and serve a copy on the foreign corporation
22 under [section 156].

23 (4) The authority of a foreign corporation to transact
24 business in this state ceases on the date shown on the
25 certificate revoking its certificate of authority.

1 (5) Revocation of a foreign corporation's certificate
2 of authority does not terminate the authority of the
3 registered agent of the corporation.

4 NEW SECTION. Section 160. Appeal from revocation. (1)
5 A foreign corporation may appeal the secretary of state's
6 revocation of its certificate of authority to the district
7 court for the first judicial district within 30 days after
8 the service of the certificate of revocation is perfected
9 under [section 156]. The foreign corporation shall appeal by
10 petitioning the court to set aside the revocation and
11 attaching to the petition copies of its certificate of
12 authority and the secretary of state's certificate of
13 revocation.

14 (2) The court may summarily order the secretary of
15 state to reinstate the certificate of authority or may take
16 any other action the court considers appropriate.

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

19 NEW SECTION. Section 161. Corporate records. (1) A
20 corporation shall keep as permanent records minutes of all
21 meetings of its members and board of directors, a record of
22 all actions taken by the members or directors without a
23 meeting, and a record of all actions taken by committees of
24 the board of directors as authorized by [section 90(4)].

25 (2) A corporation shall maintain appropriate accounting

1 records.

2 (3) A corporation or its agent shall maintain a record
3 of its members in a form that permits preparation of a list
4 of the names and addresses of all members, in alphabetical
5 order by class, showing the number of votes each member is
6 entitled to cast.

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

10 (5) A corporation shall keep a copy of the following
11 records at its principal office or a location from which the
12 records may be recovered within 2 business days:

13 (a) its articles or restated articles of incorporation
14 and all amendments to them currently in effect;

15 (b) its bylaws or restated bylaws and all amendments to
16 them currently in effect;

17 (c) resolutions adopted by its board of directors
18 relating to the characteristics, qualifications, rights,
19 limitations, and obligations of members or any class or
20 category of members;

21 (d) the minutes of all meetings of members and the
22 records of all actions approved by the members for the past
23 3 years;

24 (e) the financial statements available to shareholders
25 for the past 3 years under [section 166];

1 (f) a list of the names and business or home addresses
2 of its current directors and officers; and

3 (g) its most recent annual report delivered to the
4 secretary of state under [section 168].

5 NEW SECTION. Section 162. Inspection of records by
6 members. (1) Subject to [section 163(3)] and subsection (5)
7 of this section, a member is entitled to inspect and copy,
8 at a reasonable time and location specified by the
9 corporation, any of the records of the corporation described
10 in [section 161(5)] if the member gives the corporation
11 written notice or a written demand at least 5 business days
12 before the date on which the member wishes to inspect and
13 copy.

14 (2) Subject to subsection (5), a member is entitled to
15 inspect and copy, at a reasonable time and reasonable
16 location specified by the corporation, any of the following
17 records of the corporation if the member meets the
18 requirements of subsection (3) and gives the corporation
19 written notice at least 5 business days before the date on
20 which the member wishes to inspect and copy:

21 (a) excerpts from any records required to be maintained
22 under [section 161(1)], to the extent not subject to
23 inspection under subsection (1);

24 (b) accounting records of the corporation; and

25 (c) subject to [section 165], the membership list.

1 (3) A member may inspect and copy the records
2 identified in subsection (2) only if:

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

5 (b) the member describes with reasonable particularity
6 the purpose and the records the member desires to inspect;
7 and

8 (c) the records are directly connected with this
9 purpose.

10 (4) This section does not affect:

11 (a) the right of a member to inspect records under
12 [section 66] or, if the member is in litigation with the
13 corporation, to the same extent as any other litigant; or

14 (b) the power of a court, independent of [sections 1
15 through 168], to compel the production of corporate records
16 for examination.

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

20 NEW SECTION. Section 163. Scope of inspection rights.

21 (1) A member's agent or attorney has the same inspection and
22 copying rights as the member the agent or attorney
23 represents.

24 (2) The right to copy records under [section 162]
25 includes, if reasonable, the right to receive copies made by

1 photographic, xerographic, or other means.

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

7 (4) The corporation may comply with a member's demand
8 to inspect the record of members under [section 162(2)(c)]
9 by providing the member with a list of its members that was
10 compiled no earlier than the date of the member's demand.

11 NEW SECTION. **Section 164.** Court-ordered inspection.

12 (1) If a corporation does not allow a member who complies
13 with [section 162(1)] to inspect and copy any records
14 required by that subsection to be available for inspection,
15 the district court, for the judicial district of the county
16 where the corporation's principal office, or, if none in
17 this state, its registered office, is located may summarily
18 order inspection and copying of the records demanded at the
19 corporation's expense upon application of the member.

20 (2) If a corporation does not within a reasonable time
21 allow a member to inspect and copy any other record, the
22 member who complies with [section 162(2) and (3)] may apply
23 to the district court, for the judicial district of the
24 county where the corporation's principal office or, if the
25 principal office is not located in this state, the county

1 where its registered office is located for an order to
2 permit inspection and copying of the records demanded. The
3 court shall dispose of an application under this subsection
4 on an expedited basis.

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

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

16 NEW SECTION. **Section 165.** Limitations on use of
17 membership list. (1) Without consent of the board, a
18 membership list or any part of it may not be obtained or
19 used by a person for any purpose unrelated to a member's
20 interest as a member.

21 (2) Without limiting the generality of the provisions
22 of subsection (1), without the consent of the board a
23 membership list or any part of it may not be:

24 (a) used to solicit money or property unless the money
25 or property will be used solely to solicit the votes of the

1 members in an election to be held by the corporation;

2 (b) used for any commercial purpose; or

3 (c) sold to or purchased by any person.

4 NEW SECTION. **Section 166.** Financial statements for
5 members. Upon the written request of any member of the
6 corporation, the corporation shall mail to the member its
7 most recent financial statements showing in reasonable
8 detail its assets and liabilities and the results of the
9 operations.

10 NEW SECTION. **Section 167.** Report of indemnification to
11 members. If a corporation indemnifies or advances expenses
12 to a director under [sections 102 through 105] in connection
13 with a proceeding by or in the right of the corporation, the
14 corporation shall report the indemnification or advance in
15 writing to the members with or before the notice of the next
16 meeting of members.

17 NEW SECTION. **Section 168.** Annual report for secretary
18 of state. (1) Each domestic corporation and each foreign
19 corporation authorized to transact business in this state
20 shall deliver to the secretary of state, for filing, an
21 annual report on a form prescribed and furnished by the
22 secretary of state that sets forth:

23 (a) the name of the corporation and the state or
24 country under whose law it is incorporated;

25 (b) the address of its registered office and the name

1 of its registered agent at the office in this state;

2 (c) the address of its principal office;

3 (d) the names and business or residence addresses of
4 its directors and principal officers;

5 (e) a brief description of the nature of its
6 activities; and

7 (f) whether or not it has members.

8 (2) The information in the annual report must be
9 current on the date the annual report is executed on behalf
10 of the corporation.

11 (3) The first annual report must be delivered to the
12 secretary of state between January 1 and April 1 of the year
13 following the calendar year in which a domestic corporation
14 was incorporated or a foreign corporation was authorized to
15 transact business. Subsequent annual reports must be
16 delivered to the secretary of state between January 1 and
17 April 1.

18 (4) If an annual report does not contain the
19 information required by this section, the secretary of state
20 shall promptly notify the reporting domestic or foreign
21 corporation in writing and return the report to it for
22 correction. If the report is corrected to contain the
23 information required by this section and delivered to the
24 secretary of state within 30 days after the effective date
25 of notice, it is considered to be timely filed.

1 **Section 169.** Section 15-1-101, MCA, is amended to read:

2 "15-1-101. Definitions. (1) Except as otherwise
3 specifically provided, when terms mentioned in this section
4 are used in connection with taxation, they are defined in
5 the following manner:

6 (a) The term "agricultural" refers to the raising of
7 livestock, poultry, bees, and other species of domestic
8 animals and wildlife in domestication or a captive
9 environment, and the raising of field crops, fruit, and
10 other animal and vegetable matter for food or fiber.

11 (b) The term "assessed value" means the value of
12 property as defined in 15-8-111.

13 (c) The term "average wholesale value" means the value
14 to a dealer prior to reconditioning and profit margin shown
15 in national appraisal guides and manuals or the valuation
16 schedules of the department of revenue.

17 (d) (i) The term "commercial", when used to describe
18 property, means any property used or owned by a business, a
19 trade, or a nonprofit corporation as defined in 35-2-102
20 [section 1], or used for the production of income, except
21 that property described in subsection (ii).

22 (ii) The following types of property are not commercial:

23 (A) agricultural lands;

24 (B) timberlands;

25 (C) single-family residences and ancillary improvements

1 and improvements necessary to the function of a bona fide
2 farm, ranch, or stock operation;

3 (D) mobile homes used exclusively as a residence except
4 when held by a distributor or dealer of trailers or mobile
5 homes as his stock in trade;

6 (E) all property described in 15-6-135; and

7 (F) all property described in 15-6-136.

8 (e) The term "comparable property" means property that
9 has similar use, function, and utility; that is influenced
10 by the same set of economic trends and physical,
11 governmental, and social factors; and that has the potential
12 of a similar highest and best use.

13 (f) The term "credit" means solvent debts, secured or
14 unsecured, owing to a person.

15 (g) The term "improvements" includes all buildings,
16 structures, fences, and improvements situated upon, erected
17 upon, or affixed to land. When the department of revenue or
18 its agent determines that the permanency of location of a
19 mobile home or housetrailer has been established, the mobile
20 home or housetrailer is presumed to be an improvement to
21 real property. A mobile home or housetrailer may be
22 determined to be permanently located only when it is
23 attached to a foundation which cannot feasibly be relocated
24 and only when the wheels are removed.

25 (h) The term "leasehold improvements" means

1 improvements to mobile homes and mobile homes located on
 2 land owned by another person. This property is assessed
 3 under the appropriate classification and the taxes are due
 4 and payable in two payments as provided in 15-24-202.
 5 Delinquent taxes on such leasehold improvements are a lien
 6 only on such leasehold improvements.

7 (i) The term "livestock" means cattle, sheep, swine,
 8 goats, horses, mules, and asses.

9 (j) The term "mobile home" means forms of housing known
 10 as "trailers", "housetrainers", or "trailer coaches"
 11 exceeding 8 feet in width or 45 feet in length, designed to
 12 be moved from one place to another by an independent power
 13 connected to them, or any "trailer", "housetrailer", or
 14 "trailer coach" up to 8 feet in width or 45 feet in length
 15 used as a principal residence.

16 (k) The term "personal property" includes everything
 17 that is the subject of ownership but that is not included
 18 within the meaning of the terms "real estate" and
 19 "improvements".

20 (l) The term "poultry" includes all chickens, turkeys,
 21 geese, ducks, and other birds raised in domestication to
 22 produce food or feathers.

23 (m) The term "property" includes moneys, credits,
 24 bonds, stocks, franchises, and all other matters and things,
 25 real, personal, and mixed, capable of private ownership.

1 This definition must not be construed to authorize the
 2 taxation of the stocks of any company or corporation when
 3 the property of such company or corporation represented by
 4 the stocks is within the state and has been taxed.

5 (n) The term "real estate" includes:

6 (i) the possession of, claim to, ownership of, or right
 7 to the possession of land;

8 (ii) all mines, minerals, and quarries in and under the
 9 land subject to the provisions of 15-23-501 and Title 15,
 10 chapter 23, part 8; all timber belonging to individuals or
 11 corporations growing or being on the lands of the United
 12 States; and all rights and privileges appertaining thereto.

13 (o) "Research and development firm" means an entity
 14 incorporated under the laws of this state or a foreign
 15 corporation authorized to do business in this state whose
 16 principal purpose is to engage in theoretical analysis,
 17 exploration, and experimentation and the extension of
 18 investigative findings and theories of a scientific and
 19 technical nature into practical application for experimental
 20 and demonstration purposes, including the experimental
 21 production and testing of models, devices, equipment,
 22 materials, and processes.

23 (p) The term "taxable value" means the percentage of
 24 market or assessed value as provided for in Title 15,
 25 chapter 6, part 1.

1 (q) The term "weighted mean assessment ratio" means the
2 total of the assessed values divided by the total of the
3 selling prices of all area sales in the stratum.

4 (2) The phrase "municipal corporation" or
5 "municipality" or "taxing unit" shall be deemed to include a
6 county, city, incorporated town, township, school district,
7 irrigation district, drainage district, or any person,
8 persons, or organized body authorized by law to establish
9 tax levies for the purpose of raising public revenue.

10 (3) The term "state board" or "board" when used without
11 other qualification shall mean the state tax appeal board."

12 **Section 170.** Section 33-17-211, MCA, is amended to
13 read:

14 "33-17-211. General qualifications -- application for
15 license. (1) An individual applying for a license shall
16 apply on a form specified by the commissioner and declare
17 under penalty of refusal, suspension, or revocation of the
18 license that statements made in the application are true,
19 correct, and complete to the best of the individual's
20 knowledge and belief. Before approving the application, the
21 commissioner shall verify that the individual:

- 22 (a) is 18 years of age or older;
23 (b) has not committed an act that is a ground for
24 refusal, suspension, or revocation set forth in 33-17-1001;
25 (c) has paid the license fees stated in 33-2-708;

1 (d) has successfully passed the examinations for each
2 kind of insurance for which the individual has applied;

3 (e) is a resident of this state or of another state
4 that grants similar privileges to residents of this state;

5 (f) is competent, trustworthy, and of good reputation;

6 (g) has experience or training or otherwise is
7 qualified in the kind or kinds of insurance for which he
8 applies to be licensed and is reasonably familiar with the
9 provisions of this code which govern his operations as an
10 insurance producer; and

11 (h) if applying for a license as to life or disability
12 insurance:

13 (i) is not a funeral director, undertaker, or mortician
14 operating in this or any other state;

15 (ii) is not an officer, employee, or representative of a
16 funeral director, undertaker, or mortician operating in this
17 or any other state; or

18 (iii) does not hold an interest in or benefit from a
19 business of a funeral director, undertaker, or mortician
20 operating in this or any other state.

21 (2) A person acting as an insurance producer shall
22 obtain a license. A person shall apply for a license on a
23 form specified by the commissioner. Before approving the
24 application, the commissioner shall verify that:

25 (a) the person meets the requirements listed in

1 subsection (1);

2 (b) the person has paid the licensing fees stated in
3 33-2-708 for each individual licensed in conjunction with
4 the person's license. A licensed person shall promptly
5 notify the commissioner of each change relating to an
6 individual listed in the license.

7 (c) the person has designated a licensed officer
8 responsible for compliance by the person with the insurance
9 laws and rules of this state;

10 (d) each member and employee of a partnership and each
11 officer, director, stockholder, or employee of a corporation
12 who is acting as an insurance producer in this state has
13 obtained a license;

14 (e) (i) if the person is a partnership or corporation,
15 the transaction of insurance business is within the purposes
16 stated in the partnership agreement or the articles of
17 incorporation; and

18 (ii) if the person is a corporation, the secretary of
19 state has issued a certificate of incorporation under
20 35-1-203 or ~~35-2-203~~ filed articles of incorporation under
21 [section 23].

22 (3) The commissioner may license as a resident
23 insurance producer an association of licensed Montana
24 insurance producers, whether or not incorporated, formed and
25 existing substantially for purposes other than insurance.

1 The license must be used solely for the purpose of enabling
2 the association to place, as a resident insurance producer,
3 insurance of the properties, interests, and risks of the
4 state of Montana and of other public agencies, bodies, and
5 institutions and to receive the customary commission for the
6 placement. The president and secretary of the association
7 shall apply for the license in the name of the association,
8 and the commissioner shall issue the license to the
9 association in its name alone. The fee for the license is
10 the same as that required by 33-2-708 for the license of an
11 insurance producer. The commissioner may, after a hearing
12 with notice to the association, revoke the license if he
13 finds that continuation of the license is not in the public
14 interest or that a ground listed in 33-17-1001 exists.

15 (4) An insurance producer using an assumed business
16 name shall register the name with the commissioner before
17 using it."

18 **Section 171.** Section 35-6-104, MCA, is amended to read:
19 "35-6-104. Involuntary dissolution -- procedure. (1) On
20 or before April 1, August 1, and September 1 of each year,
21 the secretary of state shall compile a list of defaulting
22 corporations, together with the amount of any filing fee,
23 penalty, or costs remaining unpaid.

24 (2) The secretary of state shall give notice to the
25 defaulting corporations by causing such list to be posted in

1 the state capitol for a period of at least 90 days and:

2 (a) by mailing a letter addressed to the corporation in
3 care of its registered agent or any director or officer; or

4 (b) by publication of a general notice to all Montana
5 corporations once a month for 3 consecutive months in a
6 newspaper of general circulation in Lewis and Clark County.

7 (3) The notice referred to in subsection (2) shall
8 specify the fact of the proposed dissolution and state that
9 unless the grounds for dissolution described in 35-6-102
10 have been rectified within 90 days following the posting and
11 mailing or publication of notice:

12 (a) the secretary of state will dissolve such
13 defaulting corporations;

14 (b) such corporations will forfeit the amount of any
15 tax, penalty, or costs to the state of Montana; and

16 (c) such corporations will forfeit their rights to
17 carry on business within the state.

18 (4) After 90 days following posting and mailing or
19 publication of each notice, the secretary of state may, by
20 order, dissolve all corporations which have not satisfied
21 the requirements of applicable law and compile a full and
22 complete list containing the names of all corporations that
23 have been so dissolved. The secretary of state shall
24 immediately give notice to the dissolved corporation as
25 specified in subsection (2) of this section.

1 (5) In the case of involuntary dissolution, all the
2 property and assets of the dissolved corporation shall be
3 held in trust by the directors of such corporation and
4 35-1-921 or 35-2-711 [section 143], whichever is
5 appropriate, is applicable to liquidate such property and
6 assets if necessary."

7 **Section 172.** Section 35-6-201, MCA, is amended to read:
8 "35-6-201. Reinstatement of dissolved corporation. (1)
9 The secretary of state may:

10 (a) reinstate any corporation which has been dissolved
11 under the provisions of this chapter; and

12 (b) restore to such corporation its right to carry on
13 business in this state and to exercise all its corporate
14 privileges and immunities.

15 (2) A corporation applying for reinstatement shall
16 submit to the secretary of state one original and one copy
17 of the application, executed by a person who was an officer
18 or director at the time of dissolution, setting forth:

19 (a) the name of the corporation;

20 (b) a statement that the assets of the corporation have
21 not been liquidated pursuant to 35-1-921 or 35-2-711
22 [sections 140 and 141];

23 (c) a statement that not less than a majority of its
24 directors have authorized the application for reinstatement;
25 and

1 (d) if its corporate name has been legally acquired by
2 another corporation prior to its application for
3 reinstatement, the corporate name under which the
4 corporation desires to be reinstated.

5 (3) The corporation shall submit with its application
6 for reinstatement:

7 (a) a certificate from the department of revenue
8 stating that all taxes imposed pursuant to Title 15 have
9 been paid; and

10 (b) a filing fee in an amount equal to one-half of the
11 filing and license fees which the corporation would be
12 required to pay if the corporation were filing its articles
13 of incorporation.

14 (4) When all requirements are met and the secretary of
15 state reinstates the corporation to its former rights, he
16 shall:

17 (a) conform and file in his office reports, statements,
18 and other instruments submitted for reinstatement;

19 (b) immediately issue and deliver to the corporation so
20 reinstated a certificate of reinstatement authorizing it to
21 transact business; and

22 (c) upon demand, issue to the corporation one or more
23 certified copies of such certificate of reinstatement.

24 (5) The secretary of state may not order a
25 reinstatement if 5 years have elapsed since the

1 dissolution."

2 NEW SECTION. **Section 173.** Interim designation. (1)

3 Each domestic corporation not designated pursuant to
4 [section 16] is designated as follows:

5 (a) a corporation that is organized primarily or
6 exclusively for religious purposes is a religious
7 corporation;

8 (b) a corporation that is not provided for under the
9 provisions of subsection (1)(a) but that is recognized as
10 exempt under section 501(c)(3) of the Internal Revenue Code,
11 or any successor section, is a public benefit corporation;

12 (c) a corporation that is not provided for under the
13 provisions of subsection (1)(a) or (1)(b), but that is
14 organized for a public or charitable purpose and that, upon
15 dissolution, shall distribute its assets to a public benefit
16 corporation, the United States, a state, or a person that is
17 recognized as exempt under section 501(c)(3) of the Internal
18 Revenue Code, or any successor section, is a public benefit
19 corporation; and

20 (d) a corporation that is not provided for under the
21 provisions of subsection (1)(a), (1)(b), or (1)(c) is a
22 mutual benefit corporation.

23 (2) Foreign corporations authorized to transact
24 business in this state but not designated pursuant to
25 [section 16] are designated as a public benefit corporation,

1 mutual benefit corporation, or religious corporation in
2 accordance with the provisions of subsection (1).

3 **NEW SECTION. Section 174. Repealer.** Sections 35-2-102
4 through 35-2-112, 35-2-201 through 35-2-211, 35-2-301
5 through 35-2-304, 35-2-401 through 35-2-413, 35-2-501
6 through 35-2-509, 35-2-601 through 35-2-607, 35-2-701
7 through 35-2-706, 35-2-711 through 35-2-719, 35-2-801
8 through 35-2-819, 35-2-901 through 35-2-903, 35-2-1001,
9 35-2-1002, 35-2-1101 through 35-2-1106, and 35-2-1201
10 through 35-2-1203, MCA, are repealed.

11 **NEW SECTION. Section 175. Codification.** (1) [Sections
12 1 through 168] are intended to be codified as an integral
13 part of Title 35, and the provisions of Title 35 apply to
14 [sections 1 through 168].

15 (2) Section 35-2-101 is intended to be renumbered and
16 codified as an integral part of [sections 1 through 168].

17 **NEW SECTION. Section 176. Coordination.** If ____ Bill
18 No. ____, [LC 7] is passed and approved and if it includes a
19 section that repeals sections 35-1-302 and 35-1-303, then
20 [section 152(2)(b) of this act] is amended to read:

21 "(b) a corporate name reserved or registered under
22 [sections 32 or 33] of [sections 1 through 168] or [sections
23 26 or 27 of ____ Bill No. ____ [LC 7]].

24 **NEW SECTION. Section 177. Saving clause.** (1) Except as
25 provided in subsection (2), the repeal of a statute by [this

1 act] does not affect:

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

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

7 (c) any violation of the statute or any penalty,
8 forfeiture, or punishment incurred because of the violation,
9 before its repeal;

10 (d) any proceeding, reorganization, or dissolution
11 commenced under the statute before its repeal. The
12 proceeding, reorganization, or dissolution may be completed
13 in accordance with the statute as if it had not been
14 repealed.

15 (e) any meeting of members or directors or any action
16 by written consent that is noticed or taken before its
17 repeal as a result of a meeting of members or directors or
18 action by written consent.

19 (2) If a penalty or punishment imposed for violation of
20 a statute repealed by [this act] is reduced by [this act],
21 the penalty or punishment, if not already imposed, must be
22 imposed in accordance with [this act].

23 **NEW SECTION. Section 178. Severability.** If a part of
24 [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the part
 2 remains in effect in all valid applications that are
 3 severable from the invalid applications.

4 NEW SECTION. Section 179. Application to existing
 5 domestic corporations. (1) [This act] applies to all
 6 domestic corporations in existence on January 1, 1992, that
 7 were incorporated under Title 35, chapter 2, or any
 8 predecessor statute.

9 (2) [This act] applies to each domestic corporation in
 10 existence on January 1, 1992, that was incorporated under
 11 Title 35, chapter 3, upon the filing by the corporation of
 12 an irrevocable election with the secretary of state by
 13 January 1, 1992, electing to have all the provisions of
 14 [this act] applied to it or electing to have all the
 15 provisions of [this act] applied to it to the extent not
 16 inconsistent with the law then governing it.

17 NEW SECTION. Section 180. Application to qualified
 18 foreign corporations. A foreign corporation authorized to
 19 transact business in this state on January 1, 1992, is
 20 subject to [this act] but is not required to obtain a new
 21 certificate of authority to transact business under [this
 22 act].

23 NEW SECTION. Section 181. Termination. [Section 16(3)
 24 and section 173] terminate January 1, 1996.

25 NEW SECTION. Section 182. Effective date. [This act]

1 is effective January 1, 1992.

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

1 HOUSE BILL NO. 741
 2 INTRODUCED BY CROMLEY, MAZUREK, J. RICE, MEASURE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 NONPROFIT CORPORATE LAW; AMENDING SECTIONS 15-1-101,
 6 33-17-211, 35-6-104, AND 35-6-201, MCA; REPEALING SECTIONS
 7 35-2-102 THROUGH 35-2-112, 35-2-201 THROUGH 35-2-211,
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 12 35-2-1001, 35-2-1002, 35-2-1101 THROUGH 35-2-1106, AND
 13 35-2-1201 THROUGH 35-2-1203, MCA; AND PROVIDING AN EFFECTIVE
 14 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

15 STATEMENT OF INTENT
 16
 17 A statement of intent is required for this bill because
 18 it grants authority to the secretary of state to establish
 19 fees and mandate the use of forms. The fees established by
 20 the secretary of state must be commensurate with the cost of
 21 the service performed. The forms adopted should be based on
 22 forms recommended by this bill.

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 NEW SECTION. **Section 1. Definitions.** As used in

The only amendments on this bill are on page 8, line 1, page 8, line 2 and page 162, lines 12 and 17. These pages are attached. Please refer to white (introduced) for complete text. This bill will be reprinted on reference (salmon).



1 entitled to be cast for the election of directors at the
2 time the determination of voting power is made.

3 (b) The term excludes a vote that is contingent upon
4 the happening of a condition or event that has not occurred
5 at the time.

6 (c) When a class is entitled to vote as a class for
7 directors, the determination of voting power of the class
8 must be based on the percentage of the number of directors
9 the class is entitled to elect out of the total number of
10 authorized directors.

11 NEW SECTION. Section 2. Notice. (1) Notice under
12 [sections 1 through 168] must be in writing unless oral
13 notice is reasonable under the circumstances.

14 (2) (a) Notice may be communicated in person; by
15 telephone, telegraph, teletype, facsimile, or other form of
16 wire or wireless communication; or by mail or private
17 carrier.

18 (b) If these forms of personal notice are
19 impracticable, notice may be communicated by a newspaper of
20 general circulation in the area where it is published or by
21 radio, television, or other form of public broadcast
22 communication.

23 (3) Written notice by a domestic or foreign corporation
24 to its members, if in a comprehensible form, is effective
25 when mailed if it is mailed postpaid and correctly addressed

1 to the shareholder's MEMBER'S address shown in the
2 corporation's current record of shareholders MEMBERS.

3 (4) Written notice to a domestic or foreign corporation
4 authorized to transact business in this state may be
5 addressed to:

6 (a) its registered agent at its registered office; or
7 (b) the corporation or its secretary at its principal
8 office shown in its most recent annual report or, in the
9 case of a foreign corporation that has not yet delivered an
10 annual report, in its application for a certificate of
11 authority.

12 (5) Except as provided in subsections (3) and (4),
13 written notice, if in a comprehensible form, is effective at
14 the earliest of the following:

15 (a) when received;
16 (b) 5 days after its deposit in the United States mail,
17 as evidenced by the postmark, if it is mailed postpaid and
18 with correct postage; or

19 (c) on the date shown on the return receipt, if it is
20 sent by certified mail, return receipt requested, and the
21 receipt is signed by or on behalf of the addressee.

22 (6) Oral notice is effective when communicated if it is
23 communicated in a comprehensible manner.

24 (7) If [sections 1 through 168] prescribe notice
25 requirements for particular circumstances, those

1 members in an election to be held by the corporation;

2 (b) used for any commercial purpose; or

3 (c) sold to or purchased by any person.

4 NEW SECTION. Section 166. Financial statements for
5 members. Upon the written request of any member of the
6 corporation, the corporation shall mail to the member its
7 most recent financial statements showing in reasonable
8 detail its assets and liabilities and the results of the
9 operations.

10 NEW SECTION. Section 167. Report of indemnification to
11 members. If a corporation indemnifies or advances expenses
12 to a director under [sections 102 through 105] in connection
13 with a proceeding by or in the right of the corporation, the
14 corporation shall report the indemnification or advance in
15 writing to the members with or before the notice of the next
16 meeting of members.

17 NEW SECTION. Section 168. Annual report for secretary
18 of state. (1) Each domestic corporation and each foreign
19 corporation authorized to transact business in this state
20 shall deliver to the secretary of state, for filing, an
21 annual report on a form prescribed and furnished by the
22 secretary of state that sets forth:

23 (a) the name of the corporation and the state or
24 country under whose law it is incorporated;

25 (b) the address of its registered office and the name

1 of its registered agent at the office in this state;

2 (c) the address of its principal office;

3 (d) the names and business or residence addresses of
4 its directors and principal officers;

5 (e) a brief description of the nature of its
6 activities; and

7 (f) whether or not it has members.

8 (2) The information in the annual report must be
9 current on the date the annual report is executed on behalf
10 of the corporation.

11 (3) The first annual report must be delivered to the
12 secretary of state between January 1 and April 15 of the
13 year following the calendar year in which a domestic
14 corporation was incorporated or a foreign corporation was
15 authorized to transact business. Subsequent annual reports
16 must be delivered to the secretary of state between January
17 1 and April 15.

18 (4) If an annual report does not contain the
19 information required by this section, the secretary of state
20 shall promptly notify the reporting domestic or foreign
21 corporation in writing and return the report to it for
22 correction. If the report is corrected to contain the
23 information required by this section and delivered to the
24 secretary of state within 30 days after the effective date
25 of notice, it is considered to be timely filed.

1 HOUSE BILL NO. 741

2 INTRODUCED BY CROMLEY, MAZUREK, J. RICE, MEASURE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
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THIRD READING

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23 information required by this section and delivered to the
24 secretary of state within 30 days after the effective date
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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0741, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill would generally revise nonprofit corporate law.

ASSUMPTIONS:

1. The bill does not alter the current filing fees for non-profit corporations.
2. Forms prescribed by the Secretary of State are part of the executive budget recommendation for the Secretary of State's Office.


FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

None.

 2-15-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/18/91
BRENT R. CROMLEY, PRIMARY SPONSOR DATE
Fiscal Note for HB0741, as introduced **HB 741**

1 HOUSE BILL NO. 741
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 21 the service performed. The forms adopted should be based on
 22 forms recommended by this bill.
 23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. Section 1. Definitions. As used in

1 [sections 1 through 168], the following definitions apply:
 2 (1) "Approved by the members" means approved and
 3 ratified by the affirmative vote:
 4 (a) of a majority of the votes represented and voting:
 5 (i) at a meeting at which a quorum is present and the
 6 affirmative votes constitute a majority of the required
 7 quorum;
 8 (ii) by a written ballot or written consent in
 9 conformity with [sections 1 through 168]; or
 10 (iii) by the affirmative vote, written ballot, or
 11 written consent of the majority; and
 12 (b) that includes the votes of all the members of any
 13 class, unit, or grouping that may be required by the
 14 articles, bylaws, or [sections 1 through 168] for any
 15 specified member action.
 16 (2) "Articles of incorporation" or "articles" include
 17 amended and restated articles of incorporation and articles
 18 of merger.
 19 (3) "Board" or "board of directors" means the board of
 20 directors except that a person or group of persons are not
 21 the board of directors because of powers delegated to that
 22 person or group pursuant to [section 75].
 23 (4) "Bylaws" means the code, codes, or rules, other
 24 than the articles, adopted pursuant to [sections 1 through
 25 168] for the regulation or management of the affairs of the



1 corporation, regardless of the name or names by which the
2 code, codes, or rules are designated.

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

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

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

13 (8) "Deliver" includes mail.

14 (9) "Directors" means individuals:

15 (a) designated in the articles or bylaws or elected by
16 the incorporators and their successors; and

17 (b) elected or appointed by any other name or title to
18 act as members of the board.

19 (10) "Distribution" means the payment of a dividend or
20 any part of the income or profit of a corporation to its
21 members, directors, or officers.

22 (11) "Domestic corporation" means a corporation.

23 (12) "Effective date of notice" has the meaning provided
24 in [section 2(5)].

25 (13) "Employee" does not include an officer or director

1 who is not otherwise employed by the corporation.

2 (14) "Entity" includes:

3 (a) a corporation and foreign corporation;

4 (b) a business corporation and foreign business
5 corporation;

6 (c) a profit and nonprofit unincorporated association;

7 (d) a corporation sole;

8 (e) a business trust, an estate, a partnership, a
9 trust, and two or more persons having a joint or common
10 economic interest; and

11 (f) a state, the United States, and a foreign
12 government.

13 (15) "File", "filed", or "filing" means filed in the
14 office of the secretary of state.

15 (16) "Foreign corporation" means a corporation that is
16 organized under a law other than the law of this state and
17 that would be a nonprofit corporation if formed under the
18 laws of this state.

19 (17) "Governmental subdivision" includes an authority,
20 county, district, and municipality.

21 (18) "Includes" denotes a partial definition.

22 (19) "Individual" includes the estate of an incompetent
23 individual.

24 (20) "Means" denotes a complete definition.

25 (21) (a) "Member" means, without regard to what a person

1 is called in the articles or bylaws, a person or persons
2 who, on more than one occasion and pursuant to a provision
3 of a corporation's articles or bylaws, have the right to
4 vote for the election of a director or directors.

5 (b) A person is not a member by virtue of any of the
6 following:

7 (i) any rights the person has as a delegate;

8 (ii) any rights the person has to designate a director
9 or directors; or

10 (iii) any rights the person has as a director.

11 (22) "Membership" refers to the rights and obligations a
12 member or members have pursuant to a corporation's articles,
13 bylaws, and [sections 1 through 168].

14 (23) "Mutual benefit corporation" means a domestic
15 corporation designated as a mutual benefit corporation.

16 (24) "Notice" means that term as described in [section
17 2].

18 (25) "Person" includes any individual or entity.

19 (26) "Principal office" means the office, in the state
20 or out of the state, that is designated in the annual report
21 filed pursuant to [section 168] as the place where the
22 principal office of a domestic or foreign corporation is
23 located.

24 (27) "Proceeding" includes a civil suit and a criminal,
25 administrative, and investigatory action.

1 (28) "Public benefit corporation" means a domestic
2 corporation designated as a public benefit corporation.

3 (29) "Record date" means the date established under
4 [sections 39 through 74] on which a corporation determines
5 the identity of its members for the purposes of [sections 1
6 through 168].

7 (30) "Religious corporation" means a domestic
8 corporation designated as a religious corporation.

9 (31) "Secretary" means the corporate officer to whom the
10 board of directors has delegated responsibility under
11 [section 95(2)] for custody of the minutes of the directors'
12 and members' meetings and for authenticating the records of
13 the corporation.

14 (32) "State", when referring to a part of the United
15 States, includes:

16 (a) a state and commonwealth and their agencies and
17 governmental subdivisions; and

18 (b) a territory and insular possession, their agencies,
19 and governmental subdivisions of the United States.

20 (33) "United States" includes a district, an authority,
21 a bureau, a commission, a department, and any other agency
22 of the United States.

23 (34) "Vote" includes authorization by written ballot and
24 written consent.

25 (35) (a) "Voting power" means the total number of votes

1 entitled to be cast for the election of directors at the
2 time the determination of voting power is made.

3 (b) The term excludes a vote that is contingent upon
4 the happening of a condition or event that has not occurred
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12 [sections 1 through 168] must be in writing unless oral
13 notice is reasonable under the circumstances.

14 (2) (a) Notice may be communicated in person; by
15 telephone, telegraph, teletype, facsimile, or other form of
16 wire or wireless communication; or by mail or private
17 carrier.

18 (b) If these forms of personal notice are
19 impracticable, notice may be communicated by a newspaper of
20 general circulation in the area where it is published or by
21 radio, television, or other form of public broadcast
22 communication.

23 (3) Written notice by a domestic or foreign corporation
24 to its members, if in a comprehensible form, is effective
25 when mailed if it is mailed postpaid and correctly addressed

1 to the shareholder's MEMBER'S address shown in the
2 corporation's current record of shareholders MEMBERS.

3 (4) Written notice to a domestic or foreign corporation
4 authorized to transact business in this state may be
5 addressed to:

6 (a) its registered agent at its registered office; or
7 (b) the corporation or its secretary at its principal
8 office shown in its most recent annual report or, in the
9 case of a foreign corporation that has not yet delivered an
10 annual report, in its application for a certificate of
11 authority.

12 (5) Except as provided in subsections (3) and (4),
13 written notice, if in a comprehensible form, is effective at
14 the earliest of the following:

15 (a) when received;
16 (b) 5 days after its deposit in the United States mail,
17 as evidenced by the postmark, if it is mailed postpaid and
18 with correct postage; or

19 (c) on the date shown on the return receipt, if it is
20 sent by certified mail, return receipt requested, and the
21 receipt is signed by or on behalf of the addressee.

22 (6) Oral notice is effective when communicated if it is
23 communicated in a comprehensible manner.

24 (7) If [sections 1 through 168] prescribe notice
25 requirements for particular circumstances, those

1 requirements govern. If the articles of incorporation or
2 bylaws prescribe notice requirements that are consistent
3 with this section or other provisions of [sections 1 through
4 168], those requirements govern.

5 NEW SECTION. Section 3. Reservation of power to amend
6 or repeal. The legislature has power to amend or repeal all
7 or part of [sections 1 through 168] at any time, and all
8 domestic and foreign corporations subject to [sections 1
9 through 168] are governed by the amendment or repeal.

10 NEW SECTION. Section 4. Filing requirements. All of
11 the following requirements must be met before a document is
12 entitled to be filed under this section by the secretary of
13 state:

14 (1) A document that is required or permitted by
15 [sections 1 through 168] to be filed in the office of the
16 secretary of state must satisfy the requirements of this
17 section and of any other section that adds to or varies
18 these requirements.

19 (2) The document must contain the information required
20 by [sections 1 through 168]. It may contain other
21 information as well.

22 (3) The document must be typewritten or printed.

23 (4) The document must be in the English language.
24 However, a corporate name need not be in English if it is
25 written in English letters or Arabic or Roman numerals. The

1 certificate of existence required of foreign corporations
2 need not be in English if it is accompanied by a reasonably
3 authenticated English translation.

4 (5) The document must be executed:

5 (a) by the presiding officer of its board of directors,
6 its president, or another of its officers;

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

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

12 (6) The person executing the document shall sign it and
13 state beneath or opposite the signature his name and the
14 capacity in which the person signs. The document may but
15 need not contain the corporate seal, an attestation by the
16 secretary or an assistant secretary, or an acknowledgment,
17 verification, or proof.

18 (7) The document must be in or on the prescribed form
19 if the secretary of state has prescribed a mandatory form
20 for a document under [section 6].

21 (8) The document must be delivered to the office of the
22 secretary of state for filing and must be accompanied by:

23 (a) one copy, except as provided in [sections 36 and
24 155];

25 (b) the correct filing fee; and

1 (c) any franchise tax, license fee, or penalty required
2 by [sections 1 through 168], rules promulgated under
3 [sections 1 through 168], or other law.

4 NEW SECTION. Section 5. Facsimile filing. (1) The
5 secretary of state shall treat a facsimile copy of a
6 document that is required or permitted to be filed under
7 [sections 4 through 14] and the signatures on the facsimile
8 copy in the same manner as an original for purposes of
9 [sections 4 through 14] provided that the secretary of state
10 receives the original document within 5 working days of the
11 receipt of the facsimile copy. If all other requirements are
12 met, the date of filing relates back to the date of receipt
13 of the facsimile copy.

14 (2) A facsimile copy is entitled to be filed under this
15 section if it is:

16 (a) produced by a method of transmission of images in
17 which the image is scanned at the transmitter; and

18 (b) legible and the same size as the original.

19 (3) During the 5-day period referred to in subsection
20 (1), the recorded facsimile copy constitutes constructive
21 notice for all purposes of the original document.

22 (4) If the original document is not received within 5
23 working days of receipt of the facsimile copy as provided in
24 subsection (1), the filing of the facsimile copy is void.

25 (5) A person who files a false document by facsimile

1 copy is liable to an aggrieved party for three times the
2 amount of damages resulting from the filing of the false
3 document.

4 NEW SECTION. Section 6. Forms. (1) The secretary of
5 state may by rule prescribe and furnish on request forms or
6 computer formats for:

7 (a) an application for a certificate of existence;

8 (b) a foreign corporation's application for a
9 certificate of authority to transact business in this state;

10 (c) a foreign corporation's application for a
11 certificate of withdrawal;

12 (d) the annual report; and

13 (e) other documents required or permitted to be filed
14 by [sections 1 through 168].

15 (2) If the secretary of state so requires, use of any
16 of the forms or formats listed in subsection (1) is
17 mandatory.

18 (3) The secretary of state may by rule prescribe and
19 furnish on request forms or computer formats for other
20 documents required or permitted to be filed by [sections 1
21 through 168], but their use is not mandatory.

22 NEW SECTION. Section 7. Fees for filing, copying, and
23 services. (1) The secretary of state shall establish by rule
24 fees for filing documents and issuing certificates as
25 required by [sections 1 through 168].

1 (2) The secretary of state shall by rule establish fees
2 for copying documents, priority handling, transmitting, or
3 filing facsimile copies and for providing computer-generated
4 information.

5 (3) The fees presented under this section must be
6 reasonably related to the costs of processing the documents
7 and preparing and providing the services. The secretary of
8 state shall maintain records sufficient to support the fees
9 established under this section.

10 **NEW SECTION. Section 8. Effective date of document.**

11 (1) Except as provided in subsection (2), a document is
12 effective:

13 (a) at the time of filing on the date it is filed, as
14 evidenced by the secretary of state's endorsement on the
15 original document; or

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

18 (2) A document may specify a delayed effective time and
19 date, and if it does so the document becomes effective at
20 the time and date specified. If a delayed effective date but
21 no time is specified, the document is effective at the close
22 of business on that date. A delayed effective date for a
23 document may not be later than 90 days after the date it is
24 filed.

25 **NEW SECTION. Section 9. Correcting filed document. (1)**

1 A domestic or foreign corporation may correct a document
2 filed by the secretary of state if the document:

3 (a) contains an incorrect statement; or

4 (b) was defectively executed, attested, sealed,
5 verified, or acknowledged.

6 (2) A document is corrected:

7 (a) by preparing articles of correction that:

8 (i) describe the document, including its filing date,
9 or have attached a copy of the document;

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

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

15 (b) by delivering the articles of correction to the
16 secretary of state.

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

22 **NEW SECTION. Section 10. Filing duty of secretary of**
23 **state. (1)** If a document delivered to the office of the
24 secretary of state for filing satisfies the applicable
25 requirements of [sections 4 and 5], the secretary of state

1 shall file it.

2 (2) The secretary of state shall file a document by
3 stamping or otherwise endorsing "Filed", together with the
4 secretary of state's name, official title, and the date and
5 the time of receipt, on the original, the copy of the
6 document, and the receipt for the filing fee. Except as
7 provided in [sections 37 and 156], after filing a document,
8 the secretary of state shall deliver the document copy to
9 the domestic or foreign corporation or its representative,
10 together with the filing fee receipt or acknowledgment of
11 receipt if no fee is required.

12 (3) Upon refusing to file a document, the secretary of
13 state shall return it to the domestic or foreign corporation
14 or its representative within 10 days after the document was
15 delivered, together with a brief written explanation of the
16 reason or reasons for the refusal.

17 (4) The secretary of state's duty concerning the
18 documents under this section is ministerial. Filing or
19 refusal to file a document does not:

20 (a) affect the validity or invalidity of the document
21 in whole or in part;

22 (b) relate to the correctness or incorrectness of
23 information contained in the document; or

24 (c) create a presumption that the document is valid or
25 invalid or that information contained in the document is

1 correct or incorrect.

2 **NEW SECTION. Section 11. Appeal from secretary of**
3 **state's refusal to file document.** (1) If the secretary of
4 state refuses to file a document delivered for filing to the
5 secretary of state's office, the domestic or foreign
6 corporation may appeal the refusal to the district court for
7 the first judicial district. The appeal is commenced by
8 petitioning the court to compel the filing of the document
9 and by attaching to the petition the document and the
10 secretary of state's explanation of the refusal to file.

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

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

16 **NEW SECTION. Section 12. Evidentiary effect of copy of**
17 **filed document.** A certificate attached to a copy of a
18 document, bearing the secretary of state's signature, which
19 may be in facsimile, and the seal of this state, is
20 conclusive evidence that the original document is on file
21 with the secretary of state.

22 **NEW SECTION. Section 13. Certificate of existence.** (1)
23 A person may apply to the secretary of state to furnish a
24 certificate of existence for a domestic or foreign
25 corporation.

1 (2) The certificate of existence must set forth:
 2 (a) the domestic corporation's corporate name or the
 3 foreign corporation's corporate name used in this state;
 4 (b) (i) that the domestic corporation is incorporated
 5 under the laws of this state, the date of its incorporation,
 6 and the period of its duration if less than perpetual; or
 7 (ii) that the foreign corporation is authorized to
 8 transact business in this state;
 9 (c) that all fees, taxes, and penalties owed to this
 10 state have been paid, if:
 11 (i) payment is reflected in the records of the
 12 secretary of state; and
 13 (ii) nonpayment affects the good standing of the
 14 domestic or foreign corporation;
 15 (d) that its most recent annual report required by
 16 [section 168] has been delivered to the secretary of state;
 17 (e) that articles of dissolution have not been filed;
 18 and
 19 (f) other facts of record in the office of the
 20 secretary of state that may be requested by the applicant.
 21 (3) Subject to any qualification stated in the
 22 certificate, a certificate of existence issued by the
 23 secretary of state may be relied upon as conclusive evidence
 24 that the domestic or foreign corporation is in good standing
 25 in this state.

1 NEW SECTION. Section 14. Penalty for signing false
 2 documents. (1) The execution of any document that must be
 3 filed with the secretary of state under [sections 4 through
 4 14] constitutes an affirmation, under the penalties of false
 5 swearing, by each person executing the document that the
 6 facts stated in the document are true.
 7 (2) The secretary of state shall provide for the
 8 printing of a warning to this effect on each form prescribed
 9 by the secretary of state under [sections 1 through 168].
 10 NEW SECTION. Section 15. Secretary of state -- powers
 11 -- rulemaking. (1) The secretary of state has the power
 12 reasonably necessary to perform the duties required of the
 13 secretary of state's office by [sections 1 through 168].
 14 (2) The secretary of state may adopt rules to perform
 15 the duties required of the secretary of state under
 16 [sections 1 through 168], including establishing necessary
 17 fees.
 18 NEW SECTION. Section 16. Designation of status of
 19 nonprofit corporations. (1) A domestic corporation must be
 20 designated as either a public benefit, mutual benefit, or
 21 religious corporation. The specific designation of a
 22 corporation is as follows:
 23 (a) A corporation designated by its articles of
 24 incorporation as a public benefit corporation, a mutual
 25 benefit corporation, or a religious corporation is the type

1 of corporation designated by its articles of incorporation.

2 (b) A corporation that is not designated by its
3 articles of incorporation as a public benefit corporation, a
4 mutual benefit corporation, or religious corporation is the
5 type of corporation designated in the annual report filed in
6 1995.

7 (2) A foreign corporation must be designated as either
8 a foreign public benefit, foreign mutual benefit, or foreign
9 religious corporation. The specific designation of a
10 corporation is as follows:

11 (a) A foreign corporation designated by its articles of
12 incorporation as a public benefit corporation, mutual
13 benefit corporation, or religious corporation is the type of
14 foreign corporation designated by its articles of
15 incorporation.

16 (b) A foreign corporation not designated as provided in
17 subsection (2)(a), but designated in its application for a
18 certificate of authority, or any amendments of the
19 application, as a public benefit corporation, mutual benefit
20 corporation, or religious corporation is the type of foreign
21 corporation it designated in its application for a
22 certificate of authority.

23 (c) A foreign corporation not designated as provided in
24 subsection (2)(a) or (2)(b) is the type of corporation it
25 designated in the annual report filed in 1995.

1 (3) A domestic or foreign corporation not designated as
2 provided in subsections (1) and (2) must be designated
3 pursuant to [section 173].

4 NEW SECTION. Section 17. Private foundations. (1)
5 Except as otherwise determined by a court of competent
6 jurisdiction, a corporation that is a private foundation as
7 defined in section 509(a) of the Internal Revenue Code of
8 1986:

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

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

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

16 (d) may not make any taxable investments or
17 expenditures as provided in sections 4944 and 4945 of the
18 Internal Revenue Code; and

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

21 (2) All references in this section to sections of the
22 Internal Revenue Code are to sections of the Internal
23 Revenue Code of 1986, as amended from time to time, or to
24 corresponding provisions of subsequent internal revenue laws
25 of the United States.

1 **NEW SECTION. Section 18.** Judicial relief. (1) If for
 2 any reason it is impractical or impossible for a corporation
 3 to call or conduct a meeting of its members, delegates, or
 4 directors or to otherwise obtain their consent, in the
 5 manner prescribed by its articles, bylaws, or [sections 1
 6 through 168], then upon petition of a director, officer,
 7 delegate, member, or the attorney general, the state
 8 district court for the judicial district in which the
 9 registered office is located may order that a meeting be
 10 called or that a written ballot or other form of obtaining
 11 the vote of members, delegates, or directors be authorized,
 12 in the manner the court finds fair and equitable under the
 13 circumstances.

14 (2) In an order issued pursuant to this section, the
 15 court shall provide for a method of notice reasonably
 16 designed to give actual notice to all persons who would be
 17 entitled to notice of a meeting held pursuant to the
 18 articles, bylaws, and [sections 1 through 168], whether or
 19 not the method results in actual notice to all persons
 20 entitled to notice or conforms to the notice requirements
 21 that would otherwise apply. In a proceeding under this
 22 section, the court may determine who the members or
 23 directors are.

24 (3) The order issued pursuant to this section may
 25 dispense with any requirement relating to the holding of or

1 voting at meetings or obtaining votes, including any
 2 requirement as to quorums or as to the number or percentage
 3 of votes needed for approval, that would otherwise be
 4 imposed by the articles, bylaws, or [sections 1 through
 5 168].

6 (4) Whenever practical, an order issued pursuant to
 7 this section must limit the subject matter of meetings or
 8 other forms of consent authorized to approve items,
 9 including amendments to the articles or bylaws, the
 10 resolution of which will or may enable the corporation to
 11 continue managing its affairs without further resort to this
 12 section. However, an order under this section may also
 13 authorize the obtaining of votes and approvals necessary for
 14 dissolution, merger, or sale of assets.

15 (5) A meeting or other method of obtaining the vote of
 16 members, delegates, or directors that is conducted pursuant
 17 to an order issued under this section and that complies with
 18 all the provisions of the order is for all purposes a valid
 19 meeting or vote, and has the same force and effect as if it
 20 complied with every requirement imposed by the articles,
 21 bylaws, and [sections 1 through 168].

22 **NEW SECTION. Section 19.** Attorney general. (1) Notice
 23 must be given to the attorney general of the commencement of
 24 any proceeding that [sections 1 through 168] authorizes the
 25 attorney general to bring but that has been commenced by

1 another person.

2 (2) Whenever a provision of [sections 1 through 168]
 3 requires that notice be given to the attorney general before
 4 or after commencing a proceeding or permits the attorney
 5 general to commence a proceeding if no proceeding has been
 6 commenced, the attorney general may take appropriate action
 7 including but not limited to seeking injunctive relief. If a
 8 proceeding has been commenced by a person other than the
 9 attorney general, the attorney general may intervene, as of
 10 right, in the proceeding.

11 **NEW SECTION. Section 20. Religious corporations --**
 12 **constitutional protections.** If the religious doctrine
 13 governing the affairs of a religious corporation is
 14 inconsistent with the provisions of [sections 1 through 168]
 15 on the same subject, the religious doctrine controls to the
 16 extent required by the United States or the Montana
 17 constitutions.

18 **NEW SECTION. Section 21. Incorporators.** One or more
 19 persons may act as the incorporator or incorporators of a
 20 corporation by delivering articles of incorporation to the
 21 secretary of state for filing.

22 **NEW SECTION. Section 22. Articles of incorporation.**

23 (1) The articles of incorporation must set forth:

24 (a) a corporate name for the corporation that satisfies
 25 the requirements of [section 31];

1 (b) a statement that:

2 (i) the corporation is a public benefit corporation;
 3 (ii) the corporation is a mutual benefit corporation; or
 4 (iii) the corporation is a religious corporation;

5 (c) (i) the street address of the corporation's initial
 6 registered office and, if different, the mailing address;
 7 and

8 (ii) the name of its initial registered agent at that
 9 office;

10 (d) the name and address of each incorporator;

11 (e) whether or not the corporation will have members;
 12 and

13 (f) provisions consistent with law regarding the
 14 distribution of assets on dissolution.

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

16 (a) the purpose or purposes for which the corporation
 17 is organized, which may be, either alone or in combination
 18 with other purposes, the transaction of any lawful activity;

19 (b) the names and addresses of the individuals who are
 20 to serve as the initial directors;

21 (c) provisions consistent with law regarding:

22 (i) managing and regulating the affairs of the
 23 corporation;

24 (ii) defining, limiting, and regulating the powers of
 25 the corporation, its board of directors, its members, or any

1 class of members; and

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

5 (d) any provision that under [sections 1 through 168]
6 is required or permitted to be set forth in the bylaws; and

7 (e) provisions eliminating or limiting the personal
8 liability of a director to the corporation or members of the
9 corporation for monetary damages for breach of a director's
10 duties to the corporation and its members, provided that the
11 provision may not eliminate or limit the liability of a
12 director:

13 (i) for a breach of the director's duty of loyalty to
14 the corporation or its members;

15 (ii) for acts or omissions not in good faith or that
16 involve intentional misconduct or a knowing violation of
17 law;

18 (iii) for a transaction from which a director derived an
19 improper personal economic benefit; or

20 (iv) under [sections 92 through 94].

21 (3) A provision referred to in subsection (2)(e) may
22 not eliminate or limit the liability of a director for any
23 act or omission occurring prior to the date when the
24 provision becomes effective.

25 (4) Each incorporator and director named in the

1 articles shall sign the articles.

2 (5) The articles of incorporation need not set forth
3 any of the corporate powers enumerated in [sections 1
4 through 168].

5 NEW SECTION. **Section 23. Incorporation.** (1) Unless a
6 delayed effective date is specified, the corporate existence
7 begins when the articles of incorporation are filed by the
8 secretary of state.

9 (2) The secretary of state's filing of the articles of
10 incorporation is conclusive proof that the incorporators
11 have satisfied all conditions precedent to incorporation
12 except in a proceeding by the state to cancel or revoke the
13 incorporation or involuntarily dissolve the corporation.

14 NEW SECTION. **Section 24. Liability** for
15 **preincorporation** transactions. A person who purports to act
16 as or on behalf of a corporation but who knows that there
17 was no incorporation under [sections 1 through 168] is
18 jointly and severally liable for all liabilities created
19 while so acting.

20 NEW SECTION. **Section 25. Organization of corporation.**

21 (1) After incorporation:

22 (a) if initial directors are named in the articles of
23 incorporation, the initial directors shall hold an
24 organizational meeting, at the call of a majority of the
25 directors, to complete the organization of the corporation

1 by appointing officers, adopting bylaws, and carrying on any
 2 other business brought before the meeting; or

3 (b) if initial directors are not named in the articles,
 4 the incorporator or incorporators shall hold an
 5 organizational meeting at the call of a majority of the
 6 incorporators:

7 (i) to elect directors and complete the organization of
 8 the corporation; or

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

11 (2) Action required or permitted by [sections 1 through
 12 168] to be taken by incorporators at an organizational
 13 meeting may be taken without a meeting if the action taken
 14 is evidenced by one or more written consents describing the
 15 action taken and signed by each incorporator.

16 (3) An organizational meeting may be held in the state
 17 or out of the state in accordance with [section 85].

18 NEW SECTION. Section 26. Bylaws. (1) The incorporators
 19 or board of directors of a corporation shall adopt bylaws
 20 for the corporation.

21 (2) The bylaws may contain any provision for regulating
 22 and managing the affairs of the corporation consistent with
 23 law or the articles of incorporation.

24 NEW SECTION. Section 27. Emergency bylaws and powers.

25 (1) Unless the articles provide otherwise, the directors of

1 a corporation may adopt, amend, or repeal bylaws to be
 2 effective only in an emergency as defined in subsection (4).
 3 The emergency bylaws, which are subject to amendment or
 4 repeal by the members, may provide special procedures
 5 necessary for managing the corporation during the emergency,
 6 including:

- 7 (a) how to call a meeting of the board;
- 8 (b) quorum requirements for the meeting; and
- 9 (c) designation of additional or substitute directors.

10 (2) All provisions of the regular bylaws consistent
 11 with the emergency bylaws remain in effect during the
 12 emergency. The emergency bylaws are not in effect after the
 13 emergency ends.

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

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

19 (4) For purposes of this section, an emergency exists
 20 if a quorum of the corporation's directors cannot readily be
 21 assembled because of some catastrophic event.

22 NEW SECTION. Section 28. Purposes. (1) A corporation
 23 incorporated under [sections 1 through 168] has the purpose
 24 of engaging in any lawful activity unless a more limited
 25 purpose is set forth in the articles of incorporation.

1 (2) A corporation engaging in an activity that is
 2 subject to regulation under another statute of this state
 3 may incorporate under [sections 1 through 168] only if the
 4 incorporation under [sections 1 through 168] is not
 5 prohibited by the other statute. The corporation is subject
 6 to all limitations of the other statute.

7 **NEW SECTION. Section 29. General powers.** (1) Unless
 8 its articles of incorporation provide otherwise, a
 9 corporation has perpetual duration and succession in its
 10 corporate name and has the same powers as an individual to
 11 do all things necessary or convenient to carry out its
 12 affairs including, without limitation, power:

13 (a) to sue and be sued, complain, and defend in its
 14 corporate name;

15 (b) to have a corporate seal, which may be altered at
 16 will, and to use it or a facsimile of the seal by
 17 impressing, affixing, or in any other manner reproducing it;

18 (c) to make and amend bylaws, consistent with its
 19 articles of incorporation or with the laws of this state,
 20 for regulating and managing the affairs of the corporation;

21 (d) to purchase, receive, lease, or otherwise acquire
 22 and to own, hold, improve, use, and otherwise deal with real
 23 or personal property or any legal or equitable interest in
 24 property, wherever located;

25 (e) to sell, convey, mortgage, pledge, lease, exchange,

1 and otherwise dispose of all or any part of its property;

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

7 (g) to make contracts and guaranties; to incur
 8 liabilities; to borrow money; to issue notes, bonds, and
 9 other obligations; and to secure any of its obligations by
 10 mortgage or pledge of any of its property, franchises, or
 11 income;

12 (h) to lend money, invest and reinvest its funds, and
 13 receive and hold real and personal property as security for
 14 repayment, except as limited by [section 93];

15 (i) to be a promoter, partner, member, associate, or
 16 manager of any partnership, joint venture, trust, or other
 17 entity;

18 (j) to conduct its activities, locate offices, and
 19 exercise the powers granted by [sections 1 through 168] in
 20 the state or out of the state;

21 (k) to elect or appoint directors, officers, employees,
 22 and agents of the corporation; to define their duties; and
 23 to fix their compensation;

24 (l) to pay pensions and establish pension plans,
 25 pension trusts, and other benefit and incentive plans for

1 any or all of its current or former directors, officers,
2 employees, and agents;

3 (m) to make donations consistent with law for the
4 public welfare or for charitable, religious, scientific, or
5 educational purposes and for other purposes that further the
6 corporate interest;

7 (n) to impose dues, assessments, admission, and
8 transfer fees upon its members;

9 (o) to establish conditions for admission of members,
10 admit members, and issue memberships;

11 (p) to carry on a business; or

12 (q) to do all things necessary or convenient consistent
13 with law to further the activities and affairs of the
14 corporation.

15 (2) A corporation may not have or issue shares of
16 stock.

17 NEW SECTION. Section 30. Ultra vires. (1) Except as
18 provided in subsection (2), the validity of corporate action
19 may not be challenged on the ground that the corporation
20 lacks or lacked power to act.

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

1 (3) (a) A corporation's power to act may be challenged
2 in a proceeding against an incumbent or former director,
3 officer, employee, or agent of the corporation.

4 (b) The proceeding may be brought:

5 (i) by a director;

6 (ii) by the corporation, directly, derivatively, or
7 through a receiver, a trustee, or other legal
8 representative; or

9 (iii) in the case of a public benefit corporation, by
10 the attorney general.

11 NEW SECTION. Section 31. Corporate name. (1) A
12 corporate name may not contain language stating or implying
13 that the corporation is organized for a purpose other than
14 that permitted by [section 28] and its articles of
15 incorporation.

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

19 (a) the corporate name of a nonprofit or business
20 corporation incorporated or authorized to do business in
21 this state;

22 (b) a corporate name reserved or registered under
23 [sections 32 or 33] or Title 35, chapter 1;

24 (c) the fictitious name of a foreign business or
25 nonprofit corporation authorized to transact business in

1 this state because its real name is unavailable;

2 (d) the corporate name of a domestic business or
3 nonprofit corporation that has been dissolved, but only
4 distinguishable for a period of 120 days after the effective
5 date of the dissolution; or

6 (e) any assumed business name, limited partnership
7 name, trademark, or service mark registered or reserved with
8 the secretary of state.

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

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

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

23 (4) A corporation may use the name, including the
24 fictitious name, of another domestic or foreign business or
25 nonprofit corporation that is used in this state if the

1 other corporation is incorporated or authorized to do
2 business in this state and the proposed user corporation:

3 (a) has merged with the other corporation;

4 (b) has been formed by reorganization of the other
5 corporation; or

6 (c) has acquired all or substantially all of the
7 assets, including the corporate name, of the other
8 corporation.

9 (5) [Sections 1 through 168] do not control the use of
10 fictitious names.

11 NEW SECTION. Section 32. Reserved name. (1) A person
12 may reserve the exclusive use of a corporate name, including
13 a fictitious name for a foreign corporation whose corporate
14 name is not available, by delivering an application to the
15 secretary of state for filing. Upon finding that the
16 corporate name applied for is available, the secretary of
17 state shall reserve the name for the applicant's exclusive
18 use for a nonrenewable 120-day period.

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

23 NEW SECTION. Section 33. Registered name of foreign
24 corporation. (1) A foreign corporation may register its
25 corporate name, or its corporate name with any change

1 required by [section 152], if the name is distinguishable in
2 the records of the secretary of state from:

3 (a) the corporate name of a nonprofit or business
4 corporation incorporated or authorized to do business in
5 this state; and

6 (b) a corporate name reserved under [section 32], Title
7 35, chapter 1, or registered under this section.

8 (2) A foreign corporation shall register its corporate
9 name, or its corporate name with any change required by
10 [section 152], by delivering to the secretary of state, for
11 filing, an application:

12 (a) setting forth its corporate name or its corporate
13 name with any change required by [section 152], the state or
14 country, the date of its incorporation, and a brief
15 description of the nature of the activities in which it is
16 engaged; and

17 (b) accompanied by a certificate of existence, or a
18 similar document, from the state or country of
19 incorporation.

20 (3) The name is registered for the applicant's
21 exclusive use on the effective date of the application.

22 (4) A foreign corporation whose registration is
23 effective may renew it for successive years by delivering to
24 the secretary of state, for filing, a renewal application
25 that complies with the requirements of subsection (2). The

1 renewal application must be delivered between October 1 and
2 December 31 of the preceding year. The renewal application
3 renews the registration for the following calendar year.

4 (5) A foreign corporation whose registration is
5 effective may continue to qualify as a foreign corporation
6 under that name or consent in writing to the use of that
7 name by a corporation later incorporated under [sections 1
8 through 168] or by another foreign corporation later
9 authorized to transact business in this state. The
10 registration terminates when the foreign corporation is
11 incorporated as a domestic corporation or the foreign
12 corporation qualifies or consents to the qualification of
13 another foreign corporation under the registered name.

14 **NEW SECTION. Section 34. Registered name and**
15 **registered agent.** Each corporation shall continuously
16 maintain in this state:

17 (1) a registered office with the same address as that
18 of the registered agent; and

19 (2) a registered agent, who must be one of the
20 following:

21 (a) an individual who resides in this state and whose
22 office is identical to the registered office;

23 (b) a domestic business or nonprofit corporation whose
24 office is identical to the registered office; or

25 (c) a foreign business or nonprofit corporation

1 authorized to transact business in this state whose office
2 is identical to the registered office.

3 NEW SECTION. Section 35. Change of registered office
4 or registered agent. (1) A corporation may change its
5 registered office or registered agent by delivering to the
6 secretary of state, for filing, a statement of change that
7 sets forth:

- 8 (a) the name of the corporation;
- 9 (b) the street address of its current registered office
10 and, if different, the mailing address;
- 11 (c) if the current registered office is to be changed,
12 the street address of the new registered office, and, if
13 different, the mailing address;
- 14 (d) the name of its current registered agent;
- 15 (e) if the current registered agent is to be changed,
16 the name of the new registered agent and the new agent's
17 written consent to the appointment, either on the statement
18 or attached to it; and
- 19 (f) that after the change or changes are made, the
20 street addresses of its registered office and the office of
21 its registered agent will be identical.

22 (2) If the street address of a registered agent's
23 office is changed, the registered agent may change the
24 street address of the registered office of any corporation
25 for which the registered agent is the registered agent by

1 notifying the corporation in writing of the change and by
2 signing, either manually or in facsimile, and delivering to
3 the secretary of state, for filing, a statement that
4 complies with the requirements of subsection (1) and that
5 states that the corporation has been notified of the change.

6 NEW SECTION. Section 36. Resignation of registered
7 agent. (1) A registered agent may resign as registered agent
8 by signing and delivering to the secretary of state, for
9 filing, the original and two copies of a statement of
10 resignation. The statement may include a statement that the
11 registered office is also discontinued.

12 (2) After filing the statement, the secretary of state
13 shall mail one copy to the registered office, if not
14 discontinued, and the other copy to the corporation at its
15 principal office as shown in the most recent annual report
16 filed pursuant to [section 168].

17 (3) The agency appointment is terminated, and the
18 registered office discontinued, if so provided, 31 days
19 after the date on which the statement was filed.

20 NEW SECTION. Section 37. Service of process on
21 corporation. (1) Service of process on a corporation must be
22 made upon the persons and in the manner provided by the
23 Montana Rules of Civil Procedure.

24 (2) The following are to be considered trustees for the
25 corporation and its members, for the purpose of service or

1 demand, on a corporation dissolved pursuant to [sections 34
2 through 57]:

3 (a) in the case of a dissolution, any one of those
4 persons designated as trustees for service of process
5 pursuant to a filing made with the secretary of state or, if
6 no filing is made, any one of the directors or officers of
7 the corporation listed in the annual report most recently
8 filed with the secretary of state; or

9 (b) in the case of an involuntary dissolution or
10 expiration of a corporation's term:

11 (i) any one of those persons designated as receiver by
12 a court of competent jurisdiction; or

13 (ii) any one of the directors or officers of the
14 corporation listed in the annual report most recently filed
15 with the secretary of state.

16 **NEW SECTION. Section 38. Demand on or notice to**
17 **corporation.** (1) This section applies when a demand or
18 notice is required or permitted by law, but the demand or
19 notice is not required to be served in accordance with the
20 Montana Rules of Civil Procedure.

21 (2) A corporation's registered agent is the
22 corporation's agent for demand or notice required or
23 permitted by law.

24 (3) If a corporation has no registered agent or the
25 agent cannot with reasonable diligence be served, the demand

1 may be made or the corporation may be notified by certified
2 mail, return receipt requested, addressed to the secretary
3 of the corporation at its principal office. The demand or
4 notice is perfected under this subsection at the earliest
5 of:

6 (a) the date the corporation receives the mail;

7 (b) the date shown on the return receipt, if signed on
8 behalf of the corporation; or

9 (c) 5 days after its deposit in the United States mail
10 if it is mailed postpaid and correctly addressed.

11 **NEW SECTION. Section 39. Admission.** (1) The articles
12 or bylaws may establish criteria or procedures for admission
13 of members.

14 (2) A person may not be admitted as a member without
15 his consent.

16 **NEW SECTION. Section 40. Consideration.** Except as
17 provided in its articles or bylaws, a corporation may admit
18 members for no consideration or for consideration determined
19 by the board.

20 **NEW SECTION. Section 41. No requirement of members.** A
21 corporation is not required to have members.

22 **NEW SECTION. Section 42. Differences in rights and**
23 **obligations of members.** All members have the same rights and
24 obligations with respect to voting, dissolution, redemption,
25 and transfer unless the articles or bylaws establish classes

1 of membership with different rights or obligations. All
 2 members have the same rights and obligations with respect to
 3 any other matters, except as set forth in or authorized by
 4 the articles or bylaws.

5 NEW SECTION. Section 43. Transfers. (1) Except as set
 6 forth in or authorized by the articles or bylaws, a member
 7 of a mutual benefit corporation may not transfer a
 8 membership or any right arising from a membership.

9 (2) A member of a public benefit or religious
 10 corporation may not transfer a membership or any right
 11 arising from a membership.

12 (3) When transfer rights have been provided, a
 13 restriction on them is not binding on a member holding a
 14 membership issued prior to the adoption of the restriction
 15 unless the restriction is approved by the members and the
 16 affected member.

17 NEW SECTION. Section 44. Member's liability to third
 18 parties. A member of a corporation is not, as a member,
 19 personally liable for the acts, debts, liabilities, or
 20 obligations of the corporation.

21 NEW SECTION. Section 45. Member's liability for dues,
 22 assessments, and fees. A member may become liable to the
 23 corporation for dues, assessments, or fees. However, an
 24 article or bylaw provision or a resolution adopted by the
 25 board authorizing or imposing dues, assessments, or fees

1 does not, of itself, create liability.

2 NEW SECTION. Section 46. Creditor's action against
 3 member. (1) A proceeding may not be brought by a creditor to
 4 reach the liability, if any, of a member to the corporation
 5 unless final judgment has been rendered in favor of the
 6 creditor against the corporation and execution has been
 7 returned unsatisfied in whole or in part or unless further
 8 proceeding would be useless.

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

15 NEW SECTION. Section 47. Resignation. (1) A member may
 16 resign at any time.

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

21 NEW SECTION. Section 48. Termination, expulsion, and
 22 suspension. (1) A member of a public benefit corporation or
 23 mutual benefit corporation may not be expelled or suspended
 24 and membership in these corporations may not be terminated
 25 or suspended except pursuant to a procedure that is fair and

1 reasonable and is carried out in good faith.

2 (2) A procedure is fair and reasonable when either:

3 (a) the articles or bylaws set forth a procedure that

4 provides:

5 (i) not less than 15 days' prior written notice of the

6 expulsion, suspension, or termination and the reasons for

7 it; and

8 (ii) an opportunity for the member to be heard, orally

9 or in writing, not less than 5 days before the effective

10 date of the expulsion, suspension, or termination by a

11 person or persons authorized to decide that the proposed

12 expulsion, termination, or suspension not take place; or

13 (b) it takes into consideration all relevant facts and

14 circumstances.

15 (3) A written notice given by mail must be given by

16 first-class or certified mail sent to the last address of

17 the member shown on the corporation's records.

18 (4) A proceeding that , challenges an expulsion,

19 suspension, or termination, including a proceeding in which

20 defective notice is alleged, must be commenced within 1 year

21 after the effective date of the expulsion, suspension, or

22 termination.

23 (5) A member who has been expelled or suspended may be

24 liable to the corporation for dues, assessments, or fees as

25 a result of obligations incurred or commitments made prior

1 to the expulsion or suspension.

2 **NEW SECTION. Section 49. Purchase of memberships.** (1)

3 A public benefit corporation or religious corporation may

4 not purchase any of its memberships or any right arising

5 from membership.

6 (2) A mutual benefit corporation may purchase the

7 membership of a member who resigns or whose membership is

8 terminated for the amount and pursuant to the conditions set

9 forth in or authorized by its articles or bylaws. A payment

10 may not be made in violation of [sections 132 and 133].

11 **NEW SECTION. Section 50. Standing.** (1) For purposes of

12 [sections 50 through 56], "derivative proceeding" means a

13 civil suit in the right of a domestic corporation or, to the

14 extent provided in [section 56], in the right of a foreign

15 corporation.

16 (2) A derivative proceeding may be commenced or

17 maintained by a complainant who is:

18 (a) a director at the time of the bringing of the

19 proceeding; or

20 (b) a member or members having 5% or more of the voting

21 power or by 50 members, whichever is less. Each member must

22 be a member at the time of the proceeding, including the

23 time of the complained act or omission.

24 **NEW SECTION. Section 51. Demand.** A complainant may not

25 commence a derivative proceeding until:

1 (1) a written demand has been made upon the corporation
2 to take suitable action;

3 (2) 90 days have expired from the date the demand was
4 made, unless the complainant has earlier been notified that
5 the demand has been rejected by the corporation or unless
6 irreparable injury to the corporation would result by
7 waiting for the expiration of the 90-day period; and

8 (3) the complainant has notified the attorney general
9 prior to commencing a proceeding if the proceeding involves
10 a public benefit corporation or assets held in charitable
11 trust by a mutual benefit corporation. Notification of the
12 attorney general must be made by mailing the attorney
13 general a copy of the complaint.

14 NEW SECTION. Section 52. Stay of proceedings. If the
15 corporation commences an inquiry into the allegations made
16 in the demand or complaint, the court may stay any
17 derivative proceeding for any period the court considers
18 appropriate.

19 NEW SECTION. Section 53. Dismissal. (1) The court
20 shall dismiss a derivative proceeding on motion by the
21 corporation if one of the groups specified in subsections
22 (2) or (6) has determined in good faith, after conducting a
23 reasonable inquiry upon which its conclusions are based,
24 that the maintenance of the derivative proceeding is not in
25 the best interests of the corporation.

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

3 (a) a majority vote of independent directors present at
4 a meeting of the board of directors if independent directors
5 constitute a quorum; or

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

11 (3) None of the following may by itself cause a
12 director to be considered not independent for purposes of
13 this section:

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

17 (b) the naming of the director as a defendant in the
18 derivative proceeding or as a defendant against whom action
19 is demanded; or

20 (c) the approval by the director of the act being
21 challenged in the derivative proceeding or demand if the act
22 did not result in 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
25 complainant, the complaint must allege with particularity

1 facts establishing either that a majority of the board of
 2 directors did not consist of independent directors at the
 3 time the determination was made or, that the requirements of
 4 subsection (1) have not been met.

5 (5) If a majority of the board of directors does not
 6 consist of independent directors at the time the
 7 determination is made, the corporation has the burden of
 8 proving that the requirements of subsection (1) have been
 9 met. If a majority of the board of directors consists of
 10 independent directors at the time the determination is made,
 11 the complainant has the burden of proving that the
 12 requirements of subsection (1) have not been met.

13 (6) Upon motion by the corporation, the court may
 14 appoint a panel of one or more independent persons to make a
 15 determination of whether the maintenance of the derivative
 16 proceeding is in the best interests of the corporation. In
 17 this case, the plaintiff has the burden of proving that the
 18 requirements of subsection (1) have not been met.

19 **NEW SECTION. Section 54. Discontinuance or settlement**
 20 -- notice. A derivative proceeding may not be discontinued
 21 or settled without the court's approval. If the court
 22 determines that a proposed discontinuance or settlement will
 23 substantially affect the interests of the corporation's
 24 members or a class of members, the court shall direct that
 25 notice be given to the members affected.

1 **NEW SECTION. Section 55. Payment of expenses.** On
 2 termination of the derivative proceeding, the court may
 3 order:

4 (1) the corporation to pay the complainant's reasonable
 5 expenses, including attorney fees, incurred in the
 6 proceeding if it finds that the proceeding has resulted in a
 7 substantial benefit to the corporation; or

8 (2) the complainant to pay any defendant's reasonable
 9 expenses, including attorney fees, incurred in defending the
 10 proceeding if it finds that the proceeding was commenced or
 11 maintained without reasonable cause or for an improper
 12 purpose.

13 **NEW SECTION. Section 56. Applicability to foreign**
 14 **corporations.** In a derivative proceeding in the right of a
 15 foreign corporation, the matter covered by [sections 50
 16 through 56] is governed by the laws of the jurisdiction of
 17 incorporation of the foreign corporation, except for
 18 [sections 52, 54, and 55].

19 **NEW SECTION. Section 57. Delegates.** (1) A corporation
 20 may provide in its articles or bylaws for delegates who have
 21 some or all of the authority of members.

22 (2) The articles or bylaws may set forth provisions
 23 relating to:

24 (a) the characteristics, qualifications, rights,
 25 limitations, and obligations of delegates including their

1 selection and removal;

2 (b) calling, noticing, holding, and conducting meetings
3 of delegates; and

4 (c) carrying on corporate activities during and between
5 meetings of delegates.

6 **NEW SECTION. Section 58. Annual and regular meetings.**

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

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

13 (3) Annual and regular membership meetings may be held
14 in the state or out of the state, at the place stated in or
15 fixed in accordance with the bylaws. If a place is not
16 stated in or fixed in accordance with the bylaws, annual and
17 regular meetings must be held at the corporation's principal
18 office.

19 (4) At the annual meeting:

20 (a) the president and chief financial officer shall
21 report on the activities and financial condition of the
22 corporation; and

23 (b) the members shall consider and act upon other
24 matters that are raised consistent with the notice and
25 voting requirements of [sections 62 and 69(2)].

1 (5) At regular meetings, the members shall consider and
2 act upon matters raised consistent with the notice and
3 voting requirements of [sections 62 and 69(2)].

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

7 (7) If the corporation has 50 or fewer members and if
8 permitted by the bylaws, members may participate in a
9 meeting of the members by means of a conference telephone
10 call or similar communication equipment through which all
11 persons participating in the meeting can hear each other at
12 the same time. Participation in this manner constitutes
13 presence in person at a meeting.

14 **NEW SECTION. Section 59. Special meeting.** (1) A
15 corporation with members shall hold a special meeting of
16 members:

17 (a) on the call of its board or of the person
18 authorized to do so by the articles or bylaws; or

19 (b) except as provided in the articles or bylaws of a
20 religious corporation, if the holders of at least 5% of the
21 voting power of any corporation sign, date, and deliver to
22 any corporate officer one or more written demands for the
23 meeting that describe the purpose or purposes for which it
24 is to be held.

25 (2) For purposes of determining whether the 5%

1 requirement of subsection (1) has been met, the record date
 2 is at the close of business on the 30th day before delivery
 3 of the demand or demands for a special meeting to any
 4 corporate officer.

5 (3) If a notice for a special meeting demanded under
 6 subsection (1)(b) is not given pursuant to [section 62]
 7 within 30 days after the date the written demand is
 8 delivered to a corporate officer, regardless of the
 9 requirements of subsection (4), a person signing the demand
 10 or demands may set the time and place of the meeting and
 11 give notice pursuant to [section 62].

12 (4) Special meetings of members may be held in the
 13 state or out of the state, at the place stated in or fixed
 14 in accordance with the bylaws. If a place is not stated or
 15 fixed in accordance with the bylaws, special meetings must
 16 be held at the corporation's principal office.

17 (5) Only those matters that are within the purpose or
 18 purposes described in the meeting notice required by
 19 [section 62] may be conducted at a special meeting of
 20 members.

21 **NEW SECTION. Section 60. Court-ordered meeting.** (1)
 22 The district court for the judicial district of the county
 23 where a corporation's principal office is located, or, if
 24 the principal office is not located in this state, where its
 25 registered office is located may summarily order a meeting

1 to be held:

2 (a) on application of a member or other person entitled
 3 to participate in an annual or regular meeting and, in the
 4 case of a public benefit corporation, the attorney general,
 5 if an annual meeting was not held within the earlier of 6
 6 months after the end of the corporation's fiscal year or 15
 7 months after its last annual meeting;

8 (b) on application of a member or other person entitled
 9 to participate in a regular meeting and, in the case of a
 10 public benefit corporation, the attorney general, if a
 11 regular meeting is not held within 40 days after the date it
 12 was required to be held; or

13 (c) on application of a member who signed a demand for
 14 a special meeting valid under [section 59], a person
 15 entitled to call a special meeting and, in the case of a
 16 public benefit corporation, the attorney general, if:

17 (i) notice of the special meeting was not given within
 18 30 days after the date the demand was delivered to a
 19 corporate officer; or

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

22 (2) The court may fix the time and place of the
 23 meeting, specify a record date for determining members
 24 entitled to notice of and to vote at the meeting, prescribe
 25 the form and content of the meeting notice, fix the quorum

1 . required for specific matters to be considered at the
 2 meeting or direct that the votes represented at the meeting
 3 constitute a quorum for action on those matters, and enter
 4 other orders necessary to accomplish the purpose or purposes
 5 of the meeting.

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

9 NEW SECTION. Section 61. Action by written consent.

10 (1) Unless limited or prohibited by the articles or bylaws,
 11 action required or permitted by [sections 1 through 168] to
 12 be approved by the members may be approved without a meeting
 13 of members if the action is approved by members holding at
 14 least 80% of the voting power. The action must be evidenced
 15 by one or more written consents that describe the action
 16 taken, be signed by those members representing at least 80%
 17 of the voting power, and be delivered to the corporation for
 18 inclusion in the minutes or filing with the corporate
 19 records.

20 (2) If not otherwise determined under [sections 60 or
 21 64], the record date for determining members entitled to
 22 take action without a meeting is the date the first member
 23 signs the consent under subsection (1).

24 (3) A consent signed under this section has the effect
 25 of a meeting vote and may be described as a vote in any

1 document filed with the secretary of state.

2 (4) Written notice of member approval pursuant to this
 3 section must be given to all members who have not signed the
 4 written consent. If written notice is required, member
 5 approval pursuant to this section is effective 10 days after
 6 written notice is given.

7 NEW SECTION. Section 62. Notice of meeting. (1) A
 8 corporation shall give notice consistent with its bylaws of
 9 meetings of members in a fair and reasonable manner.

10 (2) Any notice that conforms to the requirements of
 11 subsection (3) is fair and reasonable, but other means of
 12 giving notice may also be fair and reasonable when all the
 13 circumstances are considered. However, notice of matters
 14 referred to in subsection (3)(b) must be given as specified
 15 in subsection (3).

16 (3) Notice is fair and reasonable if:

17 (a) the corporation notifies its members of the place,
 18 date, and time of each annual, regular, and special meeting
 19 of members not less than 10 days before the meeting date or,
 20 if notice is mailed by certified mail, not less than 30 or
 21 more than 60 days before the meeting date;

22 (b) notice of an annual or regular meeting includes a
 23 description of any matter or matters that must be approved
 24 by the members under [sections 92, 107, 112, 119, 126, 131,
 25 134, or 135]; and

1 (c) notice of a special meeting includes a description
2 of the matter or matters for which the meeting is called.

3 (4) Unless the bylaws require otherwise, if an annual,
4 regular, or special meeting of members is adjourned to a
5 different date, time, or place, notice need not be given of
6 the new date, time, or place, if the new date, time, or
7 place is announced at the meeting before adjournment. If a
8 new record date for the adjourned meeting is or must be
9 fixed under [section 64], notice of the adjourned meeting
10 must be given under this section to the members of record as
11 of the new record date.

12 (5) When giving notice of an annual, regular, or
13 special meeting of members, a corporation shall give notice
14 of a matter a member intends to raise at the meeting if:

15 (a) requested in writing to do so by a person entitled
16 to call a special meeting; and

17 (b) the request is received by the secretary or
18 president of the corporation at least 10 days before the
19 corporation gives notice of the meeting.

20 NEW SECTION. Section 63. Waiver of notice. (1) A
21 member may waive a notice required by [sections 1 through
22 168], the articles, or bylaws before or after the date and
23 time stated in the notice. The waiver must be in writing, be
24 signed by the member entitled to the notice, and be
25 delivered to the corporation for inclusion in the minutes or

1 filing with the corporate records.

2 (2) A member's attendance at a meeting:

3 (a) waives objection to lack of notice or defective
4 notice of the meeting unless the member, at the beginning of
5 the meeting, objects to holding the meeting or transacting
6 business at the meeting; and

7 (b) waives objection to consideration of a particular
8 matter at the meeting that is not within the purpose or
9 purposes described in the meeting notice unless the member
10 objects to considering the matter when it is presented.

11 NEW SECTION. Section 64. Record date -- determining
12 members entitled to notice and vote. (1) The bylaws of a
13 corporation may fix or provide the manner of fixing a date
14 as the record date for determining the members entitled to
15 notice of a members' meeting. If the bylaws do not fix or
16 provide for fixing a record date, the board may fix a future
17 date as the record date. If a record date is not fixed,
18 members are entitled to notice of the meeting:

19 (a) at the close of business on the business day
20 preceding the day on which notice is given; or

21 (b) if notice is waived, at the close of business on
22 the business day preceding the day on which the meeting is
23 held.

24 (2) The bylaws of a corporation may fix or provide the
25 manner of fixing a date as the record date for determining

1 the members entitled to vote at a members' meeting. If the
2 bylaws do not fix or provide for fixing a record date, the
3 board may fix a future date as the record date. If a record
4 date is not fixed, members on the date of the meeting who
5 are otherwise eligible to vote are entitled to vote at the
6 meeting.

7 (3) The bylaws may fix or provide the manner for
8 determining a date as the record date for the purpose of
9 determining the members entitled to exercise any rights in
10 respect of any other lawful action. If the bylaws do not fix
11 or provide for fixing a record date, the board may fix in
12 advance the record date. If a record date is not fixed,
13 members are entitled to exercise the rights at the close of
14 business on the day on which the board adopts the resolution
15 relating to it or 60 days prior to the date of other action,
16 whichever is later.

17 (4) A record date fixed under this section may not be
18 more than 70 days before the meeting or action requiring a
19 determination of members occurs.

20 (5) A determination of members entitled to notice of or
21 to vote at a membership meeting is effective for any
22 adjournment of the meeting unless the board fixes a new date
23 for determining the right to notice or the right to vote,
24 which it must do if the meeting is adjourned to a date more
25 than 70 days after the record date for determining members

1 entitled to notice of the original meeting.

2 (6) If a court orders a meeting adjourned to a date
3 more than 120 days after the date fixed for the original
4 meeting, it may provide that the original record date for
5 notice or voting continues in effect or it may fix a new
6 record date for notice or voting.

7 NEW SECTION. **Section 65. Action by written ballot.** (1)
8 Unless prohibited or limited by the articles or bylaws, any
9 action that may be taken at any annual, regular, or special
10 meeting of members may be taken without a meeting if the
11 corporation delivers a written ballot to every member
12 entitled to vote on the matter.

13 (2) A written ballot must:

14 (a) set forth each proposed action; and
15 (b) provide an opportunity to vote for or against each
16 proposed action.

17 (3) Approval by written ballot pursuant to this section
18 is valid only when:

19 (a) the number of votes cast by ballot equals or
20 exceeds the quorum required to be present at a meeting
21 authorizing the action; and

22 (b) the number of approvals equals or exceeds the
23 number of votes that would be required to approve the matter
24 at a meeting at which the total number of votes cast was the
25 same as the number of votes cast by ballot.

- 1 (4) All solicitations for votes by written ballot must:
- 2 (a) indicate the number of responses needed to meet the
- 3 quorum requirements;
- 4 (b) state the percentage of approvals necessary to
- 5 approve each matter other than election of directors; and
- 6 (c) specify the time by which a ballot must be received
- 7 by the corporation in order to be counted.
- 8 (5) Except as otherwise provided in the articles or
- 9 bylaws, a written ballot may not be revoked.

10 NEW SECTION. **Section 66. Members' list for meeting.**

11 (1) After fixing a record date for a notice of a meeting, a

12 corporation shall prepare an alphabetical list of the names

13 of all its members who are entitled to notice of the

14 meeting. The list must show the address and number of votes

15 each member is entitled to vote at the meeting. The

16 corporation shall prepare, on a current basis through the

17 time of the membership meeting, a list of members, if any,

18 who are entitled to vote at the meeting but not entitled to

19 notice of the meeting. This list must be prepared on the

20 same basis and be part of the list of members.

21 (2) The list of members must be available:

22 (a) for inspection by any member for the purpose of

23 communication with other members concerning the meeting,

24 beginning 2 business days after notice is given of the

25 meeting for which the list was prepared and continuing

1 through the meeting; and

2 (b) at the corporation's principal office or at a

3 reasonable place identified in the meeting notice in the

4 city where the meeting will be held. A member, a member's

5 agent, or a member's attorney is entitled, on written

6 demand, to inspect and, subject to the limitations of

7 [sections 162(3) and 165] to copy the list, at a reasonable

8 time and at the member's expense, during the period it is

9 available for inspection.

10 (3) The corporation shall make the list of members

11 available at the meeting, and any member, a member's agent,

12 or a member's attorney is entitled to inspect the list at

13 any time during the meeting or any adjournment.

14 (4) If the corporation refuses to allow a member, a

15 member's agent, or a member's attorney to inspect the list

16 of members before or at the meeting or to copy the list as

17 permitted by subsection (2), the district court for the

18 judicial district of the county where a corporation's

19 principal office or, if the principal office is not located

20 in this state, where its registered office is located, on

21 application of the member, may summarily order the

22 inspection or copying at the corporation's expense, may

23 postpone the meeting for which the list was prepared until

24 the inspection or copying is complete, and may order the

25 corporation to pay the member's costs, including reasonable

1 attorney fees, incurred to obtain the order.

2 (5) Unless a written demand to inspect and copy a
3 membership list has been made under subsection (2) prior to
4 the membership meeting and a corporation improperly refuses
5 to comply with the demand, refusal or failure to comply with
6 this section does not affect the validity of action taken at
7 the meeting.

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

11 **NEW SECTION. Section 67. Voting entitlement generally.**

12 (1) Unless the articles or bylaws provide otherwise, each
13 member is entitled to one vote on each matter voted on by
14 the members.

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

19 (a) if only one votes, the act binds all; and

20 (b) if more than one votes, the vote is divided on a
21 pro rata basis.

22 **NEW SECTION. Section 68. Quorum requirements. (1)**

23 Unless [sections 1 through 168], the articles, or bylaws
24 provide for a higher or lower quorum, 10% of the votes
25 entitled to be cast on a matter must be represented at a

1 meeting of members to constitute a quorum on that matter.

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

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

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

11 **NEW SECTION. Section 69. Voting requirements. (1)**

12 Unless [sections 1 through 168], the articles, or bylaws
13 require a greater vote or voting by class, if a quorum is
14 present, the affirmative vote of the votes represented and
15 voting, if they are a majority of the required quorum, is
16 the act of the members.

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

20 **NEW SECTION. Section 70. Proxies. (1)** Unless the

21 articles or bylaws prohibit or limit proxy voting, a member
22 may appoint a proxy to vote or otherwise act for the member
23 by signing an appointment form, either personally or by an
24 attorney-in-fact.

25 (2) An appointment of a proxy is effective when

1 received by the secretary or other officer or agent
 2 authorized to tabulate votes. An appointment is valid for 11
 3 months unless a different period is expressly provided in
 4 the appointment form. However, a proxy is not valid for more
 5 than 3 years from its date of execution.

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

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

14 (5) Appointment of a proxy is revoked by the person
 15 appointing the proxy:

- 16 (a) attending any meeting and voting in person; or
- 17 (b) signing and delivering to the secretary or other
 18 officer or agent authorized to tabulate proxy votes either a
 19 writing stating that the appointment of the proxy is revoked
 20 or a subsequent appointment form.

21 (6) Subject to [section 73] and any express limitation
 22 on the proxy's authority appearing on the face of the
 23 appointment form, a corporation is entitled to accept the
 24 proxy's vote or other action as that of the member who made
 25 the appointment.

1 NEW SECTION. Section 71. Cumulative voting for
 2 directors -- exception. (1) If the articles or bylaws
 3 provide for cumulative voting by members, members may so
 4 vote by multiplying the number of votes the members are
 5 entitled to cast by the number of directors for whom they
 6 are entitled to vote and casting the product for a single
 7 candidate or distributing the product among two or more
 8 candidates.

9 (2) Cumulative voting is not authorized at a particular
 10 meeting unless:

- 11 (a) the meeting notice or statement accompanying the
 12 notice states that cumulative voting will take place; or
- 13 (b) a member gives notice during the meeting and before
 14 the vote is taken of the member's intent to cumulate votes.
 15 If one member gives this notice, all other members
 16 participating in the election are entitled to cumulate their
 17 votes without giving further notice.

18 (3) A director elected by cumulative voting may be
 19 removed by the members without cause if the requirements of
 20 [section 80] are met unless the votes cast against removal
 21 or not consenting in writing to removal would be sufficient
 22 to elect the director if voted cumulatively at an election
 23 at which the same total number of votes were cast or, if the
 24 action is taken by written ballot, all memberships entitled
 25 to vote were voted, and if the entire number of directors

1 authorized at the time of the director's most recent
2 election were then being elected.

3 (4) Members may not cumulatively vote if the directors
4 and members are identical.

5 NEW SECTION. Section 72. Other methods of electing
6 directors. A corporation may provide in its articles or
7 bylaws for election of directors by members or delegates:

8 (1) on the basis of chapter or other organizational
9 unit;

10 (2) by region or other geographic unit;

11 (3) by preferential voting; or

12 (4) by any other reasonable method.

13 NEW SECTION. Section 73. Corporation's acceptance of
14 votes. (1) If the name signed on a vote, consent, waiver, or
15 proxy appointment corresponds to the name of a member, the
16 corporation, if acting in good faith, is entitled to accept
17 the vote, consent, waiver, or proxy appointment and give it
18 effect as the act of the member.

19 (2) If the name signed on a vote, consent, waiver, or
20 proxy appointment does not correspond to the record name of
21 a member, the corporation, if acting in good faith, is
22 nevertheless entitled to accept the vote, consent, waiver,
23 or proxy appointment and give it effect as the act of the
24 member if:

25 (a) the member is an entity and the name signed

1 purports to be that of an attorney-in-fact of the member
2 and, if the corporation requests, evidence acceptable to the
3 corporation of the signatory's authority to sign for the
4 member has been presented with respect to the vote, consent,
5 waiver, or proxy appointment;

6 (b) the name signed purports to be that of an
7 attorney-in-fact of the member and, if the corporation
8 requests, evidence acceptable to the corporation of the
9 signatory's authority to sign for the member has been
10 presented with respect to the vote, consent, waiver, or
11 proxy appointment;

12 (c) two or more persons hold the membership as
13 cotenants or fiduciaries and:

14 (i) the name signed purports to be the name of at least
15 one of the coholders; and

16 (ii) the person signing appears to be acting on behalf
17 of all the coholders; or

18 (d) in the case of a mutual benefit corporation:

19 (i) the name signed purports to be that of an
20 administrator, executor, guardian, or conservator
21 representing the member and, if the corporation requests,
22 evidence of fiduciary status acceptable to the corporation
23 has been presented with respect to the vote, consent,
24 waiver, or proxy appointment; or

25 (ii) the name signed purports to be that of a receiver

1 or trustee in bankruptcy of the member and, if the
2 corporation requests, evidence of this status acceptable to
3 the corporation has been presented with respect to the vote,
4 consent, waiver, or proxy appointment.

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

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

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

20 **NEW SECTION. Section 74. Voting agreements.** (1) Two or
21 more members may provide for the manner in which they will
22 vote by signing an agreement for that purpose. Voting
23 agreements may be valid for a period of up to 10 years. For
24 public benefit corporations, voting agreements must have a
25 reasonable purpose consistent with the corporation's public

1 or charitable purposes.

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

4 **NEW SECTION. Section 75. Requirement for and duties of**
5 **board.** (1) Each corporation must have a board of directors.

6 (2) Except as provided in [sections 1 through 168] or
7 subsection (3), all corporate powers are exercised by or
8 under the authority of the board, and the affairs of the
9 corporation managed under the direction of its board.

10 (3) The articles may authorize a person or persons to
11 exercise some or all of the powers that would otherwise be
12 exercised by a board. To the extent authorized, a person
13 authorized under this subsection has the duties and
14 responsibilities of the directors and the directors must be
15 relieved from the duties and responsibilities to that
16 extent.

17 **NEW SECTION. Section 76. Qualifications and numbers of**
18 **directors.** (1) All directors must be individuals. The
19 articles or bylaws may prescribe other qualifications for
20 directors.

21 (2) A board of directors must consist of three or more
22 individuals, with the number specified in or fixed in
23 accordance with the articles or bylaws.

24 (3) The number of directors may be increased or
25 decreased, but to not fewer than three, from time to time by

1 amendment to or in the manner prescribed in the articles or
2 bylaws.

3 NEW SECTION. Section 77. Election, designation and
4 appointment of directors. (1) If the corporation has
5 members, all the directors except the initial directors must
6 be elected at the first annual meeting of members and at
7 each annual meeting thereafter unless the articles or bylaws
8 provide some other time or method of election or provide
9 that some of the directors are appointed by some other
10 person or are designated.

11 (2) If the corporation does not have members, all the
12 directors except the initial directors must be elected,
13 appointed, or designated as provided in the articles or
14 bylaws. If a method of designation or appointment is not set
15 forth in the articles or bylaws, the directors, other than
16 the initial directors, must be elected by the board.

17 NEW SECTION. Section 78. Terms of directors generally
18 -- staggered terms. (1) The articles or bylaws must specify
19 the terms of directors. Except for designated or appointed
20 directors, the terms of directors may not exceed 5 years. In
21 the absence of any term specified in the articles or bylaws,
22 the term of each director is 1 year. Directors may be
23 elected for successive terms.

24 (2) A decrease in the number of directors or term of
25 office does not shorten an incumbent director's term.

1 (3) Except as provided in the articles or bylaws:

2 (a) the term of a director filling a vacancy in the
3 office of a director elected by members expires at the next
4 election of directors by members; and

5 (b) the term of a director filling any other vacancy
6 expires at the end of the unexpired term that the director
7 is filling.

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

12 (5) The articles or bylaws may provide for staggering
13 the terms of directors by dividing the total number of
14 directors into groups. The terms of office of the groups
15 need not be uniform.

16 NEW SECTION. Section 79. Resignation of directors. (1)
17 A director may resign at any time by delivering written
18 notice to the board of directors, its presiding officer, the
19 president, or the secretary.

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

1 **NEW SECTION. Section 80. Removal of directors elected**
 2 **by members or directors.** (1) The members may remove one or
 3 more directors elected by them without cause.

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

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

13 (4) If cumulative voting is authorized, a director may
 14 not be removed:

15 (a) if the number of votes sufficient to elect the
 16 director under cumulative voting is voted against the
 17 director's removal; or

18 (b) if the director was elected by a class, chapter,
 19 unit, or grouping of members and the number of votes of that
 20 class, chapter, unit, or grouping of members sufficient to
 21 elect the director under cumulative voting is voted against
 22 the director's removal.

23 (5) A director elected by members may be removed by the
 24 members only at a meeting called for the purpose of removing
 25 the director. The meeting notice must state that the purpose

1 or one of the purposes of the meeting is removal of the
 2 director.

3 (6) In computing whether a director is protected from
 4 removal under subsections (2) through (4), it should be
 5 assumed that the votes against removal are cast in an
 6 election for the number of directors of the class to which
 7 the director to be removed belonged on the date of that
 8 director's election.

9 (7) An entire board of directors may be removed under
 10 subsections (1) through (5).

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

17 (9) If, at the beginning of a director's term on the
 18 board, the articles or bylaws provide that the director may
 19 be removed for missing a specified number of board meetings,
 20 the board may remove the director for failing to attend the
 21 specified number of meetings. The director may be removed
 22 only if a majority of the directors then in office vote for
 23 the removal.

24 (10) The articles or bylaws of a religious corporation
 25 may:

1 (a) limit the application of this section; and
 2 (b) set forth the vote and procedures by which the
 3 board or any person may remove with or without cause a
 4 director elected by the members of the board.

5 NEW SECTION. Section 81. Removal of designated or
 6 appointed directors. (1) A designated director may be
 7 removed by an amendment to the articles or bylaws deleting
 8 or changing the designation.

9 (2) Except as otherwise provided in the articles or
 10 bylaws, an appointed director may be removed without cause
 11 by the person appointing the director. The person removing
 12 the director shall do so by giving written notice of the
 13 removal to the director and either the presiding officer of
 14 the board or the corporation's president or secretary. The
 15 removal of an appointed director is effective when the
 16 notice is effective unless the notice specifies a future
 17 effective date.

18 NEW SECTION. Section 82. Removal of directors by
 19 judicial proceeding. (1) The district court for the judicial
 20 district of the county where a corporation's principal
 21 office is located or, if the principal office is not located
 22 in the state, the county where its registered office is
 23 located may remove any director of the corporation from
 24 office in a proceeding commenced by the corporation, by its
 25 members holding at least 10% of the voting power of any

1 class, or by the attorney general in the case of a public
 2 benefit corporation, if the court finds that:

3 (a) (i) the director engaged in fraudulent or dishonest
 4 conduct or in gross abuse of authority or discretion, with
 5 respect to the corporation; or

6 (ii) a final judgment has been entered finding that the
 7 director has violated a duty set forth in [sections 91
 8 through 94]; and

9 (b) removal is in the best interest of the corporation.

10 (2) The court that removes a director may bar the
 11 director from serving on the board for a period prescribed
 12 by the court.

13 (3) If members or the attorney general commence a
 14 proceeding under subsection (1), the corporation must be
 15 made a party defendant.

16 (4) If a public benefit corporation or its members
 17 commence a proceeding under subsection (1), they shall give
 18 the attorney general written notice of the proceeding.

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

21 NEW SECTION. Section 83. Vacancy on board. (1) Unless
 22 the articles or bylaws provide otherwise and except as
 23 provided in subsections (2) and (3), if a vacancy occurs on
 24 a board of directors, including a vacancy resulting from an
 25 increase in the number of directors:

1 (a) (i) the members, if any, may fill the vacancy; or
 2 (ii) if the vacant office was held by a director elected
 3 by a class, chapter, organizational unit or by region or
 4 other geographic grouping, only members of the class,
 5 chapter, unit, or grouping are entitled to vote to fill the
 6 vacancy if it is filled by the members;

7 (b) the board of directors may fill the vacancy; or

8 (c) if the directors remaining in office constitute
 9 fewer than a quorum of the board, they may fill the vacancy
 10 by the affirmative vote of a majority of all the directors
 11 remaining in office.

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

15 (3) If a vacant office was held by a designated
 16 director, the vacancy must be filled as provided in the
 17 articles or bylaws. In the absence of an applicable article
 18 or bylaw provision, the vacancy may not be filled by the
 19 board.

20 (4) A vacancy that will occur at a specific later date,
 21 by reason of a resignation effective at a later date under
 22 [section 79(2)] or otherwise, may be filled before the
 23 vacancy occurs. However, the new director may not take
 24 office until the vacancy occurs.

25 NEW SECTION. **Section 84.** Compensation of directors.

1 Unless the articles or bylaws provide otherwise, the board
 2 of directors may fix the compensation of directors.

3 NEW SECTION. **Section 85.** Regular and special meetings.

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

7 (2) A board of directors may hold regular or special
 8 meetings in the state or out of the state.

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

17 NEW SECTION. **Section 86.** Action without meeting. (1)

18 Unless the articles or bylaws provide otherwise, action
 19 required or permitted by [sections 1 through 168] to be
 20 taken at a board of directors' meeting may be taken without
 21 a meeting if the action is taken by all members of the
 22 board. The action must be evidenced by one or more written
 23 consents describing the action taken, be signed by each
 24 director, and be included in the minutes filed with the
 25 corporate records reflecting the action taken.

1 (2) Action taken under this section is effective when
2 the last director signs the consent unless the consent
3 specifies a different effective date.

4 (3) A consent signed under this section has the effect
5 of a meeting vote and may be described as a vote in any
6 document.

7 **NEW SECTION. Section 87. Call and notice of meetings.**

8 (1) Unless the articles or bylaws provide otherwise or
9 unless the provisions of subsection (3) apply, regular
10 meetings of the board may be held without notice.

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

15 (3) In a corporation without members, any board action
16 to remove a director or to approve a matter that would
17 require approval by the members if the corporation had
18 members is not valid unless each director is given at least
19 7 days' written notice that the matter will be voted upon at
20 a directors' meeting or unless notice is waived pursuant to
21 [section 88].

22 (4) Unless the articles or bylaws provide otherwise,
23 the presiding officer of the board, the president, or 20% of
24 the directors then in office may call and give notice of a
25 meeting of the board.

1 **NEW SECTION. Section 88. Waiver of notice.** (1) A
2 director may at any time waive a notice required by
3 [sections 1 through 168], the articles, or bylaws. Except as
4 provided in subsection (2), the waiver must be in writing,
5 be signed by the director entitled to the notice, and be
6 filed with the minutes or the corporate records.

7 (2) A director's attendance at or participation in a
8 meeting waives any required notice of the meeting unless the
9 director, upon arriving at the meeting or prior to the vote
10 on a matter not noticed in conformity with [sections 1
11 through 168], the articles, or bylaws, objects to lack of
12 notice and does not vote for or assent to that action.

13 **NEW SECTION. Section 89. Quorum and voting.** (1) Except
14 as otherwise provided in [sections 1 through 168], the
15 articles, or bylaws, a quorum of a board of directors
16 consists of a majority of the directors in office
17 immediately before a meeting begins. In no event may the
18 articles or bylaws authorize a quorum of fewer than the
19 greater of one-third of the number of directors in office or
20 two directors.

21 (2) If a quorum is present when a vote is taken, the
22 affirmative vote of a majority of directors present is the
23 act of the board unless [sections 1 through 168], the
24 articles, or bylaws require the vote of a greater number of
25 directors.

1 NEW SECTION. Section 90. Committees of the board. (1)
 2 Unless prohibited or limited by the articles or bylaws, a
 3 board of directors may create one or more committees of the
 4 board and appoint members of the board to serve on them.
 5 Each committee must have two or more directors who serve at
 6 the pleasure of the board.

7 (2) The creation of a committee and appointment of
 8 members to it must be approved by the greater of:

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

11 (b) the number of directors required by the articles or
 12 bylaws to take action under [section 89].

13 (3) [Sections 85 through 89], which govern meetings,
 14 action without meetings, notice, waiver of notice, and
 15 quorum and voting requirements of the board, apply to
 16 committees of the board and their members.

17 (4) To the extent specified by the board of directors
 18 or in the articles or bylaws, each committee of the board
 19 may exercise the board's authority under [section 75].

20 (5) A committee of the board may not:

21 (a) authorize distributions;

22 (b) approve or recommend to members dissolution,
 23 merger, or the sale, pledge, or transfer of all or
 24 substantially all of the corporation's assets;

25 (c) elect, appoint, or remove directors or fill

1 vacancies on the board or on any of its committees; or

2 (d) adopt, amend, or repeal the articles or bylaws.

3 (6) The creation of, delegation of authority to, or
 4 action by a committee does not by itself constitute
 5 compliance by a director with the standards of conduct
 6 described in [section 91].

7 NEW SECTION. Section 91. General standards for
 8 directors. (1) A director shall discharge his duties as a
 9 director, including his duties as a member of a committee:

10 (a) in good faith;

11 (b) with the care an ordinarily prudent person in a
 12 similar position would exercise under similar circumstances;
 13 and

14 (c) in a manner the director reasonably believes to be
 15 in the best interests of the corporation.

16 (2) In discharging his duties, a director is entitled
 17 to rely on information, opinions, reports, or statements,
 18 including financial statements and other financial data, if
 19 prepared or presented by:

20 (a) one or more officers or employees of the
 21 corporation whom the director reasonably believes to be
 22 reliable and competent in the matters presented;

23 (b) attorneys, public accountants, or other persons
 24 with regard to matters the director reasonably believes are
 25 within the person's professional or expert competence;

1 (c) a committee of the board of which the director is
 2 not a member, as to matters within its jurisdiction, if the
 3 director reasonably believes the committee merits
 4 confidence; or

5 (d) in the case of religious corporations, religious
 6 authorities, ministers, priests, rabbis, or other persons
 7 whose position or duties in the religious organization the
 8 director believes justify reliance and confidence and whom
 9 the director believes to be reliable and competent in the
 10 matters presented.

11 (3) A director is not acting in good faith if the
 12 director has knowledge concerning the matter in question
 13 that makes reliance otherwise permitted by subsection (2)
 14 unwarranted.

15 (4) A director is not liable to the corporation, any
 16 member, or any other person for any action taken or not
 17 taken as a director if the director acted in compliance with
 18 this section.

19 (5) A director may not be a trustee with respect to the
 20 corporation or with respect to any property held or
 21 administered by the corporation, including but not limited
 22 to property that may be subject to restrictions imposed by
 23 the donor or transferor of the property.

24 (6) [Sections 1 through 168] do not modify any
 25 limitation of liability of directors provided by Title 27.

1 NEW SECTION. Section 92. Director conflict of
 2 interest. (1) A conflict of interest transaction is a
 3 transaction with the corporation in which a director of the
 4 corporation has a direct or indirect interest. A conflict of
 5 interest transaction is not voidable or the basis for
 6 imposing liability on the director if the transaction was
 7 fair at the time it was entered into or is approved as
 8 provided in subsections (2) or (3).

9 (2) A transaction in which a director of a public
 10 benefit corporation or religious corporation has a conflict
 11 of interest may be approved:

12 (a) in advance by the vote of the board of directors or
 13 a committee of the board if:

14 (i) the material facts of the transaction and the
 15 director's interest are disclosed or known to the board or
 16 committee of the board; and

17 (ii) the directors approving the transaction in good
 18 faith reasonably believe that the transaction is fair to the
 19 corporation; or

20 (b) before or after it is consummated by obtaining
 21 approval of:

22 (i) the attorney general; or

23 (ii) a state district court in an action in which the
 24 attorney general is joined as a party.

25 (3) A transaction in which a director of a mutual

1 benefit corporation has a conflict of interest may be
2 approved if:

3 (a) the material facts of the transaction and the
4 director's interest were disclosed or known to the board of
5 directors or a committee of the board and the board or
6 committee of the board authorized, approved, or ratified the
7 transaction; or

8 (b) the material facts of the transaction and the
9 director's interest were disclosed or known to the members
10 and they authorized, approved, or ratified the transaction.

11 (4) For purposes of this section, a director of the
12 corporation has an indirect interest in a transaction if:

13 (a) another entity in which the director has a material
14 interest or in which the director is a general partner is a
15 party to the transaction; or

16 (b) another entity of which the director is a director,
17 officer, or trustee is a party to the transaction.

18 (5) For purposes of subsections (2) and (3), a conflict
19 of interest transaction is authorized, approved, or
20 ratified, if it receives the affirmative vote of a majority
21 of the directors on the board or on the committee who have
22 no direct or indirect interest in the transaction. However,
23 a transaction may not be authorized, approved, or ratified
24 under this section by a single director. If a majority of
25 the directors on the board who have no direct or indirect

1 interest in the transaction vote to authorize, approve, or
2 ratify the transaction, a quorum is present for the purpose
3 of taking action under this section. The presence of or a
4 vote cast by a director with a direct or indirect interest
5 in the transaction does not affect the validity of any
6 action taken under subsection (2)(a) or (3)(a) if the
7 transaction is otherwise approved as provided in subsection
8 (2) or (3).

9 (6) For purposes of subsection (3)(b), a conflict of
10 interest transaction is authorized, approved, or ratified by
11 the members if it receives a majority of the votes entitled
12 to be counted under this subsection. Votes cast by or voted
13 under the control of a director who has a direct or indirect
14 interest in the transaction and votes cast by or voted under
15 the control of an entity described in subsection (4)(a) may
16 not be counted in a vote of members to determine whether to
17 authorize, approve, or ratify a conflict of interest
18 transaction under subsection (3)(b). The vote of these
19 members, however, is counted in determining whether the
20 transaction is approved under other subsections of [sections
21 1 through 168]. A majority of the voting power, whether or
22 not present, that is entitled to be counted in a vote on the
23 transaction under this subsection constitutes a quorum for
24 the purpose of taking action under this section.

25 (7) The articles, bylaws, or a resolution of the board

1 may impose additional requirements on conflict of interest
2 transactions.

3 **NEW SECTION. Section 93.** Loans to or guaranties for
4 directors and officers. (1) A corporation may not lend money
5 to or guarantee the obligation of a director or officer of
6 the corporation.

7 (2) The fact that a loan or guaranty is made in
8 violation of this section does not affect the borrower's
9 liability on the loan.

10 **NEW SECTION. Section 94.** Liability for unlawful
11 distributions. (1) Unless a director complies with the
12 applicable standards of conduct described in [section 91], a
13 director who votes for or assents to a distribution made in
14 violation of [sections 1 through 168] is personally liable
15 to the corporation for the amount of the distribution that
16 exceeds what could have been distributed without violating
17 [sections 1 through 168].

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

20 (a) from every other director who voted for or assented
21 to the distribution and who did not comply with the
22 applicable standards of conduct described in [section 91];
23 and

24 (b) from each person who received an unlawful
25 distribution for the amount of the distribution whether or

1 not the person receiving the distribution knew it was made
2 in violation of [sections 1 through 168].

3 **NEW SECTION. Section 95.** Required officers. (1) Unless
4 otherwise provided in the articles or bylaws, a corporation
5 has a president, a secretary, a treasurer, and any other
6 officers appointed by the board.

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

11 (3) A person may simultaneously hold more than one
12 office in a corporation.

13 **NEW SECTION. Section 96.** Duties and authority of
14 officers. Each officer has the authority and shall perform
15 the duties set forth in the bylaws or, to the extent
16 consistent with the bylaws, the duties and authority
17 prescribed in a resolution of the board or by direction of
18 an officer authorized by the board to prescribe the duties
19 and authority of other officers.

20 **NEW SECTION. Section 97.** Standards of conduct for
21 officers. (1) An officer with discretionary authority shall
22 discharge his duties under that authority:

23 (a) in good faith;

24 (b) with the care an ordinarily prudent person in a
25 similar position would exercise under similar circumstances;

1 and

2 (c) in a manner the officer reasonably believes to be
3 in the best interests of the corporation and its members, if
4 any.

5 (2) In discharging his duties, an officer is entitled
6 to rely on information, opinions, reports, or statements,
7 including financial statements and other financial data, if
8 prepared or presented by:

9 (a) one or more officers or employees of the
10 corporation who the officer reasonably believes to be
11 reliable and competent in the matters presented;

12 (b) attorneys, public accountants, or other persons as
13 to matters the officer reasonably believes are within the
14 person's professional or expert competence; or

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

21 (3) An officer is not acting in good faith if the
22 officer has knowledge concerning the matter in question that
23 makes reliance otherwise permitted by subsection (2)
24 unwarranted.

25 (4) An officer is not liable to the corporation, any

1 member, or any other person for an action taken or not taken
2 as an officer if the officer acted in compliance with this
3 section.

4 (5) [Sections 75 through 109] do not modify any
5 limitation of liability of officers provided by Title 27.

6 NEW SECTION. Section 98. Resignation and removal of
7 officers. (1) An officer may resign at any time by
8 delivering notice to the corporation. A resignation is
9 effective when the notice is effective unless the notice
10 specifies a future effective date. If a resignation is made
11 effective at a future date and the corporation accepts the
12 future effective date, its board of directors may fill the
13 pending vacancy before the effective date if the board
14 provides that the successor does not take office until the
15 effective date.

16 (2) A board may remove any officer at any time, with or
17 without cause.

18 NEW SECTION. Section 99. Contract rights of officers.
19 (1) The appointment of an officer does not of itself create
20 contract rights.

21 (2) An officer's removal does not affect the officer's
22 contract rights, if any, with the corporation. An officer's
23 resignation does not affect the corporation's contract
24 rights, if any, with the officer.

25 NEW SECTION. Section 100. Officers' authority to

1 execute documents. A contract or other instrument in writing
 2 executed or entered into between a corporation and any other
 3 person is not invalidated as to the corporation by a lack of
 4 authority of the signing officers in the absence of actual
 5 knowledge on the part of the other person that the signing
 6 officers did not have authority to execute the contract or
 7 other instrument if it is signed by:

8 (1) the presiding officer of the board and the
 9 president; or

10 (2) one person from each of the following:

11 (a) the presiding officer of the board or the
 12 president; and

13 (b) a vice president, the secretary, treasurer, or
 14 executive director.

15 **NEW SECTION. Section 101. Definitions.** As used in
 16 [sections 101 through 109], the following definitions apply:

17 (1) "Corporation" includes any domestic or foreign
 18 predecessor entity of a corporation in a merger or other
 19 transaction in which the predecessor's existence ceased upon
 20 consummation of the transaction.

21 (2) (a) "Director" means an individual who is or was a
 22 director of a corporation or an individual who, while a
 23 director of a corporation, is or was serving at the
 24 corporation's request as a director, officer, partner,
 25 trustee, employee, or agent of another foreign or domestic

1 business or nonprofit corporation, partnership, joint
 2 venture, trust, employee benefit plan, or other enterprise.
 3 A director is considered to be serving an employee benefit
 4 plan at the corporation's request if the director's duties
 5 to the corporation also impose duties on, or otherwise
 6 involve services by, the director to the plan or the
 7 participants in or beneficiaries of the plan.

8 (b) Director includes, unless the context requires
 9 otherwise, the estate or personal representative of a
 10 director.

11 (3) "Expenses" include attorney fees.

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

16 (5) (a) "Official capacity" means:

17 (i) when used with respect to a director, the office of
 18 director in a corporation; or

19 (ii) when used with respect to an individual other than
 20 a director, as contemplated in [section 107], the office in
 21 a corporation held by the officer or the employment or
 22 agency relationship undertaken by the employee or agent on
 23 behalf of the corporation.

24 (b) Official capacity does not include service for any
 25 other foreign or domestic business or nonprofit corporation

1 or any partnership, joint venture, trust, employee benefit
2 plan, or other enterprise.

3 (6) "Party" includes an individual who was, is, or is
4 threatened to be made a named defendant or respondent in a
5 proceeding.

6 (7) "Proceeding" means any threatened, pending, or
7 completed action, suit, or proceeding, whether civil,
8 criminal, administrative, or investigative and whether
9 formal or informal.

10 **NEW SECTION. Section 102. Authority to indemnify.** (1)

11 Except as provided in subsection (4), an individual made a
12 party to a proceeding because the individual is or was a
13 director may be indemnified against liability incurred in
14 the proceeding if the individual:

15 (a) conducted himself in good faith;

16 (b) reasonably believed:

17 (i) in the case of conduct in his official capacity
18 with the corporation, that his conduct was in its best
19 interests; and

20 (ii) in all other cases, that his conduct was at least
21 not opposed to its best interests; and

22 (c) in the case of any criminal proceeding, had no
23 reasonable cause to believe his conduct was unlawful.

24 (2) A director's conduct with respect to an employee
25 benefit plan for a purpose the director reasonably believed

1 to be in the interests of the participants in and
2 beneficiaries of the plan is conduct that satisfies the
3 requirements of subsection (1)(b)(ii).

4 (3) The termination of a proceeding by judgment, order,
5 settlement, conviction, or upon a plea of nolo contendere or
6 its equivalent is not, of itself, a determination that the
7 director did not meet the standard of conduct described in
8 this section.

9 (4) A corporation may not indemnify a director under
10 this section:

11 (a) in connection with a proceeding by or in the right
12 of the corporation in which the director was adjudged liable
13 to the corporation; or

14 (b) in connection with any other proceeding that
15 charges improper personal benefit to the director, whether
16 or not involving action in his official capacity, in which
17 the director was adjudged liable on the basis that personal
18 benefit was improperly received by the director.

19 (5) Indemnification permitted under this section in
20 connection with a proceeding by or in the right of the
21 corporation is limited to reasonable expenses incurred in
22 connection with the proceeding.

23 **NEW SECTION. Section 103. Mandatory indemnification.**

24 Unless limited by its articles of incorporation, a
25 corporation shall indemnify a director who was wholly

1 successful, on the merits or otherwise, in the defense of
 2 any proceeding to which the director was a party because he
 3 is or was a director of the corporation, against reasonable
 4 expenses actually incurred by the director in connection
 5 with the proceeding.

6 **NEW SECTION. Section 104. Advance for expenses.** (1) A
 7 corporation may pay for or reimburse the reasonable expenses
 8 incurred by a director who is a party to a proceeding in
 9 advance of final disposition of the proceeding if:

10 (a) the director furnishes the corporation a written
 11 affirmation of his good faith belief that he has met the
 12 standard of conduct described in [section 102];

13 (b) the director furnishes the corporation a written
 14 undertaking, executed personally or on the director's
 15 behalf, to repay the advance if it is ultimately determined
 16 that the director did not meet the standard of conduct; and

17 (c) a determination is made that the facts then known
 18 to those making the determination would not preclude
 19 indemnification under [sections 101 through 109].

20 (2) The undertaking required by subsection (1)(b) must
 21 be an unlimited general obligation of the director but need
 22 not be secured and may be accepted without reference to
 23 financial ability to make repayment.

24 (3) Determinations and authorizations of payments under
 25 this section must be made in the manner specified in

1 [section 106].

2 **NEW SECTION. Section 105. Court-ordered**
 3 **indemnification.** Unless limited by a corporation's articles
 4 of incorporation, a director of the corporation who is a
 5 party to a proceeding may apply for indemnification to the
 6 court conducting the proceeding or to another court of
 7 competent jurisdiction. On receipt of an application, the
 8 court, after giving any notice the court considers
 9 necessary, may order indemnification in the amount it
 10 considers proper if it determines that the director:

11 (1) is entitled to mandatory indemnification under
 12 [section 103], in which case the court shall also order the
 13 corporation to pay the director's reasonable expenses
 14 incurred to obtain court-ordered indemnification; or

15 (2) is fairly and reasonably entitled to
 16 indemnification in view of all the relevant circumstances,
 17 whether or not the director met the standard of conduct set
 18 forth in [section 102(1)] or was adjudged liable as
 19 described in [section 102(4)]. If the director was adjudged
 20 liable, indemnification is limited to reasonable expenses
 21 incurred.

22 **NEW SECTION. Section 106. Determination and**
 23 **authorization of indemnification.** (1) A corporation may not
 24 indemnify a director under [section 102] unless it is
 25 authorized in the specific case after a determination has

1 been made that indemnification of the director is
2 permissible in the circumstances because the director has
3 met the standard of conduct set forth in [section 102].

4 (2) The determination must be made:

5 (a) by the board of directors by majority vote of a
6 quorum consisting of directors not at the time parties to
7 the proceeding;

8 (b) if a quorum cannot be obtained under subsection
9 (2)(a), by majority vote of a committee designated by the
10 board of directors consisting solely of two or more
11 directors not at the time parties to the proceeding;

12 (c) by special legal counsel:

13 (i) selected by the board of directors or its committee
14 in the manner prescribed in subsection (2)(a) or (2)(b); or

15 (ii) if a quorum of the board cannot be obtained under
16 subsection (2)(a) and a committee cannot be designated under
17 subsection (2)(b), selected by majority vote of the full
18 board, in which selected directors who are parties may
19 participate; or

20 (d) by the members of a mutual benefit corporation.
21 However, directors who are at the time parties to the
22 proceeding may not vote on the determination.

23 (3) Authorization of indemnification and evaluation as
24 to reasonableness of expenses must be made in the same
25 manner as the determination that indemnification is

1 permissible, except that if the determination is made by
2 special legal counsel, authorization of indemnification and
3 evaluation as to reasonableness of expenses must be made by
4 those entitled under subsection (2)(c) to select counsel.

5 (4) A director of a public benefit corporation may not
6 be indemnified until 20 days after the effective date of
7 written notice to the attorney general of the proposed
8 indemnification.

9 **NEW SECTION. Section 107. Indemnification of officers,**
10 **employees, and agents.** Unless limited by a corporation's
11 articles of incorporation:

12 (1) an officer of the corporation who is not a director
13 is entitled to mandatory indemnification under [section 103]
14 and is entitled to apply for court-ordered indemnification
15 under [section 105] to the same extent as a director;

16 (2) the corporation may indemnify and advance expenses
17 under [sections 101 through 109] to an officer, employee, or
18 agent of the corporation who is not a director to the same
19 extent as to a director; and

20 (3) a corporation may also indemnify and advance
21 expenses to an officer, employee, or agent who is not a
22 director to the extent, consistent with public policy, that
23 may be provided by its articles of incorporation, bylaws,
24 general or specific action of its board of directors, or
25 contract.

1 **NEW SECTION. Section 108. Insurance.** A corporation may
 2 purchase and maintain insurance on behalf of an individual
 3 who is or was a director, officer, employee, or agent of the
 4 corporation or who, while a director, officer, employee, or
 5 agent of the corporation, is or was serving at the request
 6 of the corporation as a director, officer, partner, trustee,
 7 employee, or agent of another foreign or domestic business
 8 or nonprofit corporation, partnership, joint venture, trust,
 9 employee benefit plan, or other enterprise, against
 10 liability asserted against or incurred by him in that
 11 capacity or arising from his status as a director, officer,
 12 employee, or agent, whether or not the corporation would
 13 have power to indemnify the person against the same
 14 liability under [section 102 or 103].

15 **NEW SECTION. Section 109. Application.** (1) A provision
 16 treating a corporation's indemnification of or advance for
 17 expenses to directors that is contained in its articles of
 18 incorporation, its bylaws, a resolution of its members or
 19 board of directors, a contract, or other instrument is valid
 20 only if and to the extent the provision is consistent with
 21 [sections 101 through 109]. If articles of incorporation
 22 limit indemnification or advance for expenses,
 23 indemnification and advance for expenses are valid only to
 24 the extent consistent with the articles.

25 (2) [Sections 101 through 109] do not limit a

1 corporation's power to pay or reimburse expenses incurred by
 2 a director in connection with appearing as a witness in a
 3 proceeding at a time when the director has not been made a
 4 named defendant or respondent to the proceeding.

5 **NEW SECTION. Section 110. Authority to amend.** A
 6 corporation may amend its articles of incorporation at any
 7 time to add or change a provision that is required or
 8 permitted in the articles or to delete a provision not
 9 required in the articles. Whether a provision is required or
 10 permitted in the articles is determined as of the effective
 11 date of the amendment.

12 **NEW SECTION. Section 111. Amendment by directors.** (1)
 13 Unless the articles provide otherwise, a corporation's board
 14 of directors may adopt one or more amendments to the
 15 corporation's articles without member approval:

16 (a) to extend the duration of the corporation if it was
 17 incorporated at a time when limited duration was required by
 18 law;

19 (b) to delete the names and addresses of the initial
 20 directors;

21 (c) to delete the name and address of the initial
 22 registered agent or registered office if a statement of
 23 change is on file with the secretary of state;

24 (d) to change the corporate name by substituting the
 25 word "corporation", "incorporated", "company", "limited", or

1 the abbreviation "corp.", "inc.", "co.", or "ltd." for a
 2 similar word or abbreviation in the name or by adding,
 3 deleting, or changing a geographical attribution to the
 4 name; or

5 (e) to make any other change expressly permitted by
 6 [sections 1 through 168] to be made by action of the board
 7 of directors.

8 (2) If a corporation has no members, its incorporators,
 9 until directors have been chosen, and later its board of
 10 directors may adopt one or more amendments to the
 11 corporation's articles subject to any approval required
 12 pursuant to [section 121]. The corporation shall provide
 13 notice of any meeting at which an amendment is to be voted
 14 upon. The notice must be in accordance with [section 87(3)].
 15 The notice must also state that the purpose or one of the
 16 purposes of the meeting is to consider a proposed amendment
 17 to the articles and must contain or be accompanied by a copy
 18 or summary of the amendment or state the general nature of
 19 the amendment. The amendment must be approved by a majority
 20 of the directors in office at the time the amendment is
 21 adopted.

22 **NEW SECTION. Section 112. Amendment by directors and**
 23 **members.** (1) Unless [sections 1 through 168], the articles,
 24 the bylaws, the members acting pursuant to subsection (2),
 25 or the board of directors acting pursuant to subsection (3)

1 require a greater vote or voting by class to be adopted, an
 2 amendment to a corporation's articles must be approved:

3 (a) by the board if the corporation is a public benefit
 4 corporation or religious corporation and the amendment does
 5 not relate to the number of directors, the composition of
 6 the board, the term of office of directors, or the method or
 7 way in which directors are elected or selected;

8 (b) except as provided in [section 111(1)], by the
 9 members by two-thirds of the votes cast or a majority of the
 10 voting power, whichever is less; and

11 (c) in writing by any person or persons whose approval
 12 is required by a provision of the articles, as authorized by
 13 [section 121].

14 (2) The members may condition the amendment's adoption
 15 on receipt of a higher percentage of affirmative votes or on
 16 any other basis.

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

22 (4) If the board or the members seek to have the
 23 amendment approved by the members at a membership meeting,
 24 the corporation shall give notice to its members of the
 25 proposed membership meeting in writing in accordance with

1 [section 62]. The notice must state that the purpose or one
2 of the purposes of the meeting is to consider the proposed
3 amendment and must contain or be accompanied by a copy or
4 summary of the amendment.

5 (5) If the board or the members seek to have the
6 amendment approved by the members by written consent or
7 written ballot, the material soliciting the approval must
8 contain or be accompanied by a copy or summary of the
9 amendment.

10 NEW SECTION. Section 113. Class voting by members on
11 amendments. (1) The members of a class in a public benefit
12 corporation are entitled to vote as a class on a proposed
13 amendment to the articles if the amendment would change the
14 rights of that class as to voting in a manner different from
15 the manner in which the amendment affects another class or
16 members of another class.

17 (2) The members of a class in a mutual benefit
18 corporation are entitled to vote as a class on a proposed
19 amendment to the articles if the amendment would:

20 (a) affect the rights, privileges, preferences,
21 restrictions, or conditions of that class as to voting,
22 dissolution, redemption, or transfer of memberships in a
23 manner different from the manner in which the amendment
24 would affect another class;

25 (b) change the rights, privileges, preferences,

1 restrictions, or conditions of that class as to voting,
2 dissolution, redemption, or transfer by changing the rights,
3 privileges, preferences, restrictions, or conditions of
4 another class;

5 (c) increase or decrease the number of memberships
6 authorized for that class;

7 (d) increase the number of memberships authorized for
8 another class;

9 (e) cause an exchange, reclassification, or termination
10 of the memberships of that class; or

11 (f) authorize a new class of memberships.

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

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

21 (5) Except as provided in the articles or bylaws of a
22 religious corporation, if a class vote is required to
23 approve an amendment to the articles of a corporation, the
24 amendment must be approved by the members of the class by
25 two-thirds of the votes cast by the class or a majority of

1 the voting power of the class, whichever is less.

2 (6) A class of members of a public benefit corporation
3 or mutual benefit corporation is entitled to the voting
4 rights granted by this section although the articles and
5 bylaws provide that the class may not vote on the proposed
6 amendment.

7 NEW SECTION. Section 114. Articles of amendment. A
8 corporation that amends its articles shall deliver to the
9 secretary of state, for filing, articles of amendment
10 setting forth:

- 11 (1) the name of the corporation;
- 12 (2) the text of each amendment adopted;
- 13 (3) the date of each amendment's adoption;
- 14 (4) if approval of members was not required, a
15 statement to that effect and a statement that the amendment
16 was approved by a sufficient vote of the board of directors
17 or incorporators;
- 18 (5) if approval by members was required:
 - 19 (a) the designation, number of memberships outstanding,
20 number of votes entitled to be cast by each class entitled
21 to vote separately on the amendment, and number of votes of
22 each class indisputably voting on the amendment; and
 - 23 (b) (i) either the total number of votes cast for and
24 against the amendment by each class entitled to vote
25 separately on the amendment or the total number of

- 1 undisputed votes cast for the amendment by each class; and
- 2 (ii) a statement that the number cast for the amendment
3 by each class was sufficient for approval by that class; and
- 4 (6) if approval of the amendment by some person or
5 persons other than the members, the board, or the
6 incorporators is required pursuant to [section 121], a
7 statement that the approval was obtained.

8 NEW SECTION. Section 115. Restated articles of
9 incorporation. (1) A corporation's board of directors may
10 restate its articles of incorporation at any time, with or
11 without approval by members or any other person.

12 (2) The restatement may include one or more amendments
13 to the articles. If the restatement includes an amendment
14 requiring approval by the members or any other person, it
15 must be adopted as provided in [section 112].

16 (3) If the restatement includes an amendment requiring
17 approval by members, the board must submit the restatement
18 to the members for their approval.

19 (4) If the board seeks to have the restatement approved
20 by the members at a membership meeting, the corporation
21 shall notify each of its members of the proposed membership
22 meeting in writing in accordance with [section 62]. The
23 notice must also state that the purpose or one of the
24 purposes of the meeting is to consider the proposed
25 restatement and must contain or be accompanied by a copy or

1 summary of the restatement that identifies any amendments or
 2 other change that the restatement would make in the
 3 articles.

4 (5) If the board seeks to have the restatement approved
 5 by the members by written ballot or written consent, the
 6 material soliciting the approval must contain or be
 7 accompanied by a copy or summary of the restatement that
 8 identifies any amendments or other change it would make in
 9 the articles.

10 (6) A restatement requiring approval by the members
 11 must be approved by the same vote as an amendment to
 12 articles under [section 112].

13 (7) If the restatement includes an amendment that
 14 requires approval pursuant to [section 121], the board must
 15 submit the restatement for this approval.

16 (8) A corporation that restates its articles shall
 17 deliver to the secretary of state, for filing, articles of
 18 restatement setting forth the name of the corporation and
 19 the text of the restated articles of incorporation, together
 20 with a certificate setting forth:

21 (a) whether the restatement contains an amendment to
 22 the articles requiring approval by the members or any other
 23 person other than the board of directors and, if it does
 24 not, that the board of directors adopted the restatement; or

25 (b) if the restatement contains an amendment to the

1 articles requiring approval by the members, the information
 2 required by [section 114]; and

3 (c) if the restatement contains an amendment to the
 4 articles requiring approval by a person whose approval is
 5 required pursuant to [section 121], a statement that the
 6 approval was obtained.

7 (9) Adopted restated articles of incorporation
 8 supersede the original articles of incorporation and all
 9 amendments to them.

10 (10) The secretary of state may certify restated
 11 articles of incorporation as the articles of incorporation
 12 currently in effect without including the certificate
 13 information required by subsection (8).

14 **NEW SECTION. Section 116. Amendment pursuant to**
 15 **judicial reorganization.** (1) A corporation's articles may be
 16 amended without board approval, approval by the members, or
 17 approval required pursuant to [section 121] if necessary to
 18 carry out a plan of reorganization ordered or decreed by a
 19 court of competent jurisdiction under federal statute if the
 20 articles, after amendment, contain only provisions required
 21 or permitted by [section 22].

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

25 (a) the name of the corporation;

1 (b) the text of each amendment approved by the court;
 2 (c) the date of the court's order or decree approving
 3 the articles of amendment;
 4 (d) the title of the reorganization proceeding in which
 5 the order or decree was entered; and
 6 (e) a statement that the court had jurisdiction of the
 7 proceeding under federal statute.
 8 (3) This section does not apply after entry of a final
 9 decree in the reorganization proceeding even though the
 10 court retains jurisdiction of the proceeding for limited
 11 purposes unrelated to consummation of the reorganization
 12 plan.

13 **NEW SECTION. Section 117. Effect of amendment and**
 14 **restatement.** An amendment to articles of incorporation does
 15 not affect a cause of action existing against or in favor of
 16 the corporation, a proceeding to which the corporation is a
 17 party, any requirement or limitation imposed upon the
 18 corporation, or any property held by it by virtue of any
 19 trust upon which the property is held by the corporation, or
 20 the existing rights of persons other than members of the
 21 corporation. An amendment changing a corporation's name does
 22 not abate a proceeding brought by or against the corporation
 23 in its former name.

24 **NEW SECTION. Section 118. Amendment by directors.** If a
 25 corporation does not have members, its incorporators, until

1 directors have been chosen, and later its board of directors
 2 may adopt one or more amendments to the corporation's bylaws
 3 subject to any approval required pursuant to [section 121].
 4 The corporation shall provide notice of any meeting of
 5 directors at which an amendment is to be approved. The
 6 notice must be in accordance with [section 87(3)]. The
 7 notice must also state that the purpose or one of the
 8 purposes of the meeting is to consider a proposed amendment
 9 to the bylaws and contain or be accompanied by a copy or
 10 summary of the amendment or state the general nature of the
 11 amendment. The amendment must be approved by a majority of
 12 the directors in office at the time the amendment is
 13 adopted.

14 **NEW SECTION. Section 119. Amendment by directors and**
 15 **members.** (1) Unless [sections 1 through 168], the articles,
 16 the bylaws, the members acting pursuant to subsection (2),
 17 or the board of directors acting pursuant to subsection (3)
 18 require a greater vote or voting by class to be adopted, an
 19 amendment to a corporation's bylaws must be approved:

20 (a) by the board if the corporation is a public benefit
 21 corporation or religious corporation and the amendment does
 22 not relate to the number of directors, the composition of
 23 the board, the term of office of directors, or the method or
 24 way in which directors are elected or selected;

25 (b) by the members by two-thirds of the votes cast or a

1 majority of the voting power, whichever is less; or

2 (c) in writing by any person or persons whose approval
3 is required by a provision of the articles, as authorized by
4 [section 121].

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

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

13 (4) If the board or the members seek to have the
14 amendment approved by the members at a membership meeting,
15 the corporation shall give notice to its members of the
16 proposed membership meeting in writing in accordance with
17 [section 62]. The notice must also state that the purpose,
18 or one of the purposes, of the meeting is to consider the
19 proposed amendment and must contain or be accompanied by a
20 copy or summary of the amendment.

21 (5) If the board or the members seek to have the
22 amendment approved by the members by written consent or
23 written ballot, the material soliciting the approval must
24 contain or be accompanied by a copy or summary of the
25 amendment.

1 NEW SECTION. **Section 120.** Class voting by members on
2 amendments. (1) The members of a class in a public benefit
3 corporation are entitled to vote as a class on a proposed
4 amendment to the bylaws if the amendment would change the
5 rights of that class as to voting in a manner different from
6 the manner in which the amendment would affect another
7 class or members of another class.

8 (2) Members of a class in a mutual benefit corporation
9 are entitled to vote as a class on a proposed amendment to
10 the bylaws if the amendment would:

11 (a) affect the rights, privileges, preferences,
12 restrictions, or conditions of that class as to voting,
13 dissolution, redemption, or transfer of memberships in a
14 manner different from the manner in which the amendment
15 would affect another class;

16 (b) change the rights, privileges, preferences,
17 restrictions, or conditions of that class as to voting,
18 dissolution, redemption, or transfer by changing the rights,
19 privileges, preferences, restrictions, or conditions of
20 another class;

21 (c) increase or decrease the number of memberships
22 authorized for that class;

23 (d) increase the number of memberships authorized for
24 another class;

25 (e) cause an exchange, reclassification, or termination

1 of all or part of the memberships of that class; or
 2 (f) authorize a new class of memberships.
 3 (3) The members of a class of a religious corporation
 4 are entitled to vote as a class on a proposed amendment to
 5 the bylaws only if a class vote is provided for in the
 6 articles or bylaws.
 7 (4) If a class is to be divided into two or more
 8 classes as a result of an amendment to the bylaws, the
 9 amendment must be approved by the members of each class that
 10 would be created by the amendment.
 11 (5) If a class vote is required to approve an amendment
 12 to the bylaws, the amendment must be approved by the members
 13 of the class by two-thirds of the votes cast by the class or
 14 a majority of the voting power of the class, whichever is
 15 less.
 16 (6) A class of members is entitled to the voting rights
 17 granted by this section although the articles and bylaws
 18 provide that the class may not vote on the proposed
 19 amendment.
 20 **NEW SECTION. Section 121. Approval by third persons.**
 21 The articles may require an amendment to the articles or
 22 bylaws to be approved in writing by a specified person or
 23 persons other than the board. Such an article provision may
 24 only be amended with the approval in writing of the person
 25 or persons.

1 **NEW SECTION. Section 122. Amendment terminating**
 2 **members or redeeming or canceling memberships.** (1) Any
 3 amendment to the articles or bylaws of a public benefit
 4 corporation or mutual benefit corporation that would
 5 terminate all members or any class of members or redeem or
 6 cancel all memberships or any class of memberships must meet
 7 the requirements of [sections 1 through 168].
 8 (2) Before adopting a resolution proposing an amendment
 9 described in subsection (1), the board of a mutual benefit
 10 corporation shall give notice of the general nature of the
 11 amendment to the members.
 12 (3) After adopting a resolution proposing an amendment
 13 described in subsection (1), the notice to members proposing
 14 the amendment must include one statement of up to 500 words
 15 opposing the proposed amendment if the statement is
 16 submitted by any five members or members having 3% or more
 17 of the voting power, whichever is less, not later than 20
 18 days after the board has voted to submit the amendment to
 19 the members for their approval. In public benefit
 20 corporations, the production and mailing costs must be paid
 21 by the corporation.
 22 (4) Any amendment under this section must be approved
 23 by the members by two-thirds of the votes cast by each
 24 class.
 25 (5) The provisions of [section 48] do not apply to any

1 amendment that meets the requirements of [sections 1 through
2 168].

3 **NEW SECTION. Section 123. Approval of plan of merger.**

4 (1) Subject to the limitations set forth in [section 124],
5 profit corporations may merge into a business or nonprofit
6 corporation if the plan of merger is approved as provided in
7 [section 125].

8 (2) The plan of merger must set forth:

9 (a) the name of each corporation planning to merge and
10 the name of the surviving corporation into which each plans
11 to merge;

12 (b) the terms and conditions of the planned merger;

13 (c) the manner and basis, if any, of converting the
14 memberships of each public benefit or religious corporation
15 into memberships of the surviving corporation; and

16 (d) if the merger involves a mutual benefit
17 corporation, the manner and basis, if any, of converting
18 memberships of each merging corporation into memberships,
19 obligations, or securities of the surviving or any other
20 corporation or into cash or other property in whole or part.

21 (3) The plan of merger may set forth:

22 (a) any amendments to the articles of incorporation or
23 bylaws of the surviving corporation to be effected by the
24 planned merger; and

25 (b) other provisions relating to the planned merger.

1 **NEW SECTION. Section 124. Limitations on mergers by**
2 **public benefit or religious corporations.** (1) Without the
3 prior approval of the district court for the judicial
4 district in which the corporation's registered office is
5 located, in a proceeding of which the attorney general has
6 been given written notice, a public benefit corporation or
7 religious corporation may merge only with:

8 (a) a public benefit corporation or religious
9 corporation;

10 (b) a foreign corporation that would qualify under
11 [sections 1 through 168] as a public benefit corporation or
12 religious corporation;

13 (c) a wholly owned foreign or domestic business or
14 mutual benefit corporation, if the public benefit
15 corporation or religious corporation is the surviving
16 corporation and continues to be a public benefit corporation
17 or religious corporation after the merger; or

18 (d) a business or mutual benefit corporation, provided
19 that:

20 (i) on or prior to the effective date of the merger,
21 assets with a value equal to the greater of the fair market
22 value of the net tangible and intangible assets, including
23 good will, of the public benefit corporation or the fair
24 market value of the public benefit corporation if it were to
25 be operated as a business concern are transferred or

1 conveyed to one or more persons who would have received its
2 assets under [section 139 (1)(e) and (f)] had it dissolved;

3 (ii) it shall return, transfer, or convey any assets
4 held by it upon condition requiring return, transfer, or
5 conveyance in case of merger, in accordance with the
6 condition; and

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

12 (2) At least 20 days before consummation of any merger
13 of a public benefit corporation or a religious corporation
14 pursuant to subsection (1)(d), notice, including a copy of
15 the proposed plan of merger, must be delivered to the
16 attorney general.

17 (3) Without the prior written consent of the attorney
18 general or of the district court in a proceeding in which
19 the attorney general has been given notice, a member of a
20 public benefit corporation or religious corporation may not
21 receive or keep anything as a result of a merger other than
22 a membership in the surviving public benefit corporation or
23 religious corporation. The court shall approve the
24 transaction if it is in the public interest.

25 NEW SECTION. Section 125. Action on plan by board,

1 members, and third persons. (1) Unless [sections 1 through
2 168], the articles, the bylaws, or the board of directors or
3 members, acting pursuant to subsection (3), require a
4 greater vote or voting by class to be adopted, a plan of
5 merger must be approved:

6 (a) by the board;

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

10 (c) in writing by any person or persons whose approval
11 is required by a provision of the articles, as authorized by
12 [section 121], for an amendment to the articles or bylaws.

13 (2) If the corporation does not have members, the
14 merger must be approved by a majority of the directors in
15 office at the time the merger is approved. In addition, the
16 corporation shall provide notice, in accordance with
17 [section 87(3)], of any directors' meeting at which approval
18 is to be obtained. The notice must also state that the
19 purpose or one of the purposes of the meeting is to consider
20 the proposed merger.

21 (3) The board may condition its submission of the
22 proposed merger and the members may condition their approval
23 of the merger on receipt of a higher percentage of
24 affirmative votes or on any other basis.

25 (4) If the board seeks to have the plan approved by the

1 members at a membership meeting, the corporation shall give
 2 notice to its members of the proposed membership meeting in
 3 accordance with [section 62]. The notice must state that the
 4 purpose or one of the purposes of the meeting is to consider
 5 the plan of merger and contain or be accompanied by a copy
 6 or summary of the plan. The copy or summary of the plan for
 7 members of the surviving corporation must include any
 8 provision that, if contained in a proposed amendment to the
 9 articles of incorporation or bylaws, would entitle members
 10 to vote on the provision. The copy or summary of the plan
 11 for members of the disappearing corporation must include a
 12 copy or summary of the articles and bylaws that will be in
 13 effect immediately after the merger takes effect.

14 (5) If the board seeks to have the plan approved by the
 15 members by written consent or written ballot, the material
 16 soliciting the approval must contain or be accompanied by a
 17 copy or summary of the plan. The copy or summary of the plan
 18 for members of the surviving corporation must include any
 19 provision that, if contained in a proposed amendment to the
 20 articles of incorporation or bylaws, would entitle members
 21 to vote on the provision. The copy or summary of the plan
 22 for members of the disappearing corporation must include a
 23 copy or summary of the articles and bylaws that will be in
 24 effect immediately after the merger takes effect.

25 (6) Voting by a class of members is required on a plan

1 of merger if the plan contains a provision that, if
 2 contained in a proposed amendment to articles of
 3 incorporation or bylaws, would entitle the class of members
 4 to vote as a class on the proposed amendment under [section
 5 113 or 120]. The plan is approved by a class of members by
 6 two-thirds of the votes cast by the class or a majority of
 7 the voting power of the class, whichever is less.

8 (7) After a merger is adopted and at any time before
 9 articles of merger are filed, the planned merger may be
 10 abandoned, subject to any contractual rights, without
 11 further action by members or other persons who approved the
 12 plan in accordance with the procedure set forth in the plan
 13 of merger or, if no procedure is set forth, in the manner
 14 determined by the board of directors.

15 **NEW SECTION. Section 126.** Articles of merger. After a
 16 plan of merger is approved by the board of directors and, if
 17 required by [section 125], by the members and any other
 18 persons, the surviving or acquiring corporation shall
 19 deliver to the secretary of state, for filing, articles of
 20 merger setting forth:

- 21 (1) the plan of merger;
 22 (2) if approval of members was not required, a
 23 statement to that effect and a statement that the plan was
 24 approved by a sufficient vote of the board of directors;
 25 (3) if approval by members was required:

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

5 (b) (i) either the total number of votes cast for and
6 against the plan by each class entitled to vote separately
7 on the plan or the total number of undisputed votes cast for
8 the plan by each class; and

9 (ii) a statement that the number cast for the plan by
10 each class was sufficient for approval by that class;

11 (4) if approval of the plan by some person or persons
12 other than the members or the board is required pursuant to
13 [section 125(1)(c)], a statement that the approval was
14 obtained.

15 **NEW SECTION. Section 127. Effect of merger.** When a
16 merger takes effect:

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

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

25 (3) the surviving corporation has all liabilities and

1 obligations of each corporation party to the merger;

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

6 (5) the articles of incorporation and bylaws of the
7 surviving corporation are amended to the extent provided in
8 the plan of merger.

9 **NEW SECTION. Section 128. Merger with foreign**
10 **corporation.** (1) Except as provided in [section 124], one or
11 more foreign business or nonprofit corporations may merge
12 with one or more domestic nonprofit corporations if:

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

17 (b) the foreign corporation complies with [section 126]
18 if it is the surviving corporation of the merger; and

19 (c) each domestic nonprofit corporation complies with
20 the applicable provisions of [sections 123 through 125] and,
21 if it is the surviving corporation of the merger, with the
22 provisions of [section 126].

23 (2) When the merger takes effect, the surviving foreign
24 business or nonprofit corporation is considered to have
25 irrevocably appointed the secretary of state as its agent

1 for service of process in any proceeding brought against it.

2 **NEW SECTION. Section 129.** Bequests, devises, and
3 gifts. A bequest, devise, gift, grant, or promise contained
4 in a will or other instrument of donation, subscription, or
5 conveyance that is made to a constituent corporation and
6 that takes effect or remains payable after the merger inures
7 to the surviving corporation unless the will or other
8 instrument specifically provides otherwise.

9 **NEW SECTION. Section 130.** Sale of assets in regular
10 course of activities -- mortgage of assets. (1) A
11 corporation may on the terms and conditions and for the
12 consideration determined by the board of directors:

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

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

20 (2) Unless the articles require it, approval of the
21 members or any other person of a transaction described in
22 subsection (1) is not required.

23 (3) Unless the articles provide otherwise, approval of
24 a transaction described in subsection (1)(a) is required by
25 a vote of a majority of the directors in office at the time

1 the transaction is approved.

2 **NEW SECTION. Section 131.** Sale of assets other than in
3 regular course of activities. (1) A corporation may sell,
4 lease, exchange, or otherwise dispose of all or
5 substantially all of its property, which may include the
6 good will, other than in the usual and regular course of its
7 activities on the terms and conditions and for the
8 consideration determined by the corporation's board if the
9 proposed transaction is approved as required by subsection
10 (2).

11 (2) Unless [sections 1 through 168], the articles,
12 bylaws, or the board of directors or members, acting
13 pursuant to subsection (4), require a greater vote or voting
14 by class, the proposed transaction to be authorized must be
15 approved:

16 (a) by the board;

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

19 (c) in writing by any person or persons whose approval
20 is required by a provision of the articles, as authorized by
21 [section 121], for an amendment to the articles or bylaws.

22 (3) If the corporation does not have members, the
23 transaction must be approved by a vote of a majority of the
24 directors in office at the time the transaction is approved.
25 In addition, the corporation shall provide notice, in

1 accordance with [section 87(3)], of any directors' meeting
 2 at which approval is to be obtained. The notice must also
 3 state that the purpose or one of the purposes of the meeting
 4 is to consider the sale, lease, exchange, or other
 5 disposition of all or substantially all of the property or
 6 assets of the corporation and must contain or be accompanied
 7 by a copy or summary of a description of the transaction.

8 (4) The board may condition its submission of the
 9 proposed transaction and the members may condition their
 10 approval of the transaction on receipt of a higher
 11 percentage of affirmative votes or on any other basis.

12 (5) If the corporation seeks to have the transaction
 13 approved by the members at a membership meeting, the
 14 corporation shall give notice to its members of the proposed
 15 membership meeting in accordance with [section 62]. The
 16 notice must state that the purpose or one of the purposes of
 17 the meeting is to consider the sale, lease, exchange, or
 18 other disposition of all or substantially all of the
 19 property or assets of the corporation and must contain or be
 20 accompanied by a copy or summary of a description of the
 21 transaction.

22 (6) If the board needs to have the transaction approved
 23 by the members by written consent or written ballot, the
 24 material soliciting the approval must contain or be
 25 accompanied by a copy or summary of a description of the

1 transaction.

2 (7) A public benefit corporation or religious
 3 corporation must give written notice to the attorney general
 4 20 days before it sells, leases, exchanges, or otherwise
 5 disposes of all or substantially all of its property if the
 6 transaction is not in the usual and regular course of its
 7 activities unless the attorney general has given the
 8 corporation a written waiver of this subsection.

9 (8) After a sale, lease, exchange, or other disposition
 10 of property is authorized, the transaction may be abandoned,
 11 subject to any contractual rights, without further action by
 12 the members or any other person who approved the transaction
 13 in accordance with the procedure set forth in the resolution
 14 proposing the transaction or, if no procedure is set forth,
 15 in the manner determined by the board of directors.

16 **NEW SECTION. Section 132. Prohibited distributions.**
 17 Except as authorized by [section 133], a corporation may not
 18 make any distributions.

19 **NEW SECTION. Section 133. Authorized distributions.**

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

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

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

1 (2) Corporations may make distributions upon
2 dissolution in conformity with [sections 134 through 146].

3 NEW SECTION. Section 134. Dissolution by incorporators
4 or directors and third persons. (1) A majority of the
5 incorporators or directors of a corporation that does not
6 have members may, subject to any approval required by the
7 articles or bylaws, dissolve the corporation by delivering
8 to the secretary of state articles of dissolution.

9 (2) The corporation shall give notice of any meeting at
10 which dissolution will be approved. The notice must be in
11 accordance with [section 87(3)]. The notice must also state
12 that the purpose or one of the purposes of the meeting is to
13 consider dissolution of the corporation.

14 (3) In approving dissolution, the incorporators or
15 directors shall adopt a plan of dissolution indicating to
16 whom the assets owned or held by the corporation will be
17 distributed after all creditors have been paid.

18 NEW SECTION. Section 135. Dissolution by directors,
19 members, and third persons. (1) Unless [sections 1 through
20 168], the articles, bylaws, or the board of directors or
21 members, acting pursuant to subsection (1)(c), require a
22 greater vote or voting by class, dissolution is authorized
23 if it is approved:

- 24 (a) by the board;
- 25 (b) by the members, if any, by two-thirds of the votes

1 cast or a majority of the voting power, whichever is less;
2 and

3 (c) in writing, by any person or persons whose approval
4 is required by a provision of the articles, as authorized by
5 [section 121], for an amendment to the articles or bylaws.

6 (2) If the corporation does not have members,
7 dissolution must be approved by a vote of a majority of the
8 directors in office at the time the transaction is approved.

9 In addition, the corporation shall provide notice of any
10 directors' meeting at which approval is to be obtained in
11 accordance with [section 87(3)]. The notice must also state
12 that the purpose or one of the purposes of the meeting is to
13 consider dissolution of the corporation and contain or be
14 accompanied by a copy or summary of the plan of dissolution.

15 (3) The board may condition its submission of the
16 proposed dissolution, and the members may condition their
17 approval of the dissolution on receipt of a higher
18 percentage of affirmative votes or on any other basis.

19 (4) If the board seeks to have dissolution approved by
20 the members at a membership meeting, the corporation shall
21 give notice to its members of the proposed membership
22 meeting in accordance with [section 62]. The notice must
23 state that the purpose or one of the purposes of the meeting
24 is to consider dissolving the corporation and must contain
25 or be accompanied by a copy or summary of the plan of

1 dissolution.

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

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

9 NEW SECTION. Section 136. Notices to the attorney
10 general. (1) A public benefit corporation or religious
11 corporation shall give the attorney general written notice
12 that it intends to dissolve at or before the time it
13 delivers articles of dissolution to the secretary of state.
14 The notice must include a copy or summary of the plan of
15 dissolution.

16 (2) Assets may not be transferred or conveyed by a
17 public benefit corporation or religious corporation as part
18 of the dissolution process until 20 days after it has given
19 the written notice required by subsection (1) to the
20 attorney general or until the attorney general has consented
21 in writing to the dissolution or indicated in writing that
22 he will not take action in respect to the transfer or
23 conveyance, whichever is earlier.

24 (3) When all or substantially all of the assets of a
25 public benefit corporation have been transferred or conveyed

1 following approval of dissolution, the board shall deliver
2 to the attorney general a list showing those, other than
3 creditors, to whom the assets were transferred or conveyed.
4 The list must indicate the address of each person, other
5 than creditors, who received assets and indicate what assets
6 each received.

7 NEW SECTION. Section 137. Articles of dissolution. (1)
8 At any time after dissolution is authorized, the corporation
9 may dissolve by delivering to the secretary of state
10 articles of dissolution setting forth:

- 11 (a) the name of the corporation;
- 12 (b) the date dissolution was authorized;
- 13 (c) a statement that dissolution was approved by a
14 sufficient vote of the board;
- 15 (d) if approval of members was not required, a
16 statement to that effect and a statement that dissolution
17 was approved by a sufficient vote of the board of directors
18 or incorporators;

- 19 (e) if approval by members was required:
- 20 (i) the designation, number of memberships outstanding,
21 number of votes entitled to be cast by each class entitled
22 to vote separately on dissolution, and number of votes of
23 each class indisputably voting on dissolution; and

- 24 (ii) (A) either the total number of votes cast for and
25 against dissolution by each class entitled to vote

1 separately on dissolution or the total number of undisputed
2 votes cast for dissolution by each class; and

3 (B) a statement that the number cast for dissolution by
4 each class was sufficient for approval by that class;

5 (f) if approval of dissolution by some person or
6 persons other than the members, the board, or the
7 incorporators is required pursuant to [section 135(1)(c)], a
8 statement that the approval was obtained; and

9 (g) if the corporation is a public benefit or religious
10 corporation, that the notice to the attorney general
11 required by [section 136(1)] has been given.

12 (2) A corporation is dissolved upon the effective date
13 of its articles of dissolution.

14 **NEW SECTION. Section 138.** Revocation of dissolution.

15 (1) A corporation may revoke its dissolution within 120 days
16 of its effective date.

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

23 (3) After the revocation of dissolution is authorized,
24 the corporation may revoke the dissolution by delivering to
25 the secretary of state, for filing, articles of revocation

1 of dissolution, together with a copy of its articles of
2 dissolution, that set forth:

3 (a) the name of the corporation;

4 (b) the effective date of the dissolution that was
5 revoked;

6 (c) the date that the revocation of dissolution was
7 authorized;

8 (d) if the corporation's board of directors or
9 incorporators revoked the dissolution, a statement to that
10 effect;

11 (e) if the corporation's board of directors revoked a
12 dissolution authorized by the members alone or in
13 conjunction with another person or persons, a statement that
14 revocation was permitted by action by the board of directors
15 alone pursuant to that authorization; and

16 (f) if member or third person action was required to
17 revoke the dissolution, the information required by [section
18 137 (1)(e) and (1)(f)].

19 (4) Revocation of dissolution is effective upon the
20 effective date of the articles of revocation of dissolution.

21 (5) When the revocation of dissolution is effective, it
22 relates back to and takes effect as of the effective date of
23 the dissolution and the corporation may resume carrying on
24 its activities as if dissolution had never occurred.

25 **NEW SECTION. Section 139.** Effect of dissolution. (1) A

1 dissolved corporation continues its corporate existence but
 2 may not carry on any activities except those appropriate to
 3 wind up and liquidate its affairs, including:

4 (a) preserving and protecting its assets and minimizing
 5 its liabilities;

6 (b) discharging or making provision for discharging its
 7 liabilities and obligations;

8 (c) disposing of its properties that will not be
 9 distributed in kind;

10 (d) returning, transferring, or conveying assets held
 11 by the corporation upon a condition requiring return,
 12 transfer, or conveyance in accordance with the condition;

13 (e) transferring, subject to any contractual or legal
 14 requirements, its assets as provided in or authorized by its
 15 articles of incorporation or bylaws;

16 (f) if the corporation is a public benefit corporation
 17 or religious corporation and provision has not been made in
 18 its articles or bylaws for distribution of assets on
 19 dissolution, transferring, subject to any contractual or
 20 legal requirement, its assets:

21 (i) to one or more persons described in section
 22 501(c)(3) of the Internal Revenue Code; or

23 (ii) if the dissolved corporation is not described in
 24 section 501(c)(3) of the Internal Revenue Code, to one or
 25 more public benefit corporations or religious corporations;

1 (g) if the corporation is a mutual benefit corporation
 2 and provision has not been made in its articles or bylaws
 3 for distribution of assets on dissolution, transferring its
 4 assets to its members or, if it does not have members, to
 5 those persons whom the corporation holds itself out as
 6 benefitting or serving; and

7 (h) doing every other act necessary to wind up and
 8 liquidate its assets and affairs.

9 (2) Dissolution of a corporation does not:

10 (a) transfer title to the corporation's property;

11 (b) subject its directors or officers to standards of
 12 conduct different from those prescribed in [sections 75
 13 through 109];

14 (c) change quorum or voting requirements for its board
 15 or members; change provisions for selection, resignation, or
 16 removal of its directors or officers, or both; or change
 17 provisions for amending its bylaws;

18 (d) prevent commencement of a proceeding by or against
 19 the corporation in its corporate name;

20 (e) abate or suspend a proceeding pending by or against
 21 the corporation on the effective date of dissolution; or

22 (f) terminate the authority of the registered agent.

23 **NEW SECTION. Section 140. Known claims against**
 24 **dissolved corporation.** (1) A dissolved corporation shall
 25 dispose of the known claims against it by following the

1 procedure described in this section.

2 (2) The dissolved corporation shall notify its known
3 claimants in writing of the dissolution at any time after
4 its effective date. The written notice must:

5 (a) describe information that must be included in a
6 claim;

7 (b) provide a mailing address where a claim may be
8 sent;

9 (c) state the deadline, which may not be fewer than 120
10 days from the effective date of the written notice, by which
11 the dissolved corporation must receive the claim; and

12 (d) state that the claim will be barred if not received
13 by the deadline.

14 (3) A claim against the dissolved corporation is
15 barred:

16 (a) if a claimant who was given written notice under
17 subsection (2) does not deliver the claim to the dissolved
18 corporation by the deadline; or

19 (b) if a claimant whose claim was rejected by the
20 dissolved corporation does not commence a proceeding to
21 enforce the claim within 90 days from the effective date of
22 the rejection notice.

23 (4) For purposes of this section, "claim" does not
24 include a contingent liability or a claim based on an event
25 occurring after the effective date of dissolution.

1 NEW SECTION. **Section 141. Unknown claims against**
2 **dissolved corporations.** (1) The dissolution of a
3 corporation, including by the expiration of its term, does
4 not take away or impair any remedy available to or against
5 the corporation, its officers, directors, or members for any
6 claim or right, whether or not the claim or right existed or
7 accrued prior to the dissolution. Any action or proceeding
8 by or against the corporation referred to in this subsection
9 may be prosecuted or defended by the corporation in its
10 corporate name. Members, directors, and officers may take
11 corporate or other action as is appropriate to protect a
12 remedy, right, or claim.

13 (2) A claim may be enforced under this section or
14 [section 140]:

15 (a) against the dissolved corporation, to the extent of
16 its undistributed assets; or

17 (b) if the assets have been distributed in liquidation,
18 against a member of the dissolved corporation to the extent
19 of the member's pro rata share of the claim or the corporate
20 assets distributed to him in liquidation, whichever is less.
21 However, a member's total liability for all claims under
22 this section may not exceed the total amount of assets
23 distributed to the member.

24 (3) Subsections (1) and (2) apply to a foreign
25 corporation transacting business in this state, and its

1 members, for any claims otherwise arising or accruing under
2 Montana law.

3 NEW SECTION. Section 142. Grounds for judicial
4 dissolution. (1) The district court may dissolve a
5 corporation:

6 (a) in a proceeding by the attorney general if it is
7 established that:

8 (i) the corporation obtained its articles of
9 incorporation through fraud;

10 (ii) the corporation has continued to exceed or abuse
11 the authority conferred upon it by law;

12 (iii) the corporation is a public benefit corporation
13 and the corporate assets are being misapplied or wasted; or

14 (iv) the corporation is a public benefit corporation and
15 is no longer able to carry out its purposes;

16 (b) in a proceeding by 50 members or members holding 5%
17 of the voting power, whichever is less, or by a director or
18 any person specified in the articles, except as provided in
19 the articles or bylaws of a religious corporation, if it is
20 established that:

21 (i) the directors are deadlocked in the management of
22 the corporate affairs and the members, if any, are unable to
23 breach the deadlock;

24 (ii) the directors or those in control of the
25 corporation have acted, are acting, or will act in a manner

1 that is illegal, oppressive, or fraudulent;

2 (iii) the members are deadlocked in voting power and
3 have failed, for a period that includes at least two
4 consecutive annual meeting dates, to elect successors to
5 directors whose terms have or would otherwise have expired;

6 (iv) the corporate assets are being misapplied or
7 wasted; or

8 (v) the corporation is a public benefit corporation or
9 religious corporation and is no longer able to carry out its
10 purposes;

11 (c) in a proceeding by a creditor if it is established
12 that:

13 (i) the creditor's claim has been reduced to judgment,
14 the execution on the judgment returned unsatisfied, and the
15 corporation is insolvent; or

16 (ii) the corporation has admitted in writing that the
17 creditor's claim is due and owing and the corporation is
18 insolvent; or

19 (d) in a proceeding by the corporation to have its
20 voluntary dissolution continued under court supervision.

21 (2) Prior to dissolving a corporation, the court shall
22 consider whether:

23 (a) there are reasonable alternatives to dissolution;

24 (b) dissolution is in the public interest, if the
25 corporation is a public benefit corporation; and

1 (c) dissolution is the best way of protecting the
2 interests of members if the corporation is a mutual benefit
3 corporation.

4 NEW SECTION. **Section 143.** Procedure for judicial
5 dissolution. (1) Venue for a proceeding by the attorney
6 general to dissolve a corporation lies in the district court
7 for the first judicial district. Venue for a proceeding
8 brought by any other party named in [section 142] lies in
9 the judicial district for the county where a corporation's
10 principal office or, if the principal office is not located
11 in this state, the county where its registered office is or
12 was last located.

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

16 (3) In a proceeding brought to dissolve a corporation,
17 a court may issue injunctions, appoint a receiver or
18 custodian pendente lite with all powers and duties the court
19 directs, take other action required to preserve the
20 corporate assets wherever located, and carry on the
21 activities of the corporation until a full hearing can be
22 held.

23 (4) A person other than the attorney general who brings
24 an involuntary dissolution proceeding for a public benefit
25 corporation or religious corporation shall give written

1 notice of the proceeding to the attorney general who may
2 intervene.

3 NEW SECTION. **Section 144.** Receivership or
4 custodianship. (1) A court in a judicial proceeding brought
5 to dissolve a public benefit corporation or mutual benefit
6 corporation may appoint one or more receivers to wind up and
7 liquidate the affairs of the corporation or one or more
8 custodians to manage the affairs of the corporation. The
9 court shall hold a hearing, after notifying all parties to
10 the proceeding and any interested persons designated by the
11 court, before appointing a receiver or custodian. The court
12 appointing a receiver or custodian has exclusive
13 jurisdiction over the corporation and all of its property,
14 wherever located.

15 (2) The court may appoint, as a receiver or custodian,
16 an individual authorized to transact business in this state
17 or a domestic or foreign business or nonprofit corporation
18 authorized to transact business in this state. The court may
19 require the receiver or custodian to post bond, with or
20 without sureties, in an amount the court directs.

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

24 (a) the receiver:
25 (i) may, if authorized by the court, dispose of all or

1 any part of the assets of the corporation wherever located,
2 at a public or private sale, subject to any trust and other
3 restrictions that would be applicable to the corporation;
4 and

5 (ii) may sue and defend in the receiver's or custodian's
6 name as receiver or custodian of the corporation in all
7 courts of this state; and

8 (b) the custodian may exercise all the powers of the
9 corporation through or in place of its board of directors or
10 officers to the extent necessary to manage the affairs of
11 the corporation in the best interests of its members and
12 creditors.

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

18 (5) From time to time during the receivership or
19 custodianship, the court may order compensation paid and
20 expense disbursements or reimbursements made to the receiver
21 or custodian and the receiver or custodian's counsel from
22 the assets of the corporation or proceeds from the sale of
23 the assets.

24 NEW SECTION. Section 145. Decree of dissolution. (1)
25 If after a hearing the court determines that one or more

1 grounds for judicial dissolution described in [section 142]
2 exist, it may enter a decree dissolving the corporation and
3 specifying the effective date of the dissolution, and the
4 clerk of the court shall deliver a certified copy of the
5 decree to the secretary of state, who shall file it.

6 (2) After entering the decree of dissolution, the court
7 shall direct the winding up and liquidation of the
8 corporation's affairs in accordance with [section 139] and
9 the notification of its claimants in accordance with
10 [sections 140 and 141].

11 NEW SECTION. Section 146. Deposit with state
12 treasurer. Assets of a dissolved corporation that should be
13 transferred to a creditor, claimant, or member of the
14 corporation who cannot be found or who is not competent to
15 receive them must be reduced to cash, subject to known trust
16 restrictions, and deposited with the state treasurer for
17 safekeeping. However, in the state treasurer's discretion,
18 property may be received and held in kind. When the
19 creditor, claimant, or member furnishes satisfactory proof
20 of entitlement to the amount deposited or property held in
21 kind, the state treasurer shall deliver to the creditor,
22 claimant, member, or other person as his representative that
23 amount or property.

24 NEW SECTION. Section 147. Authority to transact
25 business required. (1) A foreign corporation may not

1 transact business in this state until it obtains a
 2 certificate of authority from the secretary of state.

3 (2) The following activities, among others, do not
 4 constitute transacting business within the meaning of
 5 subsection (1):

6 (a) maintaining, defending, or settling any proceeding;

7 (b) holding meetings of the board of directors or
 8 members or carrying on other activities concerning internal
 9 corporate affairs;

10 (c) maintaining bank accounts;

11 (d) maintaining offices or agencies for the transfer,
 12 exchange, and registration of memberships or securities or
 13 maintaining trustees or depositaries with respect to those
 14 securities;

15 (e) selling through independent contractors;

16 (f) soliciting or obtaining orders, whether by mail or
 17 through employees or agents or otherwise, if the orders
 18 require acceptance outside this state before they become
 19 contracts;

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

22 (h) securing or collecting debts or enforcing mortgages
 23 and security interests in property securing the debts;

24 (i) owning real or personal property:

25 (i) that is acquired incident to activities described

1 in subsection (2)(h) if the property is disposed of within 5
 2 years after the date of acquisition; or

3 (ii) that does not produce income or is not used in the
 4 performance of a corporate function;

5 (j) conducting an isolated transaction that is
 6 completed within 30 days and that is not a transaction in
 7 the course of repeated transactions of a similar nature; or

8 (k) transacting business in interstate commerce.

9 (3) The list of activities in subsection (2) is not
 10 exhaustive.

11 **NEW SECTION. Section 148. Consequences of transacting**
 12 **business without authority.** (1) A foreign corporation
 13 transacting business in this state without a certificate of
 14 authority may not maintain a proceeding in any court in this
 15 state until it obtains a certificate of authority.

16 (2) The successor to a foreign corporation that
 17 transacted business in this state without a certificate of
 18 authority and the assignee of a cause of action arising out
 19 of that business may not maintain a proceeding on that cause
 20 of action in any court in this state until the foreign
 21 corporation or its successor obtains a certificate of
 22 authority.

23 (3) A court may stay a proceeding commenced by a
 24 foreign corporation, its successor, or its assignee until it
 25 determines whether the foreign corporation, its successor,

1 or its assignee requires a certificate of authority. If it
 2 determines that a certificate is required, the court may
 3 further stay the proceeding until the foreign corporation,
 4 its successor, or its assignee obtains the certificate.

5 (4) A foreign corporation is liable for a civil penalty
 6 of \$5 for each day, but not to exceed a total of \$1,000 for
 7 each year, that it transacts business in this state without
 8 a certificate of authority. The attorney general may collect
 9 all penalties due under this subsection.

10 (5) Notwithstanding the provisions of subsections (1)
 11 and (2), the failure of a foreign corporation to obtain a
 12 certificate of authority does not impair the validity of its
 13 corporate acts or prevent it from defending any proceeding
 14 in this state.

15 **NEW SECTION. Section 149. Application for certificate**
 16 **of authority.** (1) A foreign corporation may apply for a
 17 certificate of authority to transact business in this state
 18 by delivering an application to the secretary of state. The
 19 application must set forth:

20 (a) the name of the foreign corporation or, if its name
 21 is unavailable for use in this state, a corporate name that
 22 satisfies the requirements of [section 152];

23 (b) the name of the state or country under whose law it
 24 is incorporated;

25 (c) the date of incorporation and period of duration;

1 (d) the street address and, if different, the mailing
 2 address of its principal office;

3 (e) the street address and, if different, the mailing
 4 address of its registered office in this state and the name
 5 of its registered agent at that office;

6 (f) the names and usual business or home addresses of
 7 its current directors and officers;

8 (g) whether the foreign corporation has members;

9 (h) whether the corporation, if it had been
 10 incorporated in this state, would be a public benefit
 11 corporation, mutual benefit corporation, or religious
 12 corporation; and

13 (i) the purpose or purposes of the corporation that it
 14 proposes to pursue in the transaction of business in this
 15 state.

16 (2) The foreign corporation shall deliver with the
 17 completed application a certificate of existence or a
 18 similar document authenticated by the secretary of state or
 19 other official having custody of corporate records in the
 20 state or country under whose law the foreign corporation is
 21 incorporated.

22 **NEW SECTION. Section 150. Amended certificate of**
 23 **authority.** (1) A foreign corporation authorized to transact
 24 business in this state shall obtain an amended certificate
 25 of authority from the secretary of state if it changes:

1 (a) its corporate name;
 2 (b) the period of its duration;
 3 (c) the state or country of its incorporation; or
 4 (d) its designation as a public benefit corporation,
 5 mutual benefit corporation, or religious corporation.

6 (2) The requirements of [section 149] for obtaining an
 7 original certificate of authority apply to obtaining an
 8 amended certificate under this section.

9 NEW SECTION. Section 151. Effect of certificate of
 10 authority. (1) A certificate of authority authorizes the
 11 foreign corporation to which it is issued the right to
 12 transact business in this state subject, however, to the
 13 right of the state to revoke the certificate as provided in
 14 [sections 1 through 168].

15 (2) A foreign corporation with a valid certificate of
 16 authority has the same rights and enjoys the same privileges
 17 as a domestic corporation of a similar character and, except
 18 as otherwise provided by [sections 1 through 168], is
 19 subject to the same duties, restrictions, penalties, and
 20 liabilities now or later imposed on a domestic corporation
 21 of a similar character.

22 (3) [Sections 1 through 168] do not authorize this
 23 state to regulate the organization or internal affairs of a
 24 foreign corporation authorized to transact business in this
 25 state.

1 NEW SECTION. Section 152. Corporate name of foreign
 2 corporation. (1) If the corporate name of a foreign
 3 corporation does not satisfy the requirements of [section
 4 31], the foreign corporation, to obtain or maintain a
 5 certificate of authority to transact business in this state,
 6 may use a fictitious name to transact business in this state
 7 if:

8 (a) its real name is unavailable; and
 9 (b) it delivers to the secretary of state, for filing,
 10 a copy of the resolution of its board of directors,
 11 certified by its secretary, adopting the fictitious name.

12 (2) Except as authorized by subsections (3) and (4),
 13 the corporate name, including a fictitious name, of a
 14 foreign corporation must be distinguishable in the records
 15 of the secretary of state from:

16 (a) the corporate name of a nonprofit or business
 17 corporation incorporated or authorized to transact business
 18 in this state;

19 (b) a corporate name reserved or registered under
 20 [sections 32 or 33] or 35-1-302 or 35-1-303;

21 (c) the fictitious name of another foreign business or
 22 nonprofit corporation authorized to transact business in
 23 this state;

24 (d) the corporate name of a domestic corporation that
 25 has dissolved, but distinguishable only for a period of 120

1 days after the effective date of dissolution; and

2 (e) any assumed business name, limited partnership
3 name, trademark, or service mark registered or reserved with
4 the secretary of state.

5 (3) A foreign corporation may apply to the secretary of
6 state for authorization to use in this state the name of
7 another corporation, incorporated or authorized to transact
8 business in this state, that is not distinguishable in the
9 records of the secretary of state from the name applied for.
10 The secretary of state shall authorize use of the name
11 applied for if:

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

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

21 (4) A foreign corporation may use in this state the
22 name, including the fictitious name, of another domestic or
23 foreign business or nonprofit corporation that is used in
24 this state if the other corporation is incorporated or
25 authorized to transact business in this state and the

1 foreign corporation:

2 (a) has merged with the other corporation;

3 (b) has been formed by reorganization of the other
4 corporation; or

5 (c) has acquired all or substantially all of the
6 assets, including the corporate name, of the other
7 corporation.

8 (5) If a foreign corporation authorized to transact
9 business in this state changes its corporate name to one
10 that does not satisfy the requirements of [section 31], it
11 may not transact business in this state under the changed
12 name until it adopts a name satisfying the requirements of
13 [section 31] and obtains an amended certificate of authority
14 under [section 150].

15 **NEW SECTION. Section 153. Registered office and**
16 **registered agent of foreign corporation.** Each foreign
17 corporation authorized to transact business in this state
18 shall continuously maintain in this state:

19 (1) a registered office with the same address as that
20 of its registered agent; and

21 (2) a registered agent who may be:

22 (a) an individual who resides in this state and whose
23 office is identical with the registered office;

24 (b) a domestic business or nonprofit corporation whose
25 office is identical with the registered office; or

1 (c) a foreign business or nonprofit corporation
2 authorized to transact business in this state whose office
3 is identical with the registered office.

4 NEW SECTION. Section 154. Change of registered office
5 or registered agent of foreign corporation. (1) A foreign
6 corporation authorized to transact business in this state
7 may change its registered office or registered agent by
8 delivering to the secretary of state, for filing, a
9 statement of change that sets forth:

10 (a) the name of the foreign corporation;

11 (b) the street address and, if different, the mailing
12 address of its current registered office;

13 (c) if the current registered office is to be changed,
14 the street address and, if different, the mailing address of
15 its new registered office;

16 (d) the name of its current registered agent;

17 (e) if the current registered agent is to be changed,
18 the name of its new registered agent and the new agent's
19 written consent to the appointment, either on the statement
20 or attached to it; and

21 (f) the fact that after the change or changes are made,
22 the street addresses of its registered office and the office
23 of its registered agent will be identical.

24 (2) If a registered agent changes the street address of
25 its business office, the agent may change the address of the

1 registered office of any foreign corporation for which the
2 agent is the registered agent by notifying the corporation
3 in writing of the change and signing, either manually or in
4 facsimile, and delivering to the secretary of state, for
5 filing, a statement of change that complies with the
6 requirements of subsection (1) and that states that the
7 corporation has been notified of the change.

8 NEW SECTION. Section 155. Resignation of registered
9 agent of foreign corporation. (1) The registered agent of a
10 foreign corporation may resign as agent by signing and
11 delivering to the secretary of state, for filing, the
12 original and two copies of a statement of resignation. The
13 statement of resignation may include a statement that the
14 registered office is also discontinued.

15 (2) After filing the statement, the secretary of state
16 shall attach the filing receipt to one copy and mail the
17 copy and receipt to the registered office if the office has
18 not been discontinued. The secretary of state shall mail the
19 other copy to the foreign corporation at its principal
20 office address shown in its most recent annual report.

21 (3) The agency is terminated, and the registered office
22 discontinued if so provided, 31 days after the date on which
23 the statement was filed.

24 NEW SECTION. Section 156. Service of process on
25 foreign corporations. Service of process on a foreign

1 corporation must be effected upon the persons and in the
2 manner provided for by the Montana Rules of Civil Procedure.

3 NEW SECTION. Section 157. Withdrawal of foreign
4 corporation. (1) A foreign corporation authorized to
5 transact business in this state may not withdraw from this
6 state until it obtains a certificate of withdrawal from the
7 secretary of state.

8 (2) A foreign corporation authorized to transact
9 business in this state may apply for a certificate of
10 withdrawal by delivering an application to the secretary of
11 state for filing. The application must set forth:

12 (a) the name of the foreign corporation and the name of
13 the state or country under whose law it is incorporated;

14 (b) the fact that it is not transacting business in
15 this state and that it surrenders its authority to transact
16 business in this state;

17 (c) the fact that it revokes the authority of its
18 registered agent to accept service on its behalf and
19 appoints the secretary of state as its agent for service of
20 process in any proceeding based on a cause of action arising
21 during the time it was authorized to do business in this
22 state;

23 (d) a mailing address to which the secretary of state
24 may mail a copy of any process served on him under
25 subsection (2)(c); and

1 (e) a commitment to notify the secretary of state, in
2 the future, of any change in the mailing address.

3 NEW SECTION. Section 158. Grounds for revocation. (1)
4 The secretary of state may commence a proceeding under
5 [section 159] to revoke the certificate of authority of a
6 foreign corporation authorized to transact business in this
7 state if:

8 (a) the foreign corporation does not deliver the annual
9 report to the secretary of state within 90 days after it is
10 due;

11 (b) the foreign corporation does not pay within 90 days
12 after they are due any franchise taxes or penalties imposed
13 by [sections 1 through 168] or other law;

14 (c) the foreign corporation is without a registered
15 agent or registered office in this state for 90 days or
16 more;

17 (d) the foreign corporation does not inform the
18 secretary of state under [sections 154 or 155] that its
19 registered agent or registered office has changed, that its
20 registered agent has resigned, or that its registered office
21 has been discontinued, within 90 days of the change,
22 resignation, or discontinuance;

23 (e) an incorporator, director, officer, or agent of the
24 foreign corporation signed a document that the person knew
25 was false in any material respect, with the intent that the

1 document be delivered to the secretary of state for filing;
 2 or

3 (f) the secretary of state receives a duly
 4 authenticated certificate from the secretary of state or
 5 other official having custody of corporate records in the
 6 state or country under whose law the foreign corporation is
 7 incorporated, which certificate states that the foreign
 8 corporation has been dissolved or disappeared as the result
 9 of a merger.

10 (2) The attorney general may commence a proceeding
 11 under [section 159] to revoke the certificate of authority
 12 of a foreign corporation authorized to transact business in
 13 this state if:

14 (a) the corporation has continued to exceed or abuse
 15 the authority conferred upon it by law;

16 (b) the corporation is designated as a foreign public
 17 benefit corporation and its corporation assets in this state
 18 are being misapplied or wasted; or

19 (c) the corporation is designated as a foreign public
 20 benefit corporation and it is no longer able to carry out
 21 its purpose.

22 **NEW SECTION. Section 159.** Procedure for and effect of
 23 revocation. (1) The secretary of state upon determining that
 24 one or more grounds exist under [section 158] for revocation
 25 of a certificate of authority shall serve the foreign

1 corporation with written notice of that determination under
 2 [section 156].

3 (2) The attorney general, upon determining that one or
 4 more grounds exist under [section 158(2)] for revocation of
 5 a certificate of authority, shall request the secretary of
 6 state to serve, and the secretary of state shall serve, the
 7 foreign corporation with written notice of that
 8 determination under [section 156].

9 (3) If the foreign corporation does not correct each
 10 ground for revocation or demonstrate to the reasonable
 11 satisfaction of the secretary of state or attorney general
 12 that each ground for revocation determined by the secretary
 13 of state or attorney general does not exist within 60 days
 14 after service of the notice is perfected under [section
 15 156], the secretary of state may revoke the foreign
 16 corporation's certificate of authority by signing a
 17 certificate of revocation that states the ground or grounds
 18 for revocation and the effective date of the revocation. The
 19 secretary of state shall file the original of the
 20 certificate and serve a copy on the foreign corporation
 21 under [section 156].

22 (4) The authority of a foreign corporation to transact
 23 business in this state ceases on the date shown on the
 24 certificate revoking its certificate of authority.

25 (5) Revocation of a foreign corporation's certificate

1 of authority does not terminate the authority of the
2 registered agent of the corporation.

3 **NEW SECTION. Section 160. Appeal from revocation. (1)**

4 A foreign corporation may appeal the secretary of state's
5 revocation of its certificate of authority to the district
6 court for the first judicial district within 30 days after
7 the service of the certificate of revocation is perfected
8 under [section 156]. The foreign corporation shall appeal by
9 petitioning the court to set aside the revocation and
10 attaching to the petition copies of its certificate of
11 authority and the secretary of state's certificate of
12 revocation.

13 (2) The court may summarily order the secretary of
14 state to reinstate the certificate of authority or may take
15 any other action the court considers appropriate.

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

18 **NEW SECTION. Section 161. Corporate records. (1) A**

19 corporation shall keep as permanent records minutes of all
20 meetings of its members and board of directors, a record of
21 all actions taken by the members or directors without a
22 meeting, and a record of all actions taken by committees of
23 the board of directors as authorized by [section 90(4)].

24 (2) A corporation shall maintain appropriate accounting
25 records.

1 (3) A corporation or its agent shall maintain a record
2 of its members in a form that permits preparation of a list
3 of the names and addresses of all members, in alphabetical
4 order by class, showing the number of votes each member is
5 entitled to cast.

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

9 (5) A corporation shall keep a copy of the following
10 records at its principal office or a location from which the
11 records may be recovered within 2 business days:

12 (a) its articles or restated articles of incorporation
13 and all amendments to them currently in effect;

14 (b) its bylaws or restated bylaws and all amendments to
15 them currently in effect;

16 (c) resolutions adopted by its board of directors
17 relating to the characteristics, qualifications, rights,
18 limitations, and obligations of members or any class or
19 category of members;

20 (d) the minutes of all meetings of members and the
21 records of all actions approved by the members for the past
22 3 years;

23 (e) the financial statements available to shareholders
24 for the past 3 years under [section 166];

25 (f) a list of the names and business or home addresses

1 of its current directors and officers; and

2 (g) its most recent annual report delivered to the
3 secretary of state under [section 168].

4 NEW SECTION. Section 162. Inspection of records by
5 ~~members.~~ (1) Subject to [section 163(3)] and subsection (5)
6 of this section, a member is entitled to inspect and copy,
7 at a reasonable time and location specified by the
8 corporation, any of the records of the corporation described
9 in [section 161(5)] if the member gives the corporation
10 written notice or a written demand at least 5 business days
11 before the date on which the member wishes to inspect and
12 copy.

13 (2) Subject to subsection (5), a member is entitled to
14 inspect and copy, at a reasonable time and reasonable
15 location specified by the corporation, any of the following
16 records of the corporation if the member meets the
17 requirements of subsection (3) and gives the corporation
18 written notice at least 5 business days before the date on
19 which the member wishes to inspect and copy:

20 (a) excerpts from any records required to be maintained
21 under [section 161(1)], to the extent not subject to
22 inspection under subsection (1);

23 (b) accounting records of the corporation; and

24 (c) subject to [section 165], the membership list.

25 (3) A member may inspect and copy the records

1 identified in subsection (2) only if:

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

4 (b) the member describes with reasonable particularity
5 the purpose and the records the member desires to inspect;
6 and

7 (c) the records are directly connected with this
8 purpose.

9 (4) This section does not affect:

10 (a) the right of a member to inspect records under
11 [section 66] or, if the member is in litigation with the
12 corporation, to the same extent as any other litigant; or

13 (b) the power of a court, independent of [sections 1
14 through 168], to compel the production of corporate records
15 for examination.

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

19 NEW SECTION. Section 163. Scope of inspection rights.

20 (1) A member's agent or attorney has the same inspection and
21 copying rights as the member the agent or attorney
22 represents.

23 (2) The right to copy records under [section 162]
24 includes, if reasonable, the right to receive copies made by
25 photographic, xerographic, or other means.

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

6 (4) The corporation may comply with a member's demand
 7 to inspect the record of members under [section 162(2)(c)]
 8 by providing the member with a list of its members that was
 9 compiled no earlier than the date of the member's demand.

10 **NEW SECTION. Section 164. Court-ordered inspection.**

11 (1) If a corporation does not allow a member who complies
 12 with [section 162(1)] to inspect and copy any records
 13 required by that subsection to be available for inspection,
 14 the district court, for the judicial district of the county
 15 where the corporation's principal office, or, if none in
 16 this state, its registered office, is located may summarily
 17 order inspection and copying of the records demanded at the
 18 corporation's expense upon application of the member.

19 (2) If a corporation does not within a reasonable time
 20 allow a member to inspect and copy any other record, the
 21 member who complies with [sections 162(2) and (3)] may apply
 22 to the district court, for the judicial district of the
 23 county where the corporation's principal office or, if the
 24 principal office is not located in this state, the county
 25 where its registered office is located for an order to

1 permit inspection and copying of the records demanded. The
 2 court shall dispose of an application under this subsection
 3 on an expedited basis.

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

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

15 **NEW SECTION. Section 165. Limitations on use of**
 16 **membership list.** (1) Without consent of the board, a
 17 membership list or any part of it may not be obtained or
 18 used by a person for any purpose unrelated to a member's
 19 interest as a member.

20 (2) Without limiting the generality of the provisions
 21 of subsection (1), without the consent of the board a
 22 membership list or any part of it may not be:

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

- 1 (b) used for any commercial purpose; or
- 2 (c) sold to or purchased by any person.

3 **NEW SECTION. Section 166.** Financial statements for
 4 members. Upon the written request of any member of the
 5 corporation, the corporation shall mail to the member its
 6 most recent financial statements showing in reasonable
 7 detail its assets and liabilities and the results of the
 8 operations.

9 **NEW SECTION. Section 167.** Report of indemnification to
 10 members. If a corporation indemnifies or advances expenses
 11 to a director under [sections 102 through 105] in connection
 12 with a proceeding by or in the right of the corporation, the
 13 corporation shall report the indemnification or advance in
 14 writing to the members with or before the notice of the next
 15 meeting of members.

16 **NEW SECTION. Section 168.** Annual report for secretary
 17 of state. (1) Each domestic corporation and each foreign
 18 corporation authorized to transact business in this state
 19 shall deliver to the secretary of state, for filing, an
 20 annual report on a form prescribed and furnished by the
 21 secretary of state that sets forth:

- 22 (a) the name of the corporation and the state or
- 23 country under whose law it is incorporated;
- 24 (b) the address of its registered office and the name
- 25 of its registered agent at the office in this state;

- 1 (c) the address of its principal office;
- 2 (d) the names and business or residence addresses of
- 3 its directors and principal officers;

4 (e) a brief description of the nature of its
 5 activities; and

6 (f) whether or not it has members.

7 (2) The information in the annual report must be
 8 current on the date the annual report is executed on behalf
 9 of the corporation.

10 (3) The first annual report must be delivered to the
 11 secretary of state between January 1 and April 15 of the
 12 year following the calendar year in which a domestic
 13 corporation was incorporated or a foreign corporation was
 14 authorized to transact business. Subsequent annual reports
 15 must be delivered to the secretary of state between January
 16 1 and April 15.

17 (4) If an annual report does not contain the
 18 information required by this section, the secretary of state
 19 shall promptly notify the reporting domestic or foreign
 20 corporation in writing and return the report to it for
 21 correction. If the report is corrected to contain the
 22 information required by this section and delivered to the
 23 secretary of state within 30 days after the effective date
 24 of notice, it is considered to be timely filed.

25 **Section 169.** Section 15-1-101, MCA, is amended to read:

1 "15-1-101. Definitions. (1) Except as otherwise
2 specifically provided, when terms mentioned in this section
3 are used in connection with taxation, they are defined in
4 the following manner:

5 (a) The term "agricultural" refers to the raising of
6 livestock, poultry, bees, and other species of domestic
7 animals and wildlife in domestication or a captive
8 environment, and the raising of field crops, fruit, and
9 other animal and vegetable matter for food or fiber.

10 (b) The term "assessed value" means the value of
11 property as defined in 15-8-111.

12 (c) The term "average wholesale value" means the value
13 to a dealer prior to reconditioning and profit margin shown
14 in national appraisal guides and manuals or the valuation
15 schedules of the department of revenue.

16 (d) (i) The term "commercial", when used to describe
17 property, means any property used or owned by a business, a
18 trade, or a nonprofit corporation as defined in ~~35-2-102~~
19 section 1, or used for the production of income, except
20 that property described in subsection (ii).

21 (ii) The following types of property are not commercial:

22 (A) agricultural lands;

23 (B) timberlands;

24 (C) single-family residences and ancillary improvements
25 and improvements necessary to the function of a bona fide

1 farm, ranch, or stock operation;

2 (D) mobile homes used exclusively as a residence except
3 when held by a distributor or dealer of trailers or mobile
4 homes as his stock in trade;

5 (E) all property described in 15-6-135; and

6 (F) all property described in 15-6-136.

7 (e) The term "comparable property" means property that
8 has similar use, function, and utility; that is influenced
9 by the same set of economic trends and physical,
10 governmental, and social factors; and that has the potential
11 of a similar highest and best use.

12 (f) The term "credit" means solvent debts, secured or
13 unsecured, owing to a person.

14 (g) The term "improvements" includes all buildings,
15 structures, fences, and improvements situated upon, erected
16 upon, or affixed to land. When the department of revenue or
17 its agent determines that the permanency of location of a
18 mobile home or housetrailer has been established, the mobile
19 home or housetrailer is presumed to be an improvement to
20 real property. A mobile home or housetrailer may be
21 determined to be permanently located only when it is
22 attached to a foundation which cannot feasibly be relocated
23 and only when the wheels are removed.

24 (h) The term "leasehold improvements" means
25 improvements to mobile homes and mobile homes located on

1 land owned by another person. This property is assessed
 2 under the appropriate classification and the taxes are due
 3 and payable in two payments as provided in 15-24-202.
 4 Delinquent taxes on such leasehold improvements are a lien
 5 only on such leasehold improvements.

6 (i) The term "livestock" means cattle, sheep, swine,
 7 goats, horses, mules, and asses.

8 (j) The term "mobile home" means forms of housing known
 9 as "trailers", "housetrailers", or "trailer coaches"
 10 exceeding 8 feet in width or 45 feet in length, designed to
 11 be moved from one place to another by an independent power
 12 connected to them, or any "trailer", "housetrailer", or
 13 "trailer coach" up to 8 feet in width or 45 feet in length
 14 used as a principal residence.

15 (k) The term "personal property" includes everything
 16 that is the subject of ownership but that is not included
 17 within the meaning of the terms "real estate" and
 18 "improvements".

19 (l) The term "poultry" includes all chickens, turkeys,
 20 geese, ducks, and other birds raised in domestication to
 21 produce food or feathers.

22 (m) The term "property" includes moneys, credits,
 23 bonds, stocks, franchises, and all other matters and things,
 24 real, personal, and mixed, capable of private ownership.
 25 This definition must not be construed to authorize the

1 taxation of the stocks of any company or corporation when
 2 the property of such company or corporation represented by
 3 the stocks is within the state and has been taxed.

4 (n) The term "real estate" includes:

5 (i) the possession of, claim to, ownership of, or right
 6 to the possession of land;

7 (ii) all mines, minerals, and quarries in and under the
 8 land subject to the provisions of 15-23-501 and Title 15,
 9 chapter 23, part 8; all timber belonging to individuals or
 10 corporations growing or being on the lands of the United
 11 States; and all rights and privileges appertaining thereto.

12 (o) "Research and development firm" means an entity
 13 incorporated under the laws of this state or a foreign
 14 corporation authorized to do business in this state whose
 15 principal purpose is to engage in theoretical analysis,
 16 exploration, and experimentation and the extension of
 17 investigative findings and theories of a scientific and
 18 technical nature into practical application for experimental
 19 and demonstration purposes, including the experimental
 20 production and testing of models, devices, equipment,
 21 materials, and processes.

22 (p) The term "taxable value" means the percentage of
 23 market or assessed value as provided for in Title 15,
 24 chapter 6, part 1.

25 (q) The term "weighted mean assessment ratio" means the

1 total of the assessed values divided by the total of the
2 selling prices of all area sales in the stratum.

3 (2) The phrase "municipal corporation" or
4 "municipality" or "taxing unit" shall be deemed to include a
5 county, city, incorporated town, township, school district,
6 irrigation district, drainage district, or any person,
7 persons, or organized body authorized by law to establish
8 tax levies for the purpose of raising public revenue.

9 (3) The term "state board" or "board" when used without
10 other qualification shall mean the state tax appeal board."

11 **Section 170.** Section 33-17-211, MCA, is amended to
12 read:

13 "33-17-211. General qualifications -- application for
14 license. (1) An individual applying for a license shall
15 apply on a form specified by the commissioner and declare
16 under penalty of refusal, suspension, or revocation of the
17 license that statements made in the application are true,
18 correct, and complete to the best of the individual's
19 knowledge and belief. Before approving the application, the
20 commissioner shall verify that the individual:

- 21 (a) is 18 years of age or older;
22 (b) has not committed an act that is a ground for
23 refusal, suspension, or revocation set forth in 33-17-1001;
24 (c) has paid the license fees stated in 33-2-708;
25 (d) has successfully passed the examinations for each

1 kind of insurance for which the individual has applied;

2 (e) is a resident of this state or of another state
3 that grants similar privileges to residents of this state;

4 (f) is competent, trustworthy, and of good reputation;

5 (g) has experience or training or otherwise is
6 qualified in the kind or kinds of insurance for which he
7 applies to be licensed and is reasonably familiar with the
8 provisions of this code which govern his operations as an
9 insurance producer; and

10 (h) if applying for a license as to life or disability
11 insurance:

12 (i) is not a funeral director, undertaker, or mortician
13 operating in this or any other state;

14 (ii) is not an officer, employee, or representative of a
15 funeral director, undertaker, or mortician operating in this
16 or any other state; or

17 (iii) does not hold an interest in or benefit from a
18 business of a funeral director, undertaker, or mortician
19 operating in this or any other state.

20 (2) A person acting as an insurance producer shall
21 obtain a license. A person shall apply for a license on a
22 form specified by the commissioner. Before approving the
23 application, the commissioner shall verify that:

24 (a) the person meets the requirements listed in
25 subsection (1);

1 (b) the person has paid the licensing fees stated in
2 33-2-708 for each individual licensed in conjunction with
3 the person's license. A licensed person shall promptly
4 notify the commissioner of each change relating to an
5 individual listed in the license.

6 (c) the person has designated a licensed officer
7 responsible for compliance by the person with the insurance
8 laws and rules of this state;

9 (d) each member and employee of a partnership and each
10 officer, director, stockholder, or employee of a corporation
11 who is acting as an insurance producer in this state has
12 obtained a license;

13 (e) (i) if the person is a partnership or corporation,
14 the transaction of insurance business is within the purposes
15 stated in the partnership agreement or the articles of
16 incorporation; and

17 (ii) if the person is a corporation, the secretary of
18 state has issued a certificate of incorporation under
19 35-1-203 or ~~35-2-203~~ filed articles of incorporation under
20 [section 23].

21 (3) The commissioner may license as a resident
22 insurance producer an association of licensed Montana
23 insurance producers, whether or not incorporated, formed and
24 existing substantially for purposes other than insurance.
25 The license must be used solely for the purpose of enabling

1 the association to place, as a resident insurance producer,
2 insurance of the properties, interests, and risks of the
3 state of Montana and of other public agencies, bodies, and
4 institutions and to receive the customary commission for the
5 placement. The president and secretary of the association
6 shall apply for the license in the name of the association,
7 and the commissioner shall issue the license to the
8 association in its name alone. The fee for the license is
9 the same as that required by 33-2-708 for the license of an
10 insurance producer. The commissioner may, after a hearing
11 with notice to the association, revoke the license if he
12 finds that continuation of the license is not in the public
13 interest or that a ground listed in 33-17-1001 exists.

14 (4) An insurance producer using an assumed business
15 name shall register the name with the commissioner before
16 using it."

17 **Section 171.** Section 35-6-104, MCA, is amended to read:

18 "35-6-104. Involuntary dissolution -- procedure. (1) On
19 or before April 1, August 1, and September 1 of each year,
20 the secretary of state shall compile a list of defaulting
21 corporations, together with the amount of any filing fee,
22 penalty, or costs remaining unpaid.

23 (2) The secretary of state shall give notice to the
24 defaulting corporations by causing such list to be posted in
25 the state capitol for a period of at least 90 days and:

1 (a) by mailing a letter addressed to the corporation in
2 care of its registered agent or any director or officer; or

3 (b) by publication of a general notice to all Montana
4 corporations once a month for 3 consecutive months in a
5 newspaper of general circulation in Lewis and Clark County.

6 (3) The notice referred to in subsection (2) shall
7 specify the fact of the proposed dissolution and state that
8 unless the grounds for dissolution described in 35-6-102
9 have been rectified within 90 days following the posting and
10 mailing or publication of notice:

11 (a) the secretary of state will dissolve such
12 defaulting corporations;

13 (b) such corporations will forfeit the amount of any
14 tax, penalty, or costs to the state of Montana; and

15 (c) such corporations will forfeit their rights to
16 carry on business within the state.

17 (4) After 90 days following posting and mailing or
18 publication of each notice, the secretary of state may, by
19 order, dissolve all corporations which have not satisfied
20 the requirements of applicable law and compile a full and
21 complete list containing the names of all corporations that
22 have been so dissolved. The secretary of state shall
23 immediately give notice to the dissolved corporation as
24 specified in subsection (2) of this section.

25 (5) In the case of involuntary dissolution, all the

1 property and assets of the dissolved corporation shall be
2 held in trust by the directors of such corporation and
3 35-1-921 or 35-2-711 [section 143], whichever is
4 appropriate, is applicable to liquidate such property and
5 assets if necessary."

6 **Section 172.** Section 35-6-201, MCA, is amended to read:

7 "35-6-201. Reinstatement of dissolved corporation. (1)
8 The secretary of state may:

9 (a) reinstate any corporation which has been dissolved
10 under the provisions of this chapter; and

11 (b) restore to such corporation its right to carry on
12 business in this state and to exercise all its corporate
13 privileges and immunities.

14 (2) A corporation applying for reinstatement shall
15 submit to the secretary of state one original and one copy
16 of the application, executed by a person who was an officer
17 or director at the time of dissolution, setting forth:

18 (a) the name of the corporation;

19 (b) a statement that the assets of the corporation have
20 not been liquidated pursuant to 35-1-921 or 35-2-711
21 [sections 140 and 141];

22 (c) a statement that not less than a majority of its
23 directors have authorized the application for reinstatement;
24 and

25 (d) if its corporate name has been legally acquired by

1 another corporation prior to its application for
2 reinstatement, the corporate name under which the
3 corporation desires to be reinstated.

4 (3) The corporation shall submit with its application
5 for reinstatement:

6 (a) a certificate from the department of revenue
7 stating that all taxes imposed pursuant to Title 15 have
8 been paid; and

9 (b) a filing fee in an amount equal to one-half of the
10 filing and license fees which the corporation would be
11 required to pay if the corporation were filing its articles
12 of incorporation.

13 (4) When all requirements are met and the secretary of
14 state reinstates the corporation to its former rights, he
15 shall:

16 (a) conform and file in his office reports, statements,
17 and other instruments submitted for reinstatement;

18 (b) immediately issue and deliver to the corporation so
19 reinstated a certificate of reinstatement authorizing it to
20 transact business; and

21 (c) upon demand, issue to the corporation one or more
22 certified copies of such certificate of reinstatement.

23 (5) The secretary of state may not order a
24 reinstatement if 5 years have elapsed since the
25 dissolution."

1 NEW SECTION. Section 173. Interim designation. (1)
2 Each domestic corporation not designated pursuant to
3 [section 16] is designated as follows:

4 (a) a corporation that is organized primarily or
5 exclusively for religious purposes is a religious
6 corporation;

7 (b) a corporation that is not provided for under the
8 provisions of subsection (1)(a) but that is recognized as
9 exempt under section 501(c)(3) of the Internal Revenue Code,
10 or any successor section, is a public benefit corporation;

11 (c) a corporation that is not provided for under the
12 provisions of subsection (1)(a) or (1)(b), but that is
13 organized for a public or charitable purpose and that, upon
14 dissolution, shall distribute its assets to a public benefit
15 corporation, the United States, a state, or a person that is
16 recognized as exempt under section 501(c)(3) of the Internal
17 Revenue Code, or any successor section, is a public benefit
18 corporation; and

19 (d) a corporation that is not provided for under the
20 provisions of subsection (1)(a), (1)(b), or (1)(c) is a
21 mutual benefit corporation.

22 (2) Foreign corporations authorized to transact
23 business in this state but not designated pursuant to
24 [section 16] are designated as a public benefit corporation,
25 mutual benefit corporation, or religious corporation in

1 accordance with the provisions of subsection (1).

2 **NEW SECTION. Section 174. Repealer.** Sections 35-2-102
3 through 35-2-112, 35-2-201 through 35-2-211, 35-2-301
4 through 35-2-304, 35-2-401 through 35-2-413, 35-2-501
5 through 35-2-509, 35-2-601 through 35-2-607, 35-2-701
6 through 35-2-706, 35-2-711 through 35-2-719, 35-2-801
7 through 35-2-819, 35-2-901 through 35-2-903, 35-2-1001,
8 35-2-1002, 35-2-1101 through 35-2-1106, and 35-2-1201
9 through 35-2-1203, MCA, are repealed.

10 **NEW SECTION. Section 175. Codification.** (1) [Sections
11 1 through 168] are intended to be codified as an integral
12 part of Title 35, and the provisions of Title 35 apply to
13 [sections 1 through 168].

14 (2) Section 35-2-101 is intended to be renumbered and
15 codified as an integral part of [sections 1 through 168].

16 **NEW SECTION. Section 176. Coordination.** If House Bill
17 No. 552 is passed and approved and if it includes a section
18 that repeals sections 35-1-302 and 35-1-303, then [section
19 152(2)(b) of this act] is amended to read:

20 "(b) a corporate name reserved or registered under
21 [section 32 or 33] of [sections 1 through 168] or [section
22 26 or 27 of House Bill No. 552].

23 **NEW SECTION. Section 177. Saving clause.** (1) Except as
24 provided in subsection (2), the repeal of a statute by [this
25 act] does not affect:

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

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

6 (c) any violation of the statute or any penalty,
7 forfeiture, or punishment incurred because of the violation,
8 before its repeal;

9 (d) any proceeding, reorganization, or dissolution
10 commenced under the statute before its repeal. The
11 proceeding, reorganization, or dissolution may be completed
12 in accordance with the statute as if it had not been
13 repealed.

14 (e) any meeting of members or directors or any action
15 by written consent that is noticed or taken before its
16 repeal as a result of a meeting of members or directors or
17 action by written consent.

18 (2) If a penalty or punishment imposed for violation of
19 a statute repealed by [this act] is reduced by [this act],
20 the penalty or punishment, if not already imposed, must be
21 imposed in accordance with [this act].

22 **NEW SECTION. Section 178. Severability.** If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. Section 179. Application to existing
4 domestic corporations. (1) [This act] applies to all
5 domestic corporations in existence on January 1, 1992, that
6 were incorporated under Title 35, chapter 2, or any
7 predecessor statute.

8 (2) [This act] applies to each domestic corporation in
9 existence on January 1, 1992, that was incorporated under
10 Title 35, chapter 3, upon the filing by the corporation of
11 an irrevocable election with the secretary of state by
12 January 1, 1992, electing to have all the provisions of
13 [this act] applied to it or electing to have all the
14 provisions of [this act] applied to it to the extent not
15 inconsistent with the law then governing it.

16 NEW SECTION. Section 180. Application to qualified
17 foreign corporations. A foreign corporation authorized to
18 transact business in this state on January 1, 1992, is
19 subject to [this act] but is not required to obtain a new
20 certificate of authority to transact business under [this
21 act].

22 NEW SECTION. Section 181. Termination. [Section 16(3)
23 and section 173] terminate January 1, 1996.

24 NEW SECTION. Section 182. Effective date. [This act]
25 is effective January 1, 1992.