

Introduced by

Senator W. Stenehjem

Representative Kretschmar

1 A BILL for an Act to create and enact chapter 10-33 of the North Dakota Century Code, relating
2 to nonprofit corporations; to amend and reenact subsection 2 of section 11-10-24, sections
3 14-03-09, 15-17-01, 18-05-01, 26.1-14-03, 26.1-17-11, subsection 2 of section 40-01-23,
4 subsection 12 of section 49-23-01, subsection 8 of section 54-01.1-02, section 55-03-01,
5 subsection 2 of section 61-16.1-60, and section 61-35-29 of the North Dakota Century Code,
6 relating to references to the Nonprofit Corporations Act; to repeal chapters 10-24, 10-25, 10-26,
7 10-27, and 10-28 of the North Dakota Century Code, relating to the Nonprofit Corporations Act;
8 to provide a penalty; and to provide an effective date.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1.** Chapter 10-33 of the North Dakota Century Code is created and enacted
11 as follows:

12 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise
13 requires:

14 1. "Address" means:

15 a. In the case of a registered office or principal executive office, the mailing
16 address, including a zip code, of the actual office location which may not be
17 only a post-office box; and

18 b. In any other case, the mailing address, including a zip code.

19 2. "Articles" means:

20 a. In the case of a corporation incorporated under or governed by this chapter,
21 articles of incorporation, articles of amendment, a resolution of election to
22 become governed by this chapter, a statement of change of registered office,
23 registered agent, or name of registered agent, articles of merger, articles of
24 consolidation, articles of abandonment, articles of dissolution, and any annual

report in which a registered office or registered agent has been established or changed.

b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

3. "Board" means the board of directors of a corporation.

4. "Board member" means an individual serving on the board.

5. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

6. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

7. "Director" means a member of the board.

8. "Filed with the secretary of state" means:

a. The following have been delivered to the secretary of state and have been determined by the secretary of state to conform to law:

(1) A signed original, or a legible facsimile copy of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and

(2) The fees provided for in section 10-33-140;

b. And the secretary of state has:

(1) Endorsed on the original the word "filed", and the month, day, and year; and

(2) Recorded the document in the office of the secretary of state.

9. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

10. "Good faith" means honesty in fact in the conduct of an act or transaction.

11. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:

- 1 a. If the person intentionally does the act or causes the result prohibited by the
2 statute; or
3 b. If the person intentionally fails to do the act or cause the result required by the
4 statute, even though the person may not know of the existence or
5 constitutionality of the statute or the scope or meaning of the terms used in
6 the statute

7 12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
8 from time to time, and successive federal revenue acts.

9 13. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
10 person does not "know" or have "knowledge" of a fact merely because the person
11 has reason to know of the fact.

12 14. "Legal representative" means a person empowered to act for another person,
13 including an agent, manager, officer, partner, or associate of an organization; a
14 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
15 guardian, custodian, or conservator.

16 15. "Member" means a person with membership rights in a corporation under its
17 articles or bylaws, regardless of how the person is identified.

18 16. "Members with voting rights" means members or a class of members that has
19 voting rights with respect to the purpose or matter involved.

20 17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
21 pecuniary gain to any officer, director, or member, other than a member that is a
22 nonprofit organization or subdivision, unit, or agency of the United States or a state
23 or local government.

24 18. "Notice":

- 25 a. Is given by a member of a corporation to the corporation or an officer of the
26 corporation when in writing and mailed or delivered to the corporation or the
27 officer at the registered office or principal executive office of the corporation;
28 and

- 29 b. In all other cases, is given to a person:

- 30 (1) When mailed to the person at an address designated by the person or
31 at the last known address of the person;

- (2) When handed to the person; or
- (3) When left at the office of the person with a clerk or other person in charge of the office; or
- (a) If there is no one in charge, when left in a conspicuous place in the office; or
- (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.
19. "Officer" means an individual who is more than eighteen years of age and who is:
- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
- b. Considered elected as an officer pursuant to section 10-33-52.
20. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; joint venture; association; business trust; estate; trust; enterprise; or any other legal or commercial entity.
21. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
- b. If the corporation has no elected or appointed president, then the registered office of the corporation.
22. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.
23. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- 1 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
2 interests, or other ownership interests of another organization;
3 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
4 more of the voting members of the governing body of another organization; or
5 c. Has the power, directly or indirectly, to direct or cause the direction of the
6 management and policies of another organization, whether through the
7 ownership of voting interests, by contract, or otherwise.
- 8 24. "Signed" means that the signature of a person is placed on a document, as
9 provided in subsection 39 of section 41-01-11, and:
- 10 a. With respect to a document required by this chapter to be filed with the
11 secretary of state, means that the document has been signed by a person
12 authorized to do so by this chapter, the articles, the bylaws, a resolution
13 approved by the affirmative vote of the required proportion or number of the
14 directors, or the required proportion or number of members with voting rights,
15 if any; and
- 16 b. With respect to a document that is not required by this chapter to be filed with
17 the secretary of state, the signature may be a facsimile affixed, engraved,
18 printed, placed, stamped with indelible ink, or in any other manner reproduced
19 on the document.
- 20 25. "Subsidiary" of a specified corporation means:
- 21 a. A corporation having more than fifty percent of the voting power of its shares
22 entitled to vote for directors owned directly or indirectly through related
23 corporations or limited liability companies, by the specified corporation; or
- 24 b. A limited liability company having more than fifty percent of the voting power
25 of its membership interests entitled to vote for governors owned directly, or
26 indirectly through related limited liability companies or corporations, by the
27 specified limited liability company.
- 28 26. "Surviving corporation" means the domestic or foreign corporation resulting from a
29 merger.
- 30 27. "Vote" includes authorization by written action.
- 31 28. "Written action" means:

- a. A written document signed by all of the persons required to take the action; or
- b. The counterparts of a written document signed by any of the persons taking the action. Each counterpart constitutes the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

10-33-02. Application and election.

1. This chapter applies to all nonprofit corporations incorporated for a purpose for which a corporation might be incorporated under this chapter.
2. A corporation in existence before August 1, 1997, which has incorporated under chapters 10-24, 10-25, 10-26, 10-27, and 10-28 as they existed on July 31, 1997, or any other chapter that provides that corporations incorporated under that chapter and governed by the nonprofit corporation laws of this state, may elect after July 31, 1997, and before August 1, 1998, to become governed by this chapter.
 - a. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.
 - b. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the members with voting rights of the same proportion that is required for amendment of the articles of the corporation before the election.
 - (1) If there are no members with voting rights, the corporation must elect to be governed by this chapter by a resolution adopted by a majority vote of the directors entitled to vote at a meeting of the board, with proper notice given. The notice must include a statement that a purpose of the meeting is to consider an election to become governed by this chapter.

(2) The original of the resolution, and articles of amendment if required, must be filed with the secretary of state.

(a) The resolution and articles of amendment become effective upon acceptance by the secretary of state.

(b) If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.

c. Upon filing an election pursuant to this section, all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

3. After July 31, 1998, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the nonprofit corporation laws of this state.

a. All provisions of the articles and bylaws of the corporation which may be included in the articles or bylaws under this chapter remain in effect, and all provisions of the articles and bylaws of the corporation which are inconsistent with this chapter cease to be effective on August 1, 1998.

b. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

10-33-03. Transition. The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

10-33-04. Purposes.

1. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful nonprofit activity.
2. A corporation may be incorporated under this chapter for any lawful nonprofit purpose, unless another statute requires incorporation under a different law. A corporation of this type engaging in conduct that is regulated by another statute is subject to the limitations of the other statute, except it may not:
 - a. Be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations, subdivisions, units, or agencies of the United States, a state, or a local government; or
 - b. Pay dividends or other pecuniary remuneration, directly or indirectly, to its members, excluding members that are nonprofit organizations or subdivisions, units, or agencies of the United States, a state, or a local government.

10-33-05. Incorporators. One or more individuals age eighteen or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

10-33-06. Articles.

1. The articles of incorporation must contain:
 - a. The name of the corporation;
 - b. The address of the registered office of the corporation and the name of its registered agent at that address;
 - c. The name and address of each incorporator;
 - d. The effective date of the incorporation:
 - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
 - e. A statement that the corporation is incorporated under this chapter.
2. The articles of incorporation may not contain:
 - a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.

- 1 b. Any provision authorizing the issuance of stocks or bonds in violation of
2 section 9 of article XII of the Constitution of North Dakota.
- 3 3. The following articles govern a corporation unless modified by the articles:
- 4 a. A corporation has a general purpose of engaging in any lawful nonprofit
5 activity as provided in section 10-33-04;
- 6 b. A corporation has perpetual existence and certain powers as provided in
7 section 10-33-21;
- 8 c. The power to initially adopt, amend, or repeal the bylaws is vested in the
9 board as provided in section 10-33-26;
- 10 d. The affirmative vote of a majority of the directors present is required for an
11 action of the board as provided in section 10-33-42;
- 12 e. A written action by the board taken without a meeting must be signed by all
13 directors as provided in section 10-33-43; and
- 14 f. Members are of one class as provided in section 10-33-57.
- 15 4. The following provisions govern a corporation unless modified either in the articles
16 or bylaws:
- 17 a. A certain method must be used for amending the articles as provided in
18 section 10-33-15;
- 19 b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by
20 the members as provided in section 10-33-26;
- 21 c. A director holds office for an indefinite term that expires upon the election of a
22 successor as provided in section 10-33-30;
- 23 d. The term of a director filling a vacancy expires at the end of the term the
24 director is filling as provided in section 10-33-30;
- 25 e. The compensation of directors is fixed by the board as provided in section
26 10-33-32;
- 27 f. The method provided in section 10-33-36 or 10-33-37 must be used for
28 removal of directors;
- 29 g. The method provided in section 10-33-38 must be used for filling board
30 vacancies;

- 1 h. Board meetings must be held at least once per year and if the board fails to
2 select a place for a board meeting, it must be held at the principal executive
3 office as provided in subsection 1 of section 10-33-39;
- 4 i. A director may call a board meeting, and the notice of the meeting need not
5 state the purpose of the meeting as provided in subsection 3 of section
6 10-33-39;
- 7 j. A majority of the board is a quorum as provided in section 10-33-41;
- 8 k. The affirmative vote of the majority of directors present is required for board
9 action as provided in section 10-33-42;
- 10 l. A committee consists on one or more persons, who need not be directors,
11 appointed by the board as provided in section 10-33-44;
- 12 m. Unless the articles or bylaws or a resolution adopted by the board, and not
13 inconsistent with the articles or bylaws, provides otherwise, the officers shall
14 have the duties provided in section 10-33-50;
- 15 n. The method provided in section 10-33-54 must be used for removal of
16 officers;
- 17 o. If not prohibited by the board from doing so, officers may delegate some or all
18 of their duties and powers as provided in section 10-33-55;
- 19 p. A corporation does not have members as provided in section 10-33-57;
- 20 q. The board may determine the consideration required to admit members as
21 provided in section 10-33-57;
- 22 r. All members are entitled to vote and have equal rights and preferences in
23 matters as provided in section 10-33-57;
- 24 s. Memberships are nontransferable except as provided in section 10-33-59;
- 25 t. A corporation with voting members must hold a regular meeting of voting
26 members annually as provided in section 10-33-65;
- 27 u. If a specific minimum notice period has not been fixed by law, then at least
28 five days' notice is required for a meeting of members as provided in section
29 10-33-68;

- 1 v. The board may fix a date up to fifty days before the date of a members'
2 meeting as the date for determination of the members entitled to notice of and
3 entitled to vote at the meeting as provided in section 10-33-68;
- 4 w. Each member has one vote as provided in section 10-33-71;
- 5 x. The affirmative vote of the majority of members with voting rights present and
6 entitled to vote is required for action of the members, unless this chapter or
7 the articles or bylaws require a greater vote or voting by class as provided in
8 section 10-33-72;
- 9 y. Members may take action at a meeting by voice or ballot, by unanimous
10 action without a meeting, by mailed ballot, or by electronic communication as
11 provided in section 10-33-72;
- 12 z. The number of members required for a quorum is ten percent of the members
13 entitled to vote as provided in section 10-33-76;
- 14 aa. The procedures provided in section 10-33-78 govern acceptance of member
15 acts; and
- 16 bb. Indemnification of certain persons is required as provided in section 10-33-84.
- 17 5. The following provisions relating to the management or regulation of the affairs of a
18 corporation may be included in the articles or, except for naming members of the
19 first board, in the bylaws:
 - 20 a. The first board of directors may be named in the articles as provided in
21 section 10-33-25;
 - 22 b. Additional qualifications for directors may be imposed as provided in section
23 10-33-29;
 - 24 c. Terms of directors may be staggered as provided in section 10-33-30;
 - 25 d. The date, time, and place of board meetings may be fixed as provided in
26 section 10-33-39;
 - 27 e. Additional officers may be designated as provided in section 10-33-49;
 - 28 f. Additional powers, rights, duties, and responsibilities may be given to officers
29 as provided in section 10-33-50;
 - 30 g. A method for filling vacant offices may be specified as provided in section
31 10-33-54;

- 1 h. Membership criteria and procedures for admission may be established as
- 2 provided in section 10-33-57;
- 3 i. Membership terms may be fixed as provided in section 10-33-57;
- 4 j. A corporation may issue membership certificates, or preferred or common
- 5 shares as the board deems appropriate as provided in section 10-31-58;
- 6 k. A corporation may levy dues, assessments, or fees on members as provided
- 7 in section 10-33-60;
- 8 l. A corporation may buy memberships as provided in section 10-33-63;
- 9 m. A corporation may have delegates with some or all the authority of members
- 10 as provided in section 10-33-64;
- 11 n. The date, time, and place of regular member meetings or the place of special
- 12 meetings may be fixed as provided in section 10-33-65;
- 13 o. Certain persons may be authorized to call special meetings of members as
- 14 provided in section 10-33-66;
- 15 p. Notices of special member meetings may be required to contain certain
- 16 information as provided in section 10-33-68;
- 17 q. A larger than majority vote may be required for member action as provided in
- 18 section 10-33-72;
- 19 r. Members may vote by proxy as provided in section 10-33-77; and
- 20 s. Members may enter into voting agreements as provided in section 10-33-79.
- 21 6. The articles may contain other provisions consistent with law relating to the
- 22 management or regulation of the affairs of the corporation.
- 23 7. It is not necessary to state the corporate powers granted by this chapter in the
- 24 articles.
- 25 8. If there is a conflict between subdivision 3, 4, or 5 and another section of this
- 26 chapter, the other section controls.

10-33-07. Private foundations - Provisions considered contained in articles.

1. The articles of incorporation of a corporation that is a private foundation as defined
2. in section 509(a) of the Internal Revenue Code and an instrument governing the
3. use, retention, or disposition by the corporation of its income or property must
4. contain the provisions contained in this section. If the articles and instrument do

1 not contain these provisions, they are considered to have incorporated the
2 language in subdivisions a through e with the same effect as though the language
3 was set forth verbatim. Except as provided in subsection 2, these provisions
4 govern the corporation as to the use, retention, and disposition of its income and
5 property regardless of provisions of the articles or instrument or other law of this
6 state to the contrary:

7 a. The corporation shall distribute for each of its taxable years amounts at least
8 sufficient to avoid liability for the tax imposed by section 4942(a) of the
9 Internal Revenue Code;

10 b. The corporation may not engage in an act of "self-dealing" as defined in
11 section 4941(d) of the Internal Revenue Code that would give rise to liability
12 for the tax imposed by section 4941(a) of the Internal Revenue Code;

13 c. The corporation may not retain "excess business holdings" as defined in
14 section 4943(c) of the Internal Revenue Code that would give rise to liability
15 for the tax imposed by section 4943(a) of the Internal Revenue Code;

16 d. The corporation may not make investments that would jeopardize the carrying
17 out of the exempt purposes of the corporation, within the meaning of section
18 4944 of the Internal Revenue Code, so as to give rise to liability for the tax
19 imposed by section 4944(a) of the Internal Revenue Code; and

20 e. The corporation may not make a "taxable expenditure" as defined in section
21 4945(d) of the Internal Revenue Code that would give rise to liability for the
22 tax imposed by section 4945(a) of the Internal Revenue Code.

23 2. Subsection 1 does not apply to a corporation if a court of competent jurisdiction
24 determines that the application would be contrary to the terms of an instrument
25 described in subsection 1 and that the instrument may not properly be changed to
26 conform to subsection 1.

27 3. A reference in subsection 1 to a particular section of the Internal Revenue Code
28 includes the corresponding provision of a future United States internal revenue
29 law.

30 4. This section applies to all corporations that could be governed by this chapter,
31 notwithstanding section 10-33-02.

5. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to a corporation.

10-33-08. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform and all fees have been paid under section 10-33-140, the secretary of state shall issue a certificate of incorporation to the incorporators or their representative.

10-33-09. Effective date of incorporation. The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

10-33-10. Corporate name.

1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
- c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.
- d. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.
- e. Unless a document in compliance with subsection 2 of this section is filed with the articles, may not be the same as or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state, or domestic of:
 - (a) Another corporation;

- (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
 - (c) A limited liability company;
 - (d) A limited partnership; or
 - (e) A limited liability partnership.
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
2. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
 - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on the effective date of this Act, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
4. This section and section 10-33-11 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.

- 1 5. A corporation that is merged with another domestic or foreign corporation, or that
2 is incorporated by the reorganization of one or more domestic or foreign
3 corporations, or that acquires by sale, lease, or other disposition to or exchange
4 with a domestic corporation all or substantially all of the assets of another domestic
5 or foreign corporation including its name, may have the same name as that used in
6 this state by any of the other corporations, if the other corporation was
7 incorporated under the laws of, or is authorized to conduct activities in, this state.
8 6. The use of a name by a corporation in violation of this section does not affect or
9 vitate its corporate existence, but a court in this state may, upon application of the
10 state or of an interested or affected person, enjoin the corporation from doing
11 business under a name assumed in violation of this section, although its articles
12 may have been filed with the secretary of state and a certificate of incorporation
13 issued.
14 7. If a corporation's period of existence has expired or is involuntarily dissolved by the
15 secretary of state pursuant to section 10-33-139, the corporation may reacquire
16 the right to use that name by refiling articles of incorporation pursuant to section
17 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to
18 section 10-33-139. If the name has been adopted for use or reserved by another
19 person, the filing will be rejected unless the filing is accompanied by a written
20 consent or judgment pursuant to subsection 2. A corporation that cannot reacquire
21 the use of its corporate name must adopt a new corporate name that complies with
22 the provisions of this section.

23 **10-33-11. Reserved name.**

- 24 1. The exclusive right to the use of a corporate name otherwise permitted by section
25 10-33-10 may be reserved by any person.
26 2. The reservation must be made by filing with the secretary of state a request that
27 the name be reserved, together with the fees provided in section 10-33-140:
28 a. If the name is available for use by the applicant, the secretary of state shall
29 reserve the name for the exclusive use of the applicant for a period of twelve
30 months.
31 b. The reservation may be renewed for successive twelve-month periods.

- 1 3. The right to the exclusive use of a corporate name reserved pursuant to this
2 section may be transferred to another person by or on behalf of the applicant for
3 whom the name was reserved by filing with the secretary of state a notice of the
4 transfer and specifying the name and address of the transferee, together with the
5 fees provided in section 10-33-140.
- 6 4. The right to the exclusive use of a corporate name reserved pursuant to this
7 section may be canceled by or on behalf of the applicant for whom the name was
8 reserved by filing with the secretary of state a notice of the cancellation, together
9 with the fees provided in section 10-33-140.
- 10 5. The secretary of state may accept for filing a legible facsimile copy of the signed
11 original of any request for reserved name.
- 12 6. The secretary of state may destroy all reserved name requests and index thereof
13 one year after expiration.

14 **10-33-12. Registered office - Registered agent.**

- 15 1. A corporation shall continuously maintain a registered office in this state. A
16 registered office need not be the same as the principal place of business or the
17 principal executive office of the corporation.
- 18 2. A corporation shall appoint and continuously maintain a registered agent. The
19 registered agent may be an individual residing in this state, a domestic corporation
20 whether incorporated under this chapter or under another provision of this code, a
21 limited liability company, a foreign corporation whether authorized to do business
22 or conduct activities in the state under this chapter or under another provision of
23 this code, or foreign limited liability company authorized to conduct activities in this
24 state. The registered agent shall maintain a business office that is identical with
25 the registered office. Proof of the registered agent's consent to serve in that
26 capacity must be filed with the secretary of state, together with the fees provided in
27 section 10-33-140.

28 **10-33-13. Establishment or change of registered office - Appointment or change**
29 **of registered agent - Change of name of registered agent.**

- 30 1. A corporation may establish or change its registered office, designate or change its
31 registered agent, or state a change in the name of its registered agent by filing with

the secretary of state, along with the fees provided in section 10-33-140, a statement containing:

- a. The name of the corporation.
 - b. The new address of its registered office if the address of its registered office is to be established or changed.
 - c. The name of its new registered agent if its registered agent is to be designated or changed.
 - d. The name of its registered agent as changed if the name of its registered agent is to be changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as established or changed, will be identical.
 - f. A statement that the establishment or change of registered office or designation or change of registered agent is authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.
4. The fee prescribed in section 10-33-140 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment. The fee prescribed in section

10-33-140 does not apply when the registered agent or registered office is established or changed in the annual report.

10-33-14. Amendment of articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with section 10-33-15.

10-33-15. Procedure for amendment of articles.

1. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subsection 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members as provided in subsection 2.
2. Amendments to the articles must be approved by a majority of the directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a member meeting at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members, the members may demand a special board meeting within fifty days for consideration of the proposed amendment if a regular board meeting would not occur within fifty days.
3.
 - a. The members with voting rights may authorize the board of directors, subject to subdivision c, to exercise from time to time the power of amendment of the articles without member approval.
 - b. When the members have authorized the board of directors to amend the articles, the board of directors, by a majority vote, unless the articles, bylaws,

1 or the members' resolution authorizing the board action requires a greater
2 vote, may amend the articles at a meeting of the board. Notice of the meeting
3 and of the proposed amendment must be given to the board.

4 c. The members with voting rights voting at a meeting duly called for the
5 purpose may prospectively revoke the authority of the board to exercise the
6 power of the members to amend the articles.

7 4. Articles or bylaws may require greater than majority approval by the board or
8 approval by greater than a majority of a quorum of the voting members for an
9 action under this section and may limit or prohibit the use of mail ballots by voting
10 members.

11 5. The articles or bylaws may provide that an amendment also must be approved by
12 the members of a class.

13 **10-33-16. Articles of amendment.** When an amendment has been adopted, articles
14 of amendment must be prepared that contain:

15 1. The name of the corporation.

16 2. The amendment adopted.

17 3. The date of the adoption of the amendment pursuant to this chapter.

18 4. If the amendment restates the articles in their entirety, a statement that the
19 restated articles supersede the original articles and all amendments to them.

20 5. A statement that the amendment has been adopted pursuant to this chapter.

21 **10-33-17. Effect of amendment.**

22 1. An amendment does not affect an existing cause of action in favor of or against the
23 corporation, nor a pending suit to which the corporation is a party, nor the existing
24 rights of persons other than members.

25 2. If the corporate name is changed by the amendment, a suit brought by or against
26 the corporation under its former name does not abate for that reason.

27 3. When effective under section 10-33-19, an amendment restating the articles in
28 their entirety supersedes the original articles and all amendments to the original
29 articles.

30 **10-33-18. Filing articles of amendment.** An original of the articles of amendment
31 must be filed with the secretary of state. If the secretary of state finds that the articles of

1 amendment conform to the filing requirements of this chapter and that all fees have been paid
2 as provided in section 10-33-140, then the articles of amendment must be recorded in the office
3 of the secretary of state.

4 **10-33-19. Effective date of articles of amendment.** The articles of amendment are
5 effective upon acceptance by the secretary of state or at another time within thirty days after
6 acceptance if the articles of amendment so provide.

7 **10-33-20. Amendment of articles in court-supervised reorganization.**

8 1. Whenever a plan of reorganization of a corporation has been confirmed by decree
9 or order of a court of competent jurisdiction in proceedings for the reorganization of
10 the corporation, pursuant to the provisions of any applicable statute of the United
11 States relating to reorganization of corporations, the articles may be amended, in
12 the manner provided in this section, in as many respects as may be necessary to
13 carry out the plan, so long as the articles as amended contain only provisions
14 which might be lawfully contained in original articles at the time of making the
15 amendment. In particular, and without limitation upon any general power of
16 amendment, the articles may be amended to:

- 17 a. Change the corporate name, period of duration, or corporate purposes of the
18 corporation.
- 19 b. Repeal, alter, or amend the bylaws of the corporation.
- 20 c. Change the aggregate number of shares, or shares of any class, which the
21 corporation has the authority to issue.
- 22 d. Change the preferences, limitations, relative rights in respect of all or any part
23 of the shares of the corporation, and classify, reclassify, or cancel all or any
24 part thereof, whether issued or unissued.
- 25 e. Authorize the issuance of bonds, debentures, or other obligations of the
26 corporation, whether convertible into shares of any class or bearing warrants
27 or other evidences of optional rights to purchase or subscribe for shares of
28 any class, and fix the terms and conditions thereof.
- 29 f. Constitute or reconstitute and classify or reclassify the board and appoint
30 directors and officers in place of or in addition to all or any of the directors or
31 officers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

- a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
- b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, the original must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and members.

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.

2. A corporation has perpetual duration.

3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

- 1 5. A corporation may sell, convey, mortgage, create a security interest in, lease,
2 exchange, transfer, or otherwise dispose of all or any part of its real or personal
3 property, or any interest in property, wherever situated.
- 4 6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote,
5 use, employ, sell, exchange, mortgage, lend, create a security interest in, or
6 otherwise dispose of, use and deal in and with, securities or other interests in, or
7 obligations of, a person or direct or indirect obligations of any domestic or foreign
8 government or instrumentality.
- 9 7. A corporation may make contracts and incur liabilities, borrow money, issue its
10 securities, and secure any of its obligations by mortgage of or creation of a security
11 interest in all or any of its property, franchises, and income.
- 12 8. A corporation may invest and reinvest its funds.
- 13 9. A corporation may take and hold real and personal property, whether or not of a
14 kind sold or otherwise dealt in by the corporation, as security for the payment of
15 money loaned, advanced, or invested.
- 16 10. A corporation may conduct its business, carry on its operations, have offices, and
17 exercise the powers granted by this chapter anywhere in the universe.
- 18 11. Except as otherwise prohibited by law, a corporation may make donations,
19 irrespective of corporate benefit, for:
 - 20 a. The public welfare;
 - 21 b. Social, community, charitable, religious, educational, scientific, civic, literary,
22 and testing for public safety purposes, and for similar or related purposes;
 - 23 c. The purpose of fostering national or international amateur sports competition;
24 and
 - 25 d. The prevention of cruelty to children and animals, and for similar or related
26 purposes.
- 27 12. A corporation may pay pensions, retirement allowances, and compensation for
28 past services and establish employee or incentive benefit plans, trusts, and
29 provisions for the benefit of the corporation and the corporation's related
30 organizations' officers, managers, directors, governors, employees, and agents
31 and, in the case of a related organization that is a limited liability company,

members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.

15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-33-26.

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.

18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.

19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.

20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.

21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.

22. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.

23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust where the corporation or a related organization has a vested or contingent interest in the trust.

24. Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section 59-02-08.

25. A corporation may be a member of or the owner of the ownership interest in another domestic or foreign organization.

26. A corporation may dissolve and wind up.

27. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.

28. A corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation under this chapter.

29. A corporation may acquire an owner's interest in another organization.

30. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the corporation is incorporated.

10-33-22. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

10-33-23. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that 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 against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court, if all of the parties to the contract are parties to the proceeding and if it

1 deems the same to be equitable, may set aside and enjoin the performance of the
2 contract, and in so doing may allow to the corporation or to the other parties to the
3 contract, as the case may be, compensation for the loss or damage sustained by
4 either of them which may result from the action of the court in setting aside and
5 enjoining the performance of the contract. However, anticipated profits to be
6 derived from the performance of the contract may not be awarded by the court as
7 a loss or damage sustained.

8 2. In a proceeding by the corporation, whether acting directly or through a receiver,
9 trustee or other legal representative, or through members in a representative suit,
10 against the incumbent or former officers or directors of the corporation.

11 3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the
12 corporation or to enjoin the corporation from the transaction of unauthorized
13 business.

14 **10-33-24. Unauthorized assumption of corporate powers - Liability.** All persons
15 who assume to act as a corporation without authority are jointly and severally liable for all debts
16 and liabilities incurred or arising as a result.

17 **10-33-25. Organization.**

18 1. If the first board is not named in the articles, the incorporators may elect the first
19 board or may act as directors with all of the powers, rights, duties, and liabilities of
20 directors, until directors are elected.

21 2. After the issuance of the certificate of incorporation, the incorporators or the
22 directors named in the articles shall, within a reasonable time, either hold an
23 organizational meeting at the call of a majority of the incorporators or of the
24 directors named in the articles, or take written action, for the purposes of
25 transacting business and taking actions necessary or appropriate to complete the
26 organization of the corporation. If a meeting is held, the person or persons calling
27 the meeting shall give at least three days' notice of the meeting to each
28 incorporator or director named, stating the date, time, and place of the meeting.
29 Incorporators and directors may waive notice of an organizational meeting in the
30 same manner that a director may waive notice of meetings of the board pursuant
31 to subsection 5 of section 10-33-39.

10-33-26. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including:

 - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
 - b. The qualifications of members;
 - c. Different classes of membership;
 - d. The manner of admission, withdrawal, suspension, and expulsion of members;
 - e. Property, voting, and other rights and privileges of members;
 - f. The appointment and authority of committees;
 - g. The appointment or election, duties, compensation, and tenure of officers;
 - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
 - i. The making of reports and financial statements to members; or
 - j. The number establishing a quorum for meetings of members and the board.
2. Initial bylaws may be adopted by the incorporators or by the first board pursuant to section 10-33-25. Unless reserved by the articles to the members, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights exercisable in the manner provided in subsection 3 to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members.
3. Unless the articles or bylaws provide otherwise, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may

propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.

- a. The resolution must contain the provisions proposed for adoption, amendment, or repeal.
- b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 10-33-15, for amendment of the articles, except that board approval is not required.
- c. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

10-33-27. Board.

1. The business and affairs of a corporation must be managed by or under the direction of a board.
 - a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.
 - b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.
2. No more than forty-nine percent of the individuals serving on the board of any corporation may be financially interested individuals.
3. For the purposes of this section "financially interested individuals" means:
 - a. Individuals who have received or are entitled to receive compensation, directly or indirectly, from the corporation for services rendered to it within the previous twelve months, whether as full-time or part-time employees, independent contractors, consultants, or otherwise, excluding any reasonable payments made to directors for serving as directors;
 - b. Any parent, child, child of a spouse, brother, or sister, of that individual; or
 - c. The spouse of any individual described in subdivision a or b.
4. Failure to comply with the provisions of this section does not affect the validity or enforceability of any transaction entered into by the corporation.

10-33-28. Number. The board must consist of three or more directors, with the number specified in or fixed in accordance with the articles or bylaws. However, if the

1 corporation has either one or two members with voting rights, the number of directors may be
2 less than three but not less than the number of members with voting rights. The number of
3 directors may be increased or, subject to sections 10-33-36 and 10-33-37, decreased at any
4 time by amendment to or in the manner provided in the articles or bylaws.

5 **10-33-29. Qualifications - Election.** Directors must be individuals. The method of
6 election and any additional qualifications for directors may be imposed by or in the manner
7 provided in the articles or bylaws.

8 **10-33-30. Terms.**

9 **1.** With respect to length of terms:

10 a. Directors are elected or appointed and hold office for fixed terms provided for
11 in the articles or bylaws. A fixed term of a director, other than an ex officio
12 director, may not exceed ten years. If the articles or bylaws do not provide for
13 a fixed term, the term is one year. An ex officio director serves as long as the
14 director holds the office or position designated in the articles or bylaws.

15 b. Unless the articles or bylaws provide otherwise, a director holds office until
16 expiration of the term for which the director was elected or appointed and until
17 a successor is elected and qualified, or until the earlier death, resignation,
18 removal, or disqualification of the director.

19 c. A decrease in the number of directors or term of office does not shorten an
20 incumbent director's term.

21 d. Except as provided in the articles or bylaws, the term of a director filling a
22 vacancy expires at the end of the unexpired term that the director is filling.

23 **2.** The articles or bylaws may provide for staggering the terms of directors by dividing
24 the total number of directors into groups. The terms of office of the groups need
25 not be uniform.

26 **10-33-31. Acts not void or voidable.** The expiration of a director's term with or
27 without the election of a qualified successor does not make prior or subsequent acts of the
28 officers or the board void or voidable.

29 **10-33-32. Compensation.** Subject to any limitations in the articles or bylaws, the
30 board may fix the compensation of directors.

31 **10-33-33. Classification of directors.**

1 1. Except as provided in subsection 2, directors may be divided into classes.

2 2. Directors of a corporation described in subsection 1 of section 10-33-122 may not
3 vote by class except when the articles or bylaws provide that only one class of
4 directors may vote on a particular matter.

5 **10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise or
6 except as provided in section 1 of article XII of the Constitution of North Dakota, there is no
7 cumulative voting.

8 **10-33-35. Resignation.**

9 1. A director may resign at any time by giving written notice to the corporation. The
10 resignation is effective without acceptance when the notice is given to the
11 corporation, unless a later effective time is specified in the notice.

12 2. If a resignation is made effective at a later date, the board may fill the pending
13 vacancy before the effective date if the board provides that the successor does not
14 take office until the effective date.

15 **10-33-36. Nonjudicial removal of directors.**

16 1. This section applies unless a different method of removal is provided for in the
17 articles or bylaws.

18 2. With respect to an elected director:

19 a. If there is a member with voting rights:

20 (1) A director may be removed by the board at any time, with or without
21 cause, if:

22 (a) The director was named by the board to fill a vacancy;

23 (b) The members with voting rights have not elected directors in the
24 interval between the time of the appointment to fill the vacancy
25 and the time of the removal; and

26 (c) A majority of the remaining directors present affirmatively vote to
27 remove the director.

28 (2) A director may be removed at any time, with or without cause, by those
29 members eligible to elect the director.

30 b. If there is no member with voting rights, a director may be removed at any
31 time, with or without cause, by those directors eligible to elect the director.

3. With respect to an appointed director:

- a. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.
- b. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.
- c. A removal is effective when the notice is effective unless the notice states a future effective date.

4. A new director may be elected at a meeting at which a director is removed.

10-33-37. Removal of directors by judicial proceeding.

1. The district court of the county the principal executive office of a corporation is located in may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class of shares, or the attorney general, if the court finds:
 - a. The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation;
 - b. That the provisions of subsection 2 of section 10-33-27 have been violated; or
 - c. Final judgment has been entered finding the director violated section 10-33-45.
2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.
3. If members or the attorney general commence a proceeding under subdivision a of subsection 1, then the corporation must be made a party defendant.
4. If a corporation or its members commence a proceeding under subsection 1, they must give the attorney general written notice of the proceeding.

10-33-38. Vacancies.

1. Unless the articles or bylaws provide otherwise, and except as provided in this section, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors:
 - a. The members with voting rights, if any, may fill the vacancy; or

b. The remaining members of the board, though less than a quorum, may fill the vacancy.

2. If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.

3. If a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

4. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

10-33-39. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. A board meeting may be conducted by:

a. A conference among directors using any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting; or

b. Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting.

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

1 4. If the date, time, and place of a board meeting have been provided in the articles
2 or bylaws, or announced at a previous meeting of the board, no notice is required.
3 Notice of an adjourned meeting need not be given other than by announcement at
4 the meeting at which adjournment is taken.

5 5. A director may waive notice of a meeting of the board. A waiver of notice by a
6 director entitled to notice is effective whether given before, at, or after the meeting,
7 and whether given in writing or by attendance. Attendance by a director at a
8 meeting is a waiver of notice of that meeting, except where the director objects at
9 the beginning of the meeting to the transaction of business because the meeting is
10 not lawfully called or convened and does not participate in the meeting after the
11 objection.

12 **10-33-40. Absent directors.** If the articles or bylaws so provide, a director may give
13 advance written consent or opposition to a proposal to be acted on at a board meeting. If the
14 director is not present at the meeting, consent or opposition to a proposal does not constitute
15 presence for purposes of determining the existence of a quorum, but consent or opposition
16 must be counted as the vote of a director present at the meeting in favor of or against the
17 proposal and must be entered in the minutes or other record of action at the meeting, if the
18 proposal acted on at the meeting is substantially the same or has substantially the same effect
19 as the proposal to which the director has consented or objected.

20 **10-33-41. Quorum.** A majority, or a larger or smaller proportion or number provided in
21 the articles or bylaws, of the directors currently holding office is a quorum for the transaction of
22 business. In the absence of a quorum, a majority of the directors present may adjourn a
23 meeting from time to time until a quorum is present. If a quorum is present when a duly called
24 or held meeting is convened, the directors present may continue to transact business until
25 adjournment, even though the withdrawal of a number of directors originally present leaves less
26 than the proportion or number otherwise required for a quorum.

27 **10-33-42. Act of the board.** The board shall take action by the affirmative vote of a
28 majority of directors with voting rights present and entitled to vote at a duly held meeting,
29 unless this chapter or the articles or bylaws require the affirmative vote of a larger proportion or
30 number.

31 **10-33-43. Action without meeting.**

- 1 1. An action required or permitted to be taken at a board meeting may be taken by
2 written action signed by all of the directors. If the articles so provide, any action,
3 other than an action requiring member approval, may be taken by written action
4 signed by the number of directors that would be required to take the same action
5 at a meeting of the board at which all directors were present.
- 6 2. The written action is effective when signed by the required number of directors,
7 unless a different effective time is provided in the written action.
- 8 3. When written action is permitted to be taken by less than all directors, all directors
9 must be notified immediately of its text and effective date. Failure to provide the
10 notice does not invalidate the written action. A director who does not sign or
11 consent to the written action has no liability for the action or actions.

12 **10-33-44. Committees.**

- 13 1. A resolution approved by the affirmative vote of a majority of the board may
14 establish committees having the authority of the board in the management of the
15 business of the corporation to the extent provided in the resolution. Committees
16 may include a special litigation committee consisting of one or more independent
17 directors or other independent persons to consider legal rights or remedies of the
18 corporation and whether those rights or remedies should be pursued. Committees
19 other than special litigation committees are subject at all times to the direction and
20 control of the board.
- 21 2. Committee members must be individuals. Unless the articles or bylaws provide for
22 a different membership or manner of appointment, a committee must consist of
23 one or more persons, who need not be directors, appointed by the board.
- 24 3. Sections 10-33-39 through 10-33-43 apply to committees and members of
25 committees to the same extent as those sections apply to the board and directors.
- 26 4. Minutes, if any, of committee meetings must be made available upon request to
27 members of the committee and to any director.
- 28 5. The establishment of, delegation of authority to, and action by a committee does
29 not alone constitute compliance by a director with the standard of conduct set forth
30 in section 10-33-45.

6. Committee members are deemed to be directors for purposes of sections 10-33-45, 10-33-46, and 10-33-84.

10-33-45. Standard of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
- c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-33-44 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.

4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

- a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting, in which case the director may not be considered to be present at the meeting for any purpose of this chapter;
- b. Votes against the action at the meeting; or

c. Is prohibited from voting on the action:

(1) By the articles;

(2) By the bylaws;

(3) As the result of the decision to approve, ratify, or authorize a
transaction pursuant to section 10-33-46; or

(4) By a conflict of interest policy adopted by the board.

5. A director, regardless of how identified, is not considered to be a trustee with
respect to the corporation or with respect to property held or administered by the
corporation, including without limit, property that may be subject to restrictions
imposed by the donor or transferor of the property.

10-33-46. Director conflicts of interest.

1. A contract or other transaction between a corporation and its director or a member
of the family of its director; a director of a related organization, or a member of the
family of a director of a related organization; or an organization in or of which the
corporation's director, or a member of the family of its director, is a director, officer,
or legal representative or has a material financial interest, is not void or voidable
because the director or the other individual or organization are parties or because
the director is present at the meeting of the members or the board or a committee
at which the contract or transaction is authorized, approved, or ratified, if at least
one of the requirements of subsection 2 is satisfied.

2. A contract or transaction described in subsection 1 is not void or voidable if:

a. The contract or transaction was, and the person asserting the validity of the
contract or transaction has the burden of establishing that the contract or
transaction was, fair and reasonable as to the corporation when it was
authorized, approved, or ratified;

b. The material facts as to the contract or transaction and as to the director's
interest are fully disclosed or known to the members and the contract or
transaction is approved in good faith by two-thirds of the members entitled to
vote, not counting any vote that the interested director might otherwise have,
or the unanimous affirmative vote of all members, whether or not entitled to
vote;

- 1 c. The material facts as to the contract or transaction and as to the director's
2 interest are fully disclosed or known to the board or a committee, and the
3 board or committee authorizes, approves, or ratifies the contract or
4 transaction in good faith by a majority of the board or committee, not counting
5 any vote that the interested director might otherwise have, and not counting
6 the director in determining the presence of a quorum; or
7 d. The contract or transaction is a merger or consolidation described in section
8 10-33-85.

9 3. For purposes of this section:

- 10 a. A director does not have a material financial interest in a resolution fixing the
11 compensation of the director or fixing the compensation of another director as
12 a director, officer, employee, or agent of the corporation, even though the first
13 director is also receiving compensation from the corporation;
14 b. A director has a material financial interest in an organization in which the
15 director, or a member of the family of the director, has a material financial
16 interest; and
17 c. A "member of the family" of a director is a spouse, parent, child, child of a
18 spouse, brother, sister, or the spouse of any of them.

19 4. The procedures described under subdivisions a, b, and c of subsection 2 are not
20 required if the contract or other transaction is between related organizations.

21 **10-33-47. Immunity of officers, directors, and trustees.** Any person who serves as
22 a director, officer, or trustee of a corporation that is, or would qualify as a nonprofit organization
23 that is described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c)(3) of the Internal
24 Revenue Code of 1954, as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is
25 immune from civil liability for any act or omission resulting in damage or injury if at the time of
26 the act or omission all of the following are met:

- 27 1. The officer, director, or trustee was acting in good faith and in the scope of that
28 person's official duties as a director, officer, or trustee.
29 2. The act or omission did not constitute willful misconduct or gross negligence on the
30 part of the officer, director, or trustee.

- 1 3. The officer, director, or trustee did not receive or expect to receive reimbursement
2 for or payment of expenses in excess of two thousand dollars per year for
3 expenses actually incurred as a result of providing services as a director, officer, or
4 trustee, and did not receive or expect to receive compensation or anything in lieu
5 of compensation as payment for services provided as a director, officer, or trustee.

6 **10-33-48. Immunity of volunteers.**

- 7 1. Any person who, on a volunteer basis, provides services or performs duties on
8 behalf of a corporation is immune from civil liability for any act or omission resulting
9 in damage or injury if at the time of the act or omission all of the following are met:
10 a. The person who caused the damage or injury was acting in good faith and in
11 the scope of that person's duties as a volunteer for the corporation.
12 b. The act or omission did not constitute willful misconduct or gross negligence.
13 2. This section does not grant immunity to any person causing damage as the result
14 of the negligent operation of a motor vehicle.

15 **10-33-49. Officers.** The officers of a corporation must be individuals who are eighteen
16 years of age or more, and must include a president, secretary, and treasurer. The officers of
17 the corporation may also include one or more vice presidents and any other officers or agents
18 as may be prescribed by the bylaws. Each officer must be elected by the board at the time and
19 in the manner as may be provided in the bylaws unless the articles or bylaws provide that the
20 members may elect the officers.

21 **10-33-50. Duties of officers and agents.** Unless the articles, bylaws, or a resolution
22 adopted by the board which is not inconsistent with the articles or bylaws, provides otherwise:

- 23 1. The president shall:
24 a. Have general active management for the business of the corporation;
25 b. When present, preside at all meetings of the board and of members;
26 c. See that all orders and resolutions of the board are carried into effect;
27 d. Sign and deliver in the name of the corporation, any deeds, mortgages,
28 bonds, contracts, or other instruments pertaining to the business of the
29 corporation, except in cases in which the authority to sign and deliver is
30 required by law to be exercised by another person or is expressly delegated

- 1 by the articles or bylaws or by the board to some officer or agent of the
- 2 corporation;
- 3 e. Maintain records of and, whenever necessary, certify all proceedings of the
- 4 board and the members; and
- 5 f. Perform other duties prescribed by the board.
- 6 2. The vice president, if any, or, if there is more than one, the vice presidents in the
- 7 order determined by the board, shall:
- 8 a. In the absence or disability of the president, perform the duties and exercise
- 9 the powers of the president; and
- 10 b. Perform any other duties and shall have such other powers as the board may
- 11 from time to time prescribe.
- 12 3. The treasurer shall:
- 13 a. Keep accurate financial records for the corporation;
- 14 b. Deposit all money, drafts, and checks in the name of and to the credit of the
- 15 corporation in the banks and depositories designated by the board;
- 16 c. Endorse for deposit all notes, checks, and drafts received by the corporation
- 17 as ordered by the board, making proper vouchers;
- 18 d. Disburse corporate funds and issue checks and drafts in the name of the
- 19 corporation, as ordered by the board;
- 20 e. Give to the president and the board, whenever requested, an account of all
- 21 transactions by the treasurer and of the financial condition of the corporation;
- 22 and
- 23 f. Perform other duties prescribed by the board or by the president.
- 24 4. The secretary shall:
- 25 a. Attend all meetings of the board, all meetings of the members and, when
- 26 required, all meetings of standing committees;
- 27 b. Record all proceedings of the meetings;
- 28 c. Give, or cause to be given, notice of all meetings of the members and
- 29 meetings of the board; and
- 30 d. Perform other duties prescribed by the board.

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

10-33-51. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same individual. If a document must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the individual signs.

10-33-52. Officers deemed elected. In the absence of an election or appointment of officers by the board, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

10-33-53. Contract rights. The election or appointment of an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

10-33-54. Resignation - Removal - Vacancies.

1. An officer may resign by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

2. Except as otherwise provided in the articles or bylaws, an officer may be removed at any time, with or without cause, by a resolution adopted by the board or by the members, whichever elected or appointed the officer. The removal is without prejudice to any contractual rights of the officer.

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of president or treasurer must, be filled for the unexpired part of the term in the manner provided in the articles or bylaws, or as determined by the board or under section 10-33-52.

1 **10-33-55. Delegation.** Unless prohibited by the articles or bylaws or by a resolution
2 adopted by the board, an officer elected or appointed by the board, without the approval of the
3 board, may delegate some or all of the duties and powers of an office to other individuals. An
4 officer who delegates the duties or powers of an office remains subject to the standard of
5 conduct for an officer with respect to the discharge of all duties and powers so delegated.

6 **10-33-56. Standard of conduct for officers.**

7 1. An officer shall discharge the duties of an office in good faith, in a manner the
8 officer reasonably believes to be in the best interests of the corporation, and with
9 the care an ordinarily prudent person in a like position would exercise under similar
10 circumstances. An individual exercising the principal functions of an office or to
11 whom some or all of the duties and powers of an office are delegated pursuant to
12 section 10-33-55 is deemed an officer for purposes of this section and sections
13 10-33-81 and 10-33-84.

14 2. An officer is not considered to be a trustee with respect to the corporation or with
15 respect to property held or administered by the corporation, including without limit,
16 property that may be subject to restrictions imposed by the donor or transferor of
17 the property.

18 **10-33-57. Members.**

19 1. A corporation may have one or more classes of members or may have no
20 members. In the absence of a provision in its articles or bylaws providing for
21 members, a corporation has no members.
22 a. If a corporation has no members, an action for which there is no specific
23 provision of this chapter applicable to a corporation without members and that
24 would otherwise require approval of the members requires only the approval
25 of the board.

26 b. A reference in this chapter to a corporation that has no members includes a
27 corporation in which the directors are the only members.

28 2. A corporation may admit any person as a member.

29 a. The articles or bylaws may establish criteria or procedures for admission.

30 b. A person may not be admitted as a member without the person's express or
31 implied consent.

(1) For purposes of this subdivision, consent includes acceptance of membership benefits knowing that the benefits are available only to members, or taking some other affirmative action that confers membership benefits.

(2) If the articles or bylaws provide that a person who contributes to the corporation is a member, a contribution is consent.

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

4. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members are entitled to vote and have equal rights and preferences except to the extent that the articles or bylaws have fixed or limited the rights and preferences of members or different classes of members or provide for nonvoting members. The articles or bylaws may fix the term of membership.

10-33-58. Membership certificates. A corporation may issue certificates showing membership in the corporation. In lieu of a membership certificate, a corporation may issue preferred or common shares. Shares may be issued upon the terms and conditions that the board considers appropriate.

10-33-59. Transfer of membership.

1. Except as provided in the articles or bylaws, a member of a corporation may not transfer a membership or a right arising from it.

2. Where transfer rights have been provided, a restriction on them is not binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

10-33-60. Liability of members - Third parties - Dues, assessments, or fees.

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

2. When authority to do so is conferred by the articles or bylaws and subject to any limitations, a corporation may levy dues, assessments, or fees upon its members.

- a. The dues, assessments, or fees may be imposed upon all classes of members alike or differently upon different classes of members.
- b. Members of one or more classes may be exempted.
3. Articles or bylaws may:
 - a. Fix the amount of the levy and the method of collection of dues, assessments, or fees;
 - b. Authorize the directors to fix the amount from time to time and determine the methods of collection;
 - c. Provide for enforcement or collection of dues, assessments, or fees;
 - d. Provide for cancellation of membership, on reasonable notice, for nonpayment of dues, assessments, or fees; or
 - e. Provide for reinstatement of membership.

10-33-61. Resignation. A member may resign at any time. The resignation of a member does not relieve the member from any obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-62. Termination.

1. A member may not be expelled or suspended, and a membership may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. This section does not apply to the termination of a membership at the end of a fixed term.
2. A procedure is fair and reasonable when it is fair and reasonable taking into consideration all of the relevant facts and circumstances. In addition, a procedure is fair and reasonable if it provides:
 - a. Not less than fifteen days' prior written notice of the expulsion, suspension, or termination, and the reasons for it; and
 - b. An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person authorized to decide that the proposed expulsion, termination, or suspension not take place.

3. A proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

4. The expulsion, suspension, or termination of a member does not relieve the member from obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-63. Purchase of memberships. If authorized in its articles or bylaws, a corporation may buy the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions in the articles or bylaws.

10-33-64. Delegates. A corporation may provide in its articles or bylaws for delegates having some or all the authority of members. The articles or bylaws may set forth provisions relating to:

1. The characteristics, qualifications, rights, limitations, and obligations of the delegates, including their selection and removal;

2. Calling, noticing, holding, and conducting meetings of delegates; and

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

10-33-65. Annual meetings of voting members.

1. Unless the articles or bylaws provide otherwise, a corporation with voting members shall hold at least an annual meeting of voting members.

2. If an annual meeting of voting members has not been held during the preceding fifteen months, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may demand an annual meeting of members by written notice of demand given to the president or the secretary of the corporation. Within thirty days after receipt of the demand, the board shall cause a meeting of members to be called and held at the expense of the corporation on notice no later than ninety days after receipt of the demand. If the board fails to cause a meeting to be called and held as required by this subsection, the members with voting rights making the demand may call the meeting at the expense of the corporation by giving notice as required by section 10-33-68.

3. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a

demand for a meeting is made under subsection 2, the meeting must be held in the county where the principal executive office of the corporation is located.

4. At an annual meeting of members:

- a. There must be an election of successors for directors elected by members and whose terms have expired or whose terms expire at an annual meeting;
- b. There must be a report on the activities and financial condition of the corporation; and
- c. The members shall consider and act upon other matters as may be raised consistent with the notice of meeting requirements.

5. The failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

10-33-66. Special meetings of voting members.

1. A corporation with voting members shall hold a special meeting of members:

- a. On call of its board or persons authorized to do so by the articles or bylaws; or
- b. If at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, sign, date, and deliver to the president or the secretary one or more written demands for the meeting describing the purpose for which it is to be held.

2. Within thirty days after receipt of a demand for a special meeting from voting members, the board shall cause a special meeting to be called and held on notice no later than ninety days after receipt of the demand. If the board fails to cause a special meeting to be called and held as required by this subsection, a voting member making the demand may call the meeting by giving notice pursuant to section 10-33-68. All necessary expenses of the notice and meeting shall be paid by the corporation.

3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located.

- 1 4. The notice of a special meeting must contain a statement of the purposes of the
2 meeting and may contain other information required by the articles or bylaws or
3 considered necessary or desirable by the board or by another person calling the
4 meeting.
- 5 a. The business transacted at a special meeting is limited to the purposes stated
6 within the notice of the meeting.
- 7 b. Business transacted at a special meeting that is not included in those stated
8 purposes is voidable by or on behalf of the corporation, unless all of the
9 members with voting rights have waived notice of the meeting pursuant to
10 section 10-33-68.

11 **10-33-67. Court-ordered meeting of voting members.**

- 12 1. The district court of the county where the principal executive office of a corporation
13 is located may order a meeting to be held:
- 14 a. If a meeting was not held within the earlier of six months after the fiscal
15 yearend of the corporation or fifteen months after its last meeting:
- 16 (1) On application of at least fifty members with voting rights or ten percent
17 of the members with voting rights, whichever is less; or
- 18 (2) On application of another person entitled to participate in the annual
19 meeting; or
- 20 b. On application of a voting member who signed a demand for a special
21 meeting valid under section 10-33-66 or a person entitled to call a special
22 meeting if:
- 23 (1) Notice of the special meeting was not given within thirty days after the
24 date the demand was delivered to a corporate officer; or
- 25 (2) The special meeting was not held in accordance with the notice.
- 26 2. The court may:
- 27 a. Fix the time and place of the meeting;
- 28 b. Specify a record date for determining members entitled to notice of and to
29 vote at the meeting;
- 30 c. Prescribe the form and content of the meeting notice;

d. Fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and

e. Enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the costs of the member, including reasonable attorneys' fees incurred to obtain the order.

10-33-68. Notice.

1. Except as otherwise provided in this chapter, notice of meetings of members must be given to every voting member as of the record date determined under section 10-33-69 unless:

a. The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed under section 10-33-69; or

b. Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings have been mailed to the member by first-class mail and returned undeliverable.

2. An action or meeting that is taken or held without notice under subdivision b of subsection 1 has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the corporation, the notice requirement is reinstated.

3. If notice of an adjourned meeting is required under subdivision a of subsection 1, the date for determination of members entitled to notice and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-33-69, except that if the date of the meeting is set by court order, the court may provide the original date of determination will continue in effect or fix a new date.

4. The notice:

a. In all cases where a specific minimum notice period has not been fixed by law, must be given at least five days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting;

- b. Must contain the date, time, and place of the meeting;
- c. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
- d. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
- e. Must contain any other information required by the articles or bylaws, this chapter, or considered necessary or desirable by the board; and
- f. May contain any other information considered necessary or desirable by the person calling the meeting.

5. A member may waive notice of a meeting of members.

- a. A waiver of notice by a member entitled to notice is effective:
 - (1) Whether given before, at, or after the meeting; and
 - (2) Whether given in writing, orally, or by attendance.
- b. Attendance by a member at a meeting is a waiver of notice of that meeting, unless the member:
 - (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
 - (2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-33-69. Record date - Determining members entitled to notice and vote.

- 1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the members entitled to notice of and entitled to vote at the meeting. When a date is fixed, only members with voting rights on that date are entitled to notice of and permitted to vote at that meeting of members.
- 2. A determination of members entitled to notice and to vote at a membership meeting is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.

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

5 **10-33-70. Members' list for meeting.**

- 6 1. After fixing a record date for notice of and voting at a meeting, a corporation shall
7 prepare an alphabetical list of the names of its members who are entitled to notice
8 and to vote. The list must show the address and number of votes each member is
9 entitled to vote at the meeting.
- 10 2. The list of members must be available for inspection by a member with voting
11 rights for the purpose of communication with other members concerning the
12 meeting, beginning two business days after the meeting notice is given and
13 continuing through the meeting, at the principal executive office of the corporation
14 or at a reasonable place identified in the meeting notice in the city where the
15 meeting will be held.
- 16 a. The list also must be available at the meeting.
- 17 b. A member, a member's agent, or attorney is entitled on written demand to
18 inspect and to copy the list, at a reasonable time and at the member's
19 expense, during the period it is available for inspection and at any time during
20 the meeting or an adjournment.
- 21 3. If the corporation refuses to allow a member with voting rights, the member's
22 agent, or attorney to inspect the list of members before or at the meeting, the
23 district court of the county where the principal executive office of the corporation is
24 located, on application of the member, may:
- 25 a. Order the inspection or copying at the corporation's expense;
- 26 b. Postpone the meeting until the inspection or copying is complete; or
- 27 c. Order the corporation to pay the member's costs, including reasonable
28 attorneys' fees, incurred to obtain the order.
- 29 4. Unless a written demand to inspect and copy a membership list has been made
30 under subsection 2 before the membership meeting and a corporation improperly

refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

10-33-71. Right to vote. Unless the articles or bylaws provide otherwise, each member with voting rights is entitled to one vote on each matter voted on by the members. If a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

1. If only one votes, the act binds all.
2. If more than one votes, the vote must be divided on a pro rata basis.

10-33-72. Act of the members.

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class, the members shall take action by the affirmative vote of the greater of:
 - a. A majority of the members with voting rights present and entitled to vote on that item of business; or
 - b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, the articles or bylaws control.

2. Unless otherwise provided in the articles or bylaws, members may take action at a meeting:
 - a. By voice or ballot.
 - b. By action without a meeting pursuant to section 10-33-73.
 - c. By written ballot pursuant to section 10-33-74.
 - d. By electronic communication pursuant to section 10-33-75.

1 **10-33-73. Action without a meeting.** An action required or permitted to be taken at a
2 meeting of the members may be taken without a meeting by written action signed by all of the
3 members entitled to vote on that action.

4 1. If the articles so provide, any action may be taken by written action signed by the
5 members who hold voting power equal to the voting power that would be required
6 to take the same action at a meeting of the members at which all members were
7 present.

8 2. The written action is effective when signed by the required members, unless a
9 different effective time is provided in the written action.

10 3. When written action is permitted to be taken by less than all members, all
11 members must be notified immediately of its text and effective date. Failure to
12 provide the notice does not invalidate the written action. A member who does not
13 sign or consent to the written action has no liability for the action or actions taken
14 by the written action.

15 4. When this chapter requires or permits a certificate concerning an action to be filed
16 with the secretary of state, the certificate must indicate that the action was taken
17 under this section.

18 **10-33-74. Action by written ballot.**

19 1. Except as provided in subsection 5 and unless prohibited or limited by the articles
20 or bylaws, an action that may be taken at a regular or special meeting of members
21 may be taken without a meeting if the corporation mails or delivers a written ballot
22 to every member entitled to vote on the matter.

23 2. A written ballot must set forth each proposed action and provide an opportunity to
24 vote for or against each proposed action.

25 3. Approval by written ballot under this section is valid only if:

26 a. The number of votes cast by ballot equals or exceeds the quorum required to
27 be present at a meeting authorizing the action; and

28 b. The number of approvals equals or exceeds the number of votes that would
29 be required to approve the matter at a meeting at which the total number of
30 votes cast was the same as the number of votes cast by ballot.

31 4. Solicitations for votes by written ballot must:

- a. Indicate the number of responses needed to meet the quorum requirements;
- b. State the percentage of approvals necessary to approve each matter other than election of directors; and
- c. Specify the time by which a ballot must be received by the corporation in order to be counted.

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

10-33-75. Electronic communications.

1. A conference among the members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:

- a. If the same notice is given of the conference as would be required for a meeting; and
- b. If the number of members participating in the conference would be sufficient to constitute a quorum at a meeting.

Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 5 of section 10-33-68. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member:

- a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or

- b. Objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-33-76. Quorum.

1. Unless otherwise provided by the articles or bylaws, a quorum for a meeting of members is ten percent of the members entitled to vote at the meeting.
2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.
 - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
 - b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

10-33-77. Proxies.

1. If the articles or bylaws permit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.
2. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment. However, a proxy is not valid for more than three years from its date of execution.
3. An appointment of a proxy is revocable by the member. Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person, or signing and delivering to the officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked, or a later appointment. Revocation in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.
4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the authority of the proxy unless notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under the appointment.

- 1 5. Subject to section 10-33-78 and an express limitation on the authority of the proxy
2 appearing on the face of the appointment form, a corporation is entitled to accept
3 the vote or other action of the proxy as that of the member making the
4 appointment.
- 5 6. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is
6 liable to the member for damages resulting from a failure to exercise the proxy or
7 from an exercise of the proxy in violation of the authority granted in the
8 appointment.
- 9 7. Unless the appointment specifically provides otherwise, if two or more persons are
10 appointed as proxies for a member, any one of them may vote on each item of
11 business in accordance with specific instructions contained in the appointment, but
12 if no specific instructions are contained in the appointment with respect to voting
13 on a particular item of business, a majority of the proxies have the authority
14 conferred by the instrument. If the proxies are equally divided, they share the vote
15 equally.

16 **10-33-78. Corporation's acceptance of member's act.**

- 17 1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds
18 to the record name of a member, the corporation if acting in good faith may accept
19 the vote, consent, waiver, or proxy appointment and give it effect as the act of the
20 member.
- 21 2. Unless the articles or bylaws provide otherwise, if the name signed on a vote,
22 consent, waiver, or proxy appointment does not correspond to the record name of
23 a member, the corporation if acting in good faith may accept the vote, consent
24 waiver, or proxy appointment and give it effect as the act of the member if:
 - 25 a. The member is an organization and the name signed purports to be that of an
26 officer, manager, or agent of the organization;
 - 27 b. The name signed purports to be that of an administrator, guardian, or
28 conservator representing the member and, if the corporation requests,
29 evidence of fiduciary status acceptable to the corporation has been presented
30 with respect to the vote, consent, waiver, or proxy appointment;

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

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

3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

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

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

10-33-79. Voting agreements.

1. To the extent permitted in the articles or bylaws, two or more members may provide for how they will vote by signing an agreement for that purpose. An agreement may be valid for a period of up to ten years. The agreement must have a reasonable purpose consistent with the purposes of the corporation.

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

3. A voting agreement is not effective until it is filed with the corporation.

10-33-80. Books and records - Financial statement.

- 1 1. A corporation shall keep at its principal executive office correct and complete
2 copies of its articles and bylaws, accounting records, voting agreements, and
3 minutes of meetings of members, board of directors, and committees having any of
4 the authority of the board of directors for the last six years.
- 5 2. A member or a director, or the agent or attorney of a member or a director, may
6 inspect all documents referred to in subsection 1 or 3 for any proper purpose at
7 any reasonable time. A proper purpose is one reasonably related to the interest of
8 the person as a member or director of the corporation.
- 9 3. Upon request, a corporation shall give the member or the director a statement
10 showing the financial result of all operations and transactions affecting income and
11 surplus during its last annual accounting period and a balance sheet containing a
12 summary of its assets and liabilities as of the closing date of the accounting period.
- 13 4. A member or director who has gained access under this section to any corporate
14 record may not use or furnish to another for use the corporate record or a portion
15 of the contents for any purpose other than a proper purpose. Upon application of
16 the corporation, a court may issue a protective order or order other relief as may
17 be necessary to enforce the provisions of this subdivision.
- 18 5. The corporation may charge the requesting party a reasonable fee to cover the
19 expenses of providing copies of documents under this section.
- 20 6. The records maintained by a corporation may use any information storage
21 technique, even though the technique makes them illegible visually, if the records
22 can be converted accurately and within a reasonable time into a form that is legible
23 visually and whose contents are assembled by related subject matter to permit
24 convenient use by people in the normal course of business. A corporation shall
25 convert any of the records referred to in subsection 1 or 3 upon the request of a
26 person entitled to inspect them with the expense of the conversion being borne by
27 the person who bears the expense of copying under subsection 5. A copy of the
28 conversion is admissible in evidence, and must be accepted for all other purposes,
29 to the same extent as the existing or original records would be if they were legible
30 visually.

7. A member or a director who is wrongfully denied access to or copies of documents under this section may bring an action for injunctive relief, damages, and costs and reasonable attorneys' fees.

10-33-81. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the members.

10-33-82. Loans - Guarantees - Suretyship.

1. Except as provided in subsection 2, a corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the board and:

a. Is in the usual and regular course of activities of the corporation;

b. Is with, or for the benefit of:

(1) A related organization;

(2) An organization in which the corporation has a financial interest;

(3) A person or organization with whom the corporation has a relationship in the usual and regular course of its activities; or

(4) An organization to which the corporation has the power to make donations; or

c. Has been approved by:

(1) Two-thirds of the members with voting rights; or

(2) If there is no member with voting rights, by two-thirds of the board.

2. A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation or a related organization, or of the spouse, parents, children and spouses of children, brothers and sisters or spouses of brothers and sisters of the director or officer.

a. If a loan or guarantee is made in violation of this section, the borrower's liability on the loan is not affected.

b. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, or who vote for or assent to the guarantee of the obligation of a director or officer of the corporation, and any officer participating in the making of such loan or guarantee shall be jointly and severally liable to the corporation for the amount of the loan until its repayment.

c. This subsection does not prohibit an advance of money for expenses authorized by section 10-33-83.

3. A loan, guaranty, surety contract, or other financial assistance under subsection 1 or 2 may be with or without interest and may be unsecured or secured.

4. This section does not grant authority to act as a bank or to carry on the business of banking.

10-33-83. Advances. A corporation, without a vote of the directors or its members, may advance money to its directors, officers, employees, or agents to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-33-84. Indemnification.

1. For purposes of this section:

a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a director, the position of director in a corporation;

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and

(3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position

1 involve or involved service as a director, governor, officer, manager,
2 partner, trustee, employee, or agent of another organization or
3 employee benefit plan, the position of that person as a director,
4 governor, officer, manager, partner, trustee, employee, or agent, as the
5 case may be, of the other organization or employee benefit plan.

6 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
7 administrative, arbitration, or investigative proceeding, including a proceeding
8 by or in the right of the corporation.

9 d. "Special legal counsel" means counsel who has not represented the
10 corporation or a related organization, or a director, officer, member of a
11 committee of the board, or employee whose indemnification is in issue.

12 2. Subject to subsection 5, a corporation shall indemnify a person made or
13 threatened to be made a party to a proceeding by reason of the former or present
14 official capacity of the person against judgments, penalties, fines including excise
15 taxes assessed against the person with respect to an employee benefit plan,
16 settlements, and reasonable expenses, including attorneys' fees and
17 disbursements, incurred by the person in connection with the proceeding, if, with
18 respect to the acts or omissions of the person complained of in the proceeding, the
19 person:

20 a. Has not been indemnified by another organization or employee benefit plan
21 for the same judgments, penalties, fines including excise taxes assessed
22 against the person with respect to an employee benefit plan, settlements, and
23 reasonable expenses, including attorneys' fees and disbursements, incurred
24 by the person in connection with the proceeding with respect to the same acts
25 or omissions;

26 b. Acted in good faith;

27 c. Received no improper personal benefit and section 10-33-45, if applicable,
28 has been satisfied;

29 d. In the case of a criminal proceeding, had no reasonable cause to believe the
30 conduct was unlawful; and

1 e. In the case of acts or omissions occurring in the official capacity described in
2 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
3 the conduct was in the best interests of the corporation, or in the case of acts
4 or omissions occurring in the official capacity described in paragraph 3 of
5 subdivision b of subsection 1, reasonably believed that the conduct was not
6 opposed to the best interests of the corporation. If the person's acts or
7 omissions complained of in the proceeding relate to conduct as a director,
8 governor, officer, manager, trustee, employee, or agent of an employee
9 benefit plan, the conduct is not considered to be opposed to the best interests
10 of the corporation if the person reasonably believed that the conduct was in
11 the best interests of the participants or beneficiaries of the employee benefit
12 plan.

13 3. The termination of a proceeding by judgment, order, settlement, conviction, or
14 upon a plea of nolo contendere or its equivalent does not, of itself, establish that
15 the person did not meet the criteria set forth in subsection 2.

16 4. Subject to subsection 5, if a person is made or threatened to be made a party to a
17 proceeding, the person is entitled, upon written request to the corporation, to
18 payment or reimbursement by the corporation of reasonable expenses, including
19 attorneys' fees and disbursements, incurred by the person in advance of the final
20 disposition of the proceeding:

21 a. Upon receipt by the corporation of a written affirmation by the person of a
22 good faith belief that the criteria for indemnification set forth in subsection 2
23 have been satisfied and a written undertaking by the person to repay all
24 amounts so paid or reimbursed by the corporation, if it is ultimately
25 determined that the criteria for indemnification have not been satisfied; and

26 b. After a determination that the facts then known to those making the
27 determination would not preclude indemnification under this section.

28 The written undertaking required by subdivision a is an unlimited general obligation
29 of the person making it, but need not be secured and shall be accepted without
30 reference to financial ability to make the repayment.

- 1 5. The articles or bylaws either may prohibit indemnification or advances of expenses
2 otherwise required by this section or may impose conditions on indemnification or
3 advances of expenses in addition to the conditions contained in subsections 2, 3,
4 and 4 including monetary limits on indemnification or advances for expenses, if the
5 conditions apply equally to all persons or to all persons within a given class. A
6 prohibition or limit on indemnification or advances may not apply to or affect the
7 right of a person to indemnification or advances of expenses with respect to any
8 acts or omissions of the person occurring prior to the effective date of a provision
9 in the articles or the date of adoption of a provision in the bylaws establishing the
10 prohibition or limit on indemnification or advances.
- 11 6. This section does not require, or limit the ability of, a corporation to reimburse
12 expenses, including attorneys' fees and disbursements, incurred by a person in
13 connection with an appearance as a witness in a proceeding at a time when the
14 person has not been made or threatened to be made a party to a proceeding.
- 15 7. All determinations whether indemnification of a person is required because the
16 criteria provided in subsection 2 have been satisfied and whether a person is
17 entitled to payment or reimbursement of expenses in advance of the final
18 disposition of a proceeding as provided in subsection 4 must be made:
- 19 a. By the board by a majority of a quorum, if the directors who are at the time
20 parties to the proceeding are not counted for determining either a majority or
21 the presence of a quorum;
- 22 b. If a quorum under subdivision a cannot be obtained by a majority of a
23 committee of the board, consisting solely of two or more directors not at the
24 time parties to the proceeding, duly designated to act in the matter by a
25 majority of the full board including directors who are parties;
- 26 c. If a determination is not made under subdivision a or b, by special legal
27 counsel, selected either by a majority of the board or a committee by vote
28 pursuant to subdivision a or b or, if the requisite quorum of the full board
29 cannot be obtained and the committee cannot be established, by a majority of
30 the full board including directors who are parties;

d. If a determination is not made under subdivisions a, b, and c, by the members with voting rights, other than members who are a party to the proceeding; or

e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:

(1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or

(2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under this section.

10. A corporation with members with voting rights that indemnifies or advances expenses to a person in accordance with this section in connection with a

proceeding by or on behalf of the corporation shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

11. Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

10-33-85. Merger, consolidation, or transfer.

1. Two or more corporations may merge or consolidate, resulting in a single corporation subject to this chapter. A merger or consolidation must be made as provided in sections 10-33-86 through 10-33-92.

2. A corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets under section 10-33-94.

3. If applicable, a corporation shall comply with section 10-33-122 before it may merge or consolidate or transfer all or substantially all of its assets.

10-33-86. Plan of merger or consolidation. A plan of merger or consolidation must contain:

1. The names of the corporations proposing to merge or consolidate;
2. The name of the surviving or new corporation;
3. The terms and conditions of the proposed merger or consolidation;
4. In the case of a merger, the manner and basis of converting the memberships of the constituent corporations into memberships of the surviving corporation or of any other corporation;
5. In the case of a merger, a statement of amendments to the articles of the surviving corporation proposed as part of the merger;
6. In the case of a consolidation, the provisions required by section 10-33-06 to be set out in the articles of the new corporation; and
7. Other provisions with respect to the proposed merger or consolidation which are considered necessary or desirable.

10-33-87. Plan approval.

1. A plan of merger or consolidation must be approved and adopted by each constituent corporation as provided in this section.

1 2. When a constituent corporation has members with voting rights with respect to
2 mergers and consolidations, the board of directors of the corporation shall adopt a
3 resolution by a majority vote of all directors approving a proposed plan of merger
4 or consolidation and directing that the plan be submitted to a vote at a meeting of
5 the members with voting rights. Notice of the meeting must be given to the
6 members, accompanied by a copy or summary of the proposed plan. Unless the
7 articles or bylaws require a greater vote, the plan of merger or consolidation is
8 adopted upon receiving the affirmative vote of a majority of the members who vote
9 upon the proposed plan.

10 3. When a constituent corporation does not have a member with voting rights and
11 unless the articles or bylaws require a greater vote, a plan of merger or
12 consolidation is adopted at a meeting of the board of directors of the corporation
13 upon receiving the affirmative votes of a majority of all directors. Notice of the
14 meeting must be given to all directors accompanied by a copy of the proposed
15 plan of merger or consolidation.

16 **10-33-88. Articles of merger or consolidation - Certificate.**

17 1. Upon receiving the approval required by section 10-33-87 and after compliance
18 with section 10-33-122, if applicable, articles of merger or consolidation must be
19 prepared that contain:

- 20 a. The plan of merger or consolidation;
21 b. A statement that the plan has been approved by each corporation under this
22 chapter; and
23 c. A statement that the notice of the attorney general required by section
24 10-33-122 has been given and the waiting period has expired or has been
25 waived by the attorney general or a statement that section 10-33-122 is not
26 applicable.

27 2. The articles of merger or consolidation must be signed on behalf of each
28 constituent corporation and filed with the secretary of state.

29 3. The secretary of state shall issue a certificate of merger to the surviving
30 corporation or its legal representative or a certificate of consolidation and

incorporation to the new corporation. The certificate must contain the effective date of merger or consolidation.

10-33-89. Abandonment.

1. After a plan of merger or consolidation has been approved by each constituent corporation under section 10-33-87 and before the effective date of the plan, it may be abandoned:

a. If each constituent corporation has approved the abandonment at a meeting:

(1) By a majority of the members with voting rights voting on the issue; or

(2) If the corporation does not have voting members, by a majority of all directors; or

b. If the plan itself provides for abandonment and the conditions for abandonment in the plan are met.

2. A plan of merger or consolidation may be abandoned after it has been approved by each constituent corporation and before the effective date of the plan, by a resolution approved by a majority of all directors of the constituent corporation abandoning the plan of merger or consolidation, subject to the contract rights of any other person under the plan.

3. If articles of merger or consolidation have been filed with the secretary of state, but have not yet become effective, articles of abandonment that comply with subsection 4 must be filed with the secretary of state by:

a. The constituent corporations, in the case of abandonment under subdivision a of subsection 1;

b. The constituent corporations or any one of them, in the case of abandonment under subdivision b of subsection 1; or

c. The abandoning corporation in the case of abandonment under subsection 2.

4. The articles of abandonment must contain:

a. The names of the constituent corporations;

b. The provision of this section under which the plan is abandoned; and

c. If the plan is abandoned under subsection 2, the text of the resolution approved by the directors abandoning the plan.

10-33-90. Effective date of merger or consolidation - Effect.

- 1 1. A merger or consolidation is effective when the articles of merger or consolidation
- 2 are filed with the secretary of state or on a later date named in the articles.
- 3 2. When a merger or consolidation becomes effective:
- 4 a. The constituent corporations become a single corporation, which, in case of
- 5 merger, is a surviving corporation or, in case of consolidation, is a new
- 6 corporation.
- 7 b. Subject to subdivision c and section 10-33-91, and except for the surviving
- 8 corporation, the separate existence of the constituent corporations ends.
- 9 c. When the agreement of merger or consolidation expressly provides for the
- 10 continuance of the corporate existence of a constituent corporation and
- 11 expressly declares the purpose for the continuance, the corporate existence
- 12 of the constituent corporation continues in the single corporation for the
- 13 purpose declared in the agreement.
- 14 d. The single corporation has the rights, privileges, immunities, and powers, and
- 15 is subject to the duties and liabilities, of a corporation formed under this
- 16 chapter.
- 17 e. The single corporation has the rights, privileges, immunities, powers, and
- 18 franchises, public and private, of each constituent corporation.
- 19 f. All real or personal property, debts, including debts arising from a subscription
- 20 for membership, and interests belonging to each constituent corporation are
- 21 transferred to the single corporation without further act or deed.
- 22 g. Interest in real estate possessed by a constituent corporation does not revert
- 23 to the grantor, or otherwise, nor is it in any way impaired by reason of the
- 24 merger or consolidation; and the personal property of a constituent
- 25 corporation does not revert by reason of the merger or consolidation.
- 26 h. Except where the will or other instrument provides otherwise, and subject to
- 27 section 10-33-95, a devise, bequest, gift, or grant contained in a will or other
- 28 instrument, in trust or otherwise, made before or after the merger or
- 29 consolidation has become effective, to or for any of the constituent
- 30 corporations, inures to the single corporation.

- 1 i. Debts, liabilities, and obligations of each constituent corporation become the
2 debts, liabilities, and obligations of the single corporation, just as if the debts,
3 liabilities, and obligations had been incurred or contracted by the single
4 corporation.
- 5 j. Existing claims or a pending action or proceeding by or against a constituent
6 corporation may be prosecuted to judgment as though the merger or
7 consolidation had not been effected, or the single corporation may be
8 substituted for the constituent corporation.
- 9 k. The liabilities of the members, officers, directors, or similar groups or persons,
10 however denominated, of a constituent corporation are not affected by the
11 merger or consolidation of a constituent corporation.
- 12 l. The rights of creditors or liens upon the property of a constituent corporation
13 are not impaired by the merger or consolidation, but the liens are limited to
14 the property upon which they were liens immediately before the merger or
15 consolidation.
- 16 m. The articles of the surviving corporation are considered to be amended to the
17 extent that changes in its articles are contained in a plan of merger.
- 18 n. In the case of a consolidation, the plan of consolidation constitutes the articles
19 of incorporation of the new corporation.
- 20 3. a. For purposes of this subsection, "fiduciary capacity" means the capacity of a
21 trustee, executor, administrator, personal representative, guardian,
22 conservator, receiver, escrow agent, agent for the investment of money,
23 attorney-in-fact, or a similar capacity.
- 24 b. Except where the will, declaration of trust, or other instrument provides
25 otherwise, the single corporation is, without further act or deed, the successor
26 of the constituent corporation in the fiduciary capacity in which a constituent
27 corporation was acting at the time of the merger or consolidation and is liable
28 to any beneficiary as fully as if the constituent corporation had continued its
29 separate corporate existence.
- 30 c. If a constituent corporation is nominated and appointed, or has been
31 nominated and appointed, in a fiduciary capacity in a will, declaration of trust,

1 or other instrument, order, or judgment before or after the merger or
2 consolidation, then even if the will or other instrument, order, or judgment
3 does not become operative or effective until after the merger or consolidation
4 becomes effective, every fiduciary capacity and the rights, powers, privileges,
5 duties, discretions, and responsibilities provided for in the nomination or
6 appointment fully vest in and are to be exercised by the single corporation,
7 whether there are one or more successive mergers or consolidations.

8 **10-33-91. Continuance of corporate authority.** When an act or instrument is
9 considered necessary or appropriate to evidence the vesting of property or other rights in the
10 single corporation, the persons with authority to do so under the articles or bylaws of each
11 constituent corporation shall do the act or execute and deliver the instrument and for this
12 purpose, the existence of the constituent corporations and the authority of those persons is
13 continued.

14 **10-33-92. Merger or consolidation with foreign corporation.**

- 15 1. A corporation may merge or consolidate with a foreign corporation by following the
16 procedures set forth in this section, if the merger or consolidation is permitted by
17 the laws of the state under which the foreign corporation is incorporated.
- 18 2. Each corporation shall comply with sections 10-33-85 through 10-33-91 with
19 respect to the merger or consolidation of corporations and each foreign corporation
20 shall comply with the laws under which it was incorporated or by which it is
21 governed.
- 22 3. If the single corporation will be incorporated under this chapter, it shall comply with
23 this chapter.
- 24 4. If the single corporation will be a foreign corporation and will conduct activities in
25 this state, it shall comply with the provisions of sections 10-33-125 through
26 10-33-138 with respect to foreign corporations. In every case the single
27 corporation shall file with the secretary of state:
- 28 a. An agreement that it may be served with process in this state in a proceeding
29 for the enforcement of an obligation of a constituent corporation; and

- b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded.

10-33-93. Merger of corporation doing business as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation incorporated under this chapter.

1. Notwithstanding chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger.
2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

10-33-94. Transfer of assets - When permitted.

1. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities and, subject to subsection 1 of section 10-33-82, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, in which case no member approval is required.
2. A corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights.

- a. If there are not members with voting rights, member approval is not required.
- b. Notice of the meeting must be given to the members with voting rights.
- c. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

3. If applicable, a corporation shall comply with section 10-33-122 before transferring all or substantially all of its assets under this section.

4. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

5. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-33-95. Certain assets not to be diverted. When a corporation dissolves, merges or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

10-33-96. Methods of dissolution.

1. Subject to section 10-33-122, a corporation may be dissolved:

- a. By the incorporators under section 10-33-97;
- b. By the board and members with voting rights under sections 10-33-98 through 10-33-103; or
- c. By order of a court under sections 10-33-106 through 10-33-113.

2. A corporation also may be dissolved by the secretary of state under section 10-33-139.

10-33-97. Voluntary dissolution by incorporators.

1. If the first board has not been named in the articles, designated or appointed pursuant to the articles, or elected under section 10-33-25, a corporation may be dissolved by the incorporators as provided in this section.
 2. A majority of the incorporators shall sign articles of dissolution containing:
 - a. The name of the corporation;
 - b. The date of incorporation;
 - c. A statement that the first board has not been:
 - (1) Named in the articles;
 - (2) Designated or appointed pursuant to the articles; or
 - (3) Elected at an organizational meeting;
 - d. A statement that no debts remain unpaid; and
 - e. A statement:
 - (1) That notice to the attorney general required by section 10-33-122 has been given and the waiting period:
 - (a) Has expired; or
 - (b) Has been waived by the attorney general; or
 - (2) That section 10-33-122 is not applicable.
 3. The articles of dissolution must be filed with the secretary of state together with the fees provided in section 10-33-140.
 4. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
 5. The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation is dissolved.
- 10-33-98. Voluntary dissolution by board and members with voting rights.**
1. A corporation may be dissolved by the board and members with voting rights as provided in this section.
 2. The board shall adopt a resolution proposing dissolution of the corporation by the affirmative vote of a majority of all directors.

- a. The resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after creditors are paid.
- b. The plan must comply with the requirements of section 10-33-105.
- c. If the board will have discretion in distributing assets, the plan must state that the assets will be distributed to persons the board subsequently identifies.
- d. If there is a member with voting rights, the resolution and plan of dissolution must be submitted to the members under subsection 3.

3. With respect to approval by members with voting rights:

a. Written notice:

- (1) Must be given to each member with voting rights, within the time and in the manner provided in section 10-33-68 for notice of meetings of members; and
- (2) Whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.

- b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members, the dissolution must be started.

10-33-99. Filing notice of intent to dissolve - Effect.

1. If dissolution of the corporation is approved under section 10-33-98, the corporation shall:

a. File with the secretary of state, together with the fees provided in section 10-33-140, a notice of intent to dissolve which must contain:

- (1) The name of the corporation;
- (2) The date and place of the meeting at which the resolution was approved by the board under subsection 2 of section 10-33-98, and by the members under subsection 3 of section 10-33-98, if applicable; and
- (3) A statement that the requisite approval of the directors and members was received.

- b. If applicable, notify the attorney general under section 10-33-122.

2. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 10-33-104, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation.

a. The board and members with voting rights have the right to revoke the dissolution proceedings under section 10-33-104.

b. The members with voting rights have the right to remove directors or fill vacancies on the board.

c. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

3. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 10-33-115.

10-33-100. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.

2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.

3. Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.

10-33-101. Dissolution procedure for corporations that give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

- 1 1. If notice to creditors and claimants is given, it must be given:
- 2 a. By publishing the notice once each week for four successive weeks in an
- 3 official newspaper, as defined in chapter 46-06, in the county or counties
- 4 where the registered office and the principal executive office of the
- 5 corporation are located; and
- 6 b. By giving written notice to known creditors and claimants pursuant to
- 7 subsection 18 of section 10-33-01.
- 8 2. a. The notice to creditors and claimants must contain:
- 9 (1) A statement that the corporation is in the process of dissolving;
- 10 (2) A statement that the corporation has filed with the secretary of state a
- 11 notice of intent to dissolve;
- 12 (3) The date of filing the notice of intent to dissolve;
- 13 (4) The address of the office to which written claims against the
- 14 corporation must be presented; and
- 15 (5) The date by which all the claims must be received, which must be the
- 16 later of:
- 17 (a) Ninety days after published notice; or
- 18 (b) With respect to a particular known creditor or claimant, ninety
- 19 days after the date on which written notice was given to that
- 20 creditor or claimant.
- 21 b. Published notice is deemed given on the date of first publication for the
- 22 purpose of determining this date.
- 23 3. With respect to claims against a corporation that gives notice to creditors and
- 24 claimants:
- 25 a. The corporation has thirty days from the receipt of each claim filed according
- 26 to the procedures set forth by the corporation on or before the date set forth in
- 27 the notice to accept or reject the claim by giving written notice to the person
- 28 submitting it. A claim not expressly rejected in this manner is deemed
- 29 accepted.
- 30 b. A creditor or claimant to whom notice is given and whose claim is rejected by
- 31 the corporation has:

- (1) Sixty days from the date of rejection;
 - (2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or
 - (3) Ninety days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.
- c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-33-115.
- d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.
4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:
 - a. The ninety-day period in subdivision a of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.
5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:
 - a. The last date on which the notice was given and:
 - (1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision a of subsection 2 has been made or provided for; or

(2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;

b. That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

10-33-102. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-33-101:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-33-101:

a. Must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:

(1) The payment of claims of all known creditors and claimants has been made or provided for; or

(2) At least two years have elapsed from the date of filing the notice of intent to dissolve.

b. Must state:

(1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and

(3) There are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

2. With respect to claims against corporations that do not give notice to creditors and claimants under 10-33-101:

a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-33-115.

10-33-103. Filing of articles of dissolution - Effective date of dissolution - Certificate of dissolution.

1. An original of the articles of dissolution must be filed with the secretary of state, together with the fees provided in section 10-33-140. If the secretary of state finds that the articles of dissolution conform the secretary of state shall issue a certificate of dissolution.

2. When the certificate of dissolution has been issued by the secretary of state, the corporation is dissolved.

3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:

a. The name of the corporation;

b. The date the articles of dissolution were filed with the secretary of state; and

c. A statement that the corporation was dissolved.

10-33-104. Revocation of dissolution proceedings.

1. As provided in this section, dissolution proceedings begun under section 10-33-98 may be revoked before the articles of dissolution are filed.
2. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subsection 3.
3. Written notice must be given to the members with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings.
 - a. The proposed revocation must be submitted to the members at the meeting.
 - b. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.
4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
 - a. After the notice is filed, the corporation may resume business.
 - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

10-33-105. Distribution of assets.

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
 - a. Distribution of assets received and held for a special use or purpose under subsection 2;
 - b. Payment of costs and expenses of the dissolution proceedings, including attorney fees and disbursements;
 - c. Payment of debts, obligations, and liabilities of the corporation;
 - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
 - e. Distribution of remaining assets under subsection 4.

2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

3. Where the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.

4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-02-22.

10-33-106. Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the principal executive office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 10-33-107 through 10-33-113.

10-33-107. Involuntary dissolution.

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

a. In a supervised voluntary dissolution under section 10-33-106.

b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;

- 1 (3) The members of the corporation are so divided in voting power that, for
2 a period that includes the time when two consecutive regular meetings
3 were held, they have failed to elect successors to directors whose
4 terms have expired or would have expired upon the election and
5 qualification of their successors;
6 (4) The corporate assets are being misapplied or wasted; or
7 (5) The period of duration as provided in the articles has expired and has
8 not been extended as provided in section 10-33-118.

9 c. In an action by a creditor when:

- 10 (1) The claim of the creditor has been reduced to judgment and an
11 execution on it has been returned unsatisfied; or
12 (2) The corporation has admitted in writing that the claim of the creditor is
13 due and owing and it is established that the corporation cannot pay its
14 debts in the ordinary course of its activities.

15 d. In an action by the attorney general when it is established that:

- 16 (1) The articles and certificate of incorporation were obtained through
17 fraud;
18 (2) The corporation should not have been formed under this chapter;
19 (3) The corporation failed to comply with the requirements of sections
20 10-33-02 through 10-33-19 essential to incorporation under or election
21 to become governed by this chapter;
22 (4) The corporation has flagrantly violated a provision of this chapter, has
23 violated a provision of this chapter more than once, or has violated
24 more than one provision of this chapter;
25 (5) The corporation has engaged in an unauthorized act, contract,
26 conveyance, or transfer or has exceeded its powers;
27 (6) The corporation has acted, or failed to act, in a manner that constitutes
28 surrender or abandonment of the corporate purpose, franchise,
29 privileges, or enterprise;
30 (7) The corporation has liabilities and obligations exceeding the corporate
31 assets;

- 1 (8) The period of corporate existence has ended without extension;
- 2 (9) The corporation has failed for a period of ninety days to pay fees,
- 3 charges, or penalties required by this chapter;
- 4 (10) The corporation has failed for a period of thirty days:
- 5 (a) To appoint and maintain a registered agent in this state; or
- 6 (b) After changing its registered office to file with the secretary of
- 7 state a statement of the change;
- 8 (11) The corporation has answered falsely or failed to answer a reasonable
- 9 written interrogatory from the secretary of state or the attorney general
- 10 to the corporation, its officers, or directors;
- 11 (12) The corporation has solicited property and has failed to use it for the
- 12 purpose solicited; or
- 13 (13) The corporation has fraudulently used or solicited property.
- 14 e. An action may not be commenced under subdivision d until thirty days after
- 15 notice to the corporation by the attorney general of the reason for the filing of
- 16 the action. If the reason for filing the action is an act that the corporation has
- 17 done, or omitted to do, and the act or omission may be corrected by an
- 18 amendment of the articles or bylaws or by performance of or abstention from
- 19 the act, the attorney general shall give the corporation thirty additional days in
- 20 which to effect the correction before filing the action.
- 21 2. In determining whether to order equitable relief or dissolution under this section,
- 22 the court shall consider the financial condition of the corporation but may not
- 23 refuse to order equitable relief or dissolution solely on the ground that the
- 24 corporation is solvent.
- 25 3. In deciding whether to order dissolution, the court shall consider whether lesser
- 26 relief suggested by one or more parties, such as any form of equitable relief or a
- 27 partial liquidation, would be adequate to permanently relieve the circumstances
- 28 established under subdivision b, c, or d of subsection 1. Lesser relief may be
- 29 ordered if it would be appropriate under the facts and circumstances of the case.

1 4. If the court finds that a party to a proceeding brought under this section has acted
2 arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable
3 expenses, including attorneys' fees and disbursements, to any of the other parties.

4 5. Proceedings under this section must be brought in a court within the county in
5 which the principal executive office of the corporation is located. It is not
6 necessary to make members parties to the action or proceeding unless relief is
7 sought against them personally.

8 **10-33-108. Procedure in involuntary or supervised voluntary dissolution.**

9 1. In dissolution proceedings the court may issue injunctions, appoint receivers with
10 all powers and duties the court directs, take other actions required to preserve the
11 corporate assets wherever situated, and carry on the business of the corporation
12 until a full hearing can be held.

13 2. When a proceeding involving a corporation described in subsection 1 of section
14 10-33-122 is begun, the court shall order that a copy of the petition be served on
15 the attorney general. In all proceedings under this section, the attorney general
16 has a right to participate as a party.

17 3. After a full hearing has been held, upon whatever notice the court directs to be
18 given to all parties to the proceedings and to any other parties in interest
19 designated by the court, the court may appoint a receiver to collect the corporate
20 assets. A receiver has authority, subject to the order of the court, to continue the
21 business of the corporation and to sell, lease, transfer, or otherwise dispose of all
22 or any of the property and assets of the corporation either at public or private sale.

23 4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer,
24 or other disposition must be applied in the following order of priority to the payment
25 and discharge of:

26 a. The costs and expenses of the proceedings, including attorneys' fees and
27 disbursements;

28 b. Debts, taxes, and assessments due the United States, this state and its
29 subdivisions, and other states and their subdivisions, in that order;

30 c. Claims duly proved and allowed to employees under title 65. Claims under
31 this subdivision may not be allowed if the corporation carried workers'

compensation insurance, as provided by law, at the time the injury was
sustained;

d. Claims, including the value of all compensation paid in any medium other
than money, duly proved and allowed to employees for services performed
within three months preceding the appointment of the receiver, if any; and

e. Other claims duly proved and allowed.

5. After payment of the expenses of receivership and claims of creditors duly proved,
the remaining assets, if any, must be distributed in accordance with section
10-33-105.

10-33-109. Qualifications of receivers - Powers.

1. A receiver must be an individual or organization authorized to transact business or
conduct activities in this state. A receiver shall give bond as directed by the court
with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the corporation. The
court appointing the receiver has exclusive jurisdiction of the corporation and its
property.

10-33-110. Filing claims in proceedings to dissolve.

1. In proceedings referred to in section 10-33-107 to dissolve a corporation, the court
may require all creditors and claimants of the corporation to file their claims under
oath with the clerk of court or with the receiver in a form prescribed by the court.

2. If the court requires the filing of claims, it shall fix a date, which may not be less
than one hundred twenty days from the date of the order, as the last day for the
filing of claims, and shall prescribe the notice of the fixed date that must be given
to creditors and claimants. Before the fixed date, the court may extend the time for
filing claims. Creditors and claimants failing to file claims on or before the fixed
date may be barred, by order of court, from claiming an interest in or receiving
payment out of the property or assets of the corporation.

10-33-111. Discontinuance of dissolution proceedings. The involuntary or
supervised voluntary dissolution of a corporation must be discontinued at any time during the
dissolution proceedings when it is established that cause for dissolution no longer exists.

1 When this is established, the court shall dismiss the proceedings and direct the receiver, if any,
2 to redeliver to the corporation all its remaining property and assets.

3 **10-33-112. Decree of dissolution.**

4 1. In an involuntary or supervised voluntary dissolution, the court shall provide for the
5 discharge of obligations and the distribution of the assets as set forth in
6 subsection 4 of section 10-33-108, and shall enter a decree dissolving the
7 corporation.

8 2. When the decree dissolving the corporation has been entered, the corporation is
9 dissolved.

10 **10-33-113. Filing decree.** After the court enters a decree dissolving a corporation, the
11 clerk of court shall cause a certified copy of the decree to be filed with the secretary of state.

12 The secretary of state may not charge a fee for filing the decree.

13 **10-33-114. Deposit with administrator of abandoned property of amount due**
14 **certain persons - Appropriation.** Upon dissolution of a corporation, the portion of the assets
15 distributable to a person who is unknown or cannot be found must be reduced to money and
16 deposited with the administrator of abandoned property for disposition pursuant to chapter
17 47-30.1. The amount deposited is appropriated to the administrator of abandoned property and
18 must be paid over to the person or a legal representative, upon proof satisfactory to the
19 administrator of abandoned property of a right to payment.

20 **10-33-115. Claims barred - Exceptions.**

21 1. A person who is or becomes a creditor or claimant at any time before, during, or
22 following the conclusion of dissolution proceedings, who does not file a claim or
23 pursue a remedy in a legal, administrative, or arbitration proceeding within the time
24 provided in section 10-33-101, 10-33-102, 10-33-106, 10-33-107, or 10-33-110, or
25 has not begun a legal, administrative, or arbitration proceeding before the
26 beginning of the dissolution proceedings, and a person claiming through or under
27 the creditor or claimant, is barred from suing on that claim or otherwise realizing
28 upon or enforcing it, except as provided in this section.

29 2. At any time within one year after articles of dissolution have been filed with the
30 secretary of state under subsection 4 of section 10-33-101 or subsection 1 of
31 section 10-33-102 or a decree of dissolution has been entered, a creditor or

claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim against the corporation to the extent of undistributed assets.

3. All known contractual debts, obligations, and liabilities incurred during dissolution proceedings must be paid by the corporation before the distribution of assets under section 10-33-105. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers or directors of the corporation before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

10-33-116. Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or members with voting rights may assert or defend, in the name of the corporation, any claim by or against the corporation.

10-33-117. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after all distributions pursuant to section 10-33-105 may be transferred by a court in this state.

10-33-118. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to operate despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles must be approved by the board and must include:
 - a. The date on which the period of duration expired under the articles;
 - b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended;
 - c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration; and
 - d. A name change if the name of the corporation has been adopted for use or reserved by another person.
3. If the corporation has a member with voting rights, the amendment to the articles must be presented, after notice, to a meeting of the members with voting rights.

1 The amendment is adopted when approved by the members with voting rights
2 pursuant to section 10-33-15.

- 3 4. Articles of amendment, together with any fees and delinquent filings and reports,
4 conforming to section 10-33-16 must be filed with the secretary of state.

5 **10-33-119. Effect of extension.** Filing with the secretary of state of articles of
6 amendment extending the period of duration of a corporation:

- 7 1. Relates back to the date of expiration of the original period of duration of the
8 corporation as provided in the articles;
9 2. Validates contracts or other acts within the authority of the articles, and the
10 corporation is liable for those contracts or acts; and
11 3. Restores to the corporation all the assets and rights of the corporation to the extent
12 they were held by the corporation before expiration of its original period of
13 duration, except those sold or otherwise distributed after that time.

14 **10-33-120. Service of process on corporation and nonresident directors.**

- 15 1. The registered agent must be an agent of the corporation and any nonresident
16 director upon whom any process, notice, or demand required or permitted by law
17 to be served on the corporation or director may be served. Acceptance of a
18 directorship includes the appointment of the secretary of state as an agent for
19 personal service of legal process, notice, or demand.
20 2. A process, notice, or demand required or permitted by law to be served upon a
21 corporation may be served either upon the registered agent of the corporation, or
22 upon an officer of the corporation, or upon the secretary of state as provided in this
23 section.
24 3. If neither the corporation's registered agent nor an officer of the corporation can be
25 found at the registered office, or if a corporation fails to maintain a registered agent
26 in this state and an officer of the corporation cannot be found at the registered
27 office, then the secretary of state is the agent of the corporation upon whom the
28 process, notice, or demand may be served. The return of the sheriff, or the
29 affidavit of a person who is not a party, that no registered agent or officer can be
30 found at the registered office must be provided to the secretary of state. Service
31 on the secretary of state of any process, notice, or demand is deemed personal

1 service upon the corporation and must be made by filing with the secretary of state
2 an original and two copies of the process, notice, or demand, along with the fees
3 provided in section 10-33-140. The secretary of state shall immediately forward,
4 by registered mail, addressed to the corporation at its registered office, a copy of
5 the process, notice, or demand. Service on the secretary of state is returnable in
6 not less than thirty days notwithstanding a shorter period specified in the process,
7 notice, or demand.

8 4. Process, notice, or demand may be served on a dissolved corporation as provided
9 in this subsection. The court shall determine if service is proper. If a corporation
10 has voluntarily dissolved or a court has entered a decree of dissolution, service
11 may be made according to subsection 2 as long as claims are not finally barred
12 under section 10-33-115. If a corporation has been involuntarily dissolved
13 pursuant to section 10-33-139, service may be made according to subsection 2.

14 5. A record of all processes, notices, and demands served upon the secretary of
15 state under this section, including the date of service and the action taken with
16 reference to it, must be maintained in the office of the secretary of state.

17 6. Nothing in this section limits the right to serve any process, notice, or demand
18 required or permitted by law to be served upon a corporation in any other manner
19 permitted by law.

20 **10-33-121. State interested - Proceedings.** If it appears at any stage of a proceeding
21 in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter
22 of general public interest, the court shall order that a copy of the complaint or petition be served
23 upon the attorney general in the same manner prescribed for serving a summons in a civil
24 action. The attorney general shall intervene in a proceeding when the attorney general
25 determines that the public interest requires it, whether or not the attorney general has been
26 served.

27 **10-33-122. Attorney general - Notice to - Waiting period.**

28 1. Except as provided in subsection 7, the following corporations shall notify the
29 attorney general of their intent to dissolve, merge, or consolidate, or to transfer all
30 or substantially all of their assets:

31 a. A corporation that holds assets for a charitable purpose.

b. A corporation that is exempt under section 501(c)(3) of the Internal Revenue Code.

2. The notice must be signed on behalf of the corporation by an authorized person and must include:

a. The purpose of the corporation that is giving the notice;

b. A list of assets owned or held by the corporation for charitable purposes;

c. A description of restricted assets and purposes for which the assets were received;

d. A description of debts, obligations, and liabilities of the corporation;

e. A description of tangible assets being converted to cash and the manner in which they will be sold;

f. Anticipated expenses of the transaction, including attorneys' fees;

g. A list of persons to whom assets will be transferred, if known;

h. The purposes of persons receiving the assets; and

i. The terms, conditions, or restrictions, if any, to be imposed on the transferred assets.

3. Subject to subsection 4, a corporation described in subsection 1 may not transfer or convey assets as part of a dissolution, merger, or consolidation, or transfer of assets under section 10-33-94 until forty-five days after it has given written notice to the attorney general, unless the attorney general waives all or part of the waiting period.

4. The attorney general may extend the waiting period under subsection 3 for one additional thirty-day period by notifying the corporation in writing of the extension. The attorney general shall notify the secretary of state if the waiting period is extended.

5. When all or substantially all of the assets of a corporation described in subsection 1 have been transferred or conveyed following expiration or waiver of the waiting period, the board shall deliver to the attorney general a list of persons to whom the assets were transferred or conveyed. The list must include the addresses of each person who received assets and show what assets the person received.

6. Failure of the attorney general to take an action with respect to a transaction under this section does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

7. Subsections 1 through 5 do not apply to a merger with, consolidation into, or transfer of assets to an organization exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section. A corporation that is exempt under this subsection shall send a copy of the certificate of merger or certificate of consolidation and incorporation to the attorney general.

10-33-123. Powers of attorney general.

1. When it appears to the attorney general it is in the public interest that an investigation should be made to ascertain whether a proceeding by the attorney general, as provided in this chapter, should be commenced, the attorney general may:

a. Examine under oath any person in connection with the affairs of the corporation.

b. Examine any record, book, document, account, or paper as the attorney general determines necessary.

c. Pursuant to an order of the district court, impound any record, book, document, account, or paper, and retain it in the attorney general's possession until the completion of all proceedings undertaken under this chapter.

2. To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may issue subpoenas to any person.

3. If any person fails or refuses to file any statement or report, or obey any subpoena, the attorney general may apply to the district court for an order enforcing the subpoena or other investigation demand. Failure to comply with the order of the district court is contempt of court.

10-33-124. Certified nonprofit development corporation - Application - Income tax

credit.

1. For the purposes of this section:

- 1 a. "Certified nonprofit development corporation" means a corporation organized
2 under this chapter which meets the following requirements:
3 (1) Is certified by the secretary of state under this section;
4 (2) Invests a majority of its funds in primary sector businesses; and
5 (3) No part of the income is distributable to its members, directors, or
6 officers.
- 7 b. "Primary sector business" means an individual, corporation, limited liability
8 company, partnership, or association that, through a process employing
9 knowledge and labor, adds value to a product produced for resale.
- 10 2. A corporation may apply to the secretary of state to become a certified nonprofit
11 development corporation by submitting an application executed by an officer of the
12 corporation containing:
13 a. The name of the corporation and the address of its principal executive office;
14 b. The names and addresses of the officers and directors of the corporation; and
15 c. A statement that the corporation has adopted a resolution to invest a majority
16 of membership payments, dues, or contributions received in primary sector
17 businesses. A copy of the resolution must be submitted with the application
18 to the secretary of state together with the fees provided in section 10-33-140.
- 19 3. Upon receipt by the secretary of state of the completed application and fee, the
20 secretary of state shall certify the applicant as a certified nonprofit development
21 corporation.
- 22 4. a. An individual or a corporation that buys membership in, or pays dues or
23 contributes to a nonprofit development corporation is entitled to an income tax
24 credit equal to twenty-five percent of the amount paid.
25 b. This credit may not be claimed by an individual who elects to file an income
26 tax return under section 57-38-30.3 or by a corporation that is recognized as
27 a subchapter S corporation under section 57-38-01.4.
28 c. No taxpayer is entitled to more than two thousand dollars in total income tax
29 credits under this section.
30 d. The amount of the credit under this section in excess of the taxpayer's income
31 tax liability may be carried forward for up to seven taxable years.

- 1 5. a. Within thirty days of the date on which a taxpayer buys membership in, or
2 pays dues or contributes to a certified nonprofit development corporation, the
3 certified nonprofit development corporation must complete and file with the
4 tax commissioner a form prescribed by the tax commissioner setting forth:
5 (1) The name, address, and social security number or federal employer
6 identification number of the taxpayer making the payment;
7 (2) The dollar amount paid by the taxpayer;
8 (3) The date the certified nonprofit development corporation received the
9 payment from the taxpayer;
10 (4) The name, address, and federal employer identification number of the
11 certified nonprofit development corporation; and
12 (5) The signature and title of an officer authorized to act on behalf of the
13 corporation.
14 b. Two copies of this form must be provided to the taxpayer. To receive the
15 credit, the taxpayer must attach one copy of the form to the taxpayer's income
16 tax return.

17 **10-33-125. Foreign corporation - Governing law.**

- 18 1. Subject to the constitution of this state, the laws of the jurisdiction under which a
19 foreign corporation is incorporated govern its incorporation and internal affairs.
20 Nothing in this chapter authorizes this state to regulate the incorporation or internal
21 affairs of a foreign corporation.
22 2. A foreign corporation may not be denied a certificate of authority to conduct
23 activities in this state by reason of any difference between those laws and the laws
24 of this state.
25 3. A foreign corporation holding a valid certificate of authority in this state has no
26 greater rights and privileges than a corporation. The certificate of authority does
27 not authorize the foreign corporation to exercise any of its powers or purposes that
28 a corporation is forbidden by law to exercise in this state.

29 **10-33-126. Foreign corporation - Name.** A foreign corporation may apply for a
30 certificate of authority under any name that would be available to a corporation, whether or not
31 the name is the name under which it is authorized in its jurisdiction of incorporation. A trade

1 name must be registered as provided in chapter 47-25 when applying for the certificate of
2 authority under a name other than the name as authorized in the jurisdiction of incorporation.

3 **10-33-127. Foreign corporation - Admission of foreign corporation conducting**
4 **activities - Obtaining licenses and permits.** A foreign corporation may not:

- 5 1. Conduct activities in this state or obtain any license or permit required by this state
6 until it has procured a certificate of authority from the secretary of state.
- 7 2. Conduct in this state any activity that is prohibited to a corporation incorporated
8 under this chapter.
- 9 3. Be denied a certificate of authority because the laws of the state or country where
10 the corporation is incorporated differ from the laws of this state.

11 **10-33-128. Foreign corporation application for certificate of authority.**

- 12 1. An applicant for the certificate shall file with the secretary of state a certificate of
13 status from the filing office in the jurisdiction in which the foreign corporation is
14 incorporated and an application executed by an authorized person and setting
15 forth:
 - 16 a. The name of the foreign corporation and if different, the name under which it
17 proposes to conduct activities in this state;
 - 18 b. The jurisdiction of its incorporation;
 - 19 c. The date of incorporation in the jurisdiction of its incorporation and the period
20 of duration of the foreign corporation;
 - 21 d. The address of the principal executive office of the foreign corporation in the
22 jurisdiction where it is incorporated;
 - 23 e. The address of the proposed registered office of the foreign corporation in this
24 state;
 - 25 f. The name of the proposed registered agent in this state that is:
 - 26 (1) An individual resident of this state;
 - 27 (2) A corporation whether incorporated under this chapter or under another
28 provision of this code; or
 - 29 (3) A foreign corporation having a place of business in, and authorized to
30 conduct activities in, this state whether authorized to conduct activities
31 in this state under this chapter or under another provision of this code;

g. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;

h. The names and addresses of the directors and officers of the foreign corporation; and

i. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.

2. The application must be accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

10-33-129. Foreign corporation - Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and that all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and

3. Issue to the corporation or its representative a certificate of authority to conduct activities in this state.

10-33-130. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect

authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

10-33-131. Foreign corporation - Registered agent - Registered office - Certain reports. A foreign corporation authorized to conduct activities in this state must:

1. Establish and continuously maintain a registered office in the same manner as provided in section 10-33-12;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-33-12; and
3. File a report upon the establishment of or any change in the address of its registered office or upon the designation of or change in the name or address of its registered agent in the same manner as provided in section 10-33-13.

10-33-132. Foreign corporation - Merger of foreign corporation authorized to conduct activities in this state. Whenever a foreign corporation authorized to conduct activities in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which it is incorporated, and the corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. It is not necessary for any foreign organization, which is the surviving organization in a merger, to procure either a new or amended certificate of authority to conduct activities in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.

10-33-133. Foreign corporation - Certificate of withdrawal.

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-33-140, which must set forth:
 - a. The name of the corporation and the state or country under the laws of which it is incorporated;
 - b. That the corporation is not conducting activities in this state;

- 1 c. That the corporation surrenders its authority to conduct activities in this state;
2 d. That the corporation revokes the authority of its registered agent in this state
3 to accept service of process and consents to that service of process on the
4 corporation by service upon the secretary of state in any action, suit, or
5 proceeding based upon any cause of action arising in this state during the
6 time the corporation was authorized to conduct activities in this state; and
7 e. A post-office address to which a person may mail a copy of any process
8 against the corporation.

- 9 2. The filing with the secretary of state of a certificate of dissolution, or a certificate of
10 merger if the corporation is not the surviving organization, from the proper officer of
11 the state or country under the laws of which the corporation is incorporated
12 constitutes a valid application of withdrawal and the authority of the corporation to
13 conduct activities in this state shall cease upon filing of the certificate.

14 **10-33-134. Foreign corporation - Revocation of certificate of authority.**

- 15 1. The certificate of authority of a foreign corporation to conduct activities in this state
16 may be revoked by the secretary of state if:
17 a. The foreign corporation has failed to:
18 (1) Maintain a registered office as required by this chapter;
19 (2) Appoint and maintain a registered agent as required by this chapter;
20 (3) File a report upon any change in the address of its registered office;
21 (4) File a report upon any change in the name or business address of the
22 registered agent; or
23 (5) File in the office of the secretary of state any amendment to its
24 application for a certificate of authority as specified in section
25 10-33-130; or
26 b. A misrepresentation has been made of any material matter in any application,
27 report, affidavit, or other document submitted by the foreign corporation
28 pursuant to this chapter.
29 2. No certificate of authority of a foreign corporation may be revoked by the secretary
30 of state unless:

- 1 a. The secretary has given the foreign corporation not less than sixty days'
2 notice by mail addressed to its registered office in this state or, if the foreign
3 corporation fails to appoint and maintain a registered agent in this state,
4 addressed to its principal executive office; and
5 b. During the sixty-day period, the foreign corporation has failed to file the report
6 of change regarding the registered office or the registered agent, to file any
7 amendment, or to correct the misrepresentation.
8 3. Upon the expiration of sixty days after the mailing of the notice, the authority of the
9 foreign corporation to conduct activities in this state ceases. The secretary of state
10 shall issue a certificate of revocation and shall mail the certificate to the principal
11 executive office of the foreign corporation.

12 **10-33-135. Foreign corporation - Conduct of activity without certificate of**
13 **authority - Civil penalty.**

- 14 1. A foreign corporation conducting activities in this state may not maintain any
15 action, suit, or proceeding in any court of this state until it possesses a certificate of
16 authority.
17 2. The failure of a foreign corporation to obtain a certificate of authority does not
18 impair the validity of any contract or act of the foreign corporation or prevent the
19 foreign corporation from defending any action, suit, or proceeding in any court of
20 this state.
21 3. A foreign corporation, by conducting activities in this state without a certificate of
22 authority, appoints the secretary of state as its agent upon whom any notice,
23 process, or demand may be served.
24 4. A foreign corporation that conducts activities in this state without a valid certificate
25 of authority is liable to the state for the years or parts of years during which it
26 conducted activities in this state without the certificate in an amount equal to all
27 fees that would have been imposed by this chapter upon that corporation had it
28 duly obtained the certificate, filed all reports required by this chapter, and paid all
29 penalties imposed by this chapter. The attorney general shall bring proceedings to
30 recover all amounts due this state under this section.

- 1 5. A foreign corporation that conducts activities in this state without a valid certificate
2 of authority is subject to a civil penalty, payable to the state, not to exceed five
3 thousand dollars. Each director and each officer or agent who authorizes, directs,
4 or participates in the conduct of activity in this state on behalf of a foreign
5 corporation that does not have a certificate is subject to a civil penalty, payable to
6 the state, not to exceed one thousand dollars.
- 7 6. The civil penalties set forth in subsection 5 may be recovered in an action brought
8 within the district court of Burleigh County by the attorney general. Upon a finding
9 by the court that a foreign corporation or any of its members, directors, officers, or
10 agents have conducted activities in this state in violation of this chapter, the court
11 shall issue, in addition to the imposition of a civil penalty, an injunction restraining
12 the further conduct of the activity of the foreign corporation and the further exercise
13 of any rights and privileges by the corporation in this state. The foreign corporation
14 must be enjoined from conducting activities in this state until all civil penalties plus
15 any interest and court costs that the court may assess have been paid and until
16 the foreign corporation has otherwise complied with this chapter.
- 17 7. A member of a foreign corporation is not liable for the debts and obligations of the
18 corporation solely by reason of the corporation having conducted activity in this
19 state without a valid certificate of authority.

20 **10-33-136. Foreign corporation - Conduct not constituting conducting activities.**

- 21 1. The following activities of a foreign corporation, among others, do not constitute
22 conducting activity within the meaning of this chapter:
- 23 a. Maintaining, defending, or settling any proceeding;
24 b. Holding meetings of its members or carrying on any other activities
25 concerning its internal affairs;
26 c. Maintaining bank accounts;
27 d. Creating or acquiring indebtedness, mortgages, and security interests in real
28 or personal property;
29 e. Securing or collecting debts or enforcing mortgages and security interests in
30 property securing the debts; or

f. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "conducting activity" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, is considered conducting activity in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

10-33-137. Foreign corporation - Action by attorney general. The attorney general may bring an action to restrain a foreign corporation from conducting activity in this state in violation of this chapter.

10-33-138. Foreign corporation - Service of process. Service of process on a foreign corporation must be as provided in section 10-33-120. When the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.

10-33-139. Secretary of state - Annual report of corporations and foreign corporations.

1. Each corporation, and each foreign corporation authorized to conduct activities in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:

a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.

b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

c. A brief statement of the character of the activities in which the corporation or foreign corporation is actually engaged in this state.

d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.

e. The section of the Internal Revenue Code by which its tax status is established.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 24 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.

a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.

(1) If the report does not conform, it must be returned to the corporation for any necessary corrections.

(2) If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days

1 after the annual report was returned by the secretary of state for
2 correction.

3 c. The secretary of state may extend the annual filing date of any corporation or
4 foreign corporation if a written application for an extension is delivered before
5 February first.

6 4. After the date established under subsection 3, the secretary of state shall notify
7 any corporation or foreign corporation failing to file its annual report that its
8 certificate of incorporation or certificate of authority is not in good standing and that
9 it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of
10 state must mail the notice to the last registered agent at the last registered office of
11 record. If the corporation or foreign corporation files its annual report after the
12 notice is mailed, together with the annual report filing fee and late filing penalty fee
13 as prescribed by section 10-33-140, the secretary of state shall restore its
14 certificate of incorporation or certificate of authority to good standing.

15 5. A corporation that does not file its annual report, along with the statutory filing and
16 penalty fees, within one year after the date established in subsection 3 ceases to
17 exist and is considered involuntarily dissolved by operation of law.

18 a. The secretary of state shall note the termination of the corporation's certificate
19 of incorporation on the records of the secretary of state and shall give notice
20 of the action to the dissolved corporation.

21 b. Notice by the secretary of state must be mailed to the last registered agent at
22 the last registered office of record.

23 6. A foreign corporation that does not file its annual report, along with the statutory
24 filing and penalty fees, within one year after the date established by subsection 3
25 forfeits its authority to conduct activities in this state.

26 a. The secretary of state shall note the revocation of the foreign corporation's
27 certificate of authority on the records of the secretary of state and shall give
28 notice of the action to the foreign corporation.

29 b. Notice by the secretary of state must be mailed to the foreign corporation's
30 last registered agent at the last registered office of record.

c. The decision by the secretary of state that a certificate of authority must be
revoked under this subsection is final.

7. A corporation that was dissolved for failure to file an annual report, or a foreign
corporation whose authority was forfeited by failure to file an annual report, may be
reinstated by filing a past-due report, together with the statutory filing and penalty
fees for an annual report and a reinstatement fee as prescribed in section
10-33-140. The fees must be paid and the report filed within one year following
the involuntary dissolution or revocation. Reinstatement under this subsection
does not affect the rights or liability for the time from the dissolution or revocation
to the reinstatement.

8. The secretary of state may waive any penalties provided in the section when an
annual report form could not be delivered to the corporation.

10-33-140. Secretary of state - Fees and charges.

1. The secretary of state shall charge and collect for:

a. Filing articles of incorporation and issuing a certificate of incorporation, thirty
dollars.

b. Filing articles of amendment, twenty dollars.

c. Filing restated articles of incorporation, thirty dollars.

d. Filing articles of merger or consolidation and issuing a certificate of merger or
consolidation, fifty dollars.

e. Filing an intent to dissolve, ten dollars.

f. Filing articles of dissolution, twenty dollars.

g. Filing a statement of change of address of registered office or change of
registered agent, or both, ten dollars.

h. Filing a registered agent's consent to serve in that capacity, ten dollars.

i. Filing a resignation as registered agent, ten dollars.

j. Filing an application to reserve a corporate name, ten dollars.

k. Filing a notice of transfer of a reserved corporate name, ten dollars.

l. Filing a cancellation of reserved corporate name, ten dollars.

m. Filing a consent to use of a deceptively similar name, ten dollars.

- 1 n. Filing an application of a foreign corporation for a certificate of authority to
2 conduct affairs in this state and issuing a certificate of authority, forty dollars.
- 3 o. Filing an application of a foreign corporation for an amended certificate of
4 authority, forty dollars.
- 5 p. Filing a certified statement of merger of a foreign corporation holding a
6 certificate of authority to conduct activities in this state, fifty dollars.
- 7 q. Filing an application for withdrawal of a foreign corporation and issuing a
8 certificate of withdrawal, twenty dollars.
- 9 r. Filing an annual report of a domestic or foreign corporation, ten dollars. The
10 secretary of state shall charge and collect additional fees for late filing of the
11 annual report:
- 12 (1) After the date prescribed in subsection 3 of section 10-33-140, five
13 dollars; and
- 14 (2) After the dissolution of a corporation, or the revocation of the certificate
15 of authority of a foreign corporation, the reinstatement fee of forty
16 dollars.
- 17 s. Filing any other statement of a domestic or foreign corporation, ten dollars.

18 2. The secretary of state shall charge and collect:

- 19 a. For furnishing a certified copy of any document, instrument, or paper relating
20 to a corporation, one dollar for every four pages or fraction thereof and fifteen
21 dollars for the certificate and affixing the seal to the certificate.
- 22 b. At the time of any service of process on the secretary of state as resident
23 agent of a corporation, twenty-five dollars, which may be recovered as
24 taxable costs by the party to the claim for relief causing the service to be
25 made if that party prevails in the suit or action.

26 **10-33-141. Secretary of state - Enforcement - Penalty - Appeal.**

- 27 1. The secretary of state may administer this chapter.
- 28 2. The secretary of state may propound to any corporation or foreign corporation that
29 is subject to this chapter and to any officer, director, or employee thereof, any
30 interrogatory as may be reasonably necessary and proper to ascertain whether the
31 corporation has complied with this chapter applicable to the corporation.

- 1 a. The interrogatory must be answered within thirty days after mailing, or within
2 any additional time as must be fixed by the secretary of state. The answers
3 to the interrogatory must be full and complete and must be made in writing
4 and under oath.
- 5 b. If the interrogatory is directed:
 - 6 (1) To an individual, it must be answered by that individual; or
 - 7 (2) To a corporation, it must be answered by the president, vice president,
8 secretary, or assistant secretary of the corporation.
- 9 c. The secretary of state need not file any document to which the interrogatory
10 relates until the interrogatory has been answered, and not then if the answers
11 disclose that the document is not in conformity with this chapter.
- 12 d. The secretary of state shall certify to the attorney general, for action the
13 attorney general may deem appropriate, an interrogatory and answers
14 thereto, which discloses a violation of this chapter.
- 15 e. Each officer, director, or employee of a corporation or foreign corporation who
16 fails or refuses within the time provided by subdivision a of subsection 2 to
17 answer truthfully and fully an interrogatory propounded to that person by the
18 secretary of state is guilty of an infraction.
- 19 f. An interrogatory propounded by the secretary of state and the answers are
20 not open to public inspection. The secretary of state may not disclose any
21 facts or information obtained from the interrogatory or answers except insofar
22 as may be permitted by law or insofar as is required for evidence in any
23 criminal proceedings or other action by this state.
- 24 3. If the secretary of state rejects any document required by this chapter to be
25 approved by the secretary of state before the document may be filed, then the
26 secretary of state shall give written notice of the rejection to the person who
27 delivered the document, specifying the reasons for rejection.
 - 28 a. From such rejection the person may appeal to the district court of the county
29 in which the registered office of such corporation is, or is proposed to be,
30 situated by filing with the clerk of the court a petition setting forth a copy of the

1 document sought to be filed and a copy of the written rejection of the
2 document by the secretary of state.

3 b. The matter must be tried de novo by the court. The court shall either sustain
4 the action of the secretary of state or direct the secretary of state to take the
5 action the court determines proper.

6 4. If the secretary of state revokes the certificate of authority to conduct activities in
7 this state of any foreign corporation, pursuant to section 10-33-134, then, the
8 foreign corporation may appeal to the district court of the county where the
9 registered office of the foreign corporation in this state is situated by filing with the
10 clerk of the court a petition setting forth a copy of the corporation's certificate of
11 authority to conduct activities in this state and a copy of the notice of revocation
12 given by the secretary of state. The matter must be tried de novo by the court.
13 The court shall sustain the action of the secretary of state or shall direct the
14 secretary of state to take the action the court determines proper.

15 5. Appeals from all final orders and judgments entered by the district court under this
16 section in review of any ruling or decision of the secretary of state may be taken as
17 in other civil actions.

18 **10-33-142. Secretary of state - Evidence.**

19 1. All certificates issued by the secretary of state and all copies of documents filed in
20 accordance with this chapter, when certified by the secretary of state, must be
21 taken and received in all courts, public offices, and official bodies as prima facie
22 evidence of the facts stated.

23 2. A certificate by the secretary of state under the great seal of this state, as to the
24 existence or nonexistence of the facts relating to corporations which would not
25 appear from a certified copy of any of the foregoing documents or certificates,
26 must be taken and received in all courts, public offices, and official bodies as prima
27 facie evidence of the existence or nonexistence of the facts stated.

28 **10-33-143. Secretary of state - Forms.** All annual reports required by this chapter to
29 be filed in the office of the secretary of state must be made on forms prescribed by the
30 secretary of state. Forms for all other documents to be filed in the office of the secretary of

1 state may be furnished by the secretary of state upon request. However, the use of the forms,
2 unless otherwise specifically required by law, is not mandatory.

3 **SECTION 2. AMENDMENT.** Subsection 2 of section 11-10-24 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 2. The organization or organizations authorized hereunder ~~shall~~ must be organized
6 pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

7 **SECTION 3. AMENDMENT.** Section 14-03-09 of the 1995 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **14-03-09. Who may solemnize marriages.** Marriages may be solemnized by all
10 judges of courts of record within their respective jurisdictions, by clerks of district court, by
11 ordained ministers of the gospel and priests of every church, by ministers of the gospel
12 licensed by regular church bodies or denominations and serving as pastors of churches, and by
13 any person authorized by the forms and usages of any church or religious denomination or
14 organization organized or possessing a certificate of authority pursuant to ~~chapters 10-24~~
15 ~~through 10-28~~ chapter 10-33.

16 **SECTION 4. AMENDMENT.** Section 15-17-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-17-01. Institutional holding associations authorized.** Nonprofit corporations to
19 be known as institutional holding associations may be formed in the manner, for the purposes,
20 and with the powers, obligations, and limitations prescribed by the applicable provisions of
21 ~~chapters 10-24 through 10-28~~ chapter 10-33, except as otherwise provided in this chapter.

22 **SECTION 5. AMENDMENT.** Section 18-05-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **18-05-01. Firemen's relief association - Where it may be organized.** A firemen's
25 relief association may be organized in any city which has a paid fire department. In organizing
26 such association, the procedure provided in ~~chapters 10-24 and 10-28~~ chapter 10-33 must be
27 followed.

28 **SECTION 6. AMENDMENT.** Section 26.1-14-03 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **26.1-14-03. Authority.** An incorporated mutual insurance company is authorized to be
31 known as the North Dakota medical malpractice mutual insurance company. The company is

subject to and governed by this chapter and is not subject to the laws of this state relating to insurance and insurance companies except as specifically provided in this chapter. The company has all the powers, privileges, and immunities granted by and is subject to all the obligations imposed upon a mutual insurance company under ~~chapter~~ chapters 26.1-12 and chapters 10-24 through 10-28 10-33. If a provision of chapter 26.1-12 or ~~a provision of chapters 10-24 through 10-28 10-33~~ and provision of this chapter are both by their terms applicable, the provision of this chapter controls.

SECTION 7. AMENDMENT. Section 26.1-17-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-11. Applicability of portion of Nonprofit Corporation Act. Unless in conflict with this chapter, ~~chapters 10-24, 10-25, 10-26, and 10-28 apply~~ chapter 10-33 applies to the incorporation, operation, and control of any nonprofit health service corporation.

SECTION 8. AMENDMENT. Subsection 2 of section 40-01-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The organization or organizations authorized hereunder must be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 9. AMENDMENT. Subsection 12 of section 49-23-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Nonprofit corporation" means a corporation established under ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 10. AMENDMENT. Subsection 8 of section 54-01.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Nonprofit organization" means a corporation organized under ~~the North Dakota Nonprofit Corporation Act, chapters 10-24 through 10-28~~ chapter 10-33, or an organization defined in subsection 7, 8, 9, 10, or 11 of section 57-02-08.

SECTION 11. AMENDMENT. Section 55-03-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic

buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14 must obtain an annual permit from the superintendent of the state historical board of North Dakota. The permit application must be in the form prescribed by the superintendent. Each application must be accompanied by a filing fee of one hundred dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under ~~chapters 10-24 through 10-28~~ chapter 10-33 does not have to pay the fee for filing the report.

SECTION 12. AMENDMENT. Subsection 2 of section 61-16.1-60 of the North Dakota Century Code is amended and reenacted as follows:

2. The association or associations authorized hereunder shall be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 13. AMENDMENT. Section 61-35-29 of the North Dakota Century Code is amended and reenacted as follows:

61-35-29. Authorization to organize association of rural water systems. A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 14. REPEAL. Chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Century Code are repealed.

SECTION 15. EFFECTIVE DATE. This Act becomes effective on August 1, 1997.