

Tennessee Nonprofit Corporation Act.

<http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode>

48-51-101. Short title. —

Chapters 51-68 of this title shall be known and may be cited as the “Tennessee Nonprofit Corporation Act.” [Acts 1987, ch. 242, § 1.01.]

48-51-102. Reservation of power to amend or repeal. —

The general assembly has the power to amend or repeal all or part of chapters 51-68 of this title at any time, and all domestic and foreign corporations subject to chapters 51-68 of this title shall be governed by the amendment or repeal. [Acts 1987, ch. 242, § 1.02.]

48-51-103. Eminent domain. —

Chapters 51-68 of this title do not repeal or affect the right or power of eminent domain under other existing laws, and any corporation which shall have the power of eminent domain under existing laws shall have the power to the same extent and in the same manner as if organized under chapters 51-68 of this title, and all statutes of this state granting the power of eminent domain and making compensation shall remain in force and effect and applicable to the appropriate existing corporations and to the appropriate corporations organized under chapters 51-68 of this title. [Acts 1987, ch. 242, § 1.03.]

48-51-104. Applicability. —

The provisions of chapters 51-68 of this title shall apply to every nonprofit corporation now existing or hereafter formed; provided, that if there are other specific statutory provisions which govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on, or fix special procedures or methods for, special categories of corporations, then to the extent such provisions are inconsistent with or different from chapters 51-68 of this title, such provisions shall prevail. [Acts 1987, ch. 242, § 1.04.]

48-51-201. Definitions. —

As used in chapters 51-68 of this title, unless the context otherwise requires:

(1) “Approved by (or approval by) the members” means approved or ratified by affirmative votes that exceed the number of negative votes represented and voting at a duly held meeting at which a quorum is present or by a written ballot or written consent in conformity with chapters 51-68 of this title or by the affirmative vote, written ballot or written consent of such greater proportions, including the votes of

all the members of any class, unit or grouping as may be provided in the charter, bylaws or chapters 51-68 of this title for any specified member action;

(2) “Board” or “board of directors” means the governing board of a corporation, whether denominated the board of directors or otherwise, except that no person or group of persons is the board of directors because of powers delegated to that person or group pursuant to § 48-58-101;

(3) “Bylaws” means the code or codes of rules (other than the charter) adopted pursuant to chapters 51-68 of this title for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(4) “Charter” includes amended and restated charters and articles of merger;

(5) “Class” refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly;

(6) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined is “conspicuous”;

(7) “Corporation” or “domestic corporation” means a public benefit or mutual benefit corporation which is not a foreign corporation, incorporated under or subject to the provisions of chapters 51-68 of this title;

(8) “Delegates” means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;

(9) “Deliver” includes mail;

(10) “Directors” means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which such persons are described;

(11) “Distribution” means the direct or indirect transfer of assets or any part of the income or profit of a corporation, to its members, directors or officers. “Distribution” does not include:

(A) The payment of compensation in a reasonable amount to its members, directors, or officers for services rendered;

(B) Conferring benefits on its members in conformity with its purposes;

(C) Repayment of debt obligations in the normal and ordinary course of conducting activities; or

(D) The incurrence of indebtedness, whether directly or indirectly (including through a guaranty), for or on behalf of a member, director or officer;

(12) "Effective date of notice," has the same meaning as provided in § 48-51-202;

(13) "Emergency" exists when a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event;

(14) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee;

(15) "Entity" includes corporation and foreign corporation; domestic and foreign corporations for profit; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government;

(16) "Foreign corporation" means a nonprofit corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if formed under the laws of this state;

(17) "Governmental subdivision" includes authority, county, district and municipality;

(18) "Includes" denotes a partial definition;

(19) "Individual" includes the estate of an incompetent or deceased individual;

(20) "Means" denotes an exhaustive definition;

(21) (A) "Member" means (without regard to what a person is called in the charter or bylaws) any person or persons who on more than one (1) occasion, pursuant to a provision of a corporation's charter or bylaws, have the right to vote for the election of a director or directors;

(B) A person is not a member by virtue of any of the following:

(i) Any rights such person has as a delegate;

(ii) Any rights such person has to designate a director or directors; or

(iii) Any rights such person has as a director;

(22) "Membership" means the rights and obligations a member or members have pursuant to a corporation's charter, bylaws and chapters 51-68 of this title;

(23) "Month" means the time from any day of any month to the corresponding day of the succeeding month, if any, and if none, the last day of the succeeding month;

(24) "Mutual benefit corporation" means a domestic corporation which becomes by operation of law a mutual benefit corporation pursuant to § 48-68-104 or is formed as a mutual benefit corporation pursuant to chapter 52 of this title;

(25) "Notice," has the same meaning as provided in § 48-51-202;

(26) "Person" includes individual and entity;

(27) "Principal office" means the office (in or out of this state) so designated in the charter or certificate of authority where the principal executive offices of a domestic or foreign corporation are located;

(28) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(29) "Public benefit corporation" means a domestic corporation which becomes by operation of law a public benefit corporation pursuant to § 48-68-104 or is formed as a public benefit corporation pursuant to chapter 52 of this title;

(30) "Record date" means the date established under chapter 56 or 57 of this title on which a corporation determines the identity of its members for purposes of chapters 51-68 of this title;

(31) "Religious corporation" means a public benefit or mutual benefit corporation organized and operating primarily or exclusively for religious purposes;

(32) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States;

(33) "United States" includes district, authority, bureau, commission, department and any other agency of the United States; and

(34) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. When a class is entitled to vote as a class for directors, the

determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors. [Acts 1987, ch. 242, § 1.20.]

48-51-202. Notice. —

(a) Notice under chapters 51-68 of this title shall be in writing except that oral notice is effective if it is reasonable under the circumstances and not prohibited by the charter or bylaws.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television or other form of public broadcast communication.

(c) Written notice by a domestic corporation to a member, if in a comprehensible form, is effective when mailed, if mailed first class, postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(d) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current record of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current record of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.

(e) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its charter or application for a certificate of authority, as most recently amended.

(f) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(g) Oral notice is effective when communicated if communicated in a comprehensible manner.

(h) If chapters 51-68 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the charter or bylaws prescribe additional notice requirements, not inconsistent with chapters 51-68 of this title, those requirements govern. [Acts 1987, ch. 242, § 1.21.]

48-51-301. Filing requirements. —

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) Chapters 51-68 of this title must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by chapters 51-68 of this title. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter or legal size paper.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its authorized officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite such person's signature such person's name and the capacity in which such person signs. The document may, but need not, contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary;
- (3) An acknowledgement, verification, or proof; or

(4) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state has prescribed a mandatory form for the document under § 48-51-302, the document must be in or on the prescribed form or a conformed copy thereof.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee, and any corporate tax, license fee, interest or penalty required by chapters 51-68 of this title.

(j) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(k) All documents submitted to the secretary of state for filing should contain a statement which makes it clear that they are being filed pursuant to the Tennessee Nonprofit Corporation Act, compiled in chapters 51-68 of this title.

(l) Notwithstanding any other provision of the law to the contrary, whenever this title requires that an application or other document submitted to the secretary of state for filing be accompanied by a certificate from the commissioner of revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking certificate information, the commissioner shall provide to the secretary of state electronic verification in lieu of a paper certificate. [Acts 1987, ch. 242, § 1.30; 1989, ch. 445, § 1; 1991, ch. 188, § 1; 1999, ch. 80, § 2.]

48-51-302. Forms. —

(a) The secretary of state may prescribe and shall furnish on request forms for:

(1) An application for a certificate of existence;

(2) A foreign corporation's application for a certificate of authority to transact business in this state;

(3) A foreign corporation's application for a certificate of withdrawal; and

(4) The annual report.

If the secretary of state so requires, use of these forms is mandatory.

(b) The secretary of state may prescribe and shall furnish on request forms for other documents required or permitted to be filed by chapters 51-68 of this title but their use is not mandatory. [Acts 1987, ch. 242, § 1.31.]

48-51-303. Filing, service, and copying fees. —

(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary of state for filing:

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under chapters 51-68 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign corporation. All such copies will be certified or validated by the secretary of state.

(d) In addition to the other filing requirements of chapters 51-68 of this title, a copy of all documents specified in subdivisions (a)(1), (11), (12), (14), (16)-(18) shall also be filed in the office of the register of deeds in the county wherein a corporation has its principal office, if such principal office is in Tennessee, and in the case of a merger, in the county in which the new or surviving corporation shall have its principal office, if such principal office is in Tennessee. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing. [Acts 1987, ch. 242, § 1.32; 1989, ch. 445, §§ 2, 27; 1991, ch. 188, § 6; 1998, ch. 784, § 2; 1998, ch. 890, § 2; 2000, ch. 568, § 2.]

48-51-304. Effective time and date of document. —

(a) Except as provided in subsection (b) and § 48-51-305(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date and, if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed by the secretary of state. Notwithstanding the foregoing, documents specified in § 48-51-303(a)(3)-(7), (17), (18), (22), (28), (30) and (31), may not specify a delayed effective time and date.

(c) The secretary of state shall not file any charter or application for a certificate of authority unless that document designates the registered agent and registered office of such domestic or foreign corporation in accordance with chapters 55 and 65 of this title. The secretary of state shall not file any other document under chapters 51-68 of this title if at the time of filing the domestic or foreign corporation does not have a registered agent or registered office designated at such time, unless at the time such document is received for filing the secretary of state also receives for filing a statement designating such registered agent or registered office, or both. [Acts 1987, ch. 242, § 1.33; 1991, ch. 188, § 13.]

48-51-305. Correcting filed document. —

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

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by:

(1) Preparing articles of correction that:

(A) Describe the document (including its filing date) or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) Delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [Acts 1987, ch. 242, § 1.34.]

48-52-101. Incorporators. —

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering a charter to the secretary of state for filing. If any incorporator dies or is for any reason unable to act, the other incorporators, if any, may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in the incorporator's stead or, if such other person also dies or is for any reason unable to act, or the incorporator was not acting as an agent, the incorporator's legal representative may act. [Acts 1987, ch. 242, § 2.01.]

48-52-102. Charter. —

(a) The charter must set forth:

(1) A corporate name for the corporation that satisfies the requirements of § 48-54-101;

(2) One (1) of the following statements:

(A) This corporation is a public benefit corporation; or

(B) This corporation is a mutual benefit corporation;

(3) If the corporation is a religious corporation, a statement to that effect;

(4) The street address and zip code of the corporation's initial registered office, the county in which the office is located, and the name of its initial registered agent at that office;

(5) The name, address and zip code of each incorporator;

(6) The street address and zip code of the initial principal office of the corporation;

(7) A statement that the corporation is not for profit;

(8) A statement that the corporation will or will not have members; and

(9) Provisions not inconsistent with law regarding the distribution of assets upon dissolution.

(b) The charter may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law:

(A) Stating the purpose or purposes for which the corporation is organized;

(B) Regarding the management of the business and regulating the affairs of the corporation; and

(C) Defining, limiting and regulating the powers and rights of the corporation, its board of directors and members or any class thereof;

(3) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for breach of fiduciary duty as a director; provided, that such provision shall not eliminate or limit the liability of a director:

(A) For any breach of the director's duty of loyalty to the corporation or its members;

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § 48-58-304.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a "director" are also deemed to refer to a member of the governing body of a corporation which dispenses with or limits the authority of the board of directors pursuant to § 48-58-101(c);

(4) Any provision that under chapters 51-68 of this title is required or permitted to be set forth in the bylaws.

(c) The charter need not set forth any of the corporate powers enumerated in chapters 51-68 of this title. [Acts 1987, ch. 242, § 2.02; 1991, ch. 188, § 2.]

48-51-306. Filing duty of secretary of state. —

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 48-51-301, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "filed," together with the secretary of state's name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to §§ 48-55-103, 48-65-109 and 48-66-203, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgement of receipt if no

fee is required) attached, to the domestic or foreign corporation or its representative in due course. A domestic or foreign corporation or its representative may present to the secretary of state an exact or conformed copy of the document presented for filing, together with such document and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy "filed," together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within a reasonable time after the document was delivered, together with a brief, written explanation of the reason for the secretary of state's refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or

(4) Establish that a document purporting to be an exact or conformed copy pursuant to § 48-51-301(i) is in fact an exact or conformed copy.

(e) Any corporate document which meets the requirements of chapters 51-68 of this title for filing and recording shall be received, filed and recorded by the appropriate office, notwithstanding any contrary requirements found in any other provision of the laws of this state. [Acts 1987, ch. 242, § 1.35.]

48-51-307. Appeal from secretary of state's refusal to file document. —

(a) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the secretary of state's refusal to file.

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

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

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 1987, ch. 242, § 1.36.]

48-51-308. Evidentiary effect of copy of filed document. —

A certificate attached, or certification affixed, to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state. [Acts 1987, ch. 242, § 1.37.]

48-51-309. Certificate of existence. —

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That:

(A) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(B) The foreign corporation is authorized to conduct affairs in this state;

(3) That all fees, taxes and penalties owed to this state have been paid, if:

(A) Payment is reflected in the records of the secretary of state or the department of revenue; and

(B) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) That its most recent annual report required by § 48-66-203 has been filed with the secretary of state;

(5) That articles of termination of corporate existence have not been filed; and

(6) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state and is in good standing. [Acts 1987, ch. 242, § 1.38; 1991, ch. 188, § 12.]

48-51-310. Penalty for signing false document. —

A person who signs a document, knowing it to be false in any material respect, with intent that the document be delivered to the secretary of state for filing, commits a Class A misdemeanor. [Acts 1987, ch. 242, § 1.39; 1989, ch. 591, §§ 1, 6.]

48-51-401. Powers. —

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by chapters 51-68 of this title, including, without limitation, the power to promulgate necessary and appropriate rules and regulations consistent with chapters 51-68 of this title, and the power to destroy any records in the secretary of state's office concerning the domestic or foreign corporation ten (10) years after such corporation has dissolved, withdrawn from the state, or has had its certificate of authority revoked. [Acts 1987, ch. 242, § 1.40.]

48-51-402. Deputies of secretary of state. —

An act of a duly authorized deputy of the secretary of state in the secretary of state's behalf under chapters 51-68 of this title is the equivalent of the act of the secretary of state; provided, that the name of the secretary of state is signed by such deputy as deputy. [Acts 1987, ch. 242, § 1.41.]

48-51-501. Private foundations. —

(a) Except when otherwise determined by a court of competent jurisdiction, a corporation which is a "private foundation," as defined in § 509(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 509(a):

(1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under § 4942 of the Code (26 U.S.C. § 4942);

(2) Shall not engage in any act of self-dealing as defined in § 4941(d) of the Code (26 U.S.C. § 4941(d));

(3) Shall not retain any excess business holdings as defined in § 4943(c) of the Code (26 U.S.C. § 4943(c));

(4) Shall not make any taxable expenditures as defined in § 4944 of the Code (26 U.S.C. § 4944); and

(5) Shall not make any taxable expenditures as defined in § 4945(d) of the Code (26 U.S.C. § 4945(d)).

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

(b) The provisions of subsection (a) shall not apply to any corporation to the extent that a court of record having equity jurisdiction shall determine that such application would be contrary to the terms of the charter or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not be properly changed to conform to such sections. [Acts 1987, ch. 242, § 1.50.]

48-51-601. Judicial relief. —

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its charter, bylaws, or chapters 51-68 of this title, then upon petition of a director, officer, delegate, member or the attorney general and reporter, any court of record having equity jurisdiction in the county where the corporation's principal office is located (and if not in this state, in Davidson County) may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the charter, bylaws and chapters 51-68 of this title, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the charter, bylaws, or chapters 51-68 of this title.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the charter or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section;

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

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the charter, bylaws and chapters 51-68 of this title. [Acts 1987, ch. 242, § 1.60.]

48-51-701. Attorney general and reporter. —

(a) The attorney general and reporter shall be given notice of the commencement of any proceeding which chapters 51-68 of this title authorize the attorney general and reporter to bring but which has been commenced by another person.

(b) Whenever any provision of chapters 51-68 of this title requires that notice be given to the attorney general and reporter or permits the attorney general and reporter to commence a proceeding:

(1) If no proceeding has been commenced, the attorney general and reporter may take appropriate action including, but not limited to, seeking injunctive relief;

(2) If a proceeding has been commenced by a person other than the attorney general and reporter, the attorney general and reporter, as of right, may intervene in such proceeding.

(c) Whenever any provision of chapters 51-68 of this title requires or authorizes any act or transaction upon a corporation providing written notice to the attorney general and reporter or obtaining prior review, approval, consent, or waiver of the attorney general and reporter, with respect to such act or transaction, then:

(1) The party seeking such approval, consent, or waiver shall make full, true and timely disclosure with respect to the proposed act or transaction, including the production of any relevant data, documents, and detailed statements of any and all collateral or oral understandings or agreements;

(2) The party seeking consent, approval, or waiver is obligated to produce in a timely fashion any additional information or documents the attorney general and reporter may thereafter request in order to review the matter, and the attorney general and reporter may also conduct whatever independent investigation the attorney general and reporter believes is appropriate;

(3) No oral clearance, release, or other oral statement purporting to bind the attorney general and reporter may be given, and the requesting party may rely only

upon a written consent, approval, or waiver signed by the attorney general and reporter or the attorney general and reporter's designee;

(4) The attorney general and reporter may decline to consider the request for consent, approval, or waiver, and inaction by the attorney general and reporter, within the statutory period of notice, or otherwise, shall not be construed as consent to or approval of the act or transaction, or construed to waive, estop, or in any other way restrict the attorney general and reporter from exercising the attorney general and reporter's authority under chapters 51-68 of this title; and

(5) Any written consent, approval, or waiver given by the attorney general and reporter under chapters 51-68 of this title shall be deemed only to state the enforcement intention of the attorney general and reporter as of the date of such written statement. The attorney general and reporter retains the right to bring whatever action or proceeding the attorney general and reporter subsequently comes to believe is required by the public interest; provided, that if the attorney general and reporter in writing approves, consents to, or waives enforcement with respect to an act or transaction, the attorney general and reporter will not exercise the attorney general and reporter's right to bring an enforcement action hereunder when:

(A) There has been full and true disclosure at the time the request was presented; and

(B) Each request, if any, for additional information or documents by the attorney general and reporter as set forth in this section has been met fully, truthfully and timely. [Acts 1987, ch. 242, § 1.70.]

48-52-103. Incorporation. —

(a) Unless a delayed effective date is specified, the corporate existence begins when the charter is filed by the secretary of state.

(b) The secretary of state's filing of the charter is conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation. [Acts 1987, ch. 242, § 2.03.]

48-52-104. Liability for preincorporation transactions. —

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under chapters 51-68 of this title, are jointly and severally liable for all liabilities created while so acting, except for any liability to any person who knew or reasonably should have known that there was no incorporation. [Acts 1987, ch. 242, § 2.04.]

48-52-105. Organization of corporation. —

(a) After incorporation:

(1) If initial directors are named in the charter, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) If initial directors are not named in the charter, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators and upon two (2) days' notice of the date, time, and place of the meeting to:

(A) Elect directors and complete the organization of the corporation; or

(B) Elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by chapters 51-68 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting. If all incorporators consent to taking such action without a meeting, the affirmative vote of the number of incorporators that would be necessary to authorize or take such action at a meeting is the act of the incorporators. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each incorporator in one (1) or more counterparts, indicating each signing incorporator's vote or abstention on the action, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

(c) An organizational meeting may be held in or out of this state. [Acts 1987, ch. 242, § 2.05.]

48-52-106. Bylaws. —

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the charter. [Acts 1987, ch. 242, § 2.06.]

48-52-107. Emergency bylaws. —

(a) Unless the charter provides otherwise, the board of directors or the incorporators of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the members, may

make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
 - (2) Quorum requirements for the meeting; and
 - (3) Designation of additional or substitute directors.
- (b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
- (c) Corporate action taken in good faith in accordance with the emergency bylaws:
- (1) Binds the corporation; and
 - (2) May not be used to impose liability on a corporate director, officer, employee or agent. [Acts 1987, ch. 242, § 2.07.]

48-53-101. Purposes. —

- (a) Every corporation incorporated under chapters 51-68 of this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the charter.
- (b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under chapters 51-68 of this title only if permitted by, and subject to all limitations of, the other statute. [Acts 1987, ch. 242, § 3.01.]

48-53-102. General powers. —

- (a) Unless its charter provides otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, power to:
- (1) Sue and be sued, complain, and defend in its corporate name;
 - (2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
 - (3) Make and amend bylaws, not inconsistent with its charter or with the laws of this state, for regulating and managing the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of, or grant a security interest in, all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, or grant a security interest in; and deal in and with shares of other interests in, or obligations of, any other entity;

(7) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations or those of any other person by mortgage, pledge of, or security interest in, any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its activities, locate offices, and exercise the powers granted by chapters 51-68 of this title within or without this state;

(11) Elect, appoint, and designate directors and appoint officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit or incentive plans for any or all of the current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Make payments or donations, or do any other act, not inconsistent with law, that furthers the corporate interest;

(15) Accept gifts, devises, and bequests subject to any conditions or limitations contained in such gift, devise, or bequest, so long as such conditions or limitations are not contrary to chapters 51-68 of this title or the purposes for which the corporation is organized;

(16) Impose dues, assessments, admission, service and transfer fees upon its members;

(17) Establish conditions for admission to membership, admit members, and issue memberships;

(18) Carry on a business; and

(19) Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

(b) A nonprofit corporation shall not have or issue shares of stock. [Acts 1987, ch. 242, § 3.02.]

48-53-103. Emergency powers. —

(a) In anticipation of or during an emergency, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent. [Acts 1987, ch. 242, § 3.03.]

48-53-104. Ultra vires actions. —

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceedings may be brought by the attorney general and reporter, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the attorney general and reporter, or the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative. [Acts 1987, ch. 242, § 3.04.]

48-54-101. Corporate name. —

(a) A corporate name may not contain language stating or implying that the corporation:

(1) Transacts or has power to transact any affairs for which authorization in whatever form and however denominated is required under the laws of this state, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing;

(2) Is organized as, affiliated with, or sponsored by, any fraternal, veterans', service, religious, charitable or professional organization, unless that fact is certified in writing by the organization with which affiliation or sponsorship is claimed;

(3) Is an agency or instrumentality of, affiliated with, or sponsored by the United States or the state of Tennessee or a subdivision or agency thereof, unless such fact is certified in writing by the appropriate official of the United States or the state of Tennessee or subdivision or agency thereof; or

(4) Is organized for a purpose other than that permitted by § 48-53-101 and its charter.

(b) Except as authorized by subsection (c), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) The corporate name or assumed corporate name of a nonprofit or business corporation incorporated or authorized to transact business or conduct affairs in this state;

(2) A corporate name or an assumed corporate name reserved or registered under § 48-14-102, § 48-14-103, § 48-54-102 or § 48-54-103; and

(3) A limited partnership name reserved or organized under the laws of the state of Tennessee or registered as a foreign limited partnership in Tennessee.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) The other corporation or limited partnership consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

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

(d) A domestic corporation or a foreign corporation authorized to conduct affairs or applying for a certificate of authority to conduct affairs may elect to adopt an assumed corporate name that complies with the requirements of subsections (a), (b) and (c).

(1) As used in chapters 51-68 of this title, "assumed corporate name" means any name used by the corporation other than its true corporate name, except that the following shall not constitute the use of an assumed corporate name under chapters 51-68 of this title:

(A) The identification by a corporation of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately incorporated; provided, that the corporation also clearly discloses its corporate name.

(2) Before conducting affairs in this state under an assumed corporate name or names, the corporation shall, for each assumed corporate name, pursuant to resolution by its board of directors, execute and file in accordance with chapter 51, part 3 of this title, an application setting forth:

(A) The true corporate name;

(B) The state or country under the laws of which it is organized;

(C) That it intends to transact business under an assumed corporate name; and

(D) The assumed corporate name which it proposes to use.

(3) The right to use an assumed corporate name shall be effective for five (5) years from the date of filing by the secretary of state. A corporation may reserve or use no more than five (5) assumed names during the same period.

(4) A corporation shall renew the right to use its assumed corporate name or names, if any, within the two (2) months preceding the expiration of such right, for a period of five (5) years, by filing an application to renew each assumed name and paying the renewal fee as prescribed by § 48-51-303(a).

(e) Any domestic or foreign corporation may, pursuant to resolution by its board of directors, change or cancel any or all of its assumed corporate names by executing and filing, in accordance with chapter 51, part 3 of this title, an application setting forth:

(1) The true corporate name;

(2) The state or country under the laws of which it is organized;

(3) That it intends to cease conducting affairs under an assumed corporate name by changing or cancelling it;

(4) The assumed corporate name to be changed from or cancelled; and

(5) If the assumed corporate name is to be changed, the assumed corporate name which the corporation proposes to use.

(f) Upon the filing of an application to change an assumed corporate name, the corporation shall have the right to use such assumed corporate name for the period authorized by subsection (d).

(g) The right to use an assumed corporate name shall be cancelled by the secretary of state:

(1) If the corporation fails to renew an assumed corporate name;

(2) If the corporation has filed an application to change or cancel an assumed corporate name;

(3) If a domestic corporation has been dissolved; or

(4) If a foreign corporation has had its certificate of authority to conduct affairs in this state revoked or has withdrawn its certificate of authority.

(h) Nothing in this section or in § 48-54-102, § 48-54-103 or § 48-65-106 shall abrogate or limit the law as to unfair competition or unfair trade practice, or derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks. [Acts 1987, ch. 242, § 4.01; 1989, ch. 445, §§ 3, 26.]

48-54-102. Reserved name. —

(a) A person may reserve the exclusive use of a corporate name, including an assumed corporate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for meets the requirements of § 48-54-101 and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four-month period. Upon the expiration of the four-month period, the same or any other party may apply to reserve the same name.

(b) The owner of a reserved corporate name, including an assumed corporate name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. [Acts 1987, ch. 242, § 4.02; 1989, ch. 445, § 4.]

48-54-103. Registered name. —

(a) A foreign corporation may register its corporate name, or an assumed corporate name under which it conducts affairs, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under § 48-54-101(b).

(b) A foreign corporation registers its corporate name, or its assumed corporate name, or its corporate name with any changes required by § 48-65-106, by delivering to the secretary of state for filing an application:

(1) Setting forth its corporate name, or its corporate name with any changes required by § 48-65-106, the state or country and date of its incorporation, and a brief description of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. The certificate shall not bear a date of more than one (1) month prior to the date the application is filed in this state.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which such registration occurs.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under chapters 51-68 of this title or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name. [Acts 1987, ch. 242, § 4.03.]

48-55-101. Registered office and registered agent. —

(a) Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A for-profit domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) A for-profit foreign corporation or nonprofit foreign corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office.

(b) If a registered agent resigns or is unable to perform the registered agent's duties, the designating corporation shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state. [Acts 1987, ch. 242, § 5.01.]

48-55-102. Change of registered office or registered agent. —

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office and the county in which the office is located;

(3) If the current registered agent is to be changed, the name of the new registered agent; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any corporation for which such registered agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change. [Acts 1987, ch. 242, § 5.02; 1991, ch. 188, § 11.]

48-55-103. Resignation of registered agent. —

(a) A registered agent may resign the registered agent's agency appointment by signing and filing with the secretary of state an original statement of resignation, accompanied by the registered agent's certification that the registered agent has mailed a copy thereof to the principal office of the corporation by certified mail. The statement may include a statement that the registered office is also discontinued.

(b) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state. [Acts 1987, ch. 242, § 5.03.]

48-55-104. Service on corporation. —

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) Whenever a domestic or foreign corporation authorized to transact business or conduct affairs in this state fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, whenever a foreign corporation shall transact business or conduct affairs in this state without first procuring a certificate of authority to do so from the secretary of state, or whenever the certificate of authority of a foreign corporation shall have been withdrawn or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

[Acts 1987, ch. 242, § 5.04.]

48-55-105. Procedure for service on domestic or foreign corporation by service on secretary of state. —

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign corporation as provided in § 48-55-104(b), of any process, notice, or demand shall be made by delivering to the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 48-55-104(b), for service on the secretary of state is applicable, must be included. The secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such corporation at its registered office or principal office as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such corporation is incorporated. If none of the previously mentioned addresses are available to the secretary of state, service may be made on any one (1) of the incorporators at the address set forth in the charter. The secretary of state may require the plaintiff (or complainant as the case may be) or such person's attorney to furnish the latter address.

(b) The refusal or failure of such corporation to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such corporation refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a corporation refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice sent to the defendant corporation and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign corporation may be served on the secretary of state as agent for such defendant corporation in the same manner, at the same cost and with the same effect as process, notice, or demand are served on the secretary of state as agent for such defendant corporation under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic or foreign corporation nor shall any judgment be taken against the defendant domestic or foreign corporation in less than one (1) month after the date service is complete under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of such service and the secretary of state's action with reference thereto. [Acts 1987, ch. 242, § 5.05; 1989, ch. 445, § 5.]

48-56-101. Admission. —

(a) A corporation may admit any person as a member. If there are to be criteria or procedures for admission as a member, then such criteria or procedures shall be established by the charter or bylaws.

(b) No person shall be admitted as a member without the person's consent.

(c) A corporation may issue certificates evidencing membership therein, but such certificates shall not include provisions inconsistent with the charter, bylaws, or chapters 51-68 of this title. [Acts 1987, ch. 242, § 6.01.]

48-56-102. Consideration. —

Except as provided in its charter or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board. [Acts 1987, ch. 242, § 6.02.]

48-56-103. No requirement of members. —

A corporation is not required to have members. [Acts 1987, ch. 242, § 6.03.]

48-56-201. Differences in rights and obligations of members. —

All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the charter or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the charter or bylaws. [Acts 1987, ch. 242, § 6.20.]

48-56-202. Transfers. —

(a) Except as set forth in or authorized by the charter or bylaws, no member of a corporation may transfer a membership or any right arising therefrom.

(b) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member. [Acts 1987, ch. 242, § 6.21.]

48-56-203. Member's liability to third parties. —

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation. [Acts 1987, ch. 242, § 6.22.]

48-56-204. Member's liability for dues, assessments and fees. —

(a) A member may become liable to the corporation for dues, assessments or fees by consenting (expressly or impliedly) to such obligation; provided, that a charter or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

(b) Nothing in this section shall prevent a corporation from terminating or suspending a member's membership for nonpayment of dues, assessments or fees, even though the member is not liable to the corporation, pursuant to this section, for payment of such dues, assessments or fees. [Acts 1987, ch. 242, § 6.23.]

48-56-205. Creditor's action against member. —

(a) No proceeding may be brought by a creditor of a corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

(c) Nothing provided in subsection (a) or (b) is intended to preclude the availability of other remedies to a creditor. [Acts 1987, ch. 242, § 6.24.]

48-56-301. Resignation. —

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation. [Acts 1987, ch. 242, § 6.30.]

48-56-302. Termination. —

(a) Unless the charter provides for the removal of a member and termination of a membership without cause, no member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

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

(1) The charter or bylaws set forth a procedure which provides:

(A) Not less than fifteen (15) days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(B) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or

(2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) A procedure is not necessarily unfair nor unreasonable:

(1) If a member's attorney is excluded from the hearing;

(2) If the member is not allowed to cross-examine adverse witnesses; or

(3) If the person or persons authorized to make the decision consider matters and evidence which would be inadmissible in a court of law.

(d) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(e) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(f) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees.

(g) The provisions of this section shall not apply to any amendment of the charter or bylaws meeting the requirements of chapters 51-68 of this title and § 48-60-302. [Acts 1987, ch. 242, § 6.31.]

48-56-303. Purchase of memberships. —

(a) A public benefit corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its charter. No payment shall be made in violation of chapter 63 of this title. [Acts 1987, ch. 242, § 6.32.]

48-56-401. Derivative suits. —

(a) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(1) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(2) Any director.

(b) In any such proceeding, each plaintiff shall be a member or director at the time of bringing the proceeding.

(c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the plaintiffs could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(d) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's members or a class of members, the court shall direct that notice be given the members affected. If notice is so directed to be given, the court may determine which party or parties to the suit shall bear the expense of giving such notice, in such proportion as the court finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the suit and recoverable in the same manner as other taxable costs.

(e) On termination of the proceeding, the court may require the plaintiffs to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(f) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the plaintiffs or otherwise was successful, in whole or in part, or if anything was received by the plaintiffs as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiffs reasonable expenses (including counsel fees).

(g) The plaintiffs shall notify the attorney general and reporter within ten (10) days after commencing any proceedings under this section if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. [Acts 1987, ch. 242, § 6.40.]

48-56-501. Delegates. —

(a) A corporation may provide in its charter or bylaws for delegates having some or all of the authority of members.

(b) The charter or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations and obligations of 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. [Acts 1987, ch. 242, § 6.50.]

48-57-101. Annual meeting. —

(a) At a time stated in or fixed in accordance with the bylaws, a corporation with members shall hold annually a meeting of its members.

(b) Annual membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of § 48-57-105.

(d) The failure to hold an annual meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action. [Acts 1987, ch. 242, § 7.01.]

48-57-102. Special meeting. —

(a) A corporation with members shall hold a special meeting of members:

(1) On call of its board of directors or the person or persons authorized to do so by the charter or bylaws; or

(2) Unless the charter otherwise provides, if the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under § 48-57-103 or § 48-57-107, the record date for determining the members entitled to demand a special meeting is the date the first member signs the demand.

(c) If a notice for a special meeting demanded under subdivision (a)(2) is not given pursuant to § 48-57-105 within one (1) month after the effective date of the written demand or demands under § 48-51-202, regardless of the requirements of subsection (d), any person or persons signing the demand or demands may set the time and place of the meeting and give notice pursuant to § 48-57-105.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by § 48-57-105 may be conducted at a special meeting of members. [Acts 1987, ch. 242, § 7.02; 1989, ch. 445, § 6.]

48-57-103. Court-ordered meeting. —

(a) A court of record having equity jurisdiction in the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held on application of:

(1) Any member or other person entitled to participate in the annual meeting, and in the case of a public benefit corporation, the attorney general and reporter, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) A member who signed a demand for a special meeting valid under § 48-57-102, or a person or persons entitled to call a special meeting and in the case of a public benefit corporation, the attorney general and reporter, if:

(A) Notice of the special meeting was not given within one (1) month after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the members entitled to participate and vote at the meeting, specify a record date for determining members entitled to notice of the meeting, prescribe the form and content of the meeting notice, 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 enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order. [Acts 1987, ch. 242, § 7.03.]

48-57-104. Action by written consent. —

(a) Action required or permitted by chapters 51-68 of this title to be taken at a meeting of members may be taken without a meeting if all members entitled to vote on the action consent in writing to taking such action without a meeting. If all members entitled to vote on the action consent in writing to taking such action without a meeting, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each member entitled to vote on the action in one (1) or more counterparts, indicating each signing member's vote or abstention on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under § 48-57-103 or § 48-57-107, the record date for determining members entitled to take such action without a meeting is the date the first member signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [Acts 1987, ch. 242, § 7.04.]

48-57-105. Notice of meeting. —

(a) A corporation shall give notice consistent with its charter or bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice which conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date and time of each annual and special meeting of members no fewer than ten (10) days nor more than two (2) months before the meeting date;

(2) Notice of an annual meeting includes a description of any matter or matters which must be approved by the members under § 48-58-302, § 48-58-507, § 48-60-103, § 48-60-202, § 48-61-103, § 48-62-102 or § 48-64-102; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 48-57-107, however, notice of the adjourned meeting must be given under this section to the members of record of the new record date.

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

(1) Requested in writing to do so by a person entitled to call a special meeting; and

(2) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

(f) A certificate of the secretary or other person giving the notice that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. [Acts 1987, ch. 242, § 7.05.]

48-57-106. Waiver of notice. —

(a) A member may waive any notice required by chapters 51-68 of this title, the charter, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting (or promptly upon the member's arrival) objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented. [Acts 1987, ch. 242, § 7.06.]

48-57-107. Record date — Determining members entitled to notice and vote. —

(a) The bylaws may fix or provide the manner of fixing the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a member's meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise rights.

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

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new

date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than four (4) months after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than four (4) months after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting. [Acts 1987, ch. 242, § 7.07.]

48-57-108. Action by written ballot. —

(a) Except as provided in subsection (e) and unless prohibited or limited by the charter or bylaws, any action which may be taken at any annual or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the charter or bylaws, a written ballot may not be revoked. [Acts 1987, ch. 242, § 7.08.]

48-57-201. Members' list for meeting. —

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a meeting. The list must show the address and number of votes each member is

entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of §§ 48-66-102(c) and 48-66-105, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), a court of record having equity jurisdiction in the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to make available the members' list does not affect the validity of action taken at the meeting. [Acts 1987, ch. 242, § 7.20.]

48-57-202. Voting entitlement generally. —

(a) Unless the charter or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members.

(b) Unless the charter or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

(1) If only one (1) vote, such act binds all; and

(2) If more than one (1) vote, the vote shall be divided on a pro rata basis.

(c) Memberships standing in the name of another nonprofit or for-profit corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe or, in the absence of a bylaw provision, as the board

of directors of such corporation may determine. The corporation whose membership is being voted may rely on the representations of such officer, agent, or proxy as to the authority unless such authority is questioned. [Acts 1987, ch. 242, § 7.21.]

48-57-203. Quorum requirements. —

(a) Unless chapters 51-68 of this title or the charter provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) An amendment to the charter that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

(c) When a quorum is once present to organize a meeting, a meeting may be adjourned despite the absence of a quorum caused by the subsequent withdrawal of any of those present. [Acts 1987, ch. 242, § 7.22.]

48-57-204. Voting requirements. —

If a quorum exists, action on a matter by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the charter or chapters 51-68 of this title require a greater number of affirmative votes. [Acts 1987, ch. 242, § 7.23.]

48-57-205. Proxies. —

(a) Unless the charter or bylaws prohibit or limit 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.

(b) 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 (11) months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee;

(2) A person who purchased or agreed to purchase the membership;

(3) A creditor of the corporation who extended it credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under § 48-57-301.

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

(e) An appointment made irrevocable under subsection (c) becomes revocable when the interest with which it is coupled is extinguished.

(f) A transferee for value of a membership subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the membership, and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the membership.

(g) Appointment of a revocable proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(h) Subject to § 48-57-208 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment. [Acts 1987, ch. 242, § 7.24.]

48-57-206. Voting for directors — Cumulative voting. —

(a) Unless otherwise provided in the charter or the bylaws, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(b) Members do not have a right to cumulate their votes for directors unless the charter or the bylaws so provide.

(c) If the charter or the bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes they are entitled to cast by the

number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(d) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

(1) The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) A member who has the right to cumulate the member's votes gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(e) Members may not cumulatively vote if the directors and members are identical. [Acts 1987, ch. 242, § 7.25.]

48-57-207. Other methods of electing directors. —

A corporation may provide in its charter or bylaws for election of directors by members or delegates:

(1) On the basis of chapter or other organizational unit;

(2) By region or other geographic unit;

(3) By preferential voting; or

(4) By any other reasonable method. [Acts 1987, ch. 242, § 7.26.]

48-57-208. Corporation's acceptance of votes. —

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

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

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

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

(3) 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;

(4) 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

(5) Two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders.

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

(d) The corporation and 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 are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) 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.

(f) The grounds for acceptance of votes set out in subsection (b) do not constitute the exclusive basis on which a corporation may accept votes. [Acts 1987, ch. 242, § 7.27.]

48-57-301. Voting agreements. —

(a) An agreement between two (2) or more members, if in writing and signed by the parties thereto, may provide the manner in which the parties to the agreement will exercise their voting rights. Nothing in this subsection shall impair the right of the corporation to treat the members of record as entitled to exercise their voting rights.

(b) No written agreement to which all or less than all the members have actually assented, whether embodied in the charter or bylaws or in any agreement in writing

signed by all the parties thereto, which agreement relates to any phase of the affairs of the corporation, whether to its management or otherwise, shall be invalid as between the parties thereto on the ground that it is an attempt by the parties thereto to restrict the discretion of the board of directors in its management of the corporation or to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between parties.

(c) The duration of any agreement permitted by subsection (a) shall not exceed twenty (20) years. Failure to state a period of duration or stating a period of duration in excess of twenty (20) years shall not invalidate the agreement, but in either case the period of duration of the agreement shall be twenty (20) years. Any such agreement shall be renewable at any time before the expiration of such twenty-year period by agreement of all members bound thereby at the date of renewal.

(d) A transferee of a membership in a corporation whose members have entered into an agreement authorized by subsection (a) or (b) shall be bound by such agreement or any renewal of such agreement authorized by subsection (c) if the transferee takes the membership with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the existence thereof is noted on the face or the back of the certificate representing such membership.

(e) The effect of any agreement authorized by subsection (b) or any renewal thereof authorized by subsection (c) shall be to relieve the directors and impose upon the members assenting thereto the liability for managerial acts or omissions that is imposed on directors by law, to the extent that and so long as the discretion or powers of the board of directors, in its management of corporate affairs, are controlled by any such agreement.

(f) A voting agreement created under this section is specifically enforceable. [Acts 1987, ch. 242, § 7.30.]

48-58-101. Requirement for and duties of board of directors. —

(a) Each corporation must have a board of directors.

(b) Except as provided in chapters 51-68 of this title or subsection (c), all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The charter may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities. [Acts 1987, ch. 242, § 8.01.]

48-58-102. Qualifications of directors. —

All directors must be natural persons. The charter or bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the charter or bylaws so prescribe. [Acts 1987, ch. 242, § 8.02.]

48-58-103. Number of directors. —

(a) A board of directors must consist of three (3) or more natural persons, with the number specified in or fixed in accordance with the charter or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three (3)) from time to time by amendment to, or in the manner prescribed in, the charter or bylaws. [Acts 1987, ch. 242, § 8.03.]

48-58-104. Election, designation, and appointment of directors. —

(a) If the corporation has members, all directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the charter or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all directors (except the initial directors) shall be elected, appointed or designated as provided in the charter or bylaws. If no method of designation or appointment is set forth in the charter or bylaws, the directors (other than the initial directors) shall be elected by the board. [Acts 1987, ch. 242, § 8.04; 1988, ch. 610, § 1; 1993, ch. 412, § 1.]

48-58-105. Terms of directors generally. —

(a) The charter or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five (5) years. In the absence of any term specified in the charter or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(b) Except in the case of designated or appointed directors, a decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the charter or bylaws:

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

(2) The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until a successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors. [Acts 1987, ch. 242, § 8.05.]

48-58-106. Staggered terms for directors. —

The charter or bylaws may provide for dividing the total number of directors into groups and staggering the terms of directors. The terms of office of the several groups need not be uniform. [Acts 1987, ch. 242, § 8.06.]

48-58-107. Resignation of directors. —

(a) A director may resign at any time by delivering written notice to the board of directors, its chair or president, or to the corporation.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. [Acts 1987, ch. 242, § 8.07.]

48-58-108. Removal of directors elected by members or directors. —

(a) The members may remove one (1) or more directors elected by them with or without cause, unless the charter provides that directors may be removed only for cause.

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

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must

state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b)-(d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a)-(e).

(h) The board of directors of a corporation may remove a director without cause who has been elected by the board by the vote of two thirds (2/3) of the directors then in office or such greater number as is set forth in the charter or bylaws.

(i) If at the beginning of a director's term on the board, the charter or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. [Acts 1987, ch. 242, § 8.08.]

48-58-109. Removal of designated or appointed directors. —

(a) A designated director may be removed by an amendment to the charter or bylaws deleting or changing the designation.

(b) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. 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. A removal is effective when the notice is effective unless the notice specifies a future effective date. [Acts 1987, ch. 242, § 8.09; 2004, ch. 505, § 1.]

48-58-110. Removal of directors by judicial proceeding. —

(a) Any court of record having equity jurisdiction in the county where a corporation's principal office (or if none in this state, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent (10%) of the voting power of any class or the attorney general and reporter in the case of a public benefit corporation if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 3 of this chapter; and

(2) Removal is in the best interest of the corporation.

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

(c) If members or the attorney general and reporter commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), they shall give the attorney general and reporter written notice of the proceeding. [Acts 1987, ch. 242, § 8.10.]

48-58-111. Vacancy on board. —

(a) Unless the charter or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors or a vacancy resulting from a removal with or without cause:

(1) The members, if any, may fill the vacancy. If the 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 that class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the charter or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the charter or bylaws. In the absence of an applicable charter or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 48-58-107(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [Acts 1987, ch. 242, § 8.11.]

48-58-112. Compensation of directors. —

Unless the charter or bylaws provide otherwise, the board of directors may fix the compensation of directors.

[Acts 1987, ch. 242, § 8.12.]

48-58-201. Regular and special meetings. —

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

(b) A board of directors may hold regular or special meetings in or out of this state. Unless the charter or bylaws otherwise provide, special meetings of the board of directors may be called by the presiding officer of the board, the president, or any two (2) directors.

(c) Unless the charter or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

[Acts 1987, ch. 242, § 8.20.]

48-58-202. Action without meeting. —

(a) Unless the charter or bylaws provide otherwise, action required or permitted by chapters 51-68 of this title to be taken at a board of directors' meeting may be taken without a meeting. If all directors consent to taking such action without a meeting, the affirmative vote of the number of directors that would be necessary to authorize or take such action at a meeting is the act of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

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

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [Acts 1987, ch. 242, § 8.21.]

48-58-203. Notice of meetings. —

(a) Unless the charter, bylaws or subsection (c) provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the charter, bylaws or subsection (c) provide otherwise, special meetings of the board must be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter, which would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to § 48-58-204.

(d) Notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken and if the period of adjournment does not exceed one (1) month in any one (1) adjournment. [Acts 1987, ch. 242, § 8.22.]

48-58-204. Waiver of notice. —

(a) A director may waive any notice required by chapters 51-68 of this title, the charter or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director at the beginning of the meeting (or promptly upon the director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. [Acts 1987, ch. 242, § 8.23.]

48-58-205. Quorum and voting. —

(a) Except as otherwise provided in chapters 51-68 of this title, the charter or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the charter or bylaws authorize a quorum of fewer than the greater of one third (1/3) of the number of directors in office or two (2) directors. When a quorum is once present to organize a meeting, a meeting may be later adjourned despite the absence of a quorum caused by the subsequent withdrawal of any of those present.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless chapters 51-68 of this title, the charter or bylaws require the vote of a greater number of directors.

(c) A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting (or promptly upon the director's arrival) to holding it or transacting business at the meeting;

(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [Acts 1987, ch. 242, § 8.24.]

48-58-206. Committees. —

(a) Unless the charter or bylaws provide otherwise, a board of directors may create one (1) or more committees of the board. A committee may consist of one (1) natural person. Except as provided in § 48-58-302, members of committees of the board of directors may be members of the board of directors or other natural persons, and they shall serve at the pleasure of the board of directors.

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

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the charter or bylaws to take action under § 48-58-205.

(c) Sections 48-58-201 — 48-58-205, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the charter or bylaws, each committee of the board may exercise the board's authority under § 48-58-101.

(e) A committee may not, however:

(1) Authorize distributions;

(2) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(3) Elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(4) Adopt, amend or repeal the charter or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 48-58-301. [Acts 1987, ch. 242, § 8.25.]

48-58-301. General standards for directors. —

(a) A director shall discharge all duties as a director, including duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging such duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director or any failure to take action, if the director performed the duties of the office in compliance with this section, or if the director is immune from suit under the provisions of § 48-58-601.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property. [Acts 1987, ch. 242, § 8.30.]

48-58-302. Director and officer conflict of interest. —

(a) A conflict of interest transaction is a transaction with the corporation in which a director or officer of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director

or officer if the transaction was fair at the time it was entered into or is approved as provided in subsection (b).

(b) A transaction in which a director or officer of a corporation has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board of directors or a committee consisting entirely of members of the board of directors and the board of directors or such committee authorized, approved, or ratified the transaction;

(2) The material facts of the transaction and the director's or officer's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction; or

(3) Approval is obtained from:

(A) The attorney general and reporter; or

(B) A court of record having equity jurisdiction in an action in which the attorney general and reporter is joined as party.

(c) For the purposes of this section, a director or officer of the corporation has an indirect interest in a transaction if, but not only if:

(1) Another entity in which the director or officer has a material interest or in which the director or officer is a general partner is a party to the transaction; or

(2) Another entity of which the director or officer is a director, officer, or trustee is a party to the transaction.

(d) For purposes of subsection (b), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee consisting entirely of members of the board of directors, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (b)(1) if the transaction is otherwise approved as provided in subsection (b).

(e) For purposes of subdivision (b)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a

director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subdivision (c)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subdivision (b)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of chapters 51-68 of this title. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(f) The charter, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions. [Acts 1987, ch. 242, § 8.31.]

48-58-303. Loans to or guarantees for directors and officers. —

(a) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(b) This section does not apply to loans and guarantees authorized or permitted by any other statute which regulates any special class of corporation.

(c) Neither a sale on credit in the ordinary course of business nor a life insurance policy loan shall be subject to the restrictions of this section. [Acts 1987, ch. 242, § 8.32.]

48-58-304. Liability for unlawful distributions. —

(a) Unless the director complies with the applicable standards of conduct described in § 48-58-301, a director who votes for or assents to a distribution made in violation of chapters 51-68 of this title or the charter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating chapters 51-68 of this title or the charter.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution from:

(1) Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in § 48-58-301; and

(2) Each person who received an unlawful distribution for the amount of the distribution, whether or not the person receiving the distribution knew it was made in violation of chapters 51-68 of this title or the charter. [Acts 1987, ch. 242, § 8.33.]

48-58-401. Required officers. —

(a) A corporation has the officers described in its bylaws or designated by its board of directors in accordance with the bylaws; provided, that every corporation shall have a president and a secretary. Unless the charter or bylaws provide otherwise, officers shall be elected or appointed by the board of directors.

(b) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one (1) office in a corporation, except the offices of president and secretary. [Acts 1987, ch. 242, § 8.40; 1989, ch. 445, § 7.]

48-58-402. Duties of officers. —

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties and authority of other officers. [Acts 1987, ch. 242, § 8.41.]

48-58-403. Standards of conduct for officers. —

(a) An officer with discretionary authority shall discharge all duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) In discharging such duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer or any failure to take any action, if the officer performed the duties of office in compliance with this section. [Acts 1987, ch. 242, § 8.42.]

48-58-404. Resignation and removal of officers. —

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the later effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. [Acts 1987, ch. 242, § 8.43.]

48-58-405. Contract rights of officers. —

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [Acts 1987, ch. 242, § 8.44.]

48-58-406. Release or assignment of life insurance on officers. —

When a corporation, organized under the laws of this state, has caused or shall cause to be insured the life of any director, officer, agent, or employee, or when such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other action with reference to such insurance shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president or secretary or other corresponding officer of such corporation. Such statement shall be binding upon such corporation, and any act done or suffered to be done by it upon the faith thereof shall protect the insurance company concerned, without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation, on any corporate procedure touching such insurance. [Acts 1987, ch. 242, § 8.45.]

48-58-501. Part definitions. —

In this part:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(2) “Director” means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic for-profit or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. “Director” includes, unless the contract requires otherwise, the estate or personal representative of a director;

(3) “Expenses” include counsel fees;

(4) “Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding;

(5) “Official capacity” means:

(A) When used with respect to a director, the office of director in a corporation; and

(B) When used with respect to an individual other than a director, as contemplated in § 48-58-507, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. “Official capacity” does not include service for any other foreign or domestic profit or not for profit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(6) “Party” includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding; and

(7) “Proceeding” means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal. [Acts 1987, ch. 242, § 8.50.]

48-58-502. Authority to indemnify. —

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) The individual's conduct was in good faith; and

(2) The individual reasonably believed:

(A) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interest; and

(B) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

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

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and beneficiaries of, the plan is conduct that satisfies the requirements of subdivision (a)(2)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

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

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director. [Acts 1987, ch. 242, § 8.51.]

48-58-503. Mandatory indemnification. —

Unless limited by its charter, a corporation shall indemnify a director who is wholly successful, on the merits or otherwise, or who is immune from suit under the provisions of § 48-58-601, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [Acts 1987, ch. 242, § 8.52.]

48-58-504. Advance for expenses. —

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in § 48-58-502 or is immune from suit under the provisions of § 48-58-601;

(2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director is not entitled to indemnification; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

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

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 48-58-506. [Acts 1987, ch. 242, § 8.53.]

48-58-505. Court-ordered indemnification. —

Unless a corporation's charter provides otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines the director is:

(1) Entitled to mandatory indemnification under § 48-58-503, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) Fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in § 48-58-502(a) or was adjudged liable as described in § 48-58-502(d), but, if the director was adjudged so liable, indemnification is limited to reasonable expenses incurred. [Acts 1987, ch. 242, § 8.54.]

48-58-506. Determination and authorization of indemnification. —

(a) A corporation may not indemnify a director under § 48-58-502 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in § 48-58-502.

(b) The determination shall be made by:

(1) The board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (b)(1), majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceedings;

(3) Independent special legal counsel:

(A) Selected by the board of directors or its committee in the manner prescribed in subdivision (b)(1) or (b)(2); or

(B) If a quorum of the board cannot be obtained under subdivision (b)(1) and a committee cannot be designated under subdivision (b)(2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) The members, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization if indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by independent special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) to select counsel. [Acts 1987, ch. 242, § 8.55.]

48-58-507. Indemnification of officers, employees, and agents. —

Unless a corporation's charter provides otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under § 48-58-503, and is entitled to apply for court-ordered indemnification under § 48-58-505 in each case, to the same extent as a director;

(2) The corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its charter, bylaws, general or specific action of its board of directors, or contract. [Acts 1987, ch. 242, § 8.56.]

48-58-508. Insurance. —

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under § 48-58-502 or § 48-58-503. [Acts 1987, ch. 242, § 8.57.]

48-58-509. Applicability of part. —

(a) The indemnification and advancement of expenses granted pursuant to, or provided by, chapters 51-68 of this title shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in chapters 51-68 of this title, the charter, or the bylaws or, when authorized by such charter or bylaws, in a resolution of members, a resolution of directors, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes the director's or officer's liability:

- (1) For any breach of the duty of loyalty to the corporation or its members;
- (2) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- (3) Under § 48-58-304.

Nothing contained in chapters 51-68 of this title shall affect any rights to indemnification to which corporate personnel, other than directors and officers, may be entitled by contract or otherwise under law. If the charter limits indemnification or advancement for expenses, indemnification and advancement for expenses are valid only to the extent consistent with the charter.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a

time when the director has not been made a named defendant or respondent to the proceeding. [Acts 1987, ch. 242, § 8.58.]

48-58-601. Limitation of and immunity from actions for breach of fiduciary duty. —

(a) Any action alleging breach of fiduciary duties by directors or officers, including alleged violations of the standards established in § 48-58-301, § 48-58-302 or § 48-58-403, must be brought within one (1) year from the date of such breach or violation. In the event the alleged breach or violation is not discovered nor reasonably should have been discovered within that one-year period, the period of limitation shall be one (1) year from the date such was discovered or reasonably should have been discovered. In no event shall any such action be brought more than three (3) years after the date on which the breach or violation occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after the alleged breach or violation is, or should have been, discovered.

(b) The general assembly finds and declares that the services of nonprofit boards are critical to the efficient conduct and management of the public and charitable affairs of the citizens of this state. Members of such nonprofit boards must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers.

(c) All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations. Such immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence. Notwithstanding other provisions of this subsection to the contrary, all directors, trustees or members of the governing bodies of nonprofit cemetery corporations, associations and organizations referred to in subdivision (d)(6) shall be immune from personal liability only if such cemetery corporations, associations or organizations carry liability insurance coverage in an amount to be determined by the department of commerce and insurance; provided, that such requirement shall not apply in any county having a population of not less than six thousand (6,000) nor more than six thousand one hundred twenty-five (6,125) according to the 1980 federal census or any subsequent federal census. Nothing in chapters 51-68 of this title shall be construed to grant immunity to the nonprofit cooperative, corporation, association or organization.

(d) Subsection (c) shall apply to the following:

- (1) Electric membership corporations organized under title 65, chapter 24 [repealed];

(2) Electric cooperatives organized under title 65, chapter 25, part 2;

(3) Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended;

(4) Not-for-profit civic leagues or organizations which are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(4)), as amended;

(5) Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(6)), as amended;

(6) Not-for-profit cemetery corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(13) of the Internal Revenue Code (26 U.S.C. § 501(c)(13)), as amended;

(7) Not-for-profit agricultural or horticultural organizations which are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(5)), as amended;

(8) Nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 115 of the Internal Revenue Code of 1986 (26 U.S.C. § 115), as amended;

(9) Telephone cooperatives organized or, by virtue of conversion or otherwise, operating under title 65, chapter 29;

(10) “Public broadcast stations,” as defined in 47 U.S.C. § 397(6);

(11) Workers' compensation self-insurers pools established in compliance with § 50-6-405(c), by ten (10) or more employers of the same trade or professional association if such trade or professional association is exempt from federal taxation under § 501(c)(6) of the Internal Revenue Code (26 U.S.C., § 501(c)(6));

(12) Not-for-profit corporations or associations which are exempt from federal income taxation under Internal Revenue Code of 1954, § 501(c)(7), (26 U.S.C. § 501(c)(7)), as amended, but only if general liability insurance in a reasonable amount is carried by or on behalf of any such club; and

(13) Workers' compensation self-insurance pooling arrangements between municipal electric systems and rural electric cooperatives established in compliance with title 50, chapter 6, part 7.

(e) In order for the immunity granted by subsection (c) to apply to workers' compensation self-insurers, such insurers must notify in writing each participating employer and applicant for membership in such self-insurance pool of the immunity from liability granted by the provisions of this section to the directors, trustees or members of the governing bodies of such nonprofit organization. Notification of such immunity shall be given each time an employer makes application for membership in the pool.

[Acts 1986, ch. 926, §§ 1-3; T.C.A., §§ 48-1-851 — 48-1-853; Acts 1987, ch. 242, § 8.60; 1987, ch. 403, § 1; 1988, ch. 952, §§ 1, 2; 1989, ch. 214, § 1; 1989, ch. 445, § 28; 1989, ch. 493, § 1; 1989, ch. 479, § 1; 1990, ch. 701, § 1; 1990, ch. 969, § 1; 1991, ch. 304, § 1; 1994, ch. 809, §§ 1, 2; 1996, ch. 675, § 49; 1999, ch. 399, §§ 1-3; 2001, ch. 87, § 1.]

48-59 RESERVED

48-60-101. Authority to amend. —

(a) A corporation may amend its charter at any time to add or change a provision that is required or permitted in the charter or to delete a provision not required in the charter. Whether a provision is required or permitted in the charter is determined as of the effective date of the amendment.

(b) Except as provided in § 48-56-202(b), a member of the corporation does not have a vested property right resulting from any provision in the charter or bylaws. [Acts 1987, ch. 242, § 10.01.]

48-60-102. Amendment by board of directors. —

(a) Unless the charter provides otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's charter without member approval to:

(1) Delete the names and addresses of the initial directors;

(2) Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(3) Designate or change the address of the principal office of the corporation;

(4) Change the corporate name by substituting the word “corporation,” “incorporated,” “company,” or the abbreviation “corp.,” “inc.,” “co.,” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name;

(5) Designate the street address and zip code of the corporation's current registered office, the county in which the office is located, and the name of its current registered agent at that office, as required by § 48-68-101(b);

(6) Delete the initial principal office, if an annual report is on file with the secretary of state; or

(7) Make any other change expressly permitted by chapters 51-68 of this title to be made by director action without member action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors may adopt one (1) or more amendments to the corporation's charter subject to any approval required pursuant to § 48-60-301. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with § 48-58-203. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the charter and contain or be accompanied by a copy or summary of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted. [Acts 1987, ch. 242, § 10.02; 1989, ch. 445, § 8; 1991, ch. 188, § 4.]

48-60-103. Amendment by board of directors and members. —

(a) Unless chapters 51-68 of this title, the charter, bylaws, the members (acting pursuant to subsection (b)), or the board of directors (acting pursuant to subsection (c)) require a greater vote or voting by class, an amendment to a corporation's charter to be adopted must be approved:

(1) Except as provided in § 48-60-102, by the members by two thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(2) In writing by any person or persons whose approval is required by a provision of the charter authorized by § 48-60-301.

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

(c) If the board initiates an amendment to the charter or board approval is required by the charter or bylaws to adopt a charter amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with § 48-57-105. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to

consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment. [Acts 1987, ch. 242, § 10.03.]

48-60-104. Voting on amendments by members of a class. —

(a) The members of a class are entitled to vote as a class on a proposed amendment to the charter if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification, or termination of the memberships of that class; or

(6) Authorize a new class of memberships.

(b) If a class is to be divided into two (2) or more classes as a result of an amendment to the charter, the amendment must be approved by the members of each class that would be created by the amendment.

(c) If a class vote is required to approve an amendment to the charter, the amendment must be approved by the members of the class by two thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(d) A class of members is entitled to the voting rights granted by this section although the charter and bylaws provide that the class may not vote on the proposed amendment. [Acts 1987, ch. 242, § 10.04.]

48-60-105. Articles of amendment. —

A corporation amending its charter shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If an amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment's adoption;
- (5) If approval of members was not required, a statement to that effect and a statement that the amendment was duly adopted by the incorporators or board of directors;
- (6) If approval by members was required, a statement that the amendment was duly adopted by the members; and
- (7) A statement as to whether or not approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to § 48-60-301; and if such approval is required, a statement that the approval was obtained. [Acts 1987, ch. 242, § 10.05.]

48-60-106. Restated charter. —

- (a) A corporation's board of directors may restate its charter at any time with or without approval by members or any other person.
- (b) The restatement may include one (1) or more amendments to the charter. If the restatement includes an amendment requiring approval by the members or any other person, it shall be adopted as provided in § 48-60-103.
- (c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.
- (d) If the board of directors submits a restatement for member action, the corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 48-57-105. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the charter.
- (e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be

accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the charter.

- (f) A restatement requiring approval by the members must be approved by the same vote as a charter amendment under § 48-60-103.
- (g) If the restatement includes an amendment requiring approval pursuant to § 48-60-301, the board must submit the restatement for such approval.
- (h) A corporation restating its charter shall deliver to the secretary of state the restated charter, setting forth the name of the corporation and the text of the restated charter, together with a certificate setting forth:
 - (1) Whether the restatement contains an amendment to the charter requiring approval by the members or any person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or
 - (2) If the restatement contains an amendment to the charter requiring approval by the members, the information required by § 48-60-105; and
 - (3) If the restatement contains an amendment to the charter requiring approval by a person whose approval is required pursuant to § 48-60-301, a statement that such approval was obtained.
- (i) If the restatement contains an amendment to the charter, it shall be designated in the heading as an “Amended and Restated Charter.”
- (j) The restated charter must contain all the requirements of a charter as set out in § 48-52-102(a) unless the corporation is exempt from any of those requirements pursuant to § 48-68-101(b).
- (k) A duly adopted restated charter supersedes the original charter and all prior amendments thereto.

(l) The secretary of state may certify a restated charter as the charter currently in effect, without including the certificate information required by subsection (h). [Acts 1987, ch. 242, § 10.06; 1989, ch. 445, § 9; 1991, ch. 188, § 6.]

48-60-107. Amendment of charter pursuant to reorganization. —

- (a) A corporation's charter may be amended without action by the board of directors, members or any other person pursuant to § 48-60-301 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the charter after amendment contains only provisions required or permitted by § 48-52-102.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceedings, even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [Acts 1987, ch. 242, § 10.07.]

48-60-108. Effect of amendment. —

An amendment to the charter does not affect a cause of action existing against or in favor of the corporation, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [Acts 1987, ch. 242, § 10.08.]

48-60-201. Amendment of bylaws by board of directors. —

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's bylaws, subject to any approval required pursuant to § 48-60-301. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with § 48-58-203. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted. [Acts 1987, ch. 242, § 10.20.]

48-60-202. Amendment of bylaws by board of directors or members. —

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

- (1) The charter or chapters 51-68 of this title reserve this power exclusively to the members in whole or in part; or
- (2) The members in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's members may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. An amendment to the bylaws shall be approved by members by two thirds (2/3) of the votes cast or a majority of the voting power, whichever is less. An amendment to the bylaws which relates solely to the dues required for membership and which establishes or changes a specific amount for dues shall be approved by a majority of the members present and voting unless the charter or bylaws specify a higher voting percentage.

(c) An amendment or repeal of a bylaw requires the written approval of a third person or persons if the charter so provides in accordance with § 48-60-301. [Acts 1987, ch. 242, § 10.21; 1988, ch. 859, § 1.]

48-60-203. Bylaw increasing quorum or voting requirement for members. —

(a) If expressly authorized by the charter, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members (or voting groups of members) than is required by chapters 51-68 of this title. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for members must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) may not be adopted, amended or repealed by the board of directors. [Acts 1987, ch. 242, § 10.22.]

48-60-204. Bylaw increasing quorum or voting requirement for directors. —

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- (1) By written approval of any person or persons whose approval is required by a charter provision authorized by § 48-60-301;

(2) If originally adopted by the members, only by the members; and

(3) If originally adopted by the board of directors, either by the members or by the board of directors.

(b) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subdivision (a)(3) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. [Acts 1987, ch. 242, § 10.23.]

48-60-205. Class voting by members on amendments. —

(a) The members of a class in a corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than the amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or termination of all or part of the memberships of that class; or

(6) Authorize a new class of memberships.

(b) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(c) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(d) A class of members is entitled to the voting rights granted by this section although the charter and bylaws provide that the class may not vote on the proposed amendment. [Acts 1987, ch. 242, § 10.24.]

48-60-301. Approval by third persons. —

The charter may require an amendment to the charter or bylaws to be approved in writing by a specified person or persons other than the board or members. Such a charter provision may only be amended with the approval in writing of such person or persons. [Acts 1987, ch. 242, § 10.30.]

48-60-302. Amendment terminating members or redeeming or cancelling memberships. —

(a) Any amendment to the charter or bylaws which would terminate all members or any class of members or redeem or cancel all memberships of any class of memberships must meet the requirements of chapters 51-68 of this title and this section.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After the board has adopted a resolution proposing such an amendment, the notice to members proposing such amendment shall include one (1) statement of up to five hundred (500) words opposing the proposed amendment if such statement is submitted by any five (5) members or members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations, the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations, the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two thirds (2/3) of the voting power.

(e) The provisions of § 48-56-302 shall not apply to any amendment meeting the requirements of chapters 51-68 of this title and this section. [Acts 1987, ch. 242, § 10.31.]

48-61 Merger

48-62 Sale of Assets

48-63 Distributions

48-64 Dissolution

48-65 Foreign Corporations

48-66-101. Corporate records. —

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors as authorized by § 48-58-206(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its charter or restated charter and all amendments to it currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(5) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 48-66-201;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the secretary of state under § 48-66-203. [Acts 1987, ch. 242, § 16.01.]

48-66-102. Inspection of records by members. —

(a) Subject to § 48-66-103(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the

corporation described in § 48-66-101(e) if the member gives the corporation a written demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under § 48-66-101(a), to the extent not subject to inspection under subsection (a);

(2) Accounting records of the corporation; and

(3) Subject to § 48-66-105, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with the purpose for which the demand is made.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

(e) This section does not affect:

(1) The right of a member to inspect records under § 48-57-201 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of chapters 51-68 of this title, to compel the production of corporate records for examination. [Acts 1987, ch. 242, § 16.02.]

48-66-103. Scope of inspection rights. —

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under § 48-66-102 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under § 48-66-102(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand. [Acts 1987, ch. 242, § 16.03.]

48-66-104. Court-ordered inspection. —

(a) If a corporation does not allow a member who complies with § 48-66-102(a) to inspect and copy any records required by that subsection to be available for inspection, a court of record having equity jurisdiction in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with § 48-66-102(b) and (c) may apply to a court of record having equity jurisdiction in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member. [Acts 1987, ch. 242, § 16.04.]

48-66-105. Limitations on use of membership list. —

Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Given or sold to or purchased by any person. [Acts 1987, ch. 242, § 16.05.]

48-66-201. Financial statements for members. —

(a) A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. If the financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. If requested in writing by any member, the corporation shall furnish such statements to the member as set out in subsection (c).

(b) If annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each requesting member within one (1) month after notice of the request; provided, that with respect to the financial statements for the most recently completed fiscal year, the statements shall be mailed to the member within four (4) months after the close of the fiscal year. [Acts 1987, ch. 242, § 16.20.]

48-66-202. Report of indemnification to members. —

If a corporation indemnifies or advances expenses to a director under § 48-58-502, § 48-58-503, § 48-58-504 or § 48-58-505 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members. [Acts 1987, ch. 242, § 16.21.]

48-66-203. Annual report for secretary of state. —

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address, including the zip code, of its registered office, the county in which the office is located, and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal office;

(4) The names and business addresses, including the zip code, of its directors and principal officers; provided, that corporations which are exempt from the payment of income tax under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) and are currently operating shall not be required to comply with this subdivision;

(5) If a domestic corporation, a statement that the corporation is a public benefit corporation or a mutual benefit corporation;

(6) If a foreign corporation, a statement whether the corporation, if it had been incorporated in this state, would be a public benefit or mutual benefit corporation;

(7) If a domestic religious corporation, a statement to that effect; and

(8) The federal employer identification number (FEIN) of the corporation, or its corporation control number as assigned by the secretary of state.

(b) The information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) Every corporation shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the corporation's fiscal year, if a domestic corporation or a foreign corporation.

(d) The secretary of state shall make a report to the commissioner of revenue, by the fifteenth day of each month, of any and all new corporations that have been licensed or authorized to operate in the state during the preceding month, giving the name and address of each new corporation, foreign or domestic.

(e) The secretary of state shall furnish the commissioner of revenue, by the fifteenth day of each month, a list of all corporations that have surrendered their charter, have had their charter revoked, or have ceased to do business in the state during the preceding month. [Acts 1987, ch. 242, § 16.22; 1989, ch. 445, §§ 24, 25; 1990, ch. 848, §§ 3-5; 1991, ch. 188, § 14.]

48-67 Religious Corporations

48-68 Transition Provisions

48-69-100 [RESERVED]