

A Bill for an Act Relating to Corporations.

*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 NONPROFIT CORPORATION ACT**

**PART I. NONPROFIT CORPORATIONS, GENERALLY**

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

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

"Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

"Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

"Bylaws" means any code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which such rules are designated.

"Corporation" or "domestic corporation" means a nonprofit corporation subject to this chapter, except a foreign corporation.

"Director" means the director of commerce and consumer affairs.

"Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this State.

"Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its affairs.

"Member" means any person having membership rights in a corporation in accordance with its articles of incorporation or bylaws.

"Nonprofit corporation" means a corporation of which no part of the income or profit is distributable to its members, directors, or officers.

§ -3 **Applicability.** This chapter relating to domestic corporations shall apply to:

- (1) Any corporation organized under this chapter; and
- (2) Any nonprofit corporation heretofore organized under any law superseded by this chapter, for a purpose or purposes for which a corporation might be organized under this chapter.

The provisions of this chapter relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this State for any purpose for which a corporation might be organized under this chapter.

§ -4 **Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that, labor unions, cooperative organizations other than limited equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State shall not be organized under this chapter.

§ -5 **General powers.** Any corporation organized under this chapter shall have the power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

- (2) To sue, be sued, complain, and defend, in its corporate name;
- (3) To have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile thereof, to be impressed, affixed, or in any other manner reproduced;
- (4) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (6) To lend money and use its credit to assist its employees who are not also members, directors, or officers;
- (7) 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, whether for profit or not for profit, 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;
- (8) To make contracts 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 portion of its property, franchises, and income;
- (9) 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;
- (10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this State;
- (11) To elect or appoint officers and agents of the corporation, who may be directors or members, define their duties, and fix their compensation;
- (12) 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;
- (13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific, or educational purposes; and during periods where the United States is engaged in armed conflict, to make donations in aid of military and related operations;
- (14) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers, and employees;
- (15) To cease its corporate activities and surrender its corporate franchise;
- (16) To have and exercise all powers necessary or convenient to effect its purposes.

**§ -6 Indemnification of officers, directors, employees, and agents.** (a) As used in this section, unless the context otherwise requires:

“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.

"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 the 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 the person acted in good faith and in a manner the 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 the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, of itself, shall not 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 the person's 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 the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of such action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the 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, by independent legal counsel in a written opinion; or (3) by the shareholders; or (4) by the court in which the 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 the 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 the 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 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, although 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.

**§ -7 Corporate name.** The corporate name:

- (1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, partnership, or trade name 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 under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant files with the director either of the following:
  - (A) 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
  - (B) 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.

**§ -8 Reserved name.** The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this chapter.
- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.

- (4) Any foreign corporation authorized to transact business in this State and intending to change its name.
- (5) 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.

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, the director shall reserve the name for the exclusive use to 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.

**§ -9 Service of process on corporation.** (a) 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 officer or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in the event of failure to find any such 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 (1) no 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 (2) the corporation, if a foreign corporation, has neglected to file with the director the name of a person upon whom legal notice and process from the courts of the State may be served or if the person so named is not found within the State, then service may be made upon the corporation by filing with the director, or in the director's absence with the deputy director, a copy of the notice or process, certified to be such under the seal of any court of record, or by the chairperson 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.

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

(c) Nothing in this section 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.

**§ -10 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:
  - (A) A person intending to organize a corporation or an incorporator, if the corporation has not been organized;
  - (B) Two persons who are officers of the corporation, if the corporation has been organized; or
  - (C) A majority of incorporators with respect to articles of dissolution delivered pursuant to section -94.
- (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.

**§ -11 Annual report of domestic and foreign corporations.** Each domestic corporation or foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this chapter, an annual report setting forth:

- (1) The name of the corporation and the state or county under the laws of which it is incorporated;
- (2) The address of the corporation's registered office in this State, the name of the corporation's 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 county under the laws of which it is incorporated;
- (3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State; and
- (4) The names and respective addresses of the directors and officers of the corporation.

The annual report shall be made on forms prescribed and furnished by the director, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed on behalf of the corporation by its president, a vice-president, secretary, assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, by such receiver or trustee.

**§ -12 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, the director shall file the report. If the director finds that it does not so

conform, the director shall return the report to the corporation for any necessary corrections, in which event the penalties prescribed in this chapter for failure to file such report within the time provided shall not apply, if the 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.

**§ -13 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 because the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, if all of the parties to the contract are parties to the proceeding, and if the court deems the same to be equitable, the court may set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or 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; or
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative action, against the officers or directors of the corporation for exceeding their authority.

**§ -14 Greater voting requirements.** With respect to any action to be taken by the members or directors of a corporation, whenever the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by this chapter, the articles of incorporation or bylaws shall control.

**§ -15 Waiver of notice.** Whenever any notice is required to be given to any member or director of a corporation under this chapter or under 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. Attendance at a meeting without protest shall constitute a waiver of notice of that meeting.

Subject to any limitations which are expressly contained in the articles of incorporation or in the bylaws of any corporation, or in any applicable statute, when two-thirds of the directors or members entitled to vote at any meeting sign by themselves or their proxies or other authorized representatives a written consent or approval on the record of the meeting, actions taken at the meeting, however called or notified, shall be valid.

**§ -16 Action by members or directors without a meeting.** Any action required or permitted by this chapter to be taken at a meeting of the members or directors of a corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members or directors, as the case may be, entitled to vote on the subject matter of the meeting. Such consent shall have the force and effect of a unanimous vote and

may be stated as such in any articles or document filed with the director pursuant to this chapter.

§ -17 **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.

§ -18 **Certificates and certified copies to be received in evidence.** All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director's office pursuant to this chapter where certified by the director, 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 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.

§ -19 **Forms to be furnished by 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 provided in this chapter, shall not be mandatory.

## **PART II. ORGANIZATION AND MEMBERS**

§ -31 **Members.** A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class may be set forth in the articles of incorporation or the bylaws or determined by the board of directors. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

The directors, officers, employees, and members of the corporation shall not be liable for the corporation's obligations.

§ -32 **Meetings of members.** A meeting of the members shall be held at least once each year following the year of incorporation, unless this is dispensed with pursuant to unanimous consent under section -16. Meetings of members may be held at such place within or without the 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 principal office of the corporation within this State. Unless otherwise provided in the articles of incorporation or bylaws or fixed in accordance with the bylaws, the annual meeting of the members for the consideration of business as may come before the meeting, shall be held on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following.

Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one twentieth of the votes entitled to be cast at such meeting.



**§ -33 Notice of members' meetings.** Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, any purpose 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, secretary, or officers or any person calling the meeting, to each member 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 member at the member's address as it appears on the records of the corporation, with postage thereon prepaid.

**§ -34 Articles of incorporation.** One or more persons may organize a corporation by signing and delivering articles of incorporation in duplicate to the director pursuant to section -10, which shall set forth:

- (1) The name of the corporation;
- (2) The period of the corporation's duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
- (5) The street address of the corporation's initial registered office; provided that where no specific street address is available, the rural route post office or post office box designated or made available by the United States Postal Service may be listed, and the name of its initial registered agent at such address;
- (6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors and initial officers; and
- (7) The name and address of each incorporator.

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

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

**§ -35 Effect of filing of articles of incorporation.** Upon the effective date of the articles of incorporation, the corporate existence shall begin, and such articles 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 the State in a proceeding to cancel or revoke the articles of incorporation or for involuntary dissolution of the corporation.

**§ -36 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.

**§ -37 Procedure to amend articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed

amendment and directing that it be submitted to a vote at an annual or special meeting of any such members. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

- (2) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

**§ -38 Articles of amendment.** The articles of amendment shall be filed pursuant to section -10 and shall set forth:

- (1) The name of the corporation;
- (2) The amendment so adopted;
- (3) If there are members entitled to vote on the amendment, (A) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (B) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote thereon; and
- (4) If there are no members or no members entitled to vote on the amendment, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

**§ -39 Effectiveness of amendment.** No amendment to the articles of incorporation shall affect any existing cause of action in favor of or against a corporation, any pending action to which a corporation shall be a party, or the existing rights of persons other than members; and, if the corporate name is changed by amendment, no action brought by or against the corporation under its former name shall abate for that reason.

**§ -40 Restated articles of incorporation.** A domestic corporation at any time may restate amended articles of incorporation by a resolution adopted by the board of directors.

Upon the adoption of the resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles, as amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles, as amended, and that the restated articles supersede the original articles and all prior amendments thereto.

The restated articles of incorporation shall be delivered to and filed by the director pursuant to section -10.

**§ -41 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 shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions

for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

**§ -42 Organization meetings.** 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 at the call of a majority of the incorporators for the purpose of adopting bylaws, and transacting any other business. The incorporators calling the meeting shall give at least three days' notice of the time and place of the meeting to each director.

A first meeting of the members may be held at the call of at least a majority of the directors, upon at least three days' notice for any purpose stated in the notice.

**§ -43 Voting.** The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws or as determined by the board of directors. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by the member's 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. Where directors or officers are to be elected by members, the bylaws or directors may provide that such elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate the member's vote and give one candidate a number of votes equal to the candidate's vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

**§ -44 Quorum.** The bylaws shall provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members and is necessary for the conduct of business. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of the matter to be voted upon, unless a greater proportion is required by this chapter, the articles of incorporation, or the bylaws.

**§ -45 Books and records.** Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and any committee having any of the authority of the board of directors; and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member or member's agent or attorney, for any proper purpose at any reasonable time.

**§ -46 Shares of stock and dividends prohibited; compensation; distribution.** A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay

compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

### PART III. OFFICERS AND DIRECTORS

**§ -61 Board of directors.** The affairs of a corporation shall be managed by a board of directors, of which one director shall be a resident of this State. The other directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

**§ -62 Number and election of directors.** The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except that if authorized by the articles of incorporation or the bylaws, the number may be fixed by the members at the annual meeting or at any other meeting properly called for such purpose, and except as to the number of the first 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 the bylaws or, if authorized by the bylaws or articles of incorporation, by the members, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw or membership resolution fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected by the members or elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which the director is elected or appointed and until a successor is elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws.

**§ -63 Quorum of directors.** A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in 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 this chapter, the articles of incorporation, or the bylaws.

**§ -64 Place and notice of directors' meetings.** Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when 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 need be specified in the notice or waiver of notice of such meeting.

Unless prohibited by the articles of incorporation, association, charter, or bylaws, and subject to provisions therein relating to notice, 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 communication equipment by means of which all persons participating in the meeting can simultaneously hear each other. Participation by such means shall constitute presence in person at a meeting.

§ -65 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, even if such majority is less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

A director elected or appointed to fill a vacancy shall be elected or appointed, as the case may be, for the unexpired term of the director's 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.

If a corporation has no members other than the directors and all the directors resign, die, or become incompetent, any circuit judge of the circuit where the corporation has its principal office or any circuit judge of the first circuit may appoint directors of the corporation upon petition of a creditor of the corporation, the personal representative of a deceased director, or the guardian or conservator of an incompetent director.

§ -66 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering, or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation, restating articles of incorporation adopting a plan of merger, or adopting a plan of consolidation with another corporation;
- (4) Authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;
- (5) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor;
- (6) Adopting a plan for the distribution of the assets of the corporation; or
- (7) Amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

Nothing in paragraphs (1) to (7) shall prohibit any committee, if properly authorized by the board of directors and not prohibited by the bylaws from engaging in any sale, lease, exchange, mortgage, pledge, or distribution of assets of the corporation in the normal course of the corporation's business.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon the board or such director by law.

**§ -67 Equal division of directors; appointment of provisional director; qualifications, rights, powers, and compensation.** (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of corporate affairs so that its business can no longer be conducted advantageously or so that there is danger that corporate property and business will be impaired or lost, and notwithstanding any provisions of the articles of incorporation or bylaws to the contrary and whether or not any action is pending for an involuntary dissolution of the corporation, a first circuit court judge may appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by the collective action of at least thirty-three and one-third per cent of the members, if there are members.

(b) A provisional director shall be an impartial person, who is not a member, director, officer, employee, or creditor of the corporation, or related by consanguinity or affinity within the third degree according to the common law to any other director 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 members is broken or until such provisional director is removed by order of the court or by approval of members holding a majority of the voting power. A provisional director shall be entitled to compensation which shall be fixed by the court unless otherwise agreed with the corporation.

(c) This section shall not prohibit, nullify, or limit any other lawful means of resolving a deadlock between directors, including, without limitation, the right of the directors, the president, or the members to call a special meeting of the members pursuant to section -32 or the right of the members to set a different number of directors and elect directors pursuant to section -62.

**§ -68 Officers.** The officers of a corporation shall consist of a president, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person; provided the corporation shall have at least two persons as officers.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

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.

**§ -69 Removal of officers.** Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**§ -70 Loans to directors and officers prohibited.** No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until it is repaid. For the purposes of this section, any director who votes against the making of such loan shall be deemed not to have assented to or participated in the making of such loan.

## PART IV. MERGERS AND CONSOLIDATIONS

**§ -81 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 in this chapter.

Each corporation shall adopt a plan of merger setting forth:

- (1) 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;
- (2) The terms and conditions of the proposed merger;
- (3) A statement of the proposed articles of incorporation of the surviving corporation, as amended, to effect such merger; and
- (4) Any other necessary or desirable provisions with respect to the proposed merger.

**§ -82 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 in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

- (1) 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;
- (2) The terms and conditions of the proposed consolidation;
- (3) With respect to the new corporation, all of the statements required to be set forth in the articles of incorporation for corporations organized under this chapter; and
- (4) Any other necessary or desirable provisions with respect to the proposed consolidation.

**§ -83 Approval of merger or consolidation.** A plan of merger or consolidation shall be adopted in the following manner:

- (1) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at an annual or special meeting of such members. Written notice setting forth the proposed plan or a summary thereof shall be given to each member 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 members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; and

- (2) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions set forth in the plan of merger or consolidation.

**§ -84 Articles of merger or consolidation.** The articles of merger or articles of consolidation shall be delivered to the director and filed pursuant to section -10 and shall set forth:

- (1) The plan of merger or the plan of consolidation;
- (2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (A) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (B) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and
- (3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the director, shall be returned to the surviving or new corporation, as the case may be, or its representative.

**§ -85 Effect of merger or consolidation.** Upon compliance with section -84, the merger or consolidation shall be effected and:

- (1) The several corporations party 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;
- (2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;
- (3) 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;
- (4) Such surviving or new corporation, thereupon and thereafter, shall possess all the rights, privileges, immunities, and franchises, public and private, of each of the merging or consolidating corporations. Any property, whether real, personal, or mixed; any debt due on account, any other chose in action, and any 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 the surviving or new corporation, as the case may be, without further act or deed. The title to any real estate, or any



interest therein, vested in any surviving or new corporation shall not revert or be in any way impaired by reason of the merger or consolidation.

- (5) Any surviving or new corporation shall be responsible and liable for all the liabilities and obligations of its merged or consolidated corporations. Any claim existing or action or proceeding pending by or against any merged or consolidated corporation may be prosecuted as if the merger or consolidation had not taken place or the surviving or new corporation may be substituted in the former's place. Neither the rights of creditors nor any liens upon the property of any merged or consolidated corporation shall be impaired by any merger or consolidation; and
- (6) 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. 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 articles of incorporation of the new corporation.

**§ -86 Merger or consolidation of domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner; provided that a merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

- (1) Each domestic corporation shall comply with this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the laws of the jurisdiction under which it is organized;
- (2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this State, and it shall file with the director:
  - (A) An agreement that the surviving or new corporation 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 the merger or consolidation; and
  - (B) An irrevocable appointment of the director as the surviving or new corporation's agent to accept service of process in any such proceeding.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except where the surviving or new corporations are governed by laws other than those of this State, insofar as those laws otherwise provide.

After approval by the members, or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation.

**PART V. DISSOLUTION, LIQUIDATION, AND SALE OF ASSETS**

**§ -91 Voluntary dissolution.** A corporation may dissolve and wind up its affairs in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and direct that the question of the dissolution be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting pursuant to this chapter. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the dissolution, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve adopted by the vote of a majority of the directors in office.
- (3) The corporation shall publish once in each of four successive weeks in any newspaper of general circulation published in the State, a notice to all creditors of the corporation to present their claims at a place designated in the notice within ninety days from the first publication of the notice. The corporation shall mail, within thirty days from the first publication of the notice, postage prepaid, a like notice to each creditor whose name and address is known to the corporation and who prior to the mailing of the notice, has not presented any claim. The notice shall also set forth all corporate and trade names actually used by the corporation or its predecessors in its trade or business during the preceding six years. All claims, other than tort claims, not so presented shall be forever barred. The corporation, with the approval of the director, may omit the publication of the notice if the assets of the corporation are insufficient to pay for the publication.

Upon the adoption of the resolution to dissolve by the members, or by the board of directors if there are no members or no members entitled to vote on the dissolution, the corporation shall cease to conduct its affairs upon the date established, except insofar as may be necessary for the winding up thereof, and shall proceed to collect its assets and apply and distribute them pursuant to this chapter.

**§ -92 Plan of distribution.** Subject to this chapter, a plan providing for the distribution of assets may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

- (1) The board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at an annual or special meeting of members entitled to vote thereon. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, pursuant to this chapter. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes

which members present at such meeting or represented by proxy are entitled to cast.

- (2) If there are no members or no members entitled to vote on the plan of distribution, a plan shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

**§ -93 Distribution of assets.** The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for payment and discharge;
- (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or other similar purposes, but not subject to any condition requiring return, transfer, or conveyance upon dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted pursuant to this chapter;
- (4) Any other assets shall be distributed in accordance with the articles of incorporation or bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted pursuant to this chapter.

**§ -94 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, 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 transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be filed pursuant to section -10, and shall set forth:

- (1) The name of the corporation;
- (2) A statement setting forth the date of any meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that a resolution to dissolve was adopted by a consent in writing signed by all members entitled to vote with respect thereto;
- (3) If there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
- (6) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
- (7) That there are no actions 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 the corporation in any pending action; and
- (8) That the notice required by section -91(3) has been complied with.

**§ -95 Filing of articles of dissolution.** The articles of dissolution shall be delivered to the director and filed pursuant to section -10.

Upon the filing of the articles of dissolution the existence of the corporation shall cease on the date established therein, except for the purpose of any action, proceeding, or other appropriate corporate action by members, directors, and officers as permitted in this chapter.

**§ -96 Revocation of voluntary dissolution proceedings.** At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action theretofore taken to dissolve the corporation in the following manner:

- (1) 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 an annual or special meeting of members entitled to vote thereon. 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 member entitled to vote at such meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs.

**§ -97 Involuntary dissolution, when.** A corporation may be dissolved involuntarily when it is established that:

- (1) The corporation has failed to file its annual report within the time required by this chapter;
- (2) The corporation procured its articles of incorporation through fraud;
- (3) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (4) The corporation has failed for ninety days to appoint and maintain a registered agent in this State;

- (5) The corporation has failed for ninety days after change of its registered agent to file in the office of the director a statement of such change;
- (6) The corporation has been adjudicated bankrupt; or
- (7) The corporation's articles of incorporation have expired with no attempt by the corporation to renew or extend the articles for two years.

**§ -98 Involuntary dissolution, ordered by director.** Whenever the director certifies that a corporation has given any cause for dissolution pursuant to section -97, the director may disincorporate the corporation or annul the articles of incorporation 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 in a newspaper of general circulation published in the State. If any corporation is declared dissolved any trustee appointed to settle the affairs of the corporation shall pay to the State out of any funds under the control of the trustee, a sum equal to any penalty imposed under section -157. In each case the director shall deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

**§ -99 Jurisdiction of court to liquidate assets and affairs of corporation.** The first circuit court shall have full power to liquidate the assets and affairs of a corporation:

- (1) Pursuant to action by a member or director when it appears:
  - (A) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and the members are unable to break the deadlock or there are no members having voting rights;
  - (B) That the acts of the directors or those in control of the corporation are illegal or fraudulent;
  - (C) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;
  - (D) That the corporate assets are being misapplied or wasted; or
  - (E) That the corporation is unable to carry out its purposes; or
- (2) Upon application by a corporation to have its dissolution continued under the supervision of the court.

It shall be unnecessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

**§ -100 Procedure in liquidation of corporation by court.** (a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the 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 any other action as may be necessary to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had 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. Any such liquidating receiver

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 order appointing any such liquidating receiver shall state the powers and duties, which may be increased or diminished at any time during the proceedings.

(b) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

- (1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;
- (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirement;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not subject to any condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court directs;
- (4) Any other assets shall be distributed in accordance with the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted pursuant to this chapter, or where no plan of distribution has been adopted, as the court directs.

(c) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to any receiver, and to any attorney 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.

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

**§ -101 Qualification of receivers.** A receiver shall be an individual resident of this State, or a domestic corporation for profit authorized to act as receiver, and shall give such bond as the court directs with any sureties the court requires.

**§ -102 Filing of claims in liquidation proceedings.** In proceedings to liquidate the assets and affairs 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 any form the court prescribes, proof under oath of their respective claims. If the court requires the filing of claims it shall fix a date, 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 to be given to creditors and claimants of the date so fixed. Prior to such date, 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.

**§ -103 Discontinuance of liquidation proceedings.** The liquidation of the assets and affairs 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.

**§ -104 Decree of involuntary dissolution.** In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed pursuant to this chapter, or in case the corporation's property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and 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 and the existence of the corporation shall cease.

**§ -105 Filing of decree of dissolution.** If the court enters a decree dissolving a corporation, the clerk of the court shall 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.

**§ -106 Deposits with director of finance.** Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person 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 and paid over to such person or to the person's legal representative upon proof satisfactory to the director of finance of right to the proceeds.

**§ -107 Survival of tort claims after dissolution.** The dissolution of a corporation by (1) the issuance of a certificate of dissolution by the director, (2) a decree of court when the court has not liquidated the assets and affairs of the corporation pursuant to this chapter, or (3) expiration of the corporation's period of duration shall not take away or impair any tort remedy available to or against such corporation for any right or claim existing, or any liability incurred, prior to such dissolution; provided the action or other proceeding thereon is commenced within two years after the date of the incident giving rise to the claim, or the date of such dissolution, whichever is earlier. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, 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 a corporation is dissolved by the expiration of its period of duration, the corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

**§ -108 Sale, lease, exchange, or mortgage of assets.** A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

- (1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and direct that it be

submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, pursuant to this chapter. At the meeting the members may authorize such sale, lease, exchange, mortgage, pledge, 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. The authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. Such authorization by a vote of members notwithstanding, the board of directors may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or

- (2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Nothing in this section shall require a vote of the members with respect to any sublease, exchange, mortgage pledge, or distribution of assets of the corporation in the normal and continuing course of the corporation's business.

## PART VI. FOREIGN CORPORATIONS

**§ -121 Admission of foreign corporation.** (a) No foreign corporation shall have the right to conduct affairs in this State until it obtains a certificate of authority from the director. No foreign corporation shall be entitled to obtain a certificate of authority under this chapter to conduct in this State any affairs which a corporation organized under this chapter is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws, of the jurisdiction under which it is organized, which govern its organization and internal affairs differ from the laws of this State. Nothing in this chapter shall be construed to authorize this State to regulate the organization or the internal affairs of such a foreign corporation.

(b) A foreign corporation shall not be considered to be conducting affairs 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:

- (1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof, or the settlement of claims or disputes;
- (2) Holding meetings of its directors or members or carrying on other activities concerning the corporation's internal affairs;
- (3) Maintaining bank accounts;
- (4) Creating evidences of debt, mortgages, or liens on real or personal property;
- (5) Securing or collecting debts due to it or enforcing any rights in property securing the same;
- (6) Conducting corporate affairs in interstate commerce;
- (7) Granting funds;



- (8) Distributing information to corporate members; or
- (9) 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.

**§ -122 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Does not contain any term which indicates or implies that it is organized for any purpose other than any of the purposes contained in the corporation's articles of incorporation;
- (2) Is not the same as, or deceptively similar to, the name of any profit or nonprofit corporation existing under the laws of this State, or any profit or nonprofit foreign corporation authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered pursuant to the laws of this State; and
- (3) Is transliterated into letters of the English alphabet, if the name is not in English.

**§ -123 Change of name by foreign corporation.** Whenever a foreign corporation which is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this State until it has changed its name to a name which is permitted by the laws of this State.

**§ -124 Application for certificate of authority.** In order to procure a certificate of authority to conduct affairs in this State, a foreign corporation shall submit an application therefor to the director stating:

- (1) The name of the corporation and the jurisdiction under which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The address of the corporation's proposed registered office of the corporation in this State and the name of its proposed registered agent in this State at such address;
- (5) Any purpose of the corporation which it proposes to pursue in conducting its affairs in this State;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- (7) Any additional information necessary or appropriate to enable the director to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

**§ -125 Filing of application for certificate of authority.** The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a copy of the corporation's articles of incorporation and any amendments thereto, duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated.

**§ -126 Effect of certificate of authority.** Upon the issuance of a certificate of authority by the director, a foreign corporation shall be authorized to conduct affairs in this State for any purpose set forth in the corporation's application; provided that this State may suspend or revoke such authority pursuant to this chapter.

**§ -127 Conducting affairs without certificate of authority.** (a) No foreign corporation which is conducting affairs in this State without a certificate of

authority shall be permitted to maintain any action or proceeding in any court of this State until such corporation has obtained a certificate of authority. No action or proceeding shall 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 conduct of affairs by such corporation in this State, until a certificate of authority has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs 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 or proceeding in any court of this State.

(c) A foreign corporation which conducts affairs in this State without a certificate of authority shall be liable to this State, for any year or portion thereof, during which the corporation conducted affairs 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 conduct affairs in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all interest and penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover any amount due this State pursuant to this section.

**§ -128 Powers of foreign corporation.** A foreign corporation which has received a certificate of authority under this chapter and until a certificate of revocation or of withdrawal has been issued pursuant to this chapter, shall 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 authorization is issued. Except as otherwise provided by this chapter, such a foreign corporation shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

**§ -129 Registered office and registered agent of foreign corporation.** Any foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

- (1) A registered office which may be the same as its principal office; and
- (2) A registered agent which may be either an individual resident in this State whose business office is identical with the corporation's registered office, a profit or nonprofit domestic corporation, or a profit or nonprofit foreign corporation authorized to transact business or conduct affairs in this State and having an office identical with the corporation's registered office.

**§ -130 Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs in this State may change its registered office or change its registered agent, or both, upon delivering to the director pursuant to section -10 a statement setting forth:

- (1) The name of the corporation;
- (2) The street address of the corporation's current 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 may be provided;
- (3) If the address of the corporation's registered office is to be changed, the street address to which the registered office is to be changed; 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 may be provided;
- (4) The name of the corporation's registered agent;
  - (5) If the corporation's registered agent is to be changed, the name of the successor registered agent;
  - (6) That the address of the corporation's registered office and the registered agent, as changed, will be identical; and
  - (7) That such change was authorized by resolution duly adopted by its board of directors.

Any registered agent in this State appointed by a foreign corporation may resign as such agent upon filing a written notice thereof with the director who shall mail a copy of the notice to the foreign corporation at its principal office in the jurisdiction in which it is incorporated as shown by its most recent annual report. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of the notice by the director.

**§ -131 Amendment to articles of incorporation of foreign corporation.** Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this State are amended, the foreign corporation, within thirty days after such amendment becomes effective, shall file in the office of the director a copy of such amendment duly certified by the proper officer of the jurisdiction in which the corporation is incorporated; provided that the filing of itself shall neither enlarge nor alter any purpose which the corporation is authorized to pursue in conducting its affairs in this State nor authorize the corporation to conduct affairs in this State under any other name than the name set forth in its certificate of authority.

**§ -132 Amended certificate of authority.** A foreign corporation authorized to conduct affairs in this State shall apply with the director for an amended certificate of authority to change the corporate name, or for the purpose of pursuing in this State any other purpose than one set forth in the corporation's prior application for a certificate of authority.

The requirements in respect to the form and contents of such application shall be the same as in the case of an original application for a certificate of authority.

**§ -133 Merger of foreign corporation authorized to conduct affairs in this State.** Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the jurisdiction in which it is incorporated, and such corporation is the surviving corporation, it shall file within sixty days after such merger becomes effective with the director a copy of the articles of merger duly certified by the proper officer of the jurisdiction in which such statutory merger was effected. It shall not be necessary for such surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State unless the name of such corporation is changed by the merger or the corporation desires to pursue in this State any purpose other than one which it is then authorized to pursue in this State.

**§ -134 Withdrawal of foreign corporation.** A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. The application for withdrawal shall state:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) That the corporation is not conducting affairs in this State;

- (3) That the corporation surrenders its authority to conduct affairs in this State;
- (4) 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 or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director; and
- (5) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.

§ -135 **Filing of application for withdrawal.** The application for withdrawal shall be delivered to the director and filed pursuant to section -10. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

§ -136 **Revocation of certificate of authority.** The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by the director when:

- (1) 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 imposed pursuant to this chapter;
- (2) The corporation has failed to appoint and maintain a registered agent in this State as required by this chapter;
- (3) The corporation, after change of its registered agent, has failed to file in the office of the director a statement of the change as required by this chapter;
- (4) 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;
- (5) The certificate of authority of the corporation was procured through fraud practiced upon the State;
- (6) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or
- (7) 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 the director has given the corporation at least sixty days' notice of the revocation by mail addressed to the corporation's registered office in this State, and the corporation, prior to revocation fails to file an annual report, pay fees or penalties, file the required statement of change of registered agent, file articles of amendment or articles of merger, or correct any misrepresentation.

§ -137 **Issuance of certificate of revocation.** Upon revoking any such certificate of authority, the director shall:

- (1) Issue a certificate of revocation in duplicate;
- (2) File one of such certificates in the director's office; and
- (3) Mail to the corporation at its registered office in this State a notice of revocation accompanied by one of the certificates.

Upon the issuance of the certificate of revocation, the authority of the corporation to conduct affairs in this State shall cease.

## PART VII. ENFORCEMENT, FEES, AND PENALTIES

**§ -151 Powers of director.** The director shall have the power and authority reasonably necessary to administer this chapter efficiently, to perform the duties by this chapter imposed upon the director, and to adopt, amend, and repeal rules under this chapter subject to chapter 91.

**§ -152 Appeal from director.** (a) If the director fails 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 the director's office, the director within thirty days after the delivery thereof to the director, shall deliver written notice of disapproval to the person or corporation and specify the reasons therefor. The person or corporation, domestic or foreign may appeal the director's disapproval to the first circuit court by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written disapproval thereof by the director. The matter shall be tried de novo by the court and the court shall either sustain the action of the director or order the director to take any action the court deems proper.

(b) If the director revokes the certificate of authority of any foreign corporation to conduct affairs in this State, pursuant to this chapter, the foreign corporation may appeal to the first circuit court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this State and a copy of the notice of revocation given by the director. The matter shall be tried de novo by the court, and the court shall either sustain the action of the director or order the director to take such action as the court deems proper.

(c) Appeals from all final orders and judgments entered by the first circuit court pursuant to this section may be taken in the manner provided for civil actions.

**§ -153 Interrogatories by director.** The director may propose to any foreign or domestic corporation, subject to this chapter, and to any officer or director thereof, any interrogatories which are reasonably necessary and proper to enable the director to ascertain whether the corporation has complied with all the applicable provisions of this chapter.

Interrogatories to an officer or director shall be mailed by registered mail to the individual's latest residence address on file in the office of the director. The interrogatories shall be answered within thirty days after their mailing or within any additional time fixed by the director. The answers to the interrogatories shall be full and complete, in writing, and under oath. If the interrogatories are directed to an individual they shall be answered by such individual; and, if directed to a corporation, they shall be answered by its president, vice-president, secretary, assistant secretary, treasurer, or assistant treasurer.

The director need not file any document related to such interrogatories until the interrogatories are answered pursuant to this section, and not then if such answers disclose that the document is not in conformity with this chapter. The director shall certify to the attorney general, for such action as the attorney general deems appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

The director, or designated agent, at any time, may call for the production of the books and papers of any foreign corporation doing business in the State and examine under oath its officers, members, and any others relating to corporate affairs.

**§ -154 Information disclosed by interrogatories.** Interrogatories proposed by the director and the answers thereto shall not be open to public inspection.

The director shall not disclose any facts or information obtained from the interrogatories except insofar as the director's official duty requires any such facts or information to be made public or if the interrogatories or the answers thereto are required for evidence in any criminal proceedings or other action by this State.

§ -155 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation of nonprofit corporation, \$10;
- (2) Certificate of amendment and renewal or extension of charter of nonprofit corporation, \$5;
- (3) Annual exhibit of nonprofit domestic and foreign corporations, \$1;
- (4) Agreement of merger or consolidation of nonprofit corporations, \$5; and
- (5) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$5.

§ -156 Miscellaneous charges. The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 35 cents a page and \$1 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as resident agent of a corporation, \$5, which amount may be recovered as taxable costs by the party to the action causing such service to be made if such party prevails in the action.

§ -157 Penalties imposed upon corporation. Any domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of \$50 to be assessed by the director.

Any domestic or foreign corporation that fails or refuses to truthfully and fully answer, within the time prescribed by this chapter, interrogatories propounded by the director pursuant to this chapter shall be subject to chapter 710, part V.

§ -158 Penalties imposed upon directors and officers. Any director and officer of a foreign or domestic corporation who, within the time prescribed by this chapter, fails or refuses to truthfully and fully answer interrogatories propounded to such director or officer by the director pursuant to 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 subject to chapter 710, part V.

§ -159 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 corporations 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, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter."

SECTION 2. In printing the new chapter enacted by this Act, the revisor of statutes shall provide a historical note to follow each section in the new

chapter or prepare a table to precede the new chapter, in the revisor's discretion, indicating which section in this Act is from the Model Nonprofit Corporation Act of the Committee on Corporate Laws of the American Bar Association and the corresponding section number from that edition of the Model Act. In order to prepare the historical notes the revisor shall use the following tables:

CROSS REFERENCE TABLES  
Model Nonprofit Corporation Act  
to  
House Bill

MNPCA (2nd edition)	H.B. No. 347, H.D. 1, S.D. 1	MNPCA (2nd edition)	H.B. No. 347, H.D. 1, S.D. 1
1	1	35	38
2	2	36	39
3	3	37	40
4	4	38	81
5	5	39	82
6	13	40	83
7	7	41	84
8	deleted	42	85
9	deleted	43	86
10	8	44	108
11	31	45	91
12	41	46	93
13	32	47	92
14	33	48	96
15	43	49	94
16	44	50	95
17	61	51	97
18	62	52	98
19	65	53	67
20	63	54	99
21	66	55	100
22	64	56	101
23	68	57	102
24	69	58	103
24A	deleted	59	104
25	45	60	105
26	46	61	106
27	70	62	107
28	34	63	121
29	34	64	128
30	10 (amended)	65	123
31	35	66	122
32	42	67	124
33	36	68	125
34	37	69	126
70	129	85	157
71	130	86	158
72	deleted	87	153
	repeats 10	88	154

73	131	89	151
74	133	90	152
75	132	91	18
76	134	92	19
77	135	93	14
78	136	94	15
79	137	95	16
80	127	96	17
81	11	97	deleted
82	12 (amended)	98	deleted
83	155	99	deleted
84	156	100	deleted

House Bill

to

Model Nonprofit Corporation Act

MNPCA

(2nd edition)

H.B. No. 347,

H.D. 1

S.D. 1

MNPCA

(2nd edition)

H.B. No. 347,

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S.D. 1

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7	7	35	31
8	9	36	33
9	10	37	34
10	30 (amended)	38	35
11	81	39	36
12	82 (amended)	40	37
13	6	41	12
14	93	42	32
15	94	43	15
16	95	44	16
17	96	45	25
18	91	46	26
61	17	105	60
62	18	106	61
63	20	107	62
64	22	108	44
65	19	121	63
66	21	122	65
67	53	123	66
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81	38	127	80
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85	42	131	73
86	43	132	75



91	45	133	74
92	47	134	76
93	46	135	77
94	49	136	78
95	50	137	79
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97	51	152	90
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99	54	154	88
100	55	155	83
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104	59		

**SECTION 3.** This Act shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any proceedings which were begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date.

**SECTION 4.** Act 167, Session Laws of Hawaii 1983, is amended by amending section 24 to read as follows:

“**SECTION 24.** This Act shall take effect on July 1, [1986.] 1987.”

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1987.

(Approved June 6, 1985.)