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**HAWAII BUSINESS CORPORATION ACT**

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A Bill for an Act Relating to the Hawaii Business Corporation Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HAWAII BUSINESS CORPORATION ACT**

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Business Corporation Act”.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires, the terms:

- (a) “Articles of incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.
- (b) “Authorized shares” means the shares of all classes which the corporation is authorized to issue.
- (c) “Associate of an offeror” means (1) any corporation or other organization of which the offeror is an officer or partner, or is, directly or indirectly, the beneficial owner of ten per cent or more of any class of equity securities; (2) any person who is, directly or indirectly, the beneficial owner of ten per cent or more of any class of equity securities of the offeror; (3) any trust or other estate in which the offeror has a substantial beneficial interest or as to which the offeror serves as a trustee or in a similar fiduciary capacity; and (4) any relative or spouse of the offeror or any relative of such spouse, who has the same home as the offeror.
- (d) “Commissioner” means the commissioner of securities as provided for in chapter 485.
- (e) “Corporation” or “domestic corporation” means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.
- (f) “Director” means the director of the department of commerce and consumer affairs.
- (g) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness, by a corporation to or for the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase, redemption or other acquisition of its shares, or otherwise.
- (h) “Employee” includes officers but not directors. A director may accept duties which make him also an employee.
- (i) “Equity security” means any shares of stock or similar securities or any securities convertible into such securities or carrying any warrant or right to subscribe to or purchase such securities or any such warrant or right.

- (j) "Exempt offer" means with respect to any class of equity securities of the offeree company (1) an isolated offer to purchase shares from individual stockholders and not made to stockholders generally, (2) an offer made by a corporation to purchase (i) its own shares, or (ii) shares of a subsidiary at least fifty-one per cent of the voting stock of which is directly or indirectly owned beneficially by the parent corporation, (3) an offer to acquire shares of a corporation with less than one hundred shareholders, and (4) an offer to acquire shares of a corporation with less than \$1,000,000 in assets.
- (k) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State for a purpose or purposes for which a corporation may be organized under this chapter.
- (l) "Offeree" means a person to whom a take-over bid is made.
- (m) "Offeree company" means a corporation incorporated under the laws of this State and doing business in this State whose shares are the subject of a take-over bid and which is either (i) subject to regulation by the public utilities commission under chapter 269, 271, or 271G or (ii) owns more than 1,000 acres of real property in any single county or (iii) is subject to the inspection of the bank examiner under chapter 401 or (iv) owns directly or indirectly more than ten per cent of the voting stock of any of the foregoing.
- (n) "Offeror" means each person who makes or in any way participates in making a take-over bid and includes two or more persons (1) whose take-over bids are made jointly or in concert, or (2) who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take-over bid is made. An "offeror" does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business or any broker-dealer, attorney, accountant consultant, employee, or other persons furnishing information or advice to or performing administrative or ministerial duties for an offeror and not otherwise participating in the take-over bid.
- (o) "Offeror's presently owned shares or other units" means the aggregate number of shares or other units of an offeree company (1) beneficially owned, and (2) subject to a right of acquisition, directly or indirectly, on the date of a take-over bid, by (i) the offeror, and (ii) each associate of the offeror.
- (p) "Person" means an individual, a partnership, a corporation, a joint-stock company, an unincorporated organization, or trust.
- (q) "Shareholder" means one who is a holder of record of shares in a corporation. If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth (1) the classification of shareholder who may certify, (2) the purpose or purposes for which the certification may

be made, (3) the form of certification and information to be contained therein, (4) if the certification is with respect to a record date or closing of the stock transfer books within which the certification must be received by the corporation, and (5) such other provisions with respect to the procedures as are deemed necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

- (r) "Shares" means the units into which the proprietary interests in a corporation are divided.
- (s) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.
- (t) "Take-over bid" means an offer, other than an exempt offer, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase such number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently owned shares or other units, will in the aggregate exceed ten per cent of the outstanding shares or other units of such class of equity security.

§ -3 **Purposes.** Corporations may be organized under this chapter for any lawful purpose or purposes, other than for the purpose of carrying on any profession, except pursuant to part VIII of chapter 416.

§ -4 **General powers.** Each corporation shall have the power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
- (b) To sue and be sued, complain and defend, in its corporate name;
- (c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
- (d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (f) To lend money and use its credit to assist its employees, officers, and directors;
- (g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

- (h) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;
- (i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter, within or without this State;
- (k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;
- (l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation;
- (m) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (n) To transact any lawful business which the board of directors shall find will be in aid of governmental policy;
- (o) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;
- (p) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;
- (q) To have and exercise all powers necessary or convenient to effect its purposes.

**§ -5 Indemnification of officers, directors, employees, and agents. (a)**

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

- (1) "Agent" means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.
  - (2) "Expenses" include, without limitation, attorney's fees and any expenses of completed action or proceeding, whether civil, criminal, administrative, or investigative.
- (b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to



be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, or that the person had reasonable cause to believe that his conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(d) To the extent that an agent has been successful on the merits or otherwise in defense of proceeding referred to in subsection (b) or (c), or in defense of any claim, issue, or matter therein, the agent shall be indemnified by the corporation against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Any indemnification under subsection (b) or (c) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding; or (2) if such a quorum is not obtainable, for independent legal counsel in a written opinion; or (3) by the shareholders; or (4) the court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall ultimately be determined that the agent is entitled to be indemnified by the corporation as authorized in this section.

(g) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any

bylaw, agreement, vote of shareholders, or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(h) A corporation shall have the power to purchase and maintain insurance on behalf of any agent of the corporation, against any liability asserted against or incurred by the agent in any such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under this section.

(i) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity, though such person may also be an agent of the employer corporation as defined in subsection (a). Nothing contained in this section shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise.

§ -6 **Power of corporation to acquire its own shares.** A corporation shall have the power to acquire its own shares.

All of its own shares acquired by a corporation shall, upon acquisition, constitute authorized but unissued shares, unless the articles of incorporation provide that they shall not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

If the number of authorized shares is reduced by an acquisition, the corporation shall, not later than the time it files its next annual report under this chapter with the director, deliver to the director pursuant to section -55, a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall set forth:

- (a) The name of the corporation;
- (b) The number of acquired shares canceled, itemized by classes and series; and
- (c) The aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

§ -7 **Defense of ultra vires.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to perform such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage

sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

- (b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

§ **-8 Corporate name.** The corporate name:

- (a) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words.
- (b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
- (c) Shall not be the same as, or deceptively similar to, the name of any domestic corporations, partnerships, or trade names existing or registered under the laws of this State or any foreign corporation, partnership, or trade name authorized to transact business or registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:
  - (1) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or
  - (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this State.

§ **-9 Reserved name.** The exclusive right to the use of a corporate name may be reserved by:

- (a) Any person intending to organize a corporation under this chapter.
- (b) Any domestic corporation intending to change its name.
- (c) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.
- (d) Any foreign corporation authorized to transact business in this State and intending to change its name.
- (e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this State.

§ 2 The reservation shall be made by filing with the director an application to reserve a specified corporate name, executed by the applicant. If the director finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the director a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ -10 Reserved.

§ -11 Reserved.

§ -12 Reserved.

§ -13 Reserved.

§ -14 **Service of process on corporation.** Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial, or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in default of finding any registered agent, officer, or director, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

If no registered agent, officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State; and in case the corporation, if a foreign corporation, has not filed with the director pursuant to sections -113 and -114, the name of a person upon whom legal notice and process from the courts of the State may be served; and likewise if the person so named is not found within the State, service may be made upon the corporation by filing with the director, or in his absence, with the deputy director, a copy of the notice, or process, certified under the seal of any court of record, or by the chairman, or president of the board, or by the officer issuing the same. The director or deputy director so served shall immediately notify the defendant corporation of the service. The filing shall be deemed service upon the corporation forty-five days after the filing, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.

The director shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and the action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

§ -15 **Authorized shares.** Each corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.
- (b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.
- (c) Having preference over any other class or classes of shares as to the payment of dividends.
- (d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.
- (e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

§ -16 **Issuance of shares of preferred or special classes in series.** If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (A) The rate of dividend.
- (B) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.
- (C) The amount payable upon shares in event of voluntary and involuntary liquidation.
- (D) Sinking fund provisions, if any, for the redemption or purchase of shares.
- (E) The terms and conditions, if any, on which shares may be converted.
- (F) Voting rights, if any.

If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall deliver to the director pursuant to section -55, a statement setting forth:

- (a) The name of the corporation;
- (b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;
- (c) The date of adoption of such resolution; and
- (d) That such resolution was duly adopted by the board of directors.

Upon the filing of a statement by the director pursuant to section -55, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall constitute an amendment of the articles of incorporation.

§ -17 **Subscriptions for shares.** A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

§ -18 **Issuance of shares.** Subject to any restrictions in the articles of incorporation:

- (a) Shares may be issued for such consideration as shall be authorized by the board of directors establishing a price (in money or other consideration) or a minimum price or general formula or method by which the price will be determined; and
- (b) Upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares, or distribute its own shares, pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided that no such issuance of shares of any class or series

shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

§ -19 **Payment for shares.** The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

§ -20 **Stock rights and options.** Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which, such shares may be purchased from the corporation upon the exercise of any right or option. If such rights or options are to be issued to directors, officers, or employees of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved or ratified by a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive.

§ -21 **Reserved.**

§ -22 **Expenses of organization, reorganization, and financing.** The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares assessable.

§ -23 **Shares represented by certificates and uncertificated shares.** The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice chairman of the board of directors or the president or a vice president and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Any of or all the signatures upon a certificate may be a facsimile. In case any such officer, transfer agent, or registrar who has signed or whose facsimile signature has been

placed upon such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

- (a) That the corporation is organized under the laws of this State.
- (b) The name of the person to whom issued.
- (c) The number and class of shares, and the designation of the series, if any, which such certificate represents.
- (d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until the consideration established for its issuance shall have been paid.

Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any of all classes and series of its shares shall be uncertificated shares; provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the second and third paragraphs of this section. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

§ -24 **Fractional shares.** A corporation may, (1) issue fractions of a share, either represented by a certificate or uncertificated, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing



full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.

§ **-25 Liability of subscribers and shareholders.** A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or are to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

A personal representative, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

§ **-26 Shareholders' preemptive rights.** The articles of incorporation may deny limit or restrict, or may be amended so as to deny, limit or restrict, the right of shareholders of the corporation, which may exist by virtue of the common law or by virtue of the existing articles of incorporation, to subscribe for additional shares of stock, whether then or thereafter authorized; provided, that the amendment of the articles of incorporation shall be made in accordance with this chapter. No amendment authorized by this section shall be construed as a limitation or restriction on any other amendment or amendments that might otherwise be permitted by law. Nothing in this section shall affect the validity of any action taken prior to April 21, 1953, by any corporation.

§ **-27 Bylaws.** The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

§ **-28 Meetings of shareholders.** Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period any circuit court may, on the application of any shareholder, summarily order a meeting to be held.

Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting,

or such other persons as may be authorized in the articles of incorporation or the bylaws.

§ -29 **Notice of shareholders meetings.** Written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

§ -30 **Closing of transfer books and fixing record date.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

§ -31 **Voting record.** The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

§ -32 **Quorum of shareholders.** Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

§ -33 **Voting of shares.** Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

Shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders delivers to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting; each shareholder shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as the shareholder determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws. This section shall not prevent the filling of vacancies in the directors, which vacancies may be filled in such manner as may be provided in the articles of incorporation or bylaws.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

Shares held by a personal representative may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing

in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

§ -34 **Voting trusts and agreements among shareholders.** Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.

§ -35 **Board of directors.** All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to

elect a new director who is a resident of this State. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or
- (c) A committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence,

provided that the director shall not be considered to be acting in good faith if the director has or should have knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties shall have no liability by reason of being or having been a director of the corporation.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

**§ -36 Number and election of directors.** The directors of every corporation shall be one or more in number, if the corporation has only one shareholder. If the corporation has two shareholders, the corporation shall have two or more directors. If the corporation has three or more shareholders, the corporation shall have three or more directors. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the

articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

§ -37 **Classification of directors.** When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

§ -38 **Vacancies.** Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

§ -39 **Removal of directors.** At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided for in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

§ -40 **Quorum of directors.** A majority of the number of directors fixed by or in the manner provided in the bylaws or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of

incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

§ -41 **Director conflicts of interest.** No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

- (a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
- (b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or
- (c) The contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

§ -42 **Executive and other committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have authority to:

- (i) Authorize distributions;
- (ii) Approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;
- (iii) Designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;
- (iv) Amend the bylaws;
- (v) Approve a plan of merger not requiring shareholder approval;
- (vi) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or
- (vii) Authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of class of shares;

provided that the board of directors having acted regarding general authorization for the issuance or sale of shares, or any contract therefor, and, in the case of a series,

the designation thereof, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the director under this chapter.

Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

§ -43 **Place and notice of directors' meetings; committee meetings.** Meetings of the board of directors, regular or special, may be held either within or without this State.

Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

§ -44 **Action by directors without a meeting.** Unless otherwise provided by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the directors may be taken without a meeting if all of the directors or of a committee of the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the directors' meetings or committee meetings, as the case may be, and shall have the same effect as a unanimous vote.

§ -45 **Distributions to shareholders.** Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation



may make distributions, except that no distribution may be made if, after giving effect thereto, either:

- (a) The corporation would be unable to pay its debts as they become due in the usual course of its business; or
- (b) The corporation's total assets would be less than the sum of its total liabilities and (unless the articles of incorporation otherwise permit) the maximum amount that then would be payable, in any liquidation, in respect of all outstanding shares having preferential rights in liquidation.

Determinations under paragraph (b) may be based upon (i) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or (ii) a fair valuation or other method that is reasonable in the circumstances.

In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution shall be measured as of the date, money or other property is transferred or debt is incurred by the corporation, or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.

Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section shall be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

§ -46 Reserved.

§ -47 **Loans to employees, officers, and directors.** A corporation may lend money to and otherwise assist its employees, officers, and directors.

§ -48 **Liabilities of directors in certain cases.** In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall, unless he complied with the standard provided for in this chapter for the performance of the duties of directors, be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of such dividend which is paid or the value of such distribution in excess of the amount of such distribution which could have been made without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

Any director against whom a claim shall be asserted under or pursuant to this section for the making of a distribution and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing such distribution to have been made in violation of this chapter, in proportion to the amounts received by them.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with

the standard provided for in this chapter for the performance of duties of directors. Nothing in this chapter shall be deemed to prohibit the distribution of assets to shareholders permitted or authorized by the Federal Housing Commissioner by any corporation organized for the purpose of providing housing for rent pursuant to regulations of the Federal Housing Commissioner under the provisions of Title VIII of the National Housing Act, as amended, where the principal assets of the corporation consist of real property belonging to the United States and leased to the corporation pursuant to Title VIII of the National Housing Act as amended or supplemented from time to time.

§ -49 **Provisions relating to actions by shareholders.** No action shall be brought in this State by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five per cent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of \$25,000, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause.

§ -50 **Officers.** The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected or appointed by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same

person; provided that every corporation shall have not less than two persons as officers.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

§ -51 **Removal of officers.** Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§ -52 **Books and records.** Each corporation shall keep accurate and complete books and records of account and shall keep and maintain at its principal offices, or such other place as its board of directors may order, minutes of the proceedings of its shareholders and board of directors. The books and records of account shall include accounts of the corporation's assets, liabilities, receipts, disbursements, gains, and losses. The minutes of the proceedings of the shareholders and board of directors of the corporation shall show, as to each meeting of the shareholders or the board of directors, the time and place thereof, whether regular or special, whether notice thereof was given, and if so in what manner, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings, and the proceedings at each meeting.

In every corporation incorporated under this chapter, the board of directors of the corporation, shall cause a book to be kept for registering the names of all persons who are or shall become shareholders of the corporation, showing the number of shares of stock held by them respectively, and the time when they respectively become the owner of the shares. The book shall be opened at all reasonable times for the inspection of the shareholders. The secretary or the person having the charge thereof shall give a certified transcript of anything therein contained to any shareholder applying therefor provided that the shareholder pays a reasonable charge for the preparation of the certified transcript. The transcript shall be legal evidence of the facts therein set forth in any suit by or against the corporation.

§ -53 **Incorporators.** One or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering to the director articles of incorporation for such corporation.

§ -54 **Articles of incorporation.** The articles of incorporation shall be delivered to and filed by the director pursuant to section -55 and shall set forth:

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual.
- (c) The primary specific purpose, and such other purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter.

- (d) The aggregate number of shares which the corporation shall have authority to issue, and, if such shares are to be divided into classes, the number of shares of each class.
- (e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class.
- (f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
- (g) If any preemptive right is to be granted to shareholders, the provisions therefor.
- (h) The street address of its initial registered office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service; and the name of its initial registered agent at such address.
- (i) The number of directors constituting the initial board of directors and the names and residence addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service.
- (j) The name and residence address of each incorporator; provided that where no specific residence street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service.
- (k) The names of the initial subscribers for shares of each class and the number of shares subscribed for.
- (l) The subscription price or prices for shares of each class subscribed for by each initial subscriber, and if it is to be paid in other than cash, the consideration in which it is to be paid.
- (m) The amount of capital and paid-in surplus, if any, paid in by each initial subscriber, separately stating the amount paid in cash and in property.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

- (1) The direction of the management of the business and the regulation of the affairs of the corporation;

- (2) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;
- (3) The par value of any authorized shares or class of shares; and
- (4) Any provision which under this chapter is required or permitted to be set forth in the bylaws.

**§ -55 Filing of documents and effective date.** (a) Any document required to be delivered to the director pursuant to this chapter shall be:

- (1) Executed by:
  - (i) A person intending to organize a corporation or an incorporator, if the corporation has not been organized; or
  - (ii) Two persons who are officers of the corporation, if the corporation has been organized; or
  - (iii) A majority of incorporators with respect to articles of dissolution delivered pursuant to section -82.
- (2) Delivered to the director.

(b) If the director finds such document sets forth the information required by this chapter, the director shall:

- (1) Endorse the word "Filed" and the hour, minute, month, day, and year of the delivery thereof; and
- (2) File the document in the director's office.

(c) The director, however, shall not file a document required by this chapter unless all fees prescribed by this chapter have been paid with respect to such document.

(d) Upon the filing of a document, the document shall become effective as of delivery or at such later date set forth in the instrument, but not more than thirty days after being filed.

(e) Any person knowingly making a false statement in any document to be filed with the director shall be deemed to be guilty of a violation.

**§ -56 Effect of issuance of articles of incorporation.** Upon the effective time and date of the articles of incorporation, the corporate existence shall begin, and such articles of incorporation shall be prima facie evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to cancel or revoke the articles of incorporation or for involuntary dissolution of the corporation.

**§ -57 Organization meeting of directors.** After the effective time and date of the articles of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors named in the articles of incorporation for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof to each director so named, stating the time and place of the meeting.

**§ -58 Right to amend articles of incorporation.** A corporation may amend its articles of incorporation from time to time, in any and as many respects as

may be desired, so long as its articles of incorporation as amended contain only such provisions which might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (a) To change its corporate name.
- (b) To change its period of duration.
- (c) To change, enlarge, or diminish its corporate purposes.
- (d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (e) To provide, change, or eliminate any provision with respect to the par value of any shares or class of shares.
- (f) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued.
- (g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.
- (h) To change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares, of other classes.
- (i) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.
- (j) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.
- (k) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.
- (l) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.
- (m) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

- (n) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.
- (o) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

§ **-59 Procedure to amend articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

- (a) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto, may be adopted by the board of directors; and the provisions for adoption by shareholders shall not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.
- (b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment of such summary may be included in the notice of such annual meeting.
- (c) With respect to corporations incorporated on or after July 1, 1986, at such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

- (d) With respect to corporations incorporated before July 1, 1986, at such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares having voting power. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that, said lesser proportion shall not be less than the proportion set forth in paragraph (c) of this section.

Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

§ -60 **Class voting on amendments.** The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

- (a) Increase or decrease the aggregate number of authorized shares of such class.
- (b) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.
- (c) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.
- (d) Change the designations, preferences, limitations, or relative rights of the shares of such class.
- (e) Change the shares of such class, into the same or a different number of shares, of the same class or another class or classes.
- (f) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having rights and preferences prior or superior to the shares of such class.
- (g) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.
- (h) Limit or deny any existing preemptive rights of the shares of such class.
- (i) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

§ -61 **Articles of amendment.** The articles of amendment shall be delivered to and filed by the director pursuant to section -55, and shall set forth:

- (a) The name of the corporation.
- (b) The amendments so adopted.
- (c) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.
- (d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote.



- (e) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.
- (f) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

§ -62 Reserved.

§ -63 **Effect of articles of amendment.** No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

§ -64 **Restated articles of incorporation.** A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

Upon the adoption of such resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto. The restated articles of incorporation shall be delivered to and filed by the director pursuant to section -55.

§ -65 **Amendment of articles of incorporation in reorganization proceedings.** Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided for in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (A) Change the corporate name, period of duration, or corporate purposes of the corporation;
- (B) Repeal, alter, or amend the bylaws of the corporation;
- (C) Change the aggregate number of shares or shares of any class, which the corporation has authority to issue;

- (D) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;
- (E) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
- (F) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

- (a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title or the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.
- (b) The articles of amendment shall be delivered to and filed by the director pursuant to section -55.

The amendment shall become effective upon the effective time and date of the articles of amendment without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

§ -66 Reserved.

§ -67 Reserved.

§ -68 Reserved.

§ -69 Reserved.

§ -70 Reserved.

§ -71 **Procedure for merger.** Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided for in this chapter.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

- (a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (b) The terms and conditions of the proposed merger.
- (c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or

of any other corporation or, in whole or in part, into cash or other property.

- (d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.
- (e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

§ -72 **Procedure for consolidation.** Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided for in this chapter.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

- (a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.
- (b) The terms and conditions of the proposed consolidation.
- (c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the new corporation or of any corporation, or, in whole or in part, into cash or other property.
- (d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.
- (e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

§ -72A **Procedure for share exchange.** All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

- (a) The name of the corporation, the shares of which are proposed to be acquired by exchange, and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation.
- (b) The terms and conditions of the proposed exchange.
- (c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation, or, in whole or in part, for cash or other property.
- (d) Such other provisions with respect to the proposed exchange as are deemed necessary or desirable.

The procedure authorized by this section shall not be deemed to limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise by agreement with the shareholders.

**§ -73 Approval by shareholders.** (a) The board of directors of each corporation in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, consolidation, or exchange, shall, by resolution, direct that the plan be submitted to a vote at a meeting of its shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation, or exchange. A copy or a summary of the plan of merger, consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

(b) With respect to corporations incorporated on or after July, 1986, at each such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

(c) With respect to corporations incorporated before July 1, 1986, at each such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that, said lesser proportion shall be not less than the proportion set forth in paragraph (b) of this section.

(d) After such approval by a vote of the shareholders of each such corporation, and at any time prior to the filing of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

(e) (1) Notwithstanding the provisions of subsections (a) and (b), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation shall not be required if:

(i) The articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger,

(ii) Each holder of shares of the surviving corporation which were outstanding immediately before the effective date of the merger is to

hold the same number of shares with identical rights immediately after,

- (iii) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty per cent the number of voting shares outstanding immediately before the merger, and
  - (iv) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty per cent the number of participating shares outstanding immediately before the merger.
- (2) As used in this subsection:
- (i) "Voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;
  - (ii) "Participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus.

§ -74 **Articles of merger or consolidation.** Upon receiving the approvals required by sections -71, -72, and -73, articles of merger or articles of consolidation shall be delivered to and filed by the director pursuant to section -55 and shall set forth:

- (1) The plan of merger, or the plan of consolidation.
- (2) As to each corporation, either (i) the shareholders of which were required to vote thereon, the number of shares outstanding, and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class, or (ii) a statement that the vote of shareholders is not required by virtue of section -73(d).
- (3) As to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

§ -75 **Merger of subsidiary corporation.** Any corporation owning at least ninety per cent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

- (A) The name of the subsidiary corporation and the name of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation.
- (B) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

A copy or such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

Articles of merger shall be delivered to and filed by the director pursuant to section -55, and shall set forth:

- (a) The plan of merger;
- (b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and
- (c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares duplicate originals of the articles of merger shall be delivered to the director who shall file them pursuant to section -55.

§ -76 **Effect of merger or consolidation.** A merger or consolidation shall become effective upon the effective time and date of filing the articles of merger or consolidation.

When a merger or consolidation has become effective:

- (a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.
- (b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.
- (c) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.
- (d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.
- (e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of

creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

- (f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

When a merger or consolidation has become effective, the shares of the corporation or corporations party to the plan that are, under the terms of the plan, to be converted, shall cease to exist, in the case of a merger or consolidation, and the holders of such shares shall thereafter be entitled only to the shares, obligations, other securities, cash, or other property into which they shall have been converted, in accordance with the plan, subject to any rights under section -80 of this chapter.

**§ -77 Merger, consolidation, or exchange of shares between domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in an exchange, in the following manner, if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

- (a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.
- (b) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the director of this State:
- (1) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;
  - (2) An irrevocable appointment of the director of this State as its agent to accept service of process in any such proceeding; and
  - (3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation, the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders.

§ -78 **Sale of assets in regular course of business and mortgage or pledge of assets.** The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required.

§ -79 **Sale of assets other than in regular course of business.** A sale, lease, exchange, or other disposition of all or substantially all, the property and assets, with or without the good will of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

- (a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.
- (b) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and whether the meeting be an annual or a special meeting shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.
- (c) With respect to corporations incorporated on or after July 1, 1986, at such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.
- (d) With respect to corporations incorporated before July 1, 1986, at such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of



shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that, said lesser proportion shall be not less than the proportion set forth in paragraph (c) of this section.

- (e) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

§ **-80 Right of shareholders to dissent.** (a) Any shareholder of a corporation shall have the right to dissent from, and to obtain payment for his shares in the event of, any of the following corporate actions:

- (1) Any plan of merger or consolidation to which the corporation is a party; except as provided in subsection (c);
- (2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale;
- (3) Any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;
- (4) Any amendment of the articles of incorporation which materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder in that it:
  - (i) Alters or abolishes a preferential right of such shares;
  - (ii) Creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;
  - (iii) Alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;
  - (iv) Excludes or limits the right of the holder of such shares to vote on any matter, or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or
- (5) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.

- (b) (1) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person, and discloses the name and address of the person or persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.
- (2) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf, and shall be treated as a dissenting shareholder under the terms of this section and section -31 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.
- (c) The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.
- (d) A shareholder of a corporation who has a right under this section to obtain payment for his shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment, nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

**§ -81 Rights of dissenting shareholders.** (a) As used in this section:

- (1) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under section -80, and who has performed every act required up to the time involved for the assertion of such rights.
  - (2) "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor by merger or consolidation of that issuer.
  - (3) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.
  - (4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at such rate as is fair and equitable under all the circumstances.
- (b) If a proposed corporate action which would give rise to dissenters' rights under section -80(a) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section, and shall be accompanied by a copy of sections -80 and -81 of this chapter.
- (c) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is

effectuated, and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect shall acquire no right to payment for his shares under this section or section -80.

(d) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment for their shares a notice of the adoption of the plan of corporate action. The notice shall: (1) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment; (2) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received; (3) supply a form for demanding payment which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and (4) be accompanied by a copy of sections -80 and -81 of this chapter. The time set for the demand and deposit shall be not less than thirty days from the mailing of the notice.

(e) A shareholder who fails to demand payment, or fails (in the case of certificated shares) to deposit certificates, as required by a notice pursuant to subsection (d) shall have no right under this section or section -80 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action, or the release of restrictions under the terms of subsection (f). The dissenter shall retain all other rights of a shareholder until these rights are modified by effectuation of the proposed corporate action.

- (f) (1) Within sixty days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to paragraph (3), it shall return any certificates that have been deposited, and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.
- (2) When uncertificated shares have been released from transfer restrictions, and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (d), with like effect.
- (3) Immediately upon effectuation of the proposed corporate action, or upon receipt of demand for payment if the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and (if their shares are certificated) have deposited their certificates the amount which the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

- (i) The corporation's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the date of remittance, together with the latest available interim financial statements;
  - (ii) A statement of the corporation's estimate of fair value of the shares; and
  - (iii) A notice of the dissenter's right to demand supplemental payment, accompanied by a copy of sections -80 and -81 of this chapter.
- (g) (1) If the corporation fails to remit as required by subsection (f), or if the dissenter believes that the amount remitted is less than the fair value of his shares, or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest, and demand payment of the deficiency.
- (2) If the dissenter does not file such an estimate within thirty days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.
- (h) (1) Within sixty days after receiving a demand for payment pursuant to subsection (g), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.
- (2) An appropriate court shall be a court of competent jurisdiction in the county of this State where the registered office of the corporation is located. If, in the case of a merger or consolidation or exchange of shares; the corporation is a foreign corporation without a registered office in this State, the petition shall be filed in the county where the registered office of the domestic corporation was last located.
- (3) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter; if a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.
- (4) The jurisdiction of the court shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.
- (5) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.
- (6) If the corporation fails to file a petition as provided in paragraph (1) of this subsection, each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

- (i) (1) The costs and expenses of any proceeding under subsection (h), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses may be apportioned and assessed as the court may deem equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.
- (2) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court may deem equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section, and may be assessed against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and section -80.
- (3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and should not be assessed against the corporation, it may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefitted.
- (j) (1) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (f) from any dissenter with respect to shares of which the dissenter (or the person on whose behalf the dissenter acts) was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used (explaining the basis thereof), and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.
- (2) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may within thirty days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest, and demand their payment. If the dissenter fails to do so, he shall be entitled to no more than the corporation's offer.
- (3) If the dissenter makes a demand as provided in paragraph (2), the provisions of subsections (h) and (i) shall apply to further proceedings on the dissenter's demand.

**§ -82 Voluntary dissolution by incorporators.** A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

Articles of dissolution shall be delivered to and filed by the director pursuant to section -55, and shall set forth:

- (1) The name of the corporation.
- (2) The date of issuance of its certificate of incorporation.
- (3) That none of its shares has been issued.
- (4) That the corporation has not commenced business.
- (5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses has been returned to those entitled thereto.
- (6) That no debts of the corporation remain unpaid.
- (7) That a majority of the incorporators elect that the corporation be dissolved.

After filing the articles of dissolution, the director shall issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the director, the existence of the corporation shall cease.

§ -83 **Voluntary dissolution by consent of shareholders.** A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the written consent signed by all shareholders of the corporation.
- (e) A statement that such written consent has been signed by all shareholders of the corporation.

§ -84 **Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

- (a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.
- (b) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, of the purposes, of such meeting is to consider the advisability of dissolving the corporation.
- (c) With respect to corporations incorporated on or after July 1, 1986, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.
- (d) With respect to corporations incorporated before July 1, 1986, at such meeting a vote of shareholders entitled to vote thereat shall be taken on

a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall be not less than the proportion set forth in paragraph (c) of this section.

- (e) Upon the adoption of such resolution, a statement of intent to dissolve shall set forth:
- (1) The name of the corporation.
  - (2) The names and respective addresses of its officers.
  - (3) The names and respective addresses of its directors.
  - (4) A copy of the resolution adopted by all shareholders authorizing the dissolution of the corporation.
  - (5) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
  - (6) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

§ **-85 Filing of statement of intent to dissolve.** The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to and filed by the director pursuant to section -55.

§ **-86 Effect of statement of intent to dissolve.** Upon the effective time and date of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the director or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided.

§ **-87 Procedure after filing of statement of intent to dissolve.** After the filing by the director of a statement of intent to dissolve:

- (a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.
- (b) The corporation shall forthwith publish, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, notice thereof to all creditors of the corporation.
- (c) The corporation shall proceed to collect its assets, convey, and dispose of such of its properties as are not to be distributed in kind to its

shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

- (d) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter.

**§ -88 Revocation of voluntary dissolution proceedings by consent of shareholders.** By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.
- (e) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

**§ -89 Revocation of voluntary dissolution proceedings by act of corporation.** By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

- (a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.
- (b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.
- (c) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.
- (d) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:



- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
- (5) The number of shares outstanding.
- (6) The number of shares voted for and against the resolution, respectively.

§ **-90 Filing of statement of revocation of voluntary dissolution proceedings.** The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to and filed by the director pursuant to section -55.

§ **-91 Effect of statement of revocation of voluntary dissolution proceedings.** Upon the filing by the director of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

§ **-92 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall set forth:

- (a) The name of the corporation.
- (b) That the director has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed.
- (c) That notice of the filing of the statement of intent to dissolve the corporation has been published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State.
- (d) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- (e) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.
- (f) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

§ **-93 Filing of articles of dissolution.** Articles of dissolution shall be delivered to and filed by the director pursuant to section -55. After the filing of the articles of dissolution, the director shall issue a certificate of dissolution. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of actions, other proceedings and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

§ **-94 Involuntary dissolution.** A corporation may be dissolved involuntarily when it is established that:

- (a) The corporation has failed to file its annual report within the time required by this chapter; or
- (b) The corporation procured its articles of incorporation through fraud; or
- (c) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (d) The corporation has failed for thirty days to appoint and maintain a registered agent in this State; or
- (e) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the director a statement of such change; or
- (f) The corporation has failed to complete voluntary dissolution within five years; or
- (g) The corporation has been adjudicated bankrupt; or
- (h) The corporation's articles of incorporation have expired and the corporation has not attempted to renew or extend the articles for two years.

**§ -95 Involuntary; ordered by director and certificates, notices, etc.**

Whenever the director shall certify the name of a corporation as having given any cause for dissolution pursuant to section -94, the director may disincorporate the corporation or annul the articles of incorporation of the corporation and declare the corporation dissolved, after giving notice of the intention to dissolve the corporation by mailing to the corporation at its last known address appearing in the records of the director and by publishing notice of such intention once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State. If any such corporation is declared dissolved any trustee appointed to settle the affairs of the corporation shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section . The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

**§ -96 Equal division of directors; appointment of provisional director; qualifications; rights and powers; compensation.** (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, a first circuit judge may, notwithstanding any provisions of the articles or bylaws and whether or not an action is pending for an involuntary dissolution of the corporation, appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by shareholders holding not less than thirty-three and one-third per cent of the voting power.

(b) A provisional director shall be an impartial person, who is neither a shareholder or member nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree according to the common law to any of the other directors of the corporation or to any judge of the court by which such provisional director is appointed. A provisional director shall have all the rights and powers of a director until the deadlock in the board or among the shareholders or members is broken or until such provisional director is removed by order of the

court or by approval of shareholders or members holding a majority of the voting power. Such person shall be entitled to such compensation as shall be fixed by the court unless otherwise agreed with the corporation.

**§ -97 Jurisdiction of court to liquidate assets and business of corporation.** The courts shall have full power to liquidate the assets and business of a corporation:

- (a) In an action by shareholder when it is established:
  - (1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
  - (2) That the acts of the directors or those in control of the corporation are illegal, or fraudulent; or
  - (3) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (4) That the corporate assets are being misapplied or wasted.
- (b) In an action by a creditor:
  - (1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
  - (2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.
- (c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.
- (d) When an action has been filed by the director to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under clause (a), (b), or (c) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

**§ -98 Procedure in liquidation of corporation by court.** In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

After a hearing held upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to

collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

§ -99 **Qualifications of receivers.** A receiver shall in all cases be a natural person or a corporation authorized to act as receiver which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

§ -100 **Filing of claims in liquidation proceedings.** In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

§ -101 **Discontinuance of liquidation proceedings.** The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

§ -102 **Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and

discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

§ -103 **Filing of decree of dissolution.** In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the director. No fee shall be charged by the director for the filing thereof.

§ -104 **Deposit with director of finance of amount due certain shareholders.** Upon the dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the director of finance for disposition in accordance with the State Uniform Unclaimed Property Act.

§ -105 **Survival of remedy after dissolution.** The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the director; or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

§ -106 **Admission of foreign corporation.** No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the director. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this State any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or county under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this chapter contained, shall be construed to authorize this State to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purposes of this chapter, by reason of carrying on in this State any one or more of the following activities:

- (a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

- (b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
- (c) Maintaining bank accounts.
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
- (e) Effecting sales through independent contractors.
- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts.
- (g) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.
- (h) Securing or collecting debts or enforcing any rights in property securing the same.
- (i) Transacting any business in interstate commerce.
- (j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

§ **-107 Powers of foreign corporation.** A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

§ **-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

- (a) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this State, add at the end of its name one of such words or an abbreviation thereof;
- (b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking and insurance;
- (c) Shall not be the same as, or deceptively similar to, the name of any domestic corporation or partnership or trade name existing or registered under the laws of this State or any foreign corporation or partnership or trade name authorized to transact business in or registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:

- (1) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this State.

§ -109 **Change of name by foreign corporation.** Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this chapter.

§ -110 **Application for certificate of authority.** A foreign corporation in order to procure a certificate of authority to transact business in this State, should make application therefor to the director, which application shall set forth:

- (a) The name of the corporation and the state or country under the laws of which it is incorporated;
- (b) If the name of the corporation does not contain the word "corporation," "incorporated," or "limited," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State;
- (c) The date of incorporation and the period of duration of the corporation;
- (d) The address of the principal office of the corporation in the state or country under the law of which it is incorporated;
- (e) The address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address;
- (f) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
- (g) The names and respective addresses of the directors and officers of the corporation;
- (h) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;
- (i) A statement of the aggregate number of issued shares itemized by classes and by series, if any, within each class;
- (j) An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this State during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount

thereof which will be transacted by the corporation at or from places of business in this State during such year; and

- (k) Such additional information as may be necessary or appropriate in order to enable the director to determine whether such corporation is entitled to a certificate of authority to transact business in this State and to determine and assess the fees payable as in this chapter prescribed.

Such application shall be made on forms prescribed and furnished by the director which shall be delivered to and filed by the director pursuant to section - 55.

§ -111 **Filing of application for certificate of authority.** The application of the corporation for a certificate of authority shall be delivered to the director, together with a copy of its articles of incorporation and all amendments thereto, and a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

§ -112 **Effect of certificate of authority.** After filing the application for certificate of authority, the director shall issue a certificate of authority. Upon the issuance of a certificate of authority by the director, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, subject, however, to the right of this State to suspend or to revoke such authority as provided in this chapter.

§ -113 **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State:

- (a) A registered office which may be, but need not be, the same as its place of business in this State; and
- (b) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

§ -114 **Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to transact business in this State may change its registered office or change its registered agent, or both, upon filing in the office of the director a statement setting forth:

- (a) The name of the corporation.
- (b) The address of its then registered office.
- (c) If the address of its registered office be changed, the address to which the registered office is to be changed.
- (d) The name of its then registered agent.
- (e) If its registered agent be changed, the name of its successor registered agent.
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- (g) That such change was authorized by resolution duly adopted by its board of directors.



Such statement shall be delivered to and filed by the director pursuant to section -55.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the director, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the director.

If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporation of which he or it is a registered agency by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (e) or (g) and must recite that a copy of the statement has been mailed to the corporation.

§ -115 **Service of process on foreign corporation.** Service of any notice or process authorized by law issued against any foreign corporation by any court, judicial or administrative officer, or board, may be made in the manner provided pursuant to section -14.

§ -116 **Amendment to articles of incorporation of foreign corporation.** Whenever the articles of incorporation of a foreign corporation authorized to transact business in this State are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the director a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this State, nor authorize such corporation to transact business in this State under any other name than the name set forth in its certificate of authority.

§ -117 **Merger of foreign corporation authorized to transact business in this State.** Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the director a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effectuated; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this State unless the name of such corporation is changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to transact in this State.

§ -118 **Amended certificate of authority.** A foreign corporation authorized to transact business in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the director.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing thereof with the director, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

§ -119 **Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this State may withdraw from the State upon procuring from the director a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

- (a) The name of the corporation and the state or country under the laws of which it is incorporated.
- (b) That the corporation is not transacting business in this State.
- (c) That the corporation surrenders its authority to transact business in this State.
- (d) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the director.
- (e) A post office address to which the director may mail a copy of any process against the corporation that may be served on him.
- (f) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, and series, if any, within each class, as of the date of such application.
- (g) A statement of the aggregate number of issued shares, itemized by classes and series, if any, within each class, as of the date of such application.
- (h) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed in this chapter.

The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director pursuant to section -55.

§ -120 **Certificate of withdrawal.** After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal and upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

§ -121 **Revocation of certificate of authority.** The certificate of authority of a foreign corporation to transact business in this State may be revoked by the director upon the conditions prescribed in this section when:

- (a) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable; or

- (b) The corporation has failed to appoint and maintain a registered agent in this State as required by this chapter; or
- (c) The corporation has failed, after change of its registered office or registered agent, to file in the office of the director a statement of such change as required by this chapter; or
- (d) The corporation has failed to file in the office of the director any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or
- (e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

No certificate of authority of a foreign corporation shall be revoked by the director unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this State, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

§ -122 **Issuance of certificate of revocation.** Upon revoking any such certificate of authority, the director shall:

- (a) Issue a certificate of revocation in duplicate.
- (b) File one of such certificates in his office.
- (c) Mail to such corporation at its registered office in this State a notice of such revocation accompanied by the other certificate.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this State shall cease.

§ -123 **Application to corporations heretofore authorized to transact business in this State.** Foreign corporations which are duly authorized to transact business in this State at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure such authority under this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this chapter, and from the time this chapter takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this chapter.

§ -124 **Transacting business without certificate of authority.** No foreign corporation transacting business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this State, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this State.

A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

The attorney general shall bring proceedings to recover all amounts due this State under the provisions of this section.

**§ -125 Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall file, within the time prescribed by this chapter, an annual report setting forth:

- (a) The name of the corporation and the state or country under the laws of which it is incorporated.
- (b) The address of the registered office of the foreign corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated, and, in the case of a domestic corporation, the address of its principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service.
- (c) A brief statement of the character of the business in which the corporation is actually engaged in this State.
- (d) The names and respective residence addresses of the directors and officers of the corporation; provided that where no specific residence street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service.
- (e) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class.
- (f) A statement of the aggregate number of issued shares, itemized by classes and series, if any, within each class.

**§ -126 Filing of annual report of domestic and foreign corporations.** Such annual report of a corporation shall be delivered to the director between the first day of January and the thirty-first day of March of each year in the case of a domestic corporation, or between the first day of January and the thirtieth day of June in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between the first day of January and the thirty-first day of

March in the case of a domestic corporation, or between the first day of January and the thirtieth day of June in the case of a foreign corporation, of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the director. Proof to the satisfaction of the director that prior to the thirty-first day of March in the case of a domestic corporation, or the thirtieth day of June in the case of a foreign corporation, such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the director finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the director within thirty days from the date on which it was mailed to the corporation by the director.

§ -127 **Fees and charges to be collected by director.** The director shall charge and collect in accordance with the provisions of this chapter:

- (a) Fees for filing documents and issuing certificates.
- (b) Miscellaneous charges.
- (c) License fees.

§ -128 **Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:

- (a) Articles of incorporation and affidavit of incorporation, 20 cents per \$1,000 authorized capital, \$50 minimum, \$1,000 maximum;
- (b) Certificate of increase of authorized capital stock, 20 cents per \$1,000 authorized capital increase, \$20 minimum, \$1,000 maximum;
- (c) Certificate of renewal or extension of corporate existence, same as the filing of articles of incorporation;
- (d) Certificate of reduction of capital stock, \$15;
- (e) Certificate of amendment of articles of incorporation, \$10;
- (f) Agreement of merger or consolidation, \$50;
- (g) Annual corporation exhibit of domestic and foreign corporations organized for profit, \$10;
- (h) Certificate of dissolution, \$5;
- (i) Resolution of issuance of preferred stock, \$10;
- (j) Certification, 10 cents per page or any portion thereof;
- (k) Restated articles of incorporation: corporations with an authorized capital of less than \$500,000, \$20; corporations with an authorized capital of \$500,000 or more, \$100;
- (l) Good standing certificate, \$10;
- (m) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$25;
- (n) Special handling fee for review of corporation documents, excluding agreement of merger or consolidation, \$40;
- (o) Special handling fee for review of agreement of merger or consolidation, \$100;

(p) Special handling fee for certificates issued by the department, \$10 per certificate;

(q) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents.

§ -129 **Miscellaneous charges.** The director shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 75 cents per page and \$25 for the certificate and affixing the seal thereto.

(b) At the time of any service of process on him as resident agent of a corporation, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

§ -130 **Reserved.**

§ -131 **License fees payable by foreign corporations.** No foreign corporation except foreign insurance companies and foreign nonprofit corporations which does not invest and use all its capital in the State shall do or carry on business in the State unless it shall first have obtained from the director an annual license to do so. Every corporation shall pay to the director an annual license fee of \$100. The license fee shall be assessed on the basis of the fiscal year from July 1 to June 30. The first license fee due upon qualification shall be prorated according to the month of qualification and shall be as follows:

July	\$100.00	January	\$50.00
August	91.67	February	41.67
September	83.33	March	33.33
October	75.00	April	25.00
November	66.67	May	16.67
December	58.33	June	8.33

The director may settle and collect an account against any corporation violating this section for the amount of the license fee together with a penalty of fifty per cent for failure to pay the same; provided that no license shall be necessary for any corporation while solely employed by the government of the United States. The director may, for good cause shown, reduce or waive the penalty.

§ -132 **Reserved.**

§ -133 **Reserved.**

§ -134 **Reserved.**

§ -135 **Penalties imposed upon corporations.** Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a forfeiture of an amount to be determined by the director not exceeding \$100 for every such violation, neglect, or failure, to be recovered by action brought in the name of the State by the director. A continuance of a failure to file the required report shall be a separate offense for each thirty days of the continuance. The director may, for good cause shown, waive the penalty imposed by this section.

Each corporation that fails to comply with the take-over requirements imposed by this chapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the director in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding \$500.

§ -136 **Penalties imposed upon officers and directors.** Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the director in accordance with the provisions of this chapter, or who signs any articles, statement, report, application, or other document filed with the director which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor.

§ -137 **Interrogatories by director.** The director may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the director, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The director need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The director shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

§ -138 **Information disclosed by interrogatories.** Interrogatories propounded by the director and the answers thereto shall not be open to public inspection nor shall the director disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

§ -139 **Powers of director.** The director shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. The director shall establish rules and regulations, subject to chapter 91, necessary to promulgate this chapter.

§ -140 **Appeal from director.** If the director shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the director before the same shall be filed in his office, he shall, within thirty days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic

or foreign, delivering the same, and specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the director or direct him to take such action as the court may deem proper.

If the director revokes the certificate of authority to transact business in this State of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the court of the county where the registered office of such corporation in this State is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this State and a copy of the notice of revocation given by the director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the director or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the court under this section in review of any ruling or decision of the director may be taken as in other civil actions.

§ -141 **Certificates and certified copies to be received in evidence.** All certificates issued by the director in accordance with the provisions of this chapter, and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director under the great seal of this State, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ -142 **Forms to be furnished by the director.** All reports required by this chapter to be filed in the office of the director shall be made on forms which shall be prescribed and furnished by the director. Forms for all other documents to be filed in the office of the director may be furnished by the director on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

§ -143 **Greater voting requirements.** Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

§ -144 **Waiver of notice.** Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.



§ **-145 Action by shareholders without a meeting.** Any action required by this chapter to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the director under this chapter.

§ **-146 Unauthorized assumption of corporate powers.** All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

§ **-147 Application to existing corporations.** The provisions of this chapter shall apply to all existing corporations organized under any general act of this State providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this chapter, where the power has been reserved to amend, repeal, or modify the act under which such corporation was organized and where such act is repealed by this chapter.

§ **-148 Application to foreign and interstate commerce.** The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States.

§ **-149 Reservation of power.** The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

§ **-150 Mandatory provisions of take-over bids.** The following provisions shall apply to every take-over bid:

- (1) The period of time within which shares may be deposited pursuant to a take-over bid shall be not less than twenty-one days nor more than thirty-five days from the date the take-over bid commences.
- (2) Shares deposited pursuant to a take-over bid may be withdrawn by an offeree or his agent by demand in writing on the offeror or the depository at any time up to five days prior to the date the take-over bid terminates.
- (3) A take-over bid may not be made for less than all the shares of a class.
- (4) Where an offeror varies the terms of a take-over bid before the expiration thereof by increasing the consideration offered, the offeror shall pay the increased consideration to each offeree whose securities are taken up even if they have been taken up and paid for before such variation of the take-over bid.
- (5) No offeror may make a take-over bid which is not made to offerees in this State or which is not made to offerees in this State on the same terms as the take-over bid is made to offerees outside this State.

§ -151 **Registration of take-over bids; disclosure.** (a) It shall be unlawful for any person to make a take-over bid unless the take-over bid has been registered in accordance with the provisions of this chapter.

(b) The commissioner shall receive and act upon applications for registration of take-over bids and may prescribe the forms upon which he may require the applications to be duly signed by the applicant and sworn to by any person having knowledge of the facts and shall be filed in the office of the commissioner.

(c) An application for registration of a take-over bid shall contain the following information and such other information as the commissioner prescribes:

- (1) The name, nationality, address, and business experience of the offeror and each associate of the offeror, and the name and address of the offeree company;
- (2) The terms and conditions of the take-over bid, which shall include the applicable provisions of section -150, and a statement of the aggregate consideration the offeror may be bound to pay;
- (3) The source and amount of the funds or other consideration used or to be used in making the take-over bid, and if any part of such funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making such bid, a description of the transaction and the names of the parties thereto;
- (4) Any plans to sell or mortgage any assets of the offeree company to finance the take-over bid;
- (5) Any plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;
- (6) The number of shares for which the take-over bid is made which are owned directly or indirectly by the offeror and each associate of the offeror;
- (7) Any information as to any contracts, arrangements, or understandings with any person with respect to any securities of the offerees company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof;
- (8) Complete information on the organization of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to

which the offeror or any of its subsidiaries is a party or of which any of their property is subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party;

(9) Material information concerning the identity and background of any offeror who is not a corporation, including his material business activities and affiliations during the past three years and a description of any pending legal or administrative proceeding in which the offeror is a party;

(10) A statement as to whether any filing with respect to the take-over bid has been made pursuant to the laws of the United States or of any other state or territory thereof, and if so, a true copy of each such filing shall accompany the application.

(d) A record of the registration of take-over bids shall be kept in a register to be kept in the office of the commissioner in which register shall also be recorded any orders entered by the commissioner with respect thereto. The register and all information with respect to the take-over bid registered therein shall be open to public inspection.

(e) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner, a fee of one-tenth of one per cent of the aggregate consideration which the offeror is bound to pay for the equity securities for which a take-over bid is proposed to be made, but not less than \$200 nor more than \$1,000.

(f) Registration of a take-over bid shall become effective sixty days after the date of filing the application for registration with the commission unless delayed by order of the commissioner, or unless prior thereto the commissioner calls a hearing if he deems it necessary or appropriate for the protection of offerees in this State, and shall call a hearing if so requested by the offeree company, acting by resolution of its board of directors. If a hearing is called, the registration of the take-over bid shall not become effective until so ordered by the commissioner.

(g) If, following the hearing, the commissioner finds that the take-over bid fails to provide for full and fair disclosure to offerees of all material information concerning the take-over bid or that the take-over bid is unfair or inequitable to offerees or will not be made to all stockholders on substantially equal terms or is in violation of this chapter, he shall by order deny registration of the take-over bid. If he finds that the take-over bid provides for full and fair disclosure to offerees of all material information concerning the take-over bid and that the take-over bid is fair and equitable to offerees and is made on substantially equal terms to all stockholders and complies with this chapter, he shall by order register the take-over bid.

Registration of the take-over bid shall not be deemed an approval or recommendation of the take-over bid by the commissioner.

- (h) Notwithstanding the provisions of subsection (g):
  - (1) Registration of a take-over bid with respect to an offeree company which is referred to in clause (i) or clause (iv) of subsection -2(m) of this chapter shall not become effective until the public utilities commission has notified the commissioner of securities in writing of its determination that the public interest would not be adversely affected if the take-over bid succeeds;
  - (2) Registration of a take-over bid with respect to an offeree company which is referred to in clause (ii) or clause (iv) of subsection -2(m) of this chapter shall not become effective until the land use commission has notified the commissioner of securities in writing of its determination that the public interest would not be adversely affected if the take-over bid succeeds;
  - (3) Registration of a take-over bid with respect to an offeree company which is referred to in clause (iii) or clause (iv) of subsection -2(m) of this chapter shall not become effective until the bank examiner has notified the commissioner of securities in writing of his determination that the public interest would not be adversely affected if the take-over bid succeeds.

In making such determination, the state agency or official required to make the determination shall consider whether the purposes of applicable statutes will be served, whether the business reputation and financial responsibility of the offeror is such as to command the confidence of the community, whether there will be undue concentration of economic power if the take-over bid succeeds, and whether any changes in management and operations will adversely affect employment in the State.

**§ -152 Revocation of registration of take-over bid; suspension during investigation; hearing.** (a) The commissioner may issue a stop order denying effectiveness to, or suspending, or revoking the effectiveness of, any registration of a take-over bid if he finds that:

- (1) The application for registration fails to provide full and fair disclosure to offerees of all material information concerning the take-over bid or that the take-over bid is not fair and equitable to offerees;
- (2) This chapter or any rule, order, or condition imposed under this chapter has been wilfully violated, in connection with the take-over bid by the offeror, any associate of the offeror, any partner, officer, or director of the offeror, any person occupying a similar status or performing similar functions, or any person, directly or indirectly, controlling or controlled by the offeror;
- (3) The take-over bid registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction.

**§ -153 Commissioner as agent to accept service; consent to; actions in what circuit, notice to issuer.** Upon any application for registration of a take-over

bid where the offeror is not domiciled in this State, there shall be filed with the application the irrevocable written consent of the offeror that in suits, proceedings, and actions growing out of the violation of this chapter, the service on the commissioner of any notice, process, or pleading therein, authorized by laws of the State, shall be as valid and binding as if due service had been made on the offeror. Any such action shall be brought either in the circuit of the plaintiff's residence or in the circuit in which the commissioner has his office. The written consent shall be authenticated by the seal of the offeror if it has a seal and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it is an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commissioner it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the offeror against which the process or pleadings are directed.

**§ -154 Delivery of application for registration to offeree company.**

Each application for registration of a take-over bid shall be delivered to the offeree company prior to the date it is filed with the commissioner and a certificate certifying as to such delivery shall accompany the application.

**§ -155 Terms and conditions of take-over bid; recommendations to accept or reject.** A take-over bid shall be made only upon the terms and conditions set forth in the application for registration of the take-over bid. Any written solicitation or recommendation to offerees made by the offeree company to accept or reject a take-over bid shall be filed with the commissioner not later than the time any such solicitations or recommendations are first published or sent or given to offerees.

**§ -156 Injunctions.** Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person is making a take-over bid in violation of this chapter, the commissioner may, in addition to any other remedies, bring suit in the name and in behalf of the State against such person and any other person or persons concerned in or in any way participating in or about to participate in such take-over bid or acting in violation of this chapter, to enjoin such person and such other person or persons from continuing such take-over bid or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter.

In any such court proceedings, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or things complained of in the application for injunction. In the suit the equity courts have jurisdiction of the subject matter and a judgment may be entered awarding such injunction as may be proper.

§ -157 Remedies. (a) Any offeror who:

- (1) Makes a take-over bid which does not comply with the provisions of this chapter, or
- (2) Makes a take-over bid by means of an untrue statement of a material fact or failure to state a material fact necessary in order to make the statement not misleading, in the light of the circumstances under which they were made, and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable to any offeree whose shares are taken up pursuant to the take-over bid who may sue (i) to recover such shares, together with all dividends received thereon, costs and reasonable attorneys' fees, upon the tender of the consideration received from the offeror, or (ii) for the equivalent in damages, together with costs and attorneys' fees, if the offeror no longer owns such shares.

(b) Every person who materially participates or aids in a take-over bid made by an offeror liable under subsection (a), or who directly or indirectly controls any offeror so liable, shall also be liable jointly and severally with and to the same extent as the offeror so liable, unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(c) No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided that if any person liable by reason of subsection (a) or (b) makes a written offer, before suit is brought, to return the shares taken up pursuant to the take-over bid, together with all dividends received thereon, upon the tender of the consideration received from the offeror, no offeree shall maintain a suit under this section who shall have refused or failed to accept such offer within ninety days of its receipt.

(d) Any condition, stipulation, or provision binding any offeree to waive compliance with any provision of this chapter or of any rule or order hereunder shall be void.

§ -158 Statutory or common-law remedies. Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in a take-over bid or the right of the State to punish any person for any violation of any law.

§ -159 Appeals to circuit court, first circuit; time; bonds; costs; decree; further appeal. An appeal may be taken by any aggrieved person from any final order of the commissioner to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant. The review on appeal shall be conducted by the court without a jury, and, except as otherwise provided in section 91-14, shall be confined to the record. Subject to

chapter 602, an appeal may be taken from the judgment of the circuit court to the supreme court.

§ -160 **Transfer prohibited.** The offeree company shall not transfer of record to any offeror any shares for which a take-over bid is made in violation of any provision of this chapter.

§ -161 **Applicability of chapter 485.** All of the provisions of chapter 485 which are not in conflict with this chapter shall apply to each take-over bid.

§ -162 **Effect of chapter on existing corporations.** The existence of corporations formed or existing on the date of enactment of this chapter or the voting requirements in the charter of incorporation of any such corporation shall not be affected by the enactment of this chapter nor by any change in the requirement or repeal of the laws under which they were formed or created.

Neither the repeals effected by the enactment of this chapter nor the amendment thereof shall impair or take away any existing liability, cause of action, or right against any corporation, its shareholders, directors, or officers incurred prior to the time of such enactment or amendment.

Nothing in this chapter shall affect the validity of any action taken by any corporation prior to the effective date of this chapter.”

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 **State service fees, increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency, may, with the approval of the governor, be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that the authority to increase or decrease fees or nontax revenues shall extend only to the following: chapters 6, 28 (pt III), 36, 92, 94, 142, 144, 145, 147, 150, [151,] 171, 188, 189, 191, 192, 231, 269, 271, 321, 338, 373, 403, 407, 408, 409, [416, 418,] \_\_\_, 421, 422, 425, 431, 434, [436,] 438, 439, 440, 442, [443,] 443A, 447, 448, 450, 452, 453, 455, 456, 457, 458, 459, 460, 461, [462,] 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, [514,] 514A, 572, and 574[, and 734]; and provided further[, ] that this section shall not apply to fees charged by the University of Hawaii or to judicial fees as may be set by any chapter mentioned above.”

SECTION 3. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

“§207-12 **Exemptions and immunities.** A foreign lender which (1) does not maintain a place of business in this State, (2) conducts its principal activities outside this State, and (3) complies with this part, does not by engaging in this State in any or all of the activities specified in [the following] section 207-13 violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to [chapters] chapter 401, 402, 403, 406, 407, [418] \_\_\_, or 431, or become subject to any taxation which would otherwise be imposed

for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation under [chapters] chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State; provided that nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; and provided further[, ] that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided[, ] further[, ] that if any such foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in [the following section.] section 207-13, then the rents and other receipts received by the foreign lender from such property and the proceeds of sale by the foreign lender of such property and all income and receipts from the foreign lender's business or activities in this State not specified in [the following section.] section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if such rents, other receipts, proceeds, and income were received by a resident of this State, but such other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation hereinabove stated with respect to the activities specified in [the following section.] section 207-13."

SECTION 4. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of "representation" to read as follows:

""Representation" refers to any or all of the following:

- (1) A [seller's] seller being present in the State[, and];
- (2) A [seller's] seller having in the State a salesman, commission agent, manufacturer's representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise[.]; and
- (3) A [seller's] seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of [regulatory agencies] commerce and consumer affairs and the deputy director in the cases provided in section [416-131.] -14."

SECTION 5. Section 403-62, Hawaii Revised Statutes, is amended to read as follows:



**“§403-62 Waiver of residence, etc., when.** Nothing in [sections] section 403-47, 403-61, 403-63, 403-64, or [416-4] -35 shall prevent the election or installation in office of any director or officer of any bank or other corporation controlled, supervised, or regulated by the Alien Property Custodian or other agency of the United States succeeding to the functions of the Alien Property Custodian, or in which stock is held by the Alien Property Custodian or any successor agency in the interest of and for the benefit of the United States, pursuant to the Act of October 6, 1917, 40 Statutes at Large 411, chapter 106, as amended, known as the “Trading with the Enemy Act”, or any similar federal law, notwithstanding the directors or officers are not residents of the State or are not shareholders of the bank or other corporation, if they are otherwise qualified. If as a result of the foregoing any board of directors does not have the number of resident directors required by law the board nevertheless shall be lawful and shall be empowered to function.

This section shall apply only with respect to the exercise of powers pursuant to the Trading with the Enemy Act and Executive Order No. 9095 of the President, as the same have been or may be amended, or similar federal laws or executive orders.”

SECTION 6. Section 404-8, Hawaii Revised Statutes, is amended to read as follows:

**“§404-8 Continuation of corporate entity; use of old name.** A resulting state or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, and duties of each merging bank or the converting bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank, and by the charter and bylaws of the resulting bank. A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under the name more conveniently. Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of the writing. In all other respects section [417-13] -76 shall be applicable to the extent that the same shall not be in contravention of federal law.”

SECTION 7. Section 407-25, Hawaii Revised Statutes, is amended to read as follows:

**“§407-25 Notices to foreign associations, service on agent sufficient.** In the case of any foreign association doing business in the State, any notice required by this chapter to be given to the association may be served upon the agent of such association appointed and designated pursuant to [sections 418-1 and 418-2,] section -113 or -, either by leaving a copy with him personally, or by leaving the copy at, or mailing it by registered mail postage prepaid addressed to him at the address designated.”

SECTION 8. Section 408-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every industrial loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action[, notwithstanding section 416-31 to the contrary];
- (4) To establish branches within the State with the prior written approval of the bank examiner;
- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into for the purchases; and
- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts as defined in chapter 408A, and to receive amounts invested therein in installments or otherwise, with or without allowance of interest on such investments. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules. Nothing herein shall be construed to authorize any industrial loan company to receive deposits or to create any liability due on demand.”

SECTION 9. Section 416-146, Hawaii Revised Statutes, is amended as follows:

“**§416-146 Issuance of shares.** Shares of capital in a professional corporation may be issued only to a licensed person[.] and any shares issued in violation of this restriction shall be void; provided[.] that notwithstanding [any other section of this chapter,] chapter or chapter, as the case may be, any psychologist certified under [the provisions of] chapter 465 may own stock in a medical corporation as long as such person’s status as a stockholder is permitted under the rules and regulations issued by the [Board] board which regulates the medical profession and the sum of all shares not held by a physician in a medical corporation does not exceed forty-nine per cent of the total number of shares. No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person, other than another licensed person who is a shareholder of the same corporation, with the authority to exercise the voting power of

any or all of his shares, and any such purported voting trust, proxy, or other arrangement shall be void.”

SECTION 10. Section 420-3, Hawaii Revised Statutes, is amended to read as follows:

“**§420-3 Description of stock.** The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares [in] into which [it] the capital stock is divided[,]; the par value of each share[, and]; the amount of capital stock with which [it] the corporation will commence business and, if there is more than one class of stock, a description of the different classes[,]; and the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business. The articles may also contain any provision consistent with the laws of the State for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles shall be in accordance with section [416-11] -54.”

SECTION 11. Chapter 421, Hawaii Revised Statutes, is amended as follows:

1. By amending section 421-5 to read:

“**§421-5 Name.** Section [416-12] -8 or -, as the case may be, shall apply to associations formed under this chapter and no Hawaiian corporation not organized under this chapter shall use the word “cooperative” as a part of its name.”

2. By amending section 421-6, subsection (e), to read:

“(e) An association organized under this chapter shall be subject to [section 416-97] chapter        or chapter       , as the case may be, relating to the payment of fees by corporations to the director.”

3. By amending section 421-21 to read:

“**§421-21 Voluntary dissolution.** [Section 416-121,] Chapter        or chap-ter       , as the case may be, relating to the voluntary dissolution of corporations, shall apply to associations formed under this chapter except that the dissolution shall be approved at a meeting duly called and held for the purpose by not less than two-thirds of the voting power voting thereon.”

SECTION 12. Chapter 422, Hawaii Revised Statutes, is amended as follows:

1. By amending section 422-5 to read:

“**§422-5 Name.** Section [416-12] -8 or -, as the case may be, shall apply to associations formed under this chapter and any association organized under this chapter may use the word “cooperative” as a part of its name, notwithstanding section 421-5.”

2. By amending section 422-34 to read:

“**§422-34 Voluntary dissolution.** [Section 416-121,] Chapter        or chap-ter       , as the case may be, relating to the voluntary dissolution of corporations, shall apply to associations formed under this chapter except that the dissolution shall be approved at a meeting duly called and held for the purpose by not less than two-thirds of the voting power voting thereon.”

SECTION 13. Chapter 431, Hawaii Revised Statutes, is amended as follows:

1. By amending section 431-114 to read:

**“§431-114 Incorporation of insurers.** [Chapter 418] Unless otherwise provided, the laws on foreign corporations shall not be applicable to any insurer authorized to do business in this State pursuant to this chapter.”

2. By amending section 431-161, subsection (a), to read:

“(a) A domestic stock insurer may increase its capital stock by:

- (1) Complying with section [416-64, except item (4) thereof; and
- (2) Within a period prescribed by the insurance commissioner after the filing of the certificate required by section 416-64, filing a certificate, executed in the same manner as the section 416-64 certificate, that the increased capital has been paid in full in cash.] -58. The increase in capital is effective upon the [filing of the certificate that] payment of the increased capital [has been paid] in full in cash.”

3. By amending section 431-162, subsection (a), to read:

“(a) A domestic stock insurer may decrease its capital stock by:

- (1) Vote of not less than seventy-five per cent of the holders of the shares of stock outstanding and entitled to vote; and
- (2) Filing a [certificate,] statement executed in the same manner as [the section 416-64 certificate,] provided in section -58, that such vote occurred upon which filing the decrease in capital is effective.”

4. By amending section 431-387 to read:

**“§431-387 Limitations upon nonresident agent or broker.** A nonresident agent or broker is authorized to place insurance on a subject of insurance located in this State, only under all of the following conditions:

- (1) The insured, if an individual, is not domiciled within this State[, or,]<sub>2</sub> if a partnership, each partner is not domiciled within this State[, or,]<sub>2</sub> if a corporation, is a foreign corporation within the meaning of part XIII chapter [418]     or is a corporation wholly owned by such a foreign corporation[,]<sub>2</sub> or is a corporation formed or organized under the laws of any other territory of the United States;
- (2) Any negotiation between the nonresident agent or broker and the insured[, ] leading up to the placement of the insurance[, ] has taken place outside this State;
- (3) The insurance is placed through a licensed general agent [in this State] of an [authorized insurer,] insurer authorized to do business in this State;
- (4) The commission paid to the nonresident agent or broker by the licensed general agent in the State does not exceed the usual rate of commission paid to a resident solicitor; and
- (5) Paragraphs (1) and (2) shall not be applicable to insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.”

SECTION 14. Section 433-12, Hawaii Revised Statutes, is amended to read as follows:

“**§433-12 Foreign societies.** Any foreign society subject to this chapter shall not be excused or relieved from compliance with this chapter by reason of the nonresidence of its members. Upon a showing to the satisfaction of the insurance commissioner that it is impracticable and would work a hardship to comply with that provision of section 433-10 requiring the election or appointment, among its officers, of a president and a treasurer, who shall be residents of the State, the commissioner shall permit such society to qualify in this respect upon its appointment of a local agent, in the same manner and subject to the same conditions as are provided for in the case of foreign corporations under the [provisions of part VII of chapter 416 and chapter 418.] general laws on corporations. The provisions of section 433-10 applicable to the president and treasurer of the society, shall likewise be applicable to the agent.”

SECTION 15. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

“**§441-24 Inspection of cemetery or pre-need funeral authority books; annual exhibits.** The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the director to the same extent and in the same manner as may be from time to time provided for corporations in section [416-95,] -125 or -, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such [annual exhibits] information as may be required by the director in order to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.”

SECTION 16. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name[,] which is identical with any registered print, label, trademark, service mark, or trade name or so similar as to be confused therewith, or any print, label, trademark, service mark, or trade name identical with or similar to the name of any copartnership or corporation registered in accordance with [chapter 416 or chapter 418 or chapter 425;] the laws on partnerships or domestic or foreign corporations; and the director of [regulatory agencies] commerce and consumer affairs shall not register any such print, label, trademark, service mark, or trade name.”

SECTION 17. Sections 53-23, 359G-1.1, 408-13, 420-2, 421-21.5, 421-25, and 485-5, Hawaii Revised Statutes, are amended by substituting the phrase “the general corporation laws” for the phrase “chapter 416” or “chapter 417, part I” whenever used.

SECTION 18. Sections 235-4, 235-71, 448-15, and 605-14, Hawaii Revised Statutes, are amended by substituting the term “chapter 416” for the phrase “part VIII of chapter 416” whenever used.

**ACT 167**

SECTION 19. Chapter 417E, Hawaii Revised Statutes, is repealed.

SECTION 20. This Act shall not affect any proceedings which were begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date.

SECTION 21. Chapters 417, 418 and parts I through VII of chapter 416, Hawaii Revised Statutes, shall apply only to non-profit corporations.

SECTION 22. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 23. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 24. This Act shall take effect on July 1, 1986.

(Approved June 4, 1983.)

## SECTIONS OF HAWAII REVISED STATUTES AFFECTED

Key: Am = Amended  
R = Repealed

HRS Section No.	Effect	Act 167 Section No.
53-23	Am	17
92-28	Am	2
207-12	Am	3
235-4, 71	Am	18
238-1	Am	4
359G-1.1	Am	17
403-62	Am	5
404-8	Am	6
407-25	Am	7
408-13	Am	17
408-14	Am	8
C 416 (pts I to VII)	Am	21
416-146	Am	9
C 417	Am	21
C 417E	R	19
C 418	Am	21
420-2	Am	17
420-3	Am	10
421-5, 6	Am	11(1), (2)
421-21	Am	11(3)
421-21.5, 25	Am	17
422-5	Am	12(1)
422-34	Am	12(2)
431-114	Am	13(1)
431-161, 162	Am	13(2), (3)
431-387	Am	13(4)
433-12	Am	14
441-24	Am	15
448-15	Am	18
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