

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Corporations.

Sponsored by: Joint Corporations, Elections and Political  
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to corporations; conforming statutes to the  
2 model corporations act; and providing for an effective  
3 date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 17-16-845, 17-16-1023, 17-16-1108,  
8 17-16-1117, 17-16-1408 and 17-16-1409 are created to read:

9

10 **17-16-845. Standards of liability for directors.**

11

12 (a) A director shall not be liable to the corporation  
13 or its shareholders for any decisions to take or not to  
14 take action, or any failure to take any action, as a

1 director, unless the party asserting the liability in a  
2 proceeding establishes that:

3

4 (i) No defense interposed by the director based  
5 on any provision in the articles of incorporation  
6 authorized by W.S. 17-16-202(b)(iv), the protection  
7 afforded by W.S. 17-16-861 for action taken in compliance  
8 with W.S. 17-16-862 or 17-16-863 or the protection afforded  
9 by W.S. 17-16-870, precludes liability; and

10

11 (ii) The challenged conduct consisted or was the  
12 result of:

13

14 (A) Action not in good faith;

15

16 (B) A decision:

17

18 (I) Which the director did not  
19 reasonably believe to be in the best interests of the  
20 corporation, or

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22 (II) As to which the director was  
23 not informed to an extent the director reasonably believed  
24 appropriate in the circumstances.

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(C) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenge conduct:

(I) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(II) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(D) Sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of

1 significant concern materialize that would alert a  
2 reasonably attentive director to the need therefore; or

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4 (E) Receipt of a financial benefit to which  
5 the director was not entitled or any other breach of the  
6 director's duties to deal fairly with the corporation and  
7 its shareholders that is actionable under applicable law.

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9 (b) The party seeking to hold a director liable:

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11 (i) For money damages, shall also have the  
12 burden of establishing that:

13

14 (A) Harm to the corporation or its  
15 shareholders has been suffered, and

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17 (B) The harm suffered was proximately  
18 caused by the director's challenged conduct.

19

20 (ii) For other money payment under a legal  
21 remedy, such as compensation for the unauthorized use of  
22 corporate assets, shall also have whatever persuasion  
23 burden may be called for to establish that the payment  
24 sought is appropriate in the circumstances; or

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2           (iii) For other money payment under an equitable  
3 remedy, such as profit recovery by or disgorgement to the  
4 corporation, shall also have whatever persuasion burden may  
5 be called for to establish that the equitable remedy sought  
6 is appropriate in the circumstances.

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8           (c) Nothing contained in this section shall:

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10           (i) In any instance where fairness is at issue,  
11 such as consideration of the fairness of a transaction to  
12 the corporation under W.S. 17-16-861(b)(iii), alter the  
13 burden of proving the fact or lack of fairness otherwise  
14 applicable;

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16           (ii) Alter the fact or lack of liability of a  
17 director under another section of this act, such as the  
18 provisions governing the consequences of an unlawful  
19 distribution under W.S. 17-16-833 or a transactional  
20 interest under W.S. 17-16-861; or

21

22           (iii) Affect any rights to which the corporation  
23 or a shareholder may be entitled under another statute of  
24 this state or of the United States.

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**17-16-1023. Amendment before issuance of shares.**

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4 If a corporation has not yet issued shares, its board of  
5 directors or its incorporators if it has no board of  
6 directors may adopt one (1) or more amendments to the  
7 corporation's articles of incorporation.

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**17-16-1108. Abandonment of merger or share exchange.**

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11 (a) Unless otherwise provided in a plan of merger or  
12 share exchange or in the laws under which a foreign  
13 business corporation or a domestic or foreign eligible  
14 entity that is a party to a merger or a share exchange is  
15 organized or by which it is governed, after the plan has  
16 been adopted and approved as required by this article, and  
17 at any time before the merger or share exchange has become  
18 effective, it may be abandoned by a domestic business  
19 corporation that is a party thereto without action by its  
20 shareholders in accordance with any procedures set forth in  
21 the plan of merger or share exchange or, if no such  
22 procedures are set forth in the plan, in the manner  
23 determined by the board of directors, subject to any

1 contractual rights of other parties to the merger or share  
2 exchange.

3

4 (b) If a merger or share exchange is abandoned under  
5 subsection (a) of this section after articles of merger or  
6 share exchange have been filed with the secretary of state  
7 but before the merger or share exchange has become  
8 effective, a statement that the merger or share exchange  
9 has been abandoned in accordance with this section,  
10 executed on behalf of the party to the merger or share  
11 exchange by an officer or other duly authorized  
12 representative, shall be delivered to the secretary of  
13 state for filing prior to the effective date of the merger  
14 or share exchange. Upon filing, the statement shall take  
15 effect and the merger or share exchange shall be deemed  
16 abandoned and shall not become effective.

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18 **17-16-1117. Definitions.**

19

20 (a) As used in this article:

21

22 (i) "Merger" means a business combination  
23 pursuant to W.S. 17-16-1101;

24

1           (ii) "Party to a merger" or "party to a share  
2 exchange" means any domestic or foreign corporation or  
3 eligible entity that will:

4

5           (A) Merge under a plan of merger;

6

7           (B) Acquire shares or eligible interests of  
8 another corporation or an eligible entity in a share  
9 exchange; or

10

11           (C) Have all of its shares or eligible  
12 interests or all of one (1) or more classes or series of  
13 its shares or eligible interests acquired in a share  
14 exchange;

15

16           (iii) "Share exchange" means a business  
17 combination pursuant to W.S. 17-16-1102;

18

19           (iv) "Survivor" in a merger means the  
20 corporation or eligible entity into which one (1) or more  
21 other corporations or eligible entities are merged. A  
22 survivor of a merger may preexist the merger or be created  
23 by the merger.

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1           **17-16-1408. Court proceedings.**

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3           (a)     A dissolved corporation that has published a  
4 notice under W.S. 17-16-1407 may file an application with  
5 the district court of the county where the dissolved  
6 corporation's principal office, or, if none in this state,  
7 its registered office, is located for a determination of  
8 the amount and form of security to be provided for payment  
9 of claims that are contingent or have not been made known  
10 to the dissolved corporation or that are based on an event  
11 occurring after the effective date of dissolution but that,  
12 based on the facts known to the dissolved corporation, are  
13 reasonably estimated to arise after the effective date of  
14 dissolution. Provision need not be made for any claim that  
15 is or is reasonably anticipated to be barred under W.S. 17-  
16 16-1407(c).

17

18           (b)     Within ten (10) days after the filing of the  
19 application, notice of the proceeding shall be given by the  
20 dissolved corporation to each claimant holding a contingent  
21 claim whose contingent claim is shown on the records of the  
22 dissolved corporation.

23

1           (c)     The court may appoint a guardian ad litem to  
2 represent all claimants whose identities are unknown in any  
3 proceeding brought under this section. The reasonable fees  
4 and expenses of the guardian, including all reasonable  
5 expert witness fees, shall be paid by the dissolved  
6 corporation.

7

8           (d)     Provision by the dissolved corporation for  
9 security in the amount and the form ordered by the court  
10 under subsection (a) of this section shall satisfy the  
11 dissolved corporation's obligations with respect to claims  
12 that are contingent, have not been made known to the  
13 dissolved corporation or are based on an event occurring  
14 after the effective date of dissolution, and those claims  
15 may not be enforced against a shareholder who received  
16 assets in liquidation.

17

18           **17-16-1409. Director duties.**

19

20           (a)     Directors shall cause the dissolved corporation  
21 to discharge or make reasonable provision for the payment  
22 of claims and make distributions of assets to shareholders  
23 after payment or provision for claims.

24

1 (b) Directors of a dissolved corporation which has  
2 disposed of claims under W.S. 17-16-1406, 17-16-1407 or 17-  
3 16-1408 shall not be liable for breach of W.S. 17-16-  
4 1409(a) with respect to claims against the dissolved  
5 corporation that are barred or satisfied under W.S. 17-16-  
6 1406, 17-16-1407 or 17-16-1408.

7

8 **Section 2.** W.S. 17-16-120(d), (g)(intro), (j)(intro)  
9 and by creating new subsections (k) through (m),  
10 17-16-123(a)(i), 17-16-124(a)(i), (ii) and by creating a  
11 new paragraph (iii), 17-16-125(b), 17-16-127,  
12 17-16-140(a)(i), (v), (xiii), (xxix) and by creating a new  
13 paragraph (xxx), 17-16-141(a) and (c),  
14 17-16-202(b)(ii)(intro) and (d), 17-16-205(b) and (c),  
15 17-16-206(a), 17-16-207(d), 17-16-303(d), 17-16-401(a), (b)  
16 and (c), 17-16-402(a) and (b), 17-16-502(a)(v),  
17 17-16-503(a), 17-16-504(b)(ii), 17-16-601(a) through (c)  
18 and by creating new subsections (e) through (g), 17-16-744  
19 by creating new subsections (c) through (f), 17-16-801(b),  
20 17-16-803(b), 17-16-806, 17-16-809(a)(i) and (ii) and by  
21 creating new subsections (d) through (f), 17-16-821(a) and  
22 (b), 17-16-825(a), (b), (c) and by creating a new  
23 subsection (g), 17-16-830(a) and by creating new  
24 subsections (f) through (k), 17-16-833, 17-16-840(b) and

1 (c), 17-16-842(a)(ii) and by creating new subsections (f)  
2 through (h), 17-16-843(a), (b) and by creating a new  
3 subsection (c), 17-16-850(a) by creating a new paragraph  
4 (viii), 17-16-851(a)(ii), (b) and (d)(ii), 17-16-853(a),  
5 17-16-855(a), (b)(i), (iii)(B) and (iv) and (c),  
6 17-16-858(b), 17-16-1001(a), 17-16-1003 by creating new  
7 subsections (f) through (h), 17-16-1004(a)(intro), (b) and  
8 (c), 17-16-1005, 17-16-1006(a)(ii) through (v), 17-16-1007,  
9 17-16-1008(a), 17-16-1020, 17-16-1022, 17-16-1101(a), (b)  
10 and by creating new subsections (d) through (g),  
11 17-16-1102(a), (b), (d) and by creating new subsections (e)  
12 through (h), 17-16-1103 by creating a new subsection (k),  
13 17-16-1104(a) and by creating new subsections (f) through  
14 (g), 17-16-1105(a) by creating new paragraphs (iv) through  
15 (viii) and by creating a new subsection (c), 17-16-1106(a)  
16 by creating new paragraphs (vii) through (xii), (b) and by  
17 creating new subsections (c) through (e), 17-16-1201(a),  
18 17-16-1202, 17-16-1301, 17-16-1302, 17-16-1303, 17-16-1320,  
19 17-16-1321, 17-16-1322, 17-16-1323, 17-16-1325, 17-16-1327,  
20 by creating new subsections (c) and (d), 17-16-1328 by  
21 creating new subsections (c) and (d), 17-16-1330,  
22 17-16-1331 by creating a new subsection (d), 17-16-1402(d)  
23 and (e), 17-16-1403(a)(ii) and (iii), 17-16-1404(c)(i) and  
24 (vi) and (e), 17-16-1406(a) and (b), 17-16-1407(a),

1 (b) (iii), (c) and (d), 17-16-1420(a), 17-16-1421(a) through  
2 (c), 17-16-1422(a) by creating new paragraphs (v) and (vi),  
3 17-16-1506(a), (b) and (c), 17-16-1530(a) by creating new  
4 paragraphs (vi) through (vii), 17-16-1602(b) (intro),  
5 17-16-1603(a), (b) and (d), 17-17-111 and 17-18-301 are  
6 amended to read:

7

8 **17-16-120. Filing requirements.**

9

10 (d) The document shall be typewritten or printed or,  
11 if electronically transmitted, it shall be in a format that  
12 can be retrieved or reproduced in typewritten or printed  
13 form.

14

15 (g) The person executing the document shall sign it  
16 ~~manually~~ and shall state beneath or opposite his signature  
17 his name and the capacity in which he signs. The document  
18 may but need not contain:

19

20 (j) The document shall be delivered to the office of  
21 the secretary of state for filing ~~and shall be accompanied~~  
22 ~~by:~~ Delivery may be made by electronic transmission if and  
23 to the extent permitted by the secretary of state. Except  
24 as provided in W.S. 17-16-503 and 17-16-1509, if the

1 document is filed in typewritten or printed form and not  
2 transmitted electronically, the secretary of state may  
3 require one (1) exact copy to be delivered with the  
4 document.

5  
6 (k) When the document is delivered to the office of  
7 the secretary of state for filing, the correct filing fee  
8 and any franchise tax, license fee or penalty required to  
9 be paid therewith by this act or other law shall be paid or  
10 provision for payment made in a manner permitted by the  
11 secretary of state.

12  
13 (m) Whenever a provision of this act permits any of  
14 the terms of a plan or filed document to be dependent on  
15 facts objectively ascertained outside the plan or filed  
16 document, the following provisions apply:

17  
18 (i) The manner in which the facts will operate  
19 upon the terms of the plan or filed document shall be set  
20 forth in the plan or filed document.

21  
22 (ii) The facts may include, but are not limited  
23 to:

24

1                   (A) Any of the following that is available  
2 in a nationally recognized news or information medium  
3 either in print or electronically: statistical or market  
4 indices, market prices of any security or group of  
5 securities, interest rates, currency exchange rates or  
6 similar economic or financial data;

7

8                   (B) A determination or action by any person  
9 or body, including the corporation or any other party to a  
10 plan or filed document; or

11

12                   (C) The terms of, or actions taken under,  
13 an agreement to which the corporation is a party or any  
14 other agreement or document.

15

16                   (iii) As used in this subsection:

17

18                   (A) "Filed document" means a document filed  
19 with the secretary of state under any provision of this act  
20 except W.S. 17-16-1621;

21

22                   (B) "Plan" means a plan of domestication,  
23 nonprofit conversion, entity conversion, merger or share  
24 exchange.

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(iv) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered office of any entity required in a filed document;

(C) The registered agent of any entity required in a filed document;

(D) The number of authorized shares and designation of each class or series of shares;

(E) The effective date of a filed document;

or

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which the approval was given.



1           (v) If a provision of a filed document is made  
2 dependent on a fact ascertainable outside of the filed  
3 document, and that fact is not ascertainable by reference  
4 to a source described in subparagraph (ii)(A) of this  
5 subsection or a document that is matter of public record or  
6 the affected shareholders have not received notice of the  
7 fact from the corporation, then the corporation shall file  
8 with the secretary of state articles of amendment setting  
9 forth the fact promptly after the time when the fact  
10 referred to is first ascertainable or thereafter changes.  
11 Articles of amendment under this paragraph are deemed to be  
12 authorized by the authorization of the original filed  
13 document or plan to which they relate and may be filed by  
14 the corporation without further action by the board of  
15 directors or the shareholders.

16

17           **17-16-123. Effective time and date of document.**

18

19           (a) Except as provided in subsection (b) of this  
20 section and W.S. 17-16-124(c), a document accepted for  
21 filing is effective:

22

23           (i) At the time of filing on the date it is  
24 filed, as evidenced by ~~the secretary of state's date and~~

1 ~~time endorsement on the original document~~ any means that  
2 the secretary of state may use for the purpose of recording  
3 the date and time of filing; or

4  
5 **17-16-124. Correcting filed document.**

6  
7 (a) A domestic or foreign corporation may correct a  
8 document filed by the secretary of state if the document:

9  
10 (i) Contains an ~~incorrect statement~~ inaccuracy;  
11 ~~or~~

12  
13 (ii) Was defectively executed, attested, sealed,  
14 verified, or acknowledged; ~~or~~.

15  
16 (iii) Was transmitted electronically and the  
17 electronic transmission was defective.

18  
19 **17-16-127. Evidentiary effect of copy of filed**  
20 **document.**

21  
22 A certificate ~~attached to~~ from the secretary of state  
23 delivered with a copy of a document filed by the secretary  
24 of state, ~~bearing his signature (which may be in facsimile)~~

1 ~~and the seal of this state,~~ is conclusive evidence that the  
2 original document is on file with the secretary of state.

3

4 **17-16-140. Definitions.**

5

6 (a) In this act:

7

8 (i) "Articles of incorporation" ~~include amended~~  
9 ~~and restated articles of incorporation and articles of~~  
10 ~~merger~~ means the original articles of incorporation, all  
11 amendments thereof and any other documents permitted or  
12 required to be filed by a domestic business corporation  
13 with the secretary of state under any provision of this act  
14 except W.S. 17-16-1621. If an amendment of the articles or  
15 any other document filed under this act restates the  
16 articles in their entirety thenceforth the term "articles  
17 of incorporation" shall not include any prior documents;

18

19 (v) "Deliver" ~~includes mail~~ or "delivery" means  
20 any method of delivery used in conventional commercial  
21 practice, including delivery by hand, mail, commercial  
22 delivery and electronic transmission;

23

1           (xiii) "Individual" means a natural person and  
2 includes the estate of an incompetent or deceased  
3 individual;

4  
5           (xxix) "Facts objectively ascertainable,"  
6 outside of a filed document or plan, means as defined in  
7 W.S. 17-16-120(m);

8  
9           ~~(xxix)~~ ~~(xxx)~~ "This act" means W.S. 17-16-101  
10 through 17-16-1803.

11

12           **17-16-141. Notice.**

13

14           (a) Notice under this act shall be in writing unless  
15 oral notice is reasonable under the circumstances. Notice  
16 by electronic transmission is written notice.

17

18           (c) Written notice by a domestic or foreign  
19 corporation to its shareholder, if in a comprehensible  
20 form, is effective:

21

22           (i) ~~When mailed,~~ Upon deposit in the United  
23 States mail, if mailed postpaid and correctly addressed to

1 the shareholder's address shown in the corporation's  
2 current record of shareholders; or

3  
4 (ii) When electronically transmitted to the  
5 shareholder in a manner authorized by the shareholder.

6  
7 **17-16-202. Articles of incorporation.**

8  
9 (b) The articles of incorporation may set forth:

10  
11 (ii) Provisions not inconsistent with law  
12 ~~including~~ regarding:

13  
14 (d) Provisions of the articles of incorporation ~~shall~~  
15 ~~may~~ be ~~accompanied by a written consent to appointment~~  
16 ~~manually signed by the registered agent~~ made dependent upon  
17 facts objectively ascertainable outside the articles of  
18 incorporation in accordance with W.S. 17-16-120(m).

19  
20 **17-16-205. Organization of corporation.**

21  
22 (b) Action required or permitted by this act to be  
23 taken by incorporators at an organizational meeting may be  
24 taken without a meeting if the action taken is evidenced by

1 one (1) or more written consents describing the action  
2 taken and signed, ~~either manually or in facsimile,~~ by each  
3 incorporator.

4  
5 (c) An organizational meeting may be held ~~within~~ in  
6 or ~~outside~~ out of this state.

7

8 **17-16-206. Bylaws.**

9

10 (a) The incorporators or board of directors of a  
11 corporation ~~shall~~ may adopt initial bylaws for the  
12 corporation.

13

14 **17-16-207. Emergency bylaws.**

15

16 (d) An emergency exists for purposes of this section  
17 if a quorum of the corporation's directors cannot readily  
18 be assembled because of some ~~extraordinary~~ catastrophic  
19 event.

20

21 **17-16-303. Emergency powers.**

22

23 (d) An emergency exists for the purposes of this  
24 section if a quorum of the corporation's directors cannot

1 readily be assembled because of some extraordinary  
2 catastrophic event.

3

4 **17-16-401. Corporate name.**

5

6 (a) A corporate name:

7

8 (i) Shall contain the word "corporation,"  
9 "incorporated," "company" or "limited" or the abbreviation  
10 "corp.," "inc.," "co." or "ltd.," or words or abbreviations  
11 of like import in another language; and

12

13 (ii) ~~may~~ Shall not contain language stating or  
14 implying that the corporation is organized for a purpose  
15 other than that permitted by W.S. 17-16-301 and its  
16 articles of incorporation.

17

18 (b) Except as authorized by subsections (c) and (d)  
19 of this section, a corporate name ~~shall not be the same as,~~  
20 ~~or deceptively similar to any trademark or service mark~~  
21 ~~registered in this state and~~ shall be distinguishable upon  
22 the records of the secretary of state from: ~~the name of any~~  
23 ~~profit or nonprofit corporation, trade name, limited~~  
24 ~~liability company, statutory trust company, limited~~

1 ~~partnership or other business entity organized, continued~~  
2 ~~or domesticated under the laws of this state or licensed or~~  
3 ~~registered as a foreign profit or nonprofit corporation,~~  
4 ~~foreign limited partnership, foreign joint stock company,~~  
5 ~~foreign statutory trust company, foreign limited liability~~  
6 ~~company or other foreign business entity in this state or~~  
7 ~~any fictitious or reserved name.~~

8  
9 (i) The corporate name of a corporation  
10 incorporated or authorized to transact business in this  
11 state;

12  
13 (ii) A corporate name reserved or registered  
14 under W.S. 17-16-401 or 17-16-402;

15  
16 (iii) The fictitious name adopted by a foreign  
17 corporation authorized to transact business in this state  
18 because its real name is unavailable;

19  
20 (iv) The corporate name of a not-for-profit  
21 corporation incorporated or authorized to transact business  
22 in this state.

23



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

6  
7 (i) The other ~~person whose name is not~~  
8 ~~distinguishable from the name which the applicant desires~~  
9 ~~to register or reserve, irrevocably~~ corporation consents to  
10 the use in writing and submits an undertaking in a form  
11 satisfactory to the secretary of state to change its name  
12 to a name that is distinguishable from the name of the  
13 ~~applicant~~ applying corporation; or

14

15 **17-16-402. Reserved name.**

16

17 (a) A person may apply to reserve the exclusive use  
18 of a corporate name, including a fictitious name for a  
19 foreign corporation whose corporate name is not available,  
20 by delivering an application to the secretary of state for  
21 filing. The application shall set forth the name and  
22 address of the applicant and the name proposed to be  
23 reserved. If the secretary of state finds that the  
24 corporate name applied for is available, he shall ~~file the~~

1 ~~application pursuant to W.S. 17-16-125 and~~ reserve the name  
2 for the applicant's exclusive use for a nonrenewable one  
3 hundred twenty (120) day period.

4

5 (b) The owner of a reserved corporate name may  
6 transfer the reservation to another person by delivering to  
7 the secretary of state a ~~manually~~-signed notice of the  
8 transfer that states the name and address of the  
9 transferee.

10

11 **17-16-502. Change of registered office or registered**  
12 **agent.**

13

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

17

18 (v) If the current registered agent is to be  
19 changed, the name of the new registered agent and the new  
20 agent's written consent to the appointment ~~executed by the~~  
21 ~~registered agent,~~ either on the statement or attached to  
22 it; and

23

24 **17-16-503. Resignation of registered agent.**

1

2 (a) A registered agent may resign his agency  
3 appointment by signing and delivering to the secretary of  
4 state for filing the ~~manually~~-signed original and two (2)  
5 exact or conformed copies of a statement of resignation.  
6 The statement may include a statement that the registered  
7 office is also discontinued.

8

9 **17-16-504. Service on corporation.**

10

11 (b) If a corporation has no registered agent, or the  
12 agent cannot with reasonable diligence be served, the  
13 corporation may be served by registered or certified mail,  
14 return receipt requested, addressed to the secretary of the  
15 corporation at its principal office. Service is perfected  
16 under this subsection at the earliest of:

17

18 (ii) The date shown on the return receipt, if  
19 signed, ~~either manually or in facsimile,~~ on behalf of the  
20 corporation; or

21

22 **17-16-601. Authorized shares.**

23

1           (a) The articles of incorporation shall ~~prescribe~~set  
2 forth the classes of shares and ~~the number, which may be~~  
3 ~~unlimited,~~series of shares ~~of each~~within a class ~~and the~~  
4 number of shares of each class and series that the  
5 corporation is authorized to issue. If more than one (1)  
6 class or series of shares is authorized, the articles of  
7 incorporation shall prescribe a distinguishing designation  
8 for each class,~~or series~~ and shall describe, prior to the  
9 issuance of shares of a class or series, the preferences,  
10 rights and limitations,~~and relative rights~~ of that class  
11 ~~shall be described in the articles of incorporation~~or  
12 series. Except to the extent varied as provided in this  
13 section, all shares of a class or series shall have  
14 preferences, rights and limitations,~~and relative rights~~  
15 identical with those of other shares of the same class  
16 ~~except to the extent otherwise permitted by W.S. 17-16-602~~  
17 or series.

18

19           (b) The articles of incorporation shall authorize:

20

21           (i) One (1) or more classes or series of shares  
22 that together have unlimited voting rights; and

23

1           (ii) One (1) or more classes or series of  
2 shares, which may be the same class or classes as those  
3 with voting rights, that together are entitled to receive  
4 the net assets of the corporation upon dissolution.

5

6           (c) The articles of incorporation may authorize one  
7 (1) or more classes or series of shares that:

8

9           (ii) Are redeemable or convertible as specified  
10 in the articles of incorporation as follows:

11

12           (A) At the option of the corporation, the  
13 shareholder, or another person or upon the occurrence of a  
14 ~~designated~~specified event;

15

16           (B) For cash, indebtedness, securities, or  
17 other property; and

18

19           (C) ~~In a designated amount or in an amount~~  
20 At prices and in amounts specified or determined in  
21 accordance with a ~~designated~~ formula . ~~or by reference to~~  
22 ~~extrinsic data or events.~~

23

1       (e) Terms of shares may be made dependent upon facts  
2 objectively ascertainable outside the articles of  
3 incorporation in accordance with W.S. 17-16-120(m).

4  
5       (f) Any of the terms of shares may vary among holders  
6 of the same class or series so long as such variations are  
7 expressly set forth in the articles of incorporation.

8  
9       (g) The description of the preferences, rights and  
10 limitations of classes or series of shares in subsection  
11 (c) of this section is not exhaustive.

12  
13       **17-16-744. Dismissal.**

14  
15       (c) Unless a panel is appointed pursuant to  
16 subsection (f) of this section, the determination in  
17 subsection (a) of this section shall be made by:

18  
19       (i) A majority vote of qualified directors  
20 present at a meeting of the board of directors if the  
21 qualified directors constitutes a quorum; or

22  
23       (ii) A majority of a committee consisting of two  
24 (2) or more qualified directors appointed by majority vote

1 of qualified directors present at a meeting of the board of  
2 directors if the qualified directors constitute a quorum.

3  
4 (d) If a derivative proceeding is commenced after a  
5 determination has been made rejecting a demand by a  
6 shareholder, the complaint shall allege with particularity  
7 facts establishing either:

8  
9 (i) That a majority of the board of directors  
10 did not consist of qualified directors at the time the  
11 determination was made; or

12  
13 (ii) That the requirements of subsection (a) of  
14 this section have not been met.

15  
16 (e) If a majority of the board of directors consisted  
17 of qualified directors at the time the determination was  
18 made, the plaintiff shall have the burden of proving that  
19 the requirements of subsection (a) of this section have not  
20 been met. If a majority of the board of directors did not  
21 consist of qualified directors at the time the  
22 determination was made, the corporation shall have the  
23 burden of proving that the requirements of subsection (a)  
24 of this section have been met.

1

2 (f) Upon motion by the corporation, the court may  
3 appoint a panel of one (1) or more individuals to make a  
4 determination whether the maintenance of the derivative  
5 proceeding is in the best interests of the corporation. In  
6 that case, the plaintiff shall have the burden of proving  
7 that the requirements of subsection (a) of this section  
8 have not been met.

9

10 **17-16-801. Requirement for and duties of board of**  
11 **directors.**

12

13 (b) All corporate powers shall be exercised by or  
14 under the authority of the board of directors of the  
15 corporation, and the business and affairs of the  
16 corporation shall be managed by or under the direction and  
17 subject to the oversight of<sub>7</sub> its board of directors,  
18 subject to any limitation set forth in the articles of  
19 incorporation or in an agreement authorized under W.S.  
20 17-16-732.

21

22 **17-16-803. Number and election of directors.**

23



1           (b) ~~If a board~~ The number of directors ~~has power to~~  
2 ~~fix or change the number of directors, the board may~~  
3 ~~increase or decrease by thirty percent (30%) or less the~~  
4 ~~number of directors last approved by the shareholders, but~~  
5 ~~only the shareholders may increase or decrease by more than~~  
6 ~~thirty percent (30%) the number of directors last approved~~  
7 ~~by the shareholders~~ may be increased or decreased from time  
8 to time by amendment to, or in the manner provided in, the  
9 articles of incorporation or the bylaws.

10  
11           **17-16-806. Staggered terms for directors.**

12  
13 ~~If there are three (3) or more directors,~~ The articles of  
14 incorporation may provide for staggering ~~their~~ the  
15 directors' terms by dividing the total number of directors  
16 into two (2) or three (3) groups, with each group  
17 containing one-half (1/2) or one-third (1/3) of the total,  
18 as near as may be. In that event, the terms of directors in  
19 the first group expire at the first annual shareholders'  
20 meeting after their election, the terms of the second group  
21 expire at the second annual shareholders' meeting after  
22 their election, and the terms of the third group, if any,  
23 expire at the third annual shareholders' meeting after  
24 their election. At each annual shareholders' meeting held

1 thereafter, directors shall be chosen for a term of two (2)  
2 years or three (3) years, as the case may be, to succeed  
3 those whose terms expire.

4

5 **17-16-809. Removal of directors by judicial**  
6 **proceeding.**

7

8 (a) The district court of the county where a  
9 corporation's principal office, or if none in this state,  
10 its registered office, is located may remove a director of  
11 the corporation from office in a proceeding commenced  
12 either by the corporation or by its shareholders holding at  
13 least ten percent (10%) of the outstanding shares of any  
14 class if the court finds that:

15

16 (i) The director engaged in fraudulent or  
17 dishonest conduct, ~~or gross abuse of authority or~~  
18 ~~discretion,~~ with respect to the corporation or its  
19 shareholders, grossly abused the position of director or  
20 intentionally inflicted harm on the corporation; and

21

22 (ii) Considering the director's course of  
23 conduct and the inadequacy of other available remedies,

1 removal ~~is~~ would be in the best interest of the  
2 corporation.

3

4 (d) A shareholder proceeding on behalf of the  
5 corporation under subsection (a) of this section shall  
6 comply with all of the requirements of article 7 of this  
7 act except W.S. 17-16-741(a).

8

9 (e) The court, in addition to removing the director,  
10 may bar the director from re-election for a period  
11 prescribed by the court.

12

13 (f) Nothing in this section limits the equitable  
14 powers of the court to order other relief.

15

16 **17-16-821. Action without meeting.**

17

18 (a) ~~Unless~~ Except to the extent the articles of  
19 incorporation or bylaws ~~provide otherwise~~ require that  
20 action by the board of directors be taken at a meeting,  
21 action required or permitted by this act to be taken at a  
22 board of directors' meeting may be taken without a meeting  
23 if each director signs a consent describing the action ~~is~~  
24 to be taken ~~by all members of the board and delivers it to~~

1 the corporation. ~~The action shall be evidenced by one (1)~~  
2 ~~or more written consents describing the action taken,~~  
3 ~~signed, either manually or in facsimile, by each director,~~  
4 ~~or shall be sent by electronic transmission by each~~  
5 ~~director, and shall be included in the minutes or filed~~  
6 ~~with the corporate records reflecting the action taken.~~

7  
8 (b) Action taken under this section is ~~effective when~~  
9 ~~the last director signs the consent, unless the consent~~  
10 ~~specifies a different effective date~~ the action of the  
11 board of directions when one (1) or more consents signed by  
12 all the directors are delivered to the corporation. The  
13 consent may specify the time at which the action taken  
14 thereunder is to be effective. A director's consent may be  
15 withdrawn by a revocation signed by the director and  
16 delivered to the corporation prior to delivery to the  
17 corporation of unrevoked written consents signed by all the  
18 directors.

19  
20 **17-16-825. Committees.**

21  
22 (a) Unless this act, the articles of incorporation or  
23 bylaws provide otherwise, a board of directors may create  
24 one (1) or more committees and appoint members of the board

1 of directors to serve on them. ~~Each committee shall have~~  
2 ~~one (1) or more members, who serve at the pleasure of the~~  
3 ~~board of directors.~~

4  
5 (b) Except as otherwise provided by this act, the  
6 creation of a committee and appointment of members to it  
7 shall be approved by the greater of:

8  
9 (c) W.S. 17-16-820 through 17-16-824, ~~which govern~~  
10 ~~meetings, action without meetings, notice and waiver of~~  
11 ~~notice, and quorum and voting requirements of the board of~~  
12 ~~directors,~~ apply both to committees of the board and to  
13 their members as well.

14  
15 (e) A committee may not, unless specifically  
16 authorized by the board of directors:

17  
18 (iv) Amend articles of incorporation pursuant to  
19 ~~W.S. 17-16-1002~~ W.S. 17-16-1003;

20  
21 (g) The board of directors may appoint one (1) or  
22 more directors as alternate members of any committee to  
23 replace any absent or disqualified member during the  
24 member's absence or disqualification. Unless the articles

1 of incorporation, the bylaws or the resolution creating the  
2 committee provide otherwise, in the event of the absence or  
3 disqualification of a member of a committee, the member or  
4 members present at any meeting and not disqualified from  
5 voting, unanimously may appoint another director to act in  
6 the place of the absent or disqualified member.

7  
8 **17-16-830. General standards for directors.**

9  
10 (a) ~~A director shall discharge his~~ Each member of the  
11 board of directors, when discharging the duties ~~as~~ of a  
12 director, ~~including his duties as a member of a committee~~  
13 shall act:

14  
15 (f) The members of the board of directors or a  
16 committee of the board, when becoming informed in  
17 connection with their decision-making function or devoting  
18 attention to their oversight function, shall discharge  
19 their duties with the care that a person in a like position  
20 would reasonably believe appropriate under similar  
21 circumstances.

22  
23 (g) In discharging board or committee duties, a  
24 director shall disclose, or cause to be disclosed, to the

1 other board or committee members information not already  
2 known by them but known by the director to be material to  
3 the discharge of their decision-making or oversight  
4 functions, except that disclosure is not required to the  
5 extent that the director reasonably believes that doing so  
6 would violate a duty imposed under law, a legally  
7 enforceable obligation of confidentiality or a professional  
8 ethics rule.

9  
10 (h) In discharging board or committee duties, a  
11 director who does not have knowledge that makes reliance  
12 unwarranted is entitled to rely on the performance by any  
13 of the persons specified in paragraph (k)(i) or (k)(ii) of  
14 this section to whom the board may have delegated, formally  
15 or informally by course of conduct, the authority to  
16 perform one (1) or more of the board's functions that are  
17 delegable under applicable law.

18  
19 (j) In discharging board or committee duties, a  
20 director who does not have knowledge that makes reliance  
21 unwarranted is entitled to rely on information, opinions,  
22 reports or statements, including financial statements and  
23 other financial data, prepared or presented by any of the  
24 persons specified in subsection (k) of this section.

1

2 (k) A direction is entitled to rely, in accordance  
3 with subsections (h) and (j) of this section on:

4

5 (i) One (1) or more officers or employees of the  
6 corporation whom the director reasonably believes to be  
7 reliable and competent in the functions performed or the  
8 information, opinions, reports or statements provided by  
9 the individual;

10

11 (iii) A committee of the board of directors of  
12 which the director is not a member if the director  
13 reasonably believes the committee merits confidence; or

14

15 (ii) Legal counsel, public accountants or other  
16 persons retained by the corporation as to matters involving  
17 skills or expertise the director reasonably believes are  
18 matters:

19

20 (A) Within the particular person's  
21 professional or expert competence; or

22

23 (B) As to which the particular person  
24 merits confidence.



1

2

**17-16-833. Liability for unlawful distributions.**

3

4 (a) A director who votes for or assents to a  
5 distribution ~~made in violation of~~ in excess of what may be  
6 authorized and made pursuant to W.S. 17-16-640 or ~~the~~  
7 ~~articles of incorporation~~ 17-16-1409(a) is personally  
8 liable to the corporation for the amount of the  
9 distribution that exceeds what could have been distributed  
10 without violating W.S. 17-16-640 or ~~the articles of~~  
11 ~~incorporation~~ 17-16-1409(a) if ~~it is established that he~~  
12 ~~did not perform his duties in compliance with~~ the party  
13 asserting liability establishes that when taking the action  
14 the director did not comply with W.S. 17-16-830. ~~In any~~  
15 ~~proceeding commenced under this section, a director has all~~  
16 ~~of the defenses ordinarily available to a director.~~

17

18 (b) A director held liable under subsection (a) of  
19 this section for an unlawful distribution is entitled  
20 to contribution.

21

22 (i) Contribution from every other director who  
23 could be held liable under subsection (a) of this section  
24 for the unlawful distribution; and

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(ii) Recoupment from each shareholder ~~for~~ of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of W.S. 17-16-640 or ~~the articles of incorporation~~ 17-16-1409(a).

(c) A proceeding to enforce:~~under this section is barred unless it is commenced within two (2) years after the date on which the effect of the distribution was measured under W.S. 17-16-640(e) or (g).~~

(i) The liability of a director under subsection (a) of this section is barred unless it is commenced within two (2) years after the date:

(A) On which the effect of the distribution was measured under W.S. 17-16-640(e) or (g);

(B) As of which the violation of section W.S. 17-16-640(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or

1                   (C) On which the distribution of assets to  
2 shareholders under W.S. 17-16-1409 was made.

3  
4                   (ii) Contribution or recoupment under subsection  
5 (b) of this section is barred unless it is commenced within  
6 one (1) year after the liability of the claimant has been  
7 finally adjudicated under subsection (a) of this section.

8  
9                   **17-16-840. Required officers.**

10  
11                   (b) The board of directors may elect individuals to  
12 fill one (1) or more offices of the corporation. ~~A duly~~  
13 ~~appointed~~ An officer may appoint one (1) or more officers  
14 ~~or assistant officers~~ if authorized by the bylaws or the  
15 board of directors.

16  
17                   (c) The bylaws or the board of directors shall  
18 ~~delegate~~ assign to one (1) of the officers responsibility  
19 for preparing minutes of the directors' and shareholders'  
20 meetings and for maintaining and authenticating records of  
21 the corporation required to be kept under W.S. 17-16-  
22 1601(a) and (e).

23  
24                   **17-16-842. Standards of conduct for officers.**

1

2 (a) An officer with discretionary authority shall  
3 discharge his duties under that authority:

4

5 (ii) With the care ~~an ordinarily prudent~~ that a  
6 person in a like position would reasonably exercise under  
7 similar circumstances; and

8

9 (f) The duty of an officer includes the obligation:

10

11 (i) To inform the superior officer to whom or  
12 the board of directors or the committee thereof to which  
13 the officer reports, of information about the affairs of  
14 the corporation known to the officer within the scope of  
15 the officer's functions and known to the officer to be  
16 material to such superior officer, board or committee; and

17

18 (ii) To inform his superior officer, or another  
19 appropriate person within the corporation, or the board of  
20 directors or a committee thereof, of any actual or probable  
21 material violation of law involving the corporation or  
22 material breach of duty to the corporation by an officer,  
23 employee or agent of the corporation, that the officer  
24 believes has occurred or is likely to occur.

1

2 (g) In discharging his duties, an officer who does  
3 not have knowledge that makes reliance unwarranted is  
4 entitled to rely on:

5

6 (i) The performance of properly delegated  
7 responsibilities by one (1) or more employees of the  
8 corporation whom the officer reasonably believes to be  
9 reliable and competent in performing the responsibilities  
10 delegated;

11

12 (ii) Information, opinions, reports or  
13 statements, including financial statements and other  
14 financial data, prepared or presented by one (1) or more  
15 employees of the corporation whom the officer reasonably  
16 believes to be reliable and competent in the matters  
17 presented or by legal counsel, public accountants or other  
18 persons retained by the corporation as to matters involving  
19 skills or expertise the officer reasonably believes are  
20 matters:

21

22 (A) Within the particular person's  
23 professional or expert competence; or

24

1                   (B) As to which the particular person  
2 merits confidence.

3  
4                   (h) An officer shall not be liable to the  
5 corporation or its shareholders for any decision to take or  
6 not to take action, or any failure to take any action, as  
7 an officer if the duties of the office are performed in  
8 compliance with this section. Whether an officer who does  
9 not comply with this section shall have liability will  
10 depend in such instance on applicable law, including those  
11 principles of W.S. 17-16-831 that have relevance.

12  
13                   **17-16-843. Resignation and removal of officers.**

14  
15                   (a) An officer may resign at any time by delivering  
16 notice to the corporation. A resignation is effective when  
17 the notice is delivered unless the notice specifies a later  
18 effective date. If a resignation is made effective at a  
19 later date and the ~~corporation~~ board or appointing officer  
20 accepts the future effective date, ~~its~~ the board ~~of~~  
21 ~~directors~~ or appointing officer may fill the pending  
22 vacancy before the effective date if the board ~~of directors~~  
23 or appointing officer provides that the successor does not  
24 take office until the effective date.

1

2 (b) ~~A board of directors~~ An officer may ~~remove any~~  
3 ~~officer~~ be removed at any time with or without cause ~~by~~:

4

5 (i) The board of directors;

6

7 (ii) The officer who appointed the officer,  
8 unless the bylaws or the board of directors provides  
9 otherwise; or

10

11 (iii) Any other officer if authorized by the  
12 bylaws or the board of directors.

13

14 (c) In this section "appointing officer" means the  
15 officer, including any successor to that office, who  
16 appointed the officer resigning or being removed.

17

18 **17-16-850. Subarticle definitions.**

19

20 (a) In this subarticle:

21

22 (viii) "Official capacity" means:

23

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

3  
4                   (B) When used with respect to an officer,  
5 as contemplated in W.S. 17-16-856, the office in a  
6 corporation held by the officer. Official capacity does  
7 not include service for any other domestic or foreign  
8 corporation or any partnership, joint venture, trust,  
9 employee benefit plan or other entity.

10  
11           **17-16-851. Permissible indemnification.**

12  
13           (a) Except as otherwise provided in this section, a  
14 corporation may indemnify an individual who is a party to a  
15 proceeding because he is a director against liability  
16 incurred in the proceeding if:

17  
18                   (ii) He reasonably believed: ~~that his conduct was~~  
19 ~~in or at least not opposed to the corporation's best~~  
20 ~~interests; and~~

21  
22                   (A) In the case of conduct in his official  
23 capacity, that his conduct was in the best interests of the  
24 corporation; and



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(B) In all other cases, that his conduct was at least not opposed to the best interests of the corporation.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of ~~paragraph (a)(ii)~~ subparagraph (a)(ii)(B) of this section.

(d) Unless ordered by a court under W.S. 17-16-854(a)(iii) a corporation may not indemnify a director under this section:

(ii) In connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.

**17-16-853. Advance for expenses.**

1           (a) A corporation may, before final disposition of a  
2 proceeding, advance funds to pay for or reimburse the  
3 reasonable expenses incurred in connection with the  
4 proceeding by ~~a director~~ an individual who is a party to a  
5 proceeding because he is a ~~director~~ member of the board of  
6 directors if ~~he~~ the director delivers to the corporation:

7  
8           (i) A written affirmation of his good faith  
9 belief that ~~he has met~~ the relevant standard of conduct  
10 described in W.S. 17-16-851 has been met by the director or  
11 that the proceeding involves conduct for which liability  
12 has been eliminated under a provision of the articles of  
13 incorporation as authorized by W.S. 17-16-202(b)(iv); and

14  
15           (ii) ~~His~~ A written undertaking of the director  
16 to repay any funds advanced if he is not entitled to  
17 mandatory indemnification under W.S. 17-16-852 and it is  
18 ultimately determined under W.S. 17-16-854 or 17-16-855  
19 that he has not met the relevant standard of conduct  
20 described in W.S. 17-16-851.

21  
22           (c) Authorizations under this section shall be made:

23  
24           (i) By the board of directors:

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24

(A) If there are two (2) or more ~~disinterested~~qualified directors, by a majority vote of all the disinterested directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more ~~disinterested~~qualified directors appointed by such a vote; or

(B) If there are fewer than two (2) ~~disinterested~~qualified directors, by the vote necessary for action by the board in accordance with W.S. 17-16-824(c), in which authorization directors who do not qualify as ~~disinterested~~qualified directors may participate; or

(ii) By the shareholders, but shares owned by or voted under the control of a director who at the time ~~does not qualify as a disinterested~~is not a qualified director may not be voted on the authorization.

**17-16-855. Determination and authorization of indemnification.**

(a) A corporation may not indemnify a director under W.S. 17-16-851 unless authorized for a specific proceeding

1 after a determination has been made that indemnification ~~of~~  
2 ~~the director~~ is permissible because ~~he~~ the director has met  
3 the relevant standard of conduct set forth in W.S.  
4 17-16-851.

5

6 (b) The determination shall be made:

7

8 (i) If there are two (2) or more ~~disinterested~~  
9 qualified directors, by the board of directors by majority  
10 vote of all the ~~disinterested~~ qualified directors (a  
11 majority of whom shall for such purpose constitute a  
12 quorum), or by a majority of the members of a committee of  
13 two (2) or more ~~disinterested~~ qualified directors appointed  
14 by such a vote;

15

16 (iii) By special legal counsel:

17

18 (B) If there are fewer than two (2)  
19 ~~disinterested~~ qualified directors, selected by the board of  
20 directors (in which selection directors who ~~do not qualify~~  
21 ~~as disinterested~~ are not qualified directors may  
22 ~~participate~~ not vote on the determination); or

23

1 (iv) By the shareholders, but shares owned by or  
2 voted under the control of a director who at the time ~~does~~  
3 ~~not qualify as a disinterested~~ is not a qualified director  
4 may not be voted on the determination.

5  
6 (c) Authorization of indemnification shall be made in  
7 the same manner as the determination that indemnification  
8 is permissible, except that if there are fewer than two (2)  
9 ~~disinterested~~ qualified directors or the determination is  
10 made by special legal counsel, authorization of  
11 indemnification shall be made by those entitled to special  
12 legal counsel under paragraph (b) (iii) of this section. ~~to~~  
13 ~~select special legal counsel.~~

14  
15 **17-16-858. Variation by corporate action; application**  
16 **of subarticle.**

17  
18 (b) Any provision pursuant to subsection (a) of this  
19 section shall not obligate the corporation to indemnify or  
20 advance expenses to a director of a predecessor of the  
21 corporation, pertaining to conduct with respect to the  
22 predecessor, unless otherwise specifically provided. Any  
23 provision for indemnification or advance for expenses in  
24 the articles of incorporation, bylaws, or a resolution of

1 the board of directors or shareholders of a predecessor of  
2 the corporation in a merger or in a contract to which the  
3 predecessor is a party, existing at the time the merger  
4 takes effect, shall be governed by W.S. ~~17-16-1106(a)(iii)~~  
5 17-16-1106(a)(x).

6  
7 **17-16-1001. Authority to amend.**

8  
9 (a) A corporation may amend its articles of  
10 incorporation at any time to add or change a provision that  
11 is required or permitted in the articles of incorporation  
12 as of the effective date of the amendment or to delete a  
13 provision that is not required to be contained in the  
14 articles of incorporation. ~~Whether a provision is required~~  
15 ~~or permitted in the articles of incorporation is determined~~  
16 ~~as of the effective date of the amendment.~~

17  
18 **17-16-1003. Amendment by board of directors and**  
19 **shareholders.**

20  
21 (f) If a corporation has issued shares, an amendment  
22 to the articles of incorporation shall be adopted in the  
23 following manner:

1           (i) The proposed amendment shall be adopted by  
2 the board of directors; and

3  
4           (ii) Except as provided in W.S. 17-16-1005, 17-  
5 16-1007 and 17-16-1008, after adopting the proposed  
6 amendment the board of directors shall submit the amendment  
7 to the shareholders for their approval. The board of  
8 directors shall also transmit to the shareholders a  
9 recommendation that the shareholders approve the amendment,  
10 unless the board of directors makes a determination that  
11 because of conflicts of interest or other special  
12 circumstances it should not make such a recommendation, in  
13 which case the board of directors shall transmit to the  
14 shareholders the basis for that determination.

15  
16           (g) If the amendment is required to be approved by  
17 the shareholders and the approval is to be given at a  
18 meeting, the corporation shall notify each shareholder,  
19 whether or not entitled to vote, of the meeting of  
20 shareholders at which the amendment is to be submitted for  
21 approval. The notice shall state that the purpose or one  
22 (1) of the purposes of the meeting is to consider the  
23 amendment and shall contain or be accompanied by a copy of  
24 the amendment.

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(h) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in W.S. 17-16-1004(c), the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

**17-16-1004. Voting on amendments by voting groups.**

(a) If a corporation has more than one (1) class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this act, on a proposed amendment to the articles of incorporation if the amendment would:



1 (b) If a proposed amendment would affect a series of  
2 a class of shares in one (1) or more of the ways described  
3 in subsection (a) of this section, the holders of shares of  
4 that series are entitled to vote as a separate voting group  
5 on the proposed amendment.

6  
7 (c) If a proposed amendment that entitles the holders  
8 of two (2) or more classes or series of shares to vote as  
9 separate voting groups under this section would affect  
10 those two (2) or more classes or series in the same or a  
11 substantially similar way, the holders of shares of all the  
12 classes or series so affected shall vote together as a  
13 single voting group on the proposed amendment, unless  
14 otherwise provided in the articles of incorporation or  
15 required by the board of directors.

16  
17 **17-16-1005. Amendment before issuance of shares.**

18  
19 ~~(a) If a corporation has not yet issued shares, its~~  
20 ~~incorporators or~~ Unless the articles of incorporation  
21 provide otherwise, a corporation's board of directors may  
22 adopt ~~one (1) or more~~ amendments to the corporation's  
23 articles of incorporation without shareholder approval.

24

1           (i) To extend the duration of the corporation if  
2 it was incorporated at a time when limited duration was  
3 required by law;

4  
5           (ii) To delete the names and addresses of the  
6 initial directors;

7  
8           (iii) To delete the name and address of the  
9 initial registered agent or registered office, if a  
10 statement of change is on file with the secretary of state;

11  
12           (iv) If the corporation has only one (1) class  
13 of shares outstanding:

14  
15           (A) To change each issued and unissued  
16 authorized share of the class into a greater number of  
17 whole shares of that class; or

18  
19           (B) To increase the number of authorized  
20 shares of the class to the extent necessary to permit the  
21 issuance of shares as a share dividend;

22  
23           (v) To change the corporate name by substituting  
24 the word corporation, incorporated, company, limited or the

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

4  
5 (vi) To reflect a reduction in authorized shares  
6 as a result of the operation of W.S. 17-16-631(b) when the  
7 corporation has acquired its own shares and the articles of  
8 incorporation prohibit the reissue of the acquired shares;

9  
10 (vii) To delete a class of shares from the  
11 articles of incorporation as a result of the operation of  
12 W.S. 17-16-631(b), when there are no remaining shares of  
13 the class because the corporation has acquired all shares  
14 of the class and the articles of incorporation prohibit the  
15 reissue of the acquired shares; or

16  
17 (viii) To make any change expressly permitted by  
18 W.S. 17-16-602(a) or (b) to be made without shareholder  
19 approval.

20  
21 **17-16-1006. Articles of amendment.**

22  
23 (a) A—After an amendment to the articles of  
24 incorporation has been adopted and approved in the manner

1 required by this act and by the articles of incorporation,  
2 the corporation ~~amending its articles of incorporation~~  
3 shall deliver to the secretary of state for filing articles  
4 of amendment ~~setting~~ which shall set forth:

5  
6 (ii) The text of each amendment adopted or the  
7 information required by W.S. 17-16-120(m)(v);

8  
9 (iii) If an amendment provides for an exchange,  
10 reclassification, or cancellation of issued shares,  
11 provisions for implementing the amendment if not contained  
12 in the amendment itself, which may be made dependent on  
13 facts objectively ascertainable outside the articles of  
14 amendment in accordance with W.S. 17-16-120(m)(v);

15  
16 (iv) The date of each amendment's adoption; and

17  
18 (v) If an amendment:

19  
20 (A) Was adopted by the incorporators or  
21 board of directors without shareholder ~~action~~ approval, a  
22 statement ~~to that effect~~ that the amendment was duly  
23 approved by the incorporators or by the board of directors,

1 as the case may be, and that shareholder ~~action~~approval  
2 was not required; ~~and~~

3

4 (B) Required approval by the shareholders,  
5 a statement that the amendment was duly approved by the  
6 shareholders in the manner required by this act and by the  
7 articles of incorporation; or

8

9 (C) Is being filed pursuant to W.S. 17-16-  
10 120(m) (v), a statement to that effect.

11

12 **17-16-1007. Restated articles of incorporation.**

13

14 (a) A corporation's board of directors may restate  
15 its articles of incorporation at any time with or without  
16 shareholder ~~action~~approval to consolidate all amendments  
17 into a single document.

18

19 (b) ~~The restatement may~~ If the restated articles  
20 include one (1) or more new amendments ~~to the articles that~~  
21 require shareholder approval, the amendment shall. ~~If the~~  
22 ~~restatement includes an amendment requiring shareholder~~  
23 ~~approval, it shall~~ be adopted and approved as provided in  
24 W.S. 17-16-1003.

1

2 (d) A corporation ~~restating~~ that restates its  
3 articles of incorporation shall deliver to the secretary of  
4 state for filing articles of restatement setting forth the  
5 name of the corporation and the text of the restated  
6 articles of incorporation together with a certificate  
7 ~~setting forth:~~ which states that the restated articles  
8 consolidate all amendments into a single document and if a  
9 new amendment is included in the restated articles, which  
10 also includes the statements required under W.S. 17-16-  
11 1006.

12

13 (e) Duly adopted restated articles of incorporation  
14 supersede the original articles of incorporation and all  
15 amendments ~~to them~~ thereto.

16

17 **17-16-1008. Amendment pursuant to court-ordered**  
18 **reorganization.**

19

20 (a) A corporation's articles of incorporation may be  
21 amended without action by the board of directors or  
22 shareholders to carry out a plan of reorganization ordered  
23 or decreed by a court of competent jurisdiction under  
24 ~~federal statute if the articles of incorporation after~~

1 ~~amendment contain only provisions required or permitted by~~  
2 ~~W.S. 17-16-202~~ the authority of a law of the United States.

3  
4 **17-16-1020. Amendment by board of directors or**  
5 **shareholders.**

6  
7 (a) A corporation's board of directors may amend or  
8 repeal the corporation's bylaws unless:

9  
10 (i) The articles of incorporation or ~~this act~~  
11 W.S. 17-16-1022 reserve ~~this~~ that power exclusively to the  
12 shareholders in whole or part; or

13  
14 (ii) The shareholders in amending, ~~or~~ repealing  
15 or adopting a ~~particular~~ bylaw expressly provide ~~expressly~~  
16 that the board of directors may not amend, ~~or~~ repeal or  
17 reinstate that bylaw.

18  
19 (b) A corporation's shareholders may amend or repeal  
20 the corporation's bylaws. ~~even though the bylaws may also~~  
21 ~~be amended or repealed by its board of directors.~~

22  
23 **17-16-1022. Bylaw increasing quorum or voting**  
24 **requirement for directors.**

1

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

5

6 (i) If originally adopted by the shareholders,  
7 only by the shareholders, unless the bylaw otherwise  
8 provides;

9

10 (b) A bylaw adopted or amended by the shareholders  
11 that ~~fixes~~increases a ~~greater~~ quorum or voting requirement  
12 for the board of directors may provide that it may be  
13 amended or repealed only by a specified vote of either the  
14 shareholders or the board of directors.

15

16 (c) Action by the board of directors under ~~paragraph~~  
17 ~~(a)(ii)~~subsection (a) of this section to ~~adopt or amend~~ or  
18 repeal a bylaw that changes the quorum or voting  
19 requirement for the board of directors shall meet the same  
20 quorum requirement and be adopted by the same vote required  
21 to take action under the quorum and voting requirement then  
22 in effect or proposed to be adopted, whichever is greater.

23

24 **17-16-1101. Merger.**



1

2 (a) One (1) or more domestic business corporations  
3 may merge ~~into another corporation if the board of~~  
4 ~~directors of each corporation adopts and, if required by~~  
5 ~~W.S. 17-16-1103, its shareholders approve~~ with one (1) or  
6 more domestic or foreign business corporations or eligible  
7 entities pursuant to a plan of merger, or two (2) or more  
8 foreign business corporations or domestic or foreign  
9 eligible entities may merge into a new domestic business  
10 corporation to be created in the merger in the manner  
11 provided in this section.

12

13 (b) The plan of merger shall ~~set forth~~ include:

14

15 (i) The name of each domestic or foreign  
16 business corporation ~~planning to~~ or eligible entity that  
17 will merge and the name of the ~~surviving~~ domestic or  
18 foreign business corporation ~~into which each other~~  
19 ~~corporation plans to merge~~ or eligible entity that will be  
20 the survivor of the merger;

21

22 (ii) The terms and conditions of the merger; ~~and~~

23

1           (iii) The manner and basis of converting the  
2 shares of each domestic or foreign business corporation and  
3 eligible interests of each merging domestic or foreign  
4 eligible entity into shares, ~~obligations or~~ other  
5 securities, ~~of the surviving or any other corporation or~~  
6 ~~into cash or other property in whole or part~~ eligible  
7 interests, obligations, rights to acquire shares, other  
8 securities or eligible interests, cash, other property or  
9 any combination of the foregoing;

10  
11           (iv) The articles of incorporation of any  
12 domestic or foreign business or nonprofit corporation or  
13 the organic documents of any domestic or foreign  
14 unincorporated entity, to be created by the merger, or if a  
15 new domestic or foreign business or nonprofit corporation  
16 or unincorporated entity is not to be created by the  
17 merger, any amendments to the survivor's articles of  
18 incorporation or organic documents; and

19  
20           (v) Any other provisions required by the laws  
21 under which any party to the merger is organized or by  
22 which it is governed or by the articles of incorporation or  
23 organic document of any party.

24

1       (d) If the organic law of a domestic eligible entity  
2 does not provide procedures for the approval of a merger, a  
3 plan of merger may be adopted and approved, the merger  
4 effectuated and appraisal rights exercised in accordance  
5 with the procedures in this section and article 13 of this  
6 chapter. For the purposes of applying this section and  
7 article 13 of this chapter:

8  
9       (i) The eligible entity, its members or interest  
10 holders, eligible interests and organic documents taken  
11 together shall be deemed to be a domestic business  
12 corporation, shareholders, shares and articles of  
13 incorporation respectively and vice versa as the context  
14 may require; and

15  
16       (ii) If the business and affairs of the eligible  
17 entity are managed by a group of persons that is not  
18 identical to the members or interest holders, that group  
19 shall be deemed to be the board of directors.

20  
21       (e) A foreign business corporation or a foreign  
22 eligible entity may be a party to a merger with a domestic  
23 business corporation or may be created by the terms of the

1 plan of merger only if the merger is permitted by the  
2 foreign business corporation or eligible entity.

3  
4 (f) Terms of a plan of merger may be made dependent  
5 on facts objectively ascertainable outside the plan in  
6 accordance with W.S. 17-16-120(m).

7  
8 (g) The plan of merger may also include a provision  
9 that the plan may be amended prior to filing articles of  
10 merger, but if the shareholders of a domestic corporation  
11 that is party to the merger are required or permitted to  
12 vote on the plan, the plan shall provide that subsequent to  
13 approval of the plan by the shareholders the plan may not  
14 be amended to change:

15  
16 (i) The amount or kind of shares or other  
17 securities, eligible interests, obligations, rights to  
18 acquire shares, other securities or eligible interests,  
19 cash or other property to be received under the plan by the  
20 shareholders of or owners of eligible interests in any  
21 party to the merger;

22  
23 (ii) The articles of incorporation of any  
24 corporation or the organic documents of any unincorporated

1 entity that will survive or be created as a result of the  
2 merger, except for changes permitted by W.S. 17-16-1005 or  
3 by comparable provisions in the organic laws of any foreign  
4 corporation or domestic or foreign unincorporated entity;  
5 or

6  
7 (iii) Any of the other terms or conditions of  
8 the plan if the change would adversely affect the  
9 shareholders in any material respect.

10  
11 **17-16-1102. Share exchange.**

12  
13 (a) Through a share exchange:

14  
15 (i) A domestic corporation may acquire all of  
16 the ~~outstanding~~ shares of one (1) or more classes or series  
17 of ~~shares of~~ another domestic or foreign corporation ~~if the~~  
18 ~~board of directors of each corporation adopts and, if~~  
19 ~~required by W.S. 17-16-1103, its shareholders approve the~~  
20 ~~exchange~~ or all of the interests of one (1) or more classes  
21 or series of interests of a domestic or foreign other  
22 entity in exchange for shares or other securities,  
23 interests, obligations, rights to acquire shares or other

1 securities, cash, other property or any other combination  
2 of the foregoing pursuant to a plan of share exchange; or

3  
4 (ii) All of the shares of one (1) or more  
5 classes or series of shares of a domestic corporation may  
6 be acquired by another domestic or foreign corporation or  
7 other entity in exchange for shares or other securities,  
8 interests, obligations, rights to acquire shares or other  
9 securities, cash, other property or any combination of the  
10 foregoing pursuant to a plan of share exchange.

11  
12 (b) The plan of share exchange shall ~~set forth~~  
13 include:

14  
15 (i) The name of the corporation or other entity  
16 whose shares or interests will be acquired and the name of  
17 the ~~acquiring~~ corporation or other entity that will acquire  
18 those shares or interests;

19  
20 (ii) The terms and conditions of the share  
21 exchange; ~~and~~

22  
23 (iii) The manner and basis of exchanging ~~the~~  
24 shares ~~to be acquired for shares, obligations or other~~

1 ~~securities of the acquiring or any other~~ a corporation ~~or~~  
2 ~~for cash or other property in whole or part~~ or interests in  
3 another entity whose shares or interests will be acquired  
4 under the share exchange into shares or other securities,  
5 interests, obligations, rights to acquire shares or other  
6 securities, cash, other property or any combination of the  
7 foregoing;

8  
9 (iv) Any other provisions required by the laws  
10 under which any party to the share exchange is organized or  
11 by the articles of incorporation or organic document of any  
12 party.

13  
14 (d) This section does not limit the power of a  
15 domestic corporation to acquire ~~all or part of the~~ shares  
16 ~~of one (1) or more classes or series~~ of another corporation  
17 ~~through a voluntary~~ or interests in another entity in a  
18 transaction other than a share exchange. ~~or otherwise.~~

19  
20 (e) A foreign corporation or eligible entity may be a  
21 party to a share exchange only if the share exchange is  
22 permitted by the laws under which the corporation or other  
23 entity is organized or by which it is governed.

24

1       (f) If the organic law of a domestic eligible entity  
2 does not provide procedures for the approval of a share  
3 exchange, a plan of share exchange may be adopted and  
4 approved and the share exchange effectuated in accordance  
5 with the procedures, if any, for a merger. If the organic  
6 law of a domestic eligible entity does not provide  
7 procedures for the approval of either a share exchange or a  
8 merger, a plan of share exchange may be adopted and  
9 approved, the share exchange effectuated and appraisal  
10 rights exercised in accordance with the procedures in this  
11 section and article 13 of this chapter. For the purposes  
12 of applying this section and article 13 of this chapter:

13  
14       (i) The other entity, its interest holders,  
15 eligible interests and organic documents taken together  
16 shall be deemed to be a domestic business corporation,  
17 shareholders, shares and articles of incorporation  
18 respectively and vice versa as the context may require; and

19  
20       (ii) If the business and affairs of the other  
21 entity are managed by a group of persons that is not  
22 identical to the interest holders, that group shall be  
23 deemed to be the board of directors.

24



1       (g) Terms of a plan of share exchange may be made  
2 dependent on facts objectively ascertainable outside the  
3 plan in accordance with W.S. 17-16-120(m).

4  
5       (h) The plan of share exchange may also include a  
6 provision that the plan may be amended prior to filing  
7 articles of share exchange, but if the shareholders of a  
8 domestic corporation that is party to the share exchange  
9 are required or permitted to vote on the plan, the plan  
10 shall provide that subsequent to approval of the plan by  
11 the shareholders the plan may not be amended to change:

12  
13       (i) The amount or kind of shares or other  
14 securities, interests, obligations, rights to acquire  
15 shares, other securities or interests, cash or other  
16 property to be issued by the corporation or to be received  
17 under the plan by the shareholders of or owners of  
18 interests in any party to the share exchange; or

19  
20       (ii) Any of the other terms or conditions of the  
21 plan if the change would adversely affect the shareholders  
22 in any material respect.

23

24

1           **17-16-1103. Action on plan of merger or share**  
2 **exchange.**

3  
4           (k) In the case of a domestic corporation that is  
5 party to a merger or share exchange:

6  
7           (i) The plan of merger or share exchange shall  
8 be adopted by the board of directors;

9  
10           (ii) Except as provided in paragraph (a)(v) of  
11 this section and W.S. 17-16-1104, after adopting the plan  
12 of merger or share exchange the board of directors shall  
13 submit the plan to the shareholders for their approval.  
14 The board of directors shall also transmit to the  
15 shareholders a recommendation that the shareholders approve  
16 the plan unless the board of directors makes a  
17 determination that because of conflicts of interest or  
18 other special circumstances it should not make such a  
19 recommendation, in which case the board of directors shall  
20 transmit to the shareholders the basis for that  
21 determination;

22

1           (iii) The board of directors may condition its  
2 submission of the plan of merger or share exchange to the  
3 shareholders on any basis;

4  
5           (iv) If the plan of merger or share exchange is  
6 required to be approved by the shareholder and if the  
7 approval is to be given at a meeting, the corporation shall  
8 notify each shareholder, whether or not entitled to vote,  
9 of the meeting of shareholders at which the plan is to be  
10 submitted for approval. The notice shall state that the  
11 purpose, or one (1) of the purposes of the meeting is to  
12 consider the plan and shall contain or be accompanied by a  
13 copy or summary of the plan. If the corporation is to be  
14 merged into an existing corporation or other entity, the  
15 notice shall include or be accompanied by a copy or summary  
16 of the articles of incorporation or organizational  
17 documents of that corporation or entity. If the  
18 corporation is to be merged into a corporation or other  
19 entity that is to be created pursuant to the merger, the  
20 notice shall include or be accompanied by a copy or a  
21 summary of the articles of incorporation or organizational  
22 documents of the new corporation or entity.

23

1           (v) Unless the articles of incorporation or the  
2 board of directors acting pursuant to paragraph (a)(iii) of  
3 this section requires a greater vote or a greater number of  
4 votes to be present, approval of the plan of merger or  
5 share exchange requires the approval of the shareholders at  
6 a meeting at which a quorum consisting of at least a  
7 majority of the votes entitled to be cast on the plan  
8 exists, and, if any class or series of shares is entitled  
9 to vote as a separate group on the plan of merger or share  
10 exchange, the approval of each separate voting group  
11 consisting of at least a majority of the votes entitled to  
12 be cast on the merger or share exchange by that voting  
13 group is present;

14

15           (vi) Separate voting by voting groups is  
16 required:

17

18           (A) On a plan of merger by each class or  
19 series of shares that:

20

21           (I) Are to be converted under the plan  
22 of merger into other securities, interests, obligations,  
23 rights to acquire shares, other securities or interests,

1 cash, other property or any combination of the foregoing;

2 or

3  
4 (II) Would be entitled to vote as a  
5 separate group on a provision in the plan that, if  
6 contained in a proposed amendment to the articles of  
7 incorporation, would require action by separate voting  
8 groups under W.S. 17-16-1004;

9  
10 (B) On a plan of share exchange by each  
11 class or series of shares included in the exchange, with  
12 each class or series constituting a separate voting group;  
13 and

14  
15 (C) On a plan of merger or share exchange,  
16 if the voting group is entitled under the articles of  
17 incorporation to vote a voting group to approve a plan of  
18 merger or share exchange.

19  
20 (vii) Unless the articles of incorporation  
21 otherwise provide, approval by the corporation's  
22 shareholders of a plan of merger or share exchange is not  
23 required if:

24

1                   (A) The corporation will survive the merger  
2 or is the acquiring corporation in a share exchange;

3

4                   (B) Except for amendments permitted by W.S.  
5 17-16-1005, its articles of incorporation will not be  
6 changed;

7

8                   (C) Each shareholder of the corporation  
9 whose shares were outstanding immediately before the  
10 effective date of the merger or share exchange will hold  
11 the same number of shares, with identical preferences,  
12 limitations and relative rights immediately after the  
13 effective date of change; and

14

15                   (D) The issuance in the merger or share  
16 exchange of shares or other securities convertible into or  
17 rights exercisable for shares does not require a vote under  
18 W.S. 17-16-621(f)

19

20                   **17-16-1104. Merger between parent and subsidiary or**  
21 **between subsidiaries.**

22

23                   (a) A domestic parent corporation ~~owning at least~~  
24 ~~eighty percent (80%) of the outstanding shares of each~~

1 ~~class of a~~ that owns shares of a domestic or foreign  
2 subsidiary corporation that carry at least ninety percent  
3 (90%) of the voting power of each class and series of the  
4 outstanding shares of the subsidiary that have voting power  
5 may merge the subsidiary into itself or into another  
6 subsidiary, or merge itself into the subsidiary without the  
7 approval of the board of directors or shareholders of the  
8 ~~parent or~~ subsidiary unless the articles of incorporation  
9 of any of the corporations otherwise provide, and unless,  
10 in the case of a foreign subsidiary, approval by the  
11 subsidiary's board of directors or shareholders is required  
12 by the laws under which the subsidiary is organized.

13  
14 (f) If under subsection (a) of this section approval  
15 of a merger by the subsidiary's shareholders is not  
16 required, the parent corporation shall, within (10) days  
17 after the effective date of the merger, notify each of the  
18 subsidiary's shareholders that the merger has become  
19 effective.

20  
21 (g) Except as provided in this section, a merger  
22 between a parent and a subsidiary shall be governed by the  
23 provisions in this article applicable to mergers generally.

24

1           **17-16-1105. Articles of merger or share exchange.**

2

3           (a) After a plan of merger or share exchange ~~is~~  
4 ~~approved by the shareholders, or~~ has been adopted ~~by the~~  
5 ~~board of directors if shareholder approval is not required,~~  
6 ~~the surviving or acquiring corporation shall deliver to the~~  
7 ~~secretary of state for filing setting~~ and approved as  
8 required by this act, articles of merger or share exchange  
9 shall be executed on behalf of each party to the merger or  
10 share exchange by any officer or other duly authorized  
11 representative. The articles shall set forth:

12

13                   (iv) The names of the parties to the merger or  
14 share exchange;

15

16                   (v) If the articles of incorporation of the  
17 survivor of a merger are amended, or if a new corporation  
18 is created as a result of a merger, the amendments to the  
19 survivor's articles of incorporation or the articles of  
20 incorporation of the new corporation;

21

22                   (vi) If the plan of merger or share exchange  
23 required approval by the shareholders of a domestic  
24 corporation that was a party to the merger or share



1 exchange, a statement that the plan was duly approved by  
2 the shareholders and, if voting by any separate voting  
3 group was required, by each separate voting group, in the  
4 manner required by this act and the articles of  
5 incorporation;

6  
7 (vii) If the plan of merger or share exchange  
8 did not require approval by the shareholders of a domestic  
9 corporation that was a party to the merger or share  
10 exchange, a statement to that effect; and

11  
12 (viii) As to each foreign corporation or  
13 eligible entity that was a party to the merger or share  
14 exchange, a statement that the participation of the foreign  
15 corporation or eligible entity was duly authorized as  
16 required by the organic law of the corporation or eligible  
17 entity.

18  
19 (c) Articles of merger or share exchange shall be  
20 delivered to the secretary of state for filing by the  
21 survivor of the merger or the acquiring corporation in the  
22 share exchange, and shall take effect at the effective time  
23 provided in W.S. 17-16-123. Articles of merger or share  
24 exchange filed under this section may be combined with any

1 filing required under the organic law of any domestic  
2 eligible entity involved in the transaction if the combined  
3 filing satisfies the requirement of both this section and  
4 the other organic law.

5  
6 **17-16-1106. Effect of merger or share exchange.**

7  
8 (a) When a merger ~~takes effect~~ becomes effective:

9  
10 (v) The articles of incorporation or organic  
11 documents of the ~~surviving corporation~~ survivor are amended  
12 to the extent provided in the plan of merger; ~~and~~

13  
14 (vi) The shares of each corporation that is a  
15 party to the merger and the interests in an eligible entity  
16 that is a party to a merger that are to be converted under  
17 the plan of merger into shares, eligible interests,  
18 obligations, rights to acquire securities, ~~or~~ other  
19 securities ~~of the surviving or any other corporation or~~  
20 ~~into cash or other property~~ or eligible interests, cash,  
21 other property or any combination of the foregoing are  
22 converted, and the former holders of the shares or eligible  
23 interests are entitled only to the rights provided to them  
24 in the ~~articles~~ plan of merger or to ~~their~~ any rights they

1 may have under article 13 or the organic law of the  
2 eligible entity;

3

4 (vii) The corporation or eligible entity that  
5 is designated in the plan of merger as the survivor  
6 continues or comes into existence as the case may be;

7

8 (viii) The separate existence of every  
9 corporation or eligible entity that is merged into the  
10 survivor ceases;

11

12 (ix) All property owned by, and every contract  
13 right possessed by each corporation or eligible entity that  
14 merges into the survivor is vested in the survivor without  
15 reversion or impairment;

16

17 (x) All liabilities of each corporation or  
18 eligible entity that is merged into the survivor are vested  
19 in the survivor;

20

21 (xi) The name of the survivor may, but need not  
22 be, substituted in any pending proceeding for the name of  
23 any party to the merger whose separate existence ceased in  
24 the merger; and

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(xii) The articles of incorporation or organic documents of a survivor that is created by the merger become effective.

(b) When a share exchange ~~takes effect~~ becomes effective, the shares of each ~~acquired domestic~~ corporation ~~that~~ are to be exchanged ~~as provided in the plan, and the former holders of the shares for shares or other securities, interests, obligations, rights to acquire shares, other securities, cash, other property or any combination of the foregoing~~ are entitled only to the ~~exchange~~ rights provided to them in the ~~articles~~ plan of share exchange or to ~~their any~~ rights they may have under article 13.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations and liabilities that arise after the effective time of the articles of merger or share exchange.

1       (d) Upon a merger becoming effective a foreign  
2 corporation or a foreign eligible entity that is the  
3 survivor of the merger is deemed to:

4  
5       (i) Appoint the secretary of state as its agent  
6 for service of process in a proceeding to enforce the  
7 rights of shareholders of each domestic corporation that is  
8 a party to the merger who exercise appraisal rights; and

9  
10       (ii) Agree that it will promptly pay the amount,  
11 if any, to which such shareholders are entitled under  
12 article 13.

13  
14       (e) The effect of a merger or share exchange on the  
15 owner liability of a person who had owner liability for  
16 some or all of the debts, obligations or liabilities of a  
17 party to the merger or share exchange shall be as follows:

18  
19       (i) The merger or share exchange does not  
20 discharge any owner liability under the organic law of the  
21 entity in which the person was a shareholder or interest  
22 holder to the extent any such owner liability arose before  
23 the effective time of the articles of merger or share  
24 exchange.

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(ii) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange.

(iii) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (e)(i) of this subsection, as if the merger or share exchange had not occurred;

(iv) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (e)(i) of this subsection, as if the merger or share exchange had not occurred.

1           **17-16-1201. Disposition of assets not requiring**  
2 **shareholder approval.**

3  
4           (a) No approval of the shareholders of a corporation  
5 ~~may, on the terms and conditions and for the consideration~~  
6 ~~determined by the board of directors~~ is required, unless  
7 the articles of incorporation otherwise provide, to:

8  
9           (i) Sell, lease, exchange, or otherwise dispose  
10 of any or all, ~~or substantially all,~~ of ~~its property~~ the  
11 corporation's assets in the usual and regular course of  
12 business;

13  
14           (ii) Mortgage, pledge, dedicate to the repayment  
15 of indebtedness, whether with or without recourse, or  
16 otherwise encumber any or all of ~~its property~~ the  
17 corporation's assets whether or not in the usual and  
18 regular course of business; ~~or~~

19  
20           (iii) Transfer any or all of ~~its property~~ the  
21 corporation's assets to ~~a corporation~~ one (1) or more  
22 corporations or other entities all the shares or interests  
23 of which are owned by the corporation; ~~or-~~

24

1           (iv) Distribute assets pro rata to the holders  
2 of one (1) or more classes or series of the corporation's  
3 shares.

4  
5           **17-16-1202. Sale of assets other than in regular**  
6 **course of business.**

7  
8           (a) A ~~corporation may sell~~ sale, lease, exchange, or  
9 ~~otherwise dispose of all, or substantially all, of its~~  
10 ~~property, with or without the good will, otherwise than in~~  
11 ~~the usual and regular course of business, on the terms and~~  
12 ~~conditions and for the consideration determined by the~~  
13 ~~corporation's board of directors, if the board of directors~~  
14 ~~proposes and its shareholders approve the proposed~~  
15 ~~transaction~~ other disposition of assets, other than a  
16 disposition described in W.S. 17-16-1201, requires approval  
17 of the corporation's shareholders if the disposition would  
18 leave the corporation without a significant continuing  
19 business activity. If a corporation retains a business  
20 activity that represented at least twenty-five percent  
21 (25%) of total assets at the end of the most recently  
22 completed fiscal year, and twenty-five percent (25%) of  
23 either income from continuing operations before taxes or  
24 revenues from continuing operations for that fiscal year,



1 in each case of the corporation and its subsidiaries on a  
2 consolidated basis, the corporation will conclusively be  
3 deemed to have retained a significant continuing business  
4 activity.

5  
6 (c) The board of directors may condition its  
7 submission of ~~the proposed transaction~~ the disposition to  
8 the shareholders under subsection (j) of this section on  
9 any basis.

10  
11 (d) If a disposition is required to be approved by  
12 the shareholders under subsection (a) of this section, and  
13 if the approval is given at a meeting, the corporation  
14 shall notify each shareholder, whether or not entitled to  
15 vote, of the ~~proposed shareholders'~~ meeting ~~in accordance~~  
16 ~~with W.S. 17-16-705~~ of shareholders at which the  
17 disposition is to be submitted for approval. The notice  
18 shall also state that the purpose, or one (1) of the  
19 purposes, of the meeting is to consider the ~~sale, lease,~~  
20 ~~exchange, or other~~ disposition ~~of all, or substantially~~  
21 ~~all, the property of the corporation~~ and shall contain ~~or~~  
22 ~~be accompanied by~~ a description of the ~~transaction~~  
23 disposition including the terms and conditions thereof and  
24 the consideration to be received by the corporation.

1

2 (e) Unless the articles of incorporation or the board  
3 of directors, acting pursuant to subsection (c) of this  
4 section, require a greater vote or a ~~vote by voting groups,~~  
5 ~~the transaction to be authorized shall be approved by~~  
6 greater number of votes to be present, the approval of a  
7 disposition by the shareholders shall require the approval  
8 of the shareholders at a meeting at which a quorum  
9 consisting of at least a majority of ~~all~~ the votes entitled  
10 to be cast on the ~~transaction~~ disposition exists.

11

12 (f) After a ~~sale, lease, exchange or other~~  
13 disposition ~~of property is authorized, the transaction~~ has  
14 been approved by the shareholders under subsection (j) of  
15 this section, and at any time before the disposition has  
16 been consummated, it may be abandoned by the corporation  
17 without action by the shareholders, subject to any  
18 contractual rights, ~~without further shareholder action~~ of  
19 other parties to the disposition.

20

21 (g) A ~~transaction that constitutes a distribution is~~  
22 ~~governed by W.S. 17-16-640 and not~~ disposition of assets in  
23 the course of dissolution under article 14 is not governed  
24 by this section.

1

2       (h) The assets of directly and indirectly  
3 consolidated subsidiaries shall be deemed the assets of the  
4 parent corporation for the purposes of this section.

5

6       (j) A disposition that requires approval of the  
7 shareholders under subsection (a) of this section shall be  
8 initiated by a resolution by the board of directors  
9 authorizing the disposition. After adoption of such a  
10 resolution, the board of directors shall submit the  
11 proposed disposition to the shareholders for their  
12 approval. The board of directors shall also transmit to  
13 the shareholders a recommendation that the shareholders  
14 approve the proposed disposition, unless the board of  
15 directors makes a determination that because of conflicts  
16 of interest or other special circumstances it should not  
17 make such a recommendation, in which case the board of  
18 directors shall transmit to the shareholders the basis for  
19 that determination

20

21       **17-16-1301. Definitions.**

22

23       (a) As used in this article:

24

1 (i) "Beneficial shareholder" means the person  
2 who is ~~a~~ the beneficial owner of shares held in a voting  
3 trust or by a nominee ~~as the record shareholder~~ on the  
4 beneficial owner's behalf;

5  
6 (ii) "Corporation" means the issuer of the  
7 shares held by a ~~dissenter before the corporate action, or~~  
8 ~~the surviving, new, or acquiring corporation by merger,~~  
9 ~~consolidation, or share exchange of that issuer~~ shareholder  
10 demanding appraisal and, for matters covered in W.S. 17-16-  
11 1322 through 17-16-1331 includes the surviving entity in a  
12 merger;

13  
14 (iv) "Fair value," ~~with respect to a dissenter's~~  
15 ~~shares,~~ means the value of the corporation's shares  
16 determined;

17  
18 (A) Immediately before the effectuation of  
19 the corporate action to which the shareholder dissenter  
20 objects; ~~excluding any appreciation or depreciation in~~  
21 ~~anticipation of the corporate action unless exclusion would~~  
22 ~~be inequitable~~;

23

1                   (B) Using customary and current valuation  
2 concepts and techniques generally employed for similar  
3 businesses in the context of the transaction requiring  
4 appraisal; and

5

6                   (C) Without discounting for lack of  
7 marketability or minority status except, if appropriate,  
8 for amendments to the articles pursuant to W.S. 17-16-  
9 1302(a)(iv).

10

11                   (v) "Interest" means interest from the effective  
12 date of the corporate action until the date of payment, at  
13 the ~~average rate currently paid by the corporation on its~~  
14 ~~principal bank loans, or, if none, at a rate that is fair~~  
15 ~~and equitable under all the circumstances~~ of interest on  
16 judgments in this state on the effective date of the  
17 corporate action;

18

19                   (vi) "Record shareholder" means the person in  
20 whose names shares are registered in the records of ~~a~~ the  
21 corporation or the beneficial owner of shares to the extent  
22 of the rights granted by a nominee certificate on file with  
23 a corporation;

24

1           (vii) "Shareholder" means ~~the both a~~ record  
2 shareholder ~~or the~~ and a beneficial shareholder;~~;~~

3  
4           (viii) "Affiliate" means a person that directly  
5 or indirectly through one (1) or more intermediaries  
6 controls, is controlled by or is under common control with  
7 another person or is a senior executive thereof. For  
8 purposes of W.S. 17-16-1302(c)(iv) a person is deemed to be  
9 an affiliate of its senior executives;

10  
11           (ix) "Preferred shares" means a class or series of  
12 shares whose holders have preference over any other class  
13 or series with respect to distributions;

14  
15           (x) "Senior executive" means the chief executive  
16 officer, chief operating officer, chief financial officer  
17 and anyone in charge of a principal business unit or  
18 function.

19  
20           **17-16-1302. Right to appraisal.**

21  
22           (a) A shareholder is entitled to ~~dissent from~~  
23 appraisal rights, and to obtain payment of the fair value

1 of ~~his~~ that shareholder's shares in the event of, any of  
2 the following corporate actions:

3

4 (i) Consummation of a ~~plan of~~ merger ~~or~~  
5 ~~consolidation~~ to which the corporation is a party if:

6

7 (A) Shareholder approval is required for  
8 the merger ~~or the consolidation~~ by W.S. 17-16-1103 ~~or~~  
9 ~~17-16-1111 or the articles of incorporation~~ and the  
10 shareholder is entitled to vote on the merger ~~or~~  
11 ~~consolidation~~ except that appraisal rights shall not be  
12 available to any shareholder of the corporation with  
13 respect to shares of any class or series that remain  
14 outstanding after consummation of the merger; or

15

16 (B) The corporation is a subsidiary ~~that is~~  
17 ~~merged with its parent under~~ and the merger is governed by  
18 W.S. 17-16-1104.

19

20 (ii) Consummation of a ~~plan of~~ share exchange to  
21 which the corporation is a party as the corporation whose  
22 shares will be acquired, if the shareholder is entitled to  
23 vote on the ~~plan~~ exchange except that appraisal rights  
24 shall not be available to any shareholder of the

1 corporation with respect to any class or series of shares  
2 of the corporation that is not exchanged;

3  
4 (iii) ~~Consummation of a sale or exchange of all,~~  
5 ~~or substantially all, of the property of the corporation~~  
6 ~~other than in the usual and regular course of business, if~~  
7 ~~the shareholder is entitled to vote on the sale or~~  
8 ~~exchange, including a sale in dissolution, but not~~  
9 ~~including a sale pursuant to court order or a sale for cash~~  
10 ~~pursuant to a plan by which all or substantially all of the~~  
11 ~~net proceeds of the sale will be distributed to the~~  
12 ~~shareholders within one (1) year after the date of sale~~  
13 disposition of assets pursuant to W.S. 17-16-1202;

14  
15 (iv) An amendment of the articles of  
16 incorporation ~~that materially and adversely affects rights~~  
17 ~~in respect of a dissenter's~~ with respect to a class or  
18 series of shares ~~because it that:~~

19  
20 (E) Reduces the number of shares of a class  
21 or series owned by the shareholder to a fraction of a share  
22 if the corporation has the obligation or right to  
23 repurchase the fractional share so created. ~~is to be~~  
24 ~~acquired for cash under W.S. 17-16-604.~~



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(vi) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;

(vii) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication;

(viii) Consummation of a conversion of the corporation to nonprofit status; or

(ix) Consummation of a conversion of the corporation to an unincorporated entity.

(b) A shareholder entitled to ~~dissent and obtain payment for his shares~~ appraisal rights under this article

1 may not challenge the completed corporate action ~~creating~~  
2 ~~his entitlement unless the action is unlawful or fraudulent~~  
3 ~~with respect to the shareholder or the corporation~~ for  
4 which appraisal rights are available unless the corporate  
5 action:

6  
7 (i) Was not effectuated in accordance with the  
8 applicable provisions of articles 9, 10, 11 or 12 or the  
9 corporation's articles of incorporation, bylaws or board of  
10 directors' resolution authorizing the corporate action; or

11  
12 (ii) Was produced as a result of fraud or  
13 material misrepresentation.

14  
15 (c) Notwithstanding subsection (a) of this section,  
16 the availability of appraisal rights under paragraphs  
17 (a)(i), (ii), (iii), (iv), (vii) and (x) of this section  
18 shall be limited in accordance with the following  
19 provisions:

20  
21 (i) Appraisal rights shall not be available for  
22 the holders of shares of any class or series of shares  
23 which is:

24

1                   (A) Listed on the New York stock exchange  
2 or the American stock exchange or designated as a national  
3 market system security on an interdealer quotation system  
4 by the National Association of Securities Dealers, Inc.; or

5  
6                   (B) Not so listed or designated, but has at  
7 least two thousand (2,000) shareholders and the outstanding  
8 shares of such class or series has a market value of at  
9 least twenty million dollars (\$20,000,000.00), exclusive of  
10 the value of such shares held by its subsidiaries, senior  
11 executives, directors and beneficial shareholders owning  
12 more than ten percent (10%) of such shares.

13  
14                   (ii) The applicability of paragraph (i) of this  
15 subsection shall be determined as of:

16  
17                   (A) The record date fixed to determine the  
18 shareholders entitled to receive notice of, and to vote at,  
19 the meeting of shareholders to act upon the corporate  
20 action requiring appraisal rights; or

21  
22                   (B) The day before the effective date of  
23 such corporate action if there is no meeting of  
24 shareholders.

1

2 (iii) Paragraph (b)(i) of this section shall not  
3 be applicable and appraisal rights shall be available  
4 pursuant to subsection (a) of this section for the holders  
5 of any class or series of shares who are required by the  
6 terms of the corporate action requiring appraisal rights to  
7 accept for such shares anything other than cash or shares  
8 of any class or any series of shares of any corporation, or  
9 any other proprietary interest of any other entity, that  
10 satisfies the standards set forth in paragraph (b)(i) of  
11 this section at the time the corporate action becomes  
12 effective.

13

14 (iv) Paragraph (b)(i) of this section shall not  
15 be applicable and appraisal rights shall be available  
16 pursuant to subsection (a) of this section for the holders  
17 of any class or series of shares where:

18

19 (A) Any of the shares or assets of the  
20 corporation are being acquired or converted, whether by  
21 merger, share exchange or otherwise, pursuant to the  
22 corporate action by a person, or by an affiliate of a  
23 person, who:

24

1                   (I) Is, or at any time in the one (1)  
2 year period immediately preceding approval by the board of  
3 directors of the corporate action requiring appraisal  
4 rights was, the beneficial owner of twenty percent (20%) or  
5 more of the voting power of the corporation, excluding any  
6 shares acquired pursuant to an offer for all shares having  
7 voting power if such offer was made within one (1) year  
8 prior to the corporate action requiring appraisal rights  
9 for consideration of the same kind and of a value equal to  
10 or less than that paid in connection with the corporate  
11 action; or

12  
13                   (II) Directly or indirectly has, or at  
14 any time in the one (1) year period immediately preceding  
15 approval by the board of directors of the corporation of  
16 the corporate action requiring appraisal rights had, the  
17 power, contractually or otherwise, to cause the appointment  
18 or election of twenty-five percent (25%) or more of the  
19 directors to the board of directors of the corporation; or

20  
21                   (B) Any of the shares or assets of the  
22 corporation are being acquired or converted, whether by  
23 merger, share exchange or otherwise, pursuant to such  
24 corporate action by a person, or by an affiliate of a

1 person, who is, or at any time in the one (1) year period  
2 immediately preceding approval by the board of directors of  
3 the corporate action requiring appraisal rights was, a  
4 senior executive or director of the corporation or a senior  
5 executive of any affiliate thereof, and that senior  
6 executive or director will receive, as a result of the  
7 corporate action, a financial benefit not generally  
8 available to other shareholders as such, other than:

9  
10 (I) Employment, consulting, retirement  
11 or similar benefits established separately and not as part  
12 of or in contemplation of the corporate action;

13  
14 (II) Employment, consulting,  
15 retirement or similar benefits established in contemplation  
16 of, or as part of, the corporate action that are not more  
17 favorable than those existing before the corporate action  
18 or, if more favorable, that have been approved on behalf of  
19 the corporation in the same manner as is provided in W.S.  
20 17-16-862; or

21  
22 (III) In the case of a director of the  
23 corporation who will, in the corporate action, become a  
24 director of the acquiring entity in the corporate action or

1 one of its affiliates, rights and benefits as a director  
2 that are provided on the same basis as those afforded by  
3 the acquiring entity generally to other directors of such  
4 entity or such affiliate.

5  
6 (v) For the purposes of paragraph (iv) of this  
7 subsection only, the term "beneficial owner" means any  
8 person who, directly or indirectly, through any contract,  
9 arrangement, or understanding, other than a revocable  
10 proxy, has or shares the power to vote, or to direct the  
11 voting of, shares, provided that a member of a national  
12 securities exchange shall not be deemed to be a beneficial  
13 owner of securities held directly or indirectly by it on  
14 behalf of another person solely because such member is  
15 precluded by the rules of such exchange from voting without  
16 instruction on contested matters or matters that may affect  
17 substantially the rights or privileges of the holders of  
18 the securities to be voted. When two (2) or more persons  
19 agree to act together for the purpose of voting their  
20 shares of the corporation, each member of the group formed  
21 thereby shall be deemed to have acquired beneficial  
22 ownership, as of the date of such agreement, of all voting  
23 shares of the corporation beneficially owned by any member  
24 of the group.

1

2       (d) Notwithstanding any other provision of this  
3 section, the articles of incorporation as originally filed  
4 or any amendment thereto may limit or eliminate appraisal  
5 rights for any class or series of preferred shares, but any  
6 such limitation or elimination contained in an amendment to  
7 the articles of incorporation that limits or eliminates  
8 appraisal rights for any of such shares that are  
9 outstanding immediately prior to the effective date of the  
10 amendment or that the corporation is or may be required to  
11 issue or sell thereafter pursuant to any conversion,  
12 exchange or other right existing immediately before the  
13 effective date of the amendment shall not apply to any  
14 corporate action that becomes effective within one (1) year  
15 of that date if the action would otherwise afford appraisal  
16 rights.

17

18       **17-16-1303. Assertion of rights by nominees and**  
19 **beneficial owners.**

20

21       (a) A record shareholder may assert ~~dissenters'~~  
22 appraisal rights as to fewer than all the shares registered  
23 in ~~his~~ the record shareholder's name ~~only if he dissents~~  
24 ~~with respect to all shares beneficially~~ but owned by any



1 ~~one (1) person and notifies the corporation in writing of~~  
2 ~~the name and address of each person~~ a beneficial  
3 shareholder only if the record shareholder objects with  
4 respect to all shares of the class or series owned by the  
5 beneficial shareholder on whose behalf ~~he asserts~~  
6 ~~dissenters' rights~~ appraisal rights are being asserted.  
7 The rights of a ~~partial dissenter~~ record shareholder who  
8 asserts appraisal rights for only part of the shares held  
9 of record in the shareholder's name under this subsection  
10 ~~are shall be~~ determined as if the shares as to which ~~he~~  
11 ~~dissents~~ the record shareholder objects and his other  
12 shares were registered in the names of different record  
13 shareholders.

14  
15 (b) A beneficial shareholder may assert ~~dissenters'~~  
16 appraisal rights as to shares of any class or series held  
17 on ~~his~~ behalf of the shareholder only if the shareholder:

18  
19 (i) ~~He~~ Submits to the corporation the record  
20 shareholder's written consent to the ~~dissent not~~ assertion  
21 of appraisal rights no later than the ~~time the beneficial~~  
22 ~~shareholder asserts dissenters' rights~~ date provided in  
23 W.S. 17-16-1322(b) (vi) (B); and

24

1           (ii) ~~He~~Does so with respect to all shares of  
2 ~~which he is~~ the class or series that are beneficially owned  
3 by the beneficial shareholder. ~~or over which he has power~~  
4 ~~to direct the vote.~~

5

6           **17-16-1320. Notice of appraisal rights.**

7

8           (a) If proposed corporate action ~~creating dissenters'~~  
9 ~~rights under W.S. 17-16-1302~~ described in W.S. 17-16-  
10 1302(a) is to be submitted to a vote at a shareholders'  
11 meeting, the meeting notice shall state that the  
12 corporation has concluded that shareholders are, are not or  
13 may be entitled to assert ~~dissenters'~~ appraisal rights  
14 under this article. ~~and be accompanied by a copy of this~~  
15 ~~article.~~

16

17           (b) ~~If corporate action creating dissenters' rights~~  
18 ~~under W.S. 17-16-1302 is taken without a vote of~~  
19 ~~shareholders, the~~ In a merger pursuant to W.S. 17-16-1104,  
20 the parent corporation shall notify in writing all record  
21 shareholders of the subsidiary who are entitled to assert  
22 ~~dissenters'~~ appraisal rights that the corporate action ~~was~~  
23 ~~taken and send them the dissenters' notice~~ became  
24 effective. The notice shall be sent within ten (10) days

1 after the corporate action became effective and shall  
2 include the materials described in W.S. 17-16-1322.

3

4 **17-16-1321. Notice of intent to demand payment.**

5

6 (a) If proposed corporate action ~~creating dissenters'~~  
7 requiring appraisal rights under W.S. 17-16-1302 is  
8 submitted to a vote at a shareholders' meeting, a  
9 shareholder who wishes to assert ~~dissenters'~~appraisal  
10 rights:

11

12 (i) Shall deliver to the corporation before the  
13 vote is taken written notice of his intent to demand  
14 payment ~~for his shares~~ if the proposed action is  
15 effectuated; and

16

17 (ii) Shall not vote ~~his~~or cause or permit to be  
18 voted any shares of that class or series in favor of the  
19 proposed action.

20

21 (b) A shareholder who does not satisfy the  
22 requirements of subsection (a) of this section is not  
23 entitled to payment ~~for his shares~~ under this article.

24

1           **17-16-1322. Appraisal notice and form.**

2

3           (a) If proposed corporate action ~~creating dissenters'~~  
4 requiring appraisal rights under ~~W.S. 17-16-1302 is~~  
5 ~~authorized at a shareholders' meeting~~ W.S. 17-16-1302(a)  
6 becomes effective, the corporation shall deliver a written  
7 ~~dissenters'~~ appraisal notice and form required under  
8 paragraph (b)(iii) of this section to all shareholders who  
9 satisfied the requirements of W.S. 17-16-1321. In the case  
10 of a merger under W.S. 17-16-1104, the parent must deliver  
11 a written appraisal notice and form to all record  
12 shareholders who may be entitled to assert appraisal  
13 rights.

14

15           (b) The ~~dissenters'~~ appraisal notice shall be sent no  
16 earlier than the date the corporate action became effective  
17 and no later than ten (10) days after ~~the corporate action~~  
18 ~~was taken~~ that date, and shall:

19

20           (iii) Supply a form ~~for demanding payment that~~  
21 ~~includes~~ that specifies the date of the first announcement  
22 ~~to news media or~~ to shareholders of the principal terms of  
23 the proposed corporate action and requires ~~that the person~~

1 ~~asserting dissenters'~~ the shareholder asserting the  
2 appraisal rights certify:

3  
4 (A) Whether or not he acquired beneficial  
5 ownership of ~~the~~ those shares for which appraisal right are  
6 asserted was acquired before that date; and

7  
8 (B) That the shareholder did not vote for  
9 the transaction.

10  
11 (v) Be accompanied by a copy of this article;  
12 and-

13  
14 (vi) State:

15  
16 (A) Where the form must be sent and where  
17 certificates for certificated shares must be deposited and  
18 the date by which those certificates must be deposited,  
19 which date may not be earlier than the date for receiving  
20 the required form under subparagraph (vi)(B) of this  
21 subsection;

22  
23 (B) A date by which the corporation must  
24 receive the form which date may not be fewer than forty

1 (40) nor more than sixty (60) days after the date the  
2 appraisal notice and form are sent, and state that the  
3 shareholder shall have waived the right to demand appraisal  
4 with respect to the shares unless the form is received by  
5 the corporation by such specified date;

6  
7 (C) The corporation's estimate of the fair  
8 value of the shares;

9  
10 (D) That, if requested in writing, the  
11 corporation will provide, to the shareholder so requesting,  
12 within ten (10) days after the date specified in  
13 subparagraph (vi)(B) of this subsection the number of  
14 shareholders who return the forms by the specified date and  
15 the total number of shares owned by them; and

16  
17 (E) The date by which the notice to  
18 withdraw under W.S. 17-16-1323 must be received, which date  
19 shall be within twenty (20) days after the date specified  
20 in subparagraph (vi)(B) of this section.

21  
22 **17-16-1323. Perfection of rights; right to withdraw.**

23

1 (a) A shareholder ~~sent a dissenters'~~ who receives  
2 notice ~~described in~~ pursuant to W.S. 17-16-1322 ~~shall~~  
3 ~~demand payment,~~ and who wishes to exercise appraisal rights  
4 shall certify on the form sent by the corporation whether  
5 ~~he~~ the beneficial owner of those shares acquired beneficial  
6 ownership of the shares before the date required to be set  
7 forth in the ~~dissenters'~~ notice pursuant to W.S.  
8 17-16-1322(b)(iii). ~~,~~ and If the shareholder fails to make  
9 this certification, the corporation may elect to treat the  
10 shareholder's shares as after acquired shares under W.S.  
11 17-16-1326. In addition, a shareholder who wishes to  
12 exercise appraisal rights shall execute and return the form  
13 and in the case of certificated shares, deposit his  
14 certificates in accordance with the terms of the notice by  
15 the date referred to in the notice pursuant to W.S. 17-16-  
16 1322(b)(vi)(B). Once a shareholder deposits that  
17 shareholder's certificates or in the case of uncertificated  
18 shares, returns the executed forms, that shareholder loses  
19 all rights as a shareholder unless the shareholder  
20 withdraws pursuant to subsection (b) of this section.

21

22 (b) ~~The~~ A shareholder who ~~demands payment and~~  
23 ~~deposits his share certificates under~~ has complied with  
24 subsection (a) of this section ~~retains all other rights of~~

1 ~~a shareholder until these rights are cancelled or modified~~  
2 ~~by the taking of the proposed corporate action~~ may  
3 nevertheless decline to exercise appraisal rights and  
4 withdraw from the appraisal process by so notifying the  
5 corporation in writing by the date set forth in the  
6 appraisal notice pursuant to W.S. 17-16-1322(b)(vi)(E). A  
7 shareholder who fails to so withdraw from the appraisal  
8 process may not thereafter withdraw without the  
9 corporation's written consent.

10  
11 (c) A shareholder who does not ~~demand payment or~~  
12 execute and return the form and, in the case of  
13 certificated shares, deposit his share certificates where  
14 required, each by the date set forth in the ~~dissenters'~~  
15 notice described in W.S. 17-16-1322(b), is not shall not be  
16 entitled to payment ~~for his shares~~ under this article.

17  
18 **17-16-1325. Payment.**

19  
20 (a) Except as provided in W.S. 17-16-1327, ~~as soon as~~  
21 ~~the proposed corporate action is taken, or upon receipt of~~  
22 a payment demand, within thirty (30) days after the form  
23 required by W.S. 17-16-1322(b)(vi) is due, the corporation  
24 shall pay ~~each dissenter~~ in cash to those shareholders who



1 complied with W.S. 17-16-1323 the amount the corporation  
2 estimates to be the fair value of his shares, plus ~~accrued~~  
3 interest.

4  
5 (b) The payment to each shareholder pursuant to  
6 subsection (a) of this section shall be accompanied by:

7  
8 (i) ~~The corporation's~~ financial statements of  
9 the corporation that issued the shares to be appraised,  
10 consisting of a balance sheet as of the end of a fiscal  
11 year ending not more than sixteen (16) months before the  
12 date of payment, an income statement for that year, a  
13 statement of changes in shareholders' equity for that year,  
14 and the latest available interim financial statements, if  
15 any;

16  
17 (ii) A statement of the corporation's estimate  
18 of the fair value of the shares which estimate shall equal  
19 or exceed the corporation's estimate give pursuant to W.S.  
20 17-16-1322(b)(vi)(C); and

21  
22 (iv) A statement ~~of the dissenter's~~ that  
23 shareholders described in subsection (a) of this section  
24 have the right to demand further payment under W.S.

1 17-16-1328 and that if any such shareholder does not do so  
2 within the time period specified therein the payment is in  
3 full satisfaction of the corporation's obligations under  
4 this article.; ~~and~~

5  
6 **17-16-1327. After-acquired shares.**

7  
8 (a) A corporation may elect to withhold payment  
9 required by W.S. 17-16-1325 from ~~a dissenter unless he was~~  
10 any shareholder who did not certify that the beneficial  
11 ~~owner~~ ownership of all of the shareholder's shares for  
12 which appraisal rights are asserted was acquired before the  
13 date set forth in the ~~dissenters'~~ appraisal notice ~~as the~~  
14 ~~date of the first announcement to news media or to~~  
15 ~~shareholders of the terms of the proposed corporate action~~  
16 sent pursuant to W.S. 17-16-1322(b)(iii).

17  
18 (b) ~~To the extent~~ If the corporation ~~elects~~ elected  
19 to withhold payment under subsection (a) of this section,  
20 ~~after taking the proposed corporate action,~~ it shall  
21 ~~estimate the fair value of the shares, plus accrued~~  
22 ~~interest, and shall pay this amount to each dissenter who~~  
23 ~~agrees to accept it in full satisfaction of his demand.~~  
24 ~~The corporation shall send with its offer a statement of~~

1 ~~its estimate of the fair value of the shares, an~~  
2 ~~explanation of how the interest was calculated, and a~~  
3 ~~statement of the dissenter's right to demand payment under~~  
4 ~~W.S. 17-16-1328~~ within thirty (30) days after the form  
5 required by W.S. 17-16-1322(b)(vi) is due, notify all  
6 shareholders who are described in subsection (a) of this  
7 section:

8  
9 (i) Of the information required by W.S. 17-16-  
10 1325(b)(i);

11  
12 (ii) Of the corporation's estimate of fair value  
13 pursuant to W.S. 17-16-1325(b)(ii);

14  
15 (iii) That they may accept the corporation's  
16 estimate of fair value, plus interest, in full satisfaction  
17 of their demands or demand appraisal under W.S. 17-16-1328;

18  
19 (iv) That those shareholders who wish to accept  
20 such offer must so notify the corporation of their  
21 acceptance of the corporation's offer within thirty (30)  
22 days after receiving the offer; and

23

1           (v) That those shareholders who do not satisfy  
2 the requirements for demanding appraisal under W.S. 17-16-  
3 1328 shall be deemed to have accepted the corporation's  
4 offer.

5  
6           (c) Within ten (10) days after receiving the  
7 shareholder's acceptance pursuant to subsection (b) of this  
8 section, the corporation shall pay in cash the amount it  
9 offered under paragraph (b)(ii) of this section to each  
10 shareholder who agreed to accept the corporation's offer in  
11 full satisfaction of the shareholder's demand.

12  
13           (d) Within forty (40) days after sending the notice  
14 described in subsection (b) of this section, the  
15 corporation shall pay in cash the amount it offered to pay  
16 under paragraph (b)(ii) of this section to each shareholder  
17 described in paragraph (b)(v) of this section.

18  
19           **17-16-1328. Procedure if shareholder dissatisfied**  
20 **with payment or offer.**

21  
22           (c) A shareholder paid pursuant to W.S. 17-16-1325  
23 who is dissatisfied with the amount of the payment shall  
24 notify the corporation in writing of that shareholder's

1 estimate of the fair value of the shares and demand payment  
2 of that estimate plus interest, less any payment under W.S.  
3 17-16-1325. A shareholder offered payment under W.S. 17-  
4 16-1327 who is dissatisfied with the offer may reject the  
5 offer and demand payment of the fair value of his shares  
6 and interest due.

7  
8 (d) A shareholder who fails to notify the corporation  
9 in writing of that shareholder's demand to be paid the  
10 shareholder's stated estimate of the fair value plus  
11 interest under subsection (c) of this section within thirty  
12 (30) days after receiving the corporation's payment or  
13 offer of payment under section W.S. 17-16-1325 or W.S. 17-  
14 16-1327, respectively, waives the right to demand payment  
15 under this section and shall be entitled only to the  
16 payment made or offered pursuant to those respective  
17 sections.

18  
19 **17-16-1330. Court action.**

20  
21 (a) If a shareholder makes a demand for payment under  
22 W.S. 17-16-1328 which remains unsettled, the corporation  
23 shall commence a proceeding within sixty (60) days after  
24 receiving the payment demand and petition the court to

1 determine the fair value of the shares and accrued  
2 interest. If the corporation does not commence the  
3 proceeding within the sixty (60) day period, it shall pay  
4 in cash to each ~~dissenter whose demand remains unsettled~~  
5 shareholder the amount the shareholder demanded pursuant to  
6 W.S. 17-16-1328 plus interest.

7  
8 (b) The corporation shall commence the proceeding in  
9 the ~~district~~ appropriate court of the county where a  
10 corporation's principal office, or if none, ~~in this state,~~  
11 its registered office in this state, is located. If the  
12 corporation is a foreign corporation without a registered  
13 office in this state, it shall commence the proceeding in  
14 the county in this state where the principal office or  
15 registered office of the domestic corporation merged with  
16 ~~or whose shares were acquired by~~ the foreign corporation  
17 was located at the time of the transaction.

18  
19 (c) The corporation shall make all ~~dissenters~~  
20 shareholders, whether or not residents of this state, whose  
21 demands remain unsettled parties to the proceeding as in an  
22 action against their shares and all parties shall be served  
23 with a copy of the petition. Nonresidents may be served by

1 registered or certified mail or by publication as provided  
2 by law.

3

4 (d) The jurisdiction of the court in which the  
5 proceeding is commenced under subsection (b) of this  
6 section is plenary and exclusive. The court may appoint  
7 one (1) or more persons as appraisers to receive evidence  
8 and recommend decision on the question of fair value. The  
9 appraisers have the powers described in the order  
10 appointing them, or in the amendment to it. The ~~dissenters~~  
11 shareholders demanding appraisal are entitled to the same  
12 discovery rights as parties in other civil proceedings.  
13 There shall be no right to a jury trial.

14

15 (e) Each ~~dissenter~~shareholder made a party to the  
16 proceeding is entitled to judgment for:

17

18 (i) The amount, if any, by which the court finds  
19 the fair value of his shares, plus interest, exceeds the  
20 amount paid by the corporation to the shareholder for his  
21 shares; or

22

23 (ii) The fair value, plus ~~accrued~~ interest, of  
24 ~~his after-acquired~~ the shareholder's shares for which the

1 corporation elected to withhold payment under W.S.  
2 17-16-1327.

3

4 **17-16-1331. Court costs and counsel fees.**

5

6 (a) The court in an appraisal proceeding commenced  
7 under W.S. 17-16-1330 shall determine all costs of the  
8 proceeding, including the reasonable compensation and  
9 expenses of appraisers appointed by the court. The court  
10 shall assess the costs against the corporation, except that  
11 the court may assess costs against all or some of the  
12 ~~dissenters~~ shareholders demanding appraisal, in amounts the  
13 court finds equitable, to the extent the court finds ~~the~~  
14 ~~dissenters~~ those shareholders acted arbitrarily,  
15 vexatiously, or not in good faith ~~in demanding payment~~  
16 ~~under W.S. 17-16-1328~~ with respect to the rights provided  
17 by this article.

18

19 (b) The court in an appraisal proceeding may also  
20 assess the fees and expenses of counsel and experts for the  
21 respective parties, in amounts the court finds equitable:

22

23 (i) Against the corporation and in favor of any  
24 or all ~~dissenters~~ shareholders demanding appraisal if the



1 court finds the corporation did not substantially comply  
2 with the requirements of W.S. 17-16-1320, ~~through~~  
3 ~~17-16-1328~~ 17-16-1322, 17-16-1325 or 17-16-1327; or

4  
5 (ii) Against either the corporation or a  
6 ~~dissenter~~ shareholder demanding appraisal, in favor of any  
7 other party, if the court finds that the party against whom  
8 the fees and expenses are assessed acted arbitrarily,  
9 vexatiously, or not in good faith with respect to the  
10 rights provided by this article.

11  
12 (c) If the court in an appraisal proceeding finds  
13 that the services of counsel for any ~~dissenter~~ shareholder  
14 were of substantial benefit to other ~~dissenters~~  
15 shareholders similarly situated, and that the fees for  
16 those services should not be assessed against the  
17 corporation, the court may award to these counsel  
18 reasonable fees to be paid out of the amounts awarded the  
19 ~~dissenters~~ shareholders who were benefited.

20  
21 (d) To the extent the corporation fails to make a  
22 required payment pursuant to W.S. 17-16-1325, 17-16-1327 or  
23 17-16-1328, the shareholder may sue directly for the amount  
24 owed and, to the extent successful, shall be entitled to

1 recover from the corporation all costs and expenses of the  
2 suit including counsel fees.

3

4 **17-16-1402. Dissolution by board of directors and**  
5 **shareholders.**

6

7 (d) The corporation shall notify each shareholder,  
8 whether or not entitled to vote, of the proposed  
9 shareholders' meeting. ~~in accordance with W.S. 17-16-705.~~  
10 The notice shall also state that the purpose, or one (1) of  
11 the purposes, of the meeting is to consider dissolving the  
12 corporation.

13

14 (e) Unless the articles of incorporation or the board  
15 of directors, acting pursuant to subsection (c) of this  
16 section, require a greater vote, a greater number of shares  
17 to be present or a vote by voting groups, adoption of the  
18 proposal to dissolve ~~to be adopted~~ shall ~~be approved by~~  
19 require the approval of the shareholders at a meeting at  
20 which a majority of ~~all~~ the votes entitled to be cast ~~on~~  
21 ~~that proposal~~ exists.

22

23 **17-16-1403. Articles of dissolution.**

24

1 (a) At any time after dissolution is authorized, the  
2 corporation may dissolve by delivering to the secretary of  
3 state for filing articles of dissolution setting forth:

4  
5 (ii) The date dissolution was authorized; and

6  
7 (iii) If dissolution was approved by the  
8 shareholders, a statement that the proposal to dissolve was  
9 duly approved by the shareholders in the manner required by  
10 this act and by the articles of incorporation.‡

11  
12 **17-16-1404. Revocation of dissolution.**

13  
14 (c) After the revocation of dissolution is  
15 authorized, the corporation may revoke the dissolution by  
16 delivering to the secretary of state for filing articles of  
17 revocation of dissolution, together with a copy of its  
18 articles of dissolution, that set forth:

19  
20 (i) The name of the corporation; ~~which shall~~  
21 ~~satisfy the requirements of W.S. 17-16-401;~~

1 (vi) If shareholder action was required to  
2 revoke the dissolution, the information required by W.S.  
3 17-16-1403(a) (iii) ~~. or (iv).~~

4  
5 (e) When the revocation of dissolution is effective,  
6 it relates back to and takes effect as ~~if~~of the effective  
7 date of the dissolution and the corporation resumes  
8 carrying on its business as if dissolution had never  
9 occurred~~.~~, ~~except the corporation may be required to adopt~~  
10 ~~some other name by amending its articles of incorporation~~  
11 ~~in the manner provided by this act so its name satisfies~~  
12 ~~the requirements of W.S. 17-16-401.~~

13  
14 **17-16-1406. Known claims against dissolved**  
15 **corporation.**

16  
17 (a) A dissolved corporation may dispose of the known  
18 claims against it by ~~following the procedure described in~~  
19 ~~this section~~ notifying its known claimants in writing of  
20 the dissolution at any time after its effective date.

21  
22 (b) ~~The dissolved corporation shall notify its known~~  
23 ~~claimants in writing, by mail or private carrier or by~~

1 ~~personal delivery, of the dissolution at any time after its~~  
2 ~~effective date.~~ The written notice shall:

3  
4 **17-16-1407. Other claims against dissolved**  
5 **corporation.**

6  
7 (a) A dissolved corporation may also publish notice  
8 of its dissolution and request that persons with claims  
9 against the dissolved corporation present them in  
10 accordance with the notice.

11  
12 (b) The notice shall:

13  
14 (iii) State that a claim against the dissolved  
15 corporation will be barred unless a proceeding to enforce  
16 the claim is commenced within ~~four (4)~~ three (3) years ~~or~~  
17 ~~the applicable statute of limitations, whichever is less,~~  
18 after the publication of the notice.

19  
20 (c) If the dissolved corporation publishes a  
21 newspaper notice in accordance with subsection (b) of this  
22 section, the claim of each of the following claimants is  
23 barred unless the claimant commences a proceeding to  
24 enforce the claim against the dissolved corporation within

1 ~~four (4)~~ three (3) years after the publication date of the  
2 newspaper notice:

3  
4 (i) A claimant who ~~did not receive~~ was not given  
5 written notice under W.S. 17-16-1406;

6  
7 (d) A claim that is not barred by W.S. 17-16-1406(c)  
8 or 17-16-1407(c) may be enforced; ~~under this section:~~

9  
10 (ii) Except as provided in W.S. 17-16-1408(d),  
11 if the assets have been distributed in liquidation, against  
12 a shareholder of the dissolved corporation to the extent of  
13 his pro rata share of the claim or the corporate assets  
14 distributed to him in liquidation, whichever is less, but a  
15 shareholder's total liability for all claims under this  
16 section may not exceed the total amount of assets  
17 distributed to him.

18  
19 **17-16-1420. Grounds for administrative dissolution.**

20  
21 (a) The secretary of state may commence a proceeding  
22 under W.S. 17-16-1421 to administratively dissolve a  
23 corporation if:

24

1 (iv) The corporation does not deliver its annual  
2 reports ~~or pay the annual license taxes~~ to the secretary of  
3 state ~~when~~ within thirty (30) days after it is due ~~pursuant~~  
4 ~~to W.S. 17-16-1630~~; or

5  
6 (vi) The corporation does not pay within sixty  
7 (60) days after they are due any franchise taxes or  
8 penalties imposed by this act or other law.

9  
10 **17-16-1421. Procedure for and effect of**  
11 **administrative dissolution.**

12  
13 (a) If the secretary of state determines that one (1)  
14 or more grounds exist under W.S. 17-16-1420 for dissolving  
15 a corporation, he shall serve the corporation with written  
16 notice of his determination under W.S. 17-16-504., ~~except~~  
17 ~~for W.S. 17-16-1420(a)(iii) in which case dissolution is by~~  
18 ~~choice and therefore automatic and W.S. 17-16-1420(a)(iv)~~  
19 ~~in which case notice of the proposed dissolution shall be~~  
20 ~~given only as provided in subsection (c) of this section.~~

21  
22 (b) If the corporation does not correct each ground  
23 for dissolution or demonstrate to the reasonable  
24 satisfaction of the secretary of state that each ground

1 determined by the secretary of state does not exist within  
2 sixty (60) days after service of the notice is perfected  
3 under W.S. 17-16-504, the secretary of state shall  
4 administratively dissolve the corporation by signing,  
5 ~~either manually or in facsimile,~~ a certificate of  
6 dissolution that recites the ground or grounds for  
7 dissolution and its effective date. The secretary of state  
8 shall file the original of the certificate and serve a copy  
9 on the corporation under W.S. 17-16-504. ~~The provisions of~~  
10 ~~subsection (e) of this section shall govern the procedures~~  
11 ~~for dissolution pursuant to W.S. 17-16-1420(a)(iv).~~

12

13 (c) A corporation administratively dissolved ~~under~~  
14 ~~W.S. 17-16-1420~~ continues its corporate existence but may  
15 not carry on any business except that necessary to wind up  
16 and liquidate its business and affairs under W.S.  
17 17-16-1405 and notify claimants under W.S. 17-16-1406 and  
18 17-16-1407.

19

20 **17-16-1422. Reinstatement following administrative**  
21 **dissolution.**

22

23 (a) A corporation administratively dissolved under  
24 W.S. 17-16-1421 may apply to the secretary of state for



1 reinstatement within two (2) years after the effective date  
2 of dissolution. ~~Reinstatement may be denied by the~~  
3 ~~secretary of state if the corporation has been the subject~~  
4 ~~of secretary of state and law enforcement investigation~~  
5 ~~pertaining to fraud or any other violation of state or~~  
6 ~~federal law, or if there is other reason to believe the~~  
7 ~~corporation was engaged in illegal operations.~~ The  
8 application shall:

9  
10 (v) State that the corporation's name satisfies  
11 the requirements of W.S. 17-16-401; and

12  
13 (vi) Contain a certificate from the secretary of  
14 state reciting that all fees and taxes owed by the  
15 corporation have been paid.

16  
17 **17-16-1506. Corporate name of foreign corporation.**

18  
19 (a) If the corporate name of a foreign corporation  
20 does not satisfy the requirements of W.S. 17-16-401, the  
21 foreign corporation to obtain or maintain a certificate of  
22 authority to transact business in this state: ~~may use a~~  
23 ~~fictitious name to transact business in this state if its~~  
24 ~~real name is unavailable and it delivers to the secretary~~

1 ~~of state for filing a copy of the resolution of its board~~  
2 ~~of directors, certified by its secretary, adopting the~~  
3 ~~fictitious name.~~

4  
5 (i) May add the word corporation, incorporated,  
6 company or limited or the abbreviation corp., inc. or ltd.  
7 to its corporate name of use in this state; or

8  
9 (ii) May use a fictitious name to transact  
10 business in this state if its real name is unavailable and  
11 it delivers to the secretary of state for filing a copy of  
12 the resolution of its board of directors, certified by its  
13 secretary, adopting the fictitious name.

14  
15 (b) Except as authorized by subsections (c) and (d)  
16 of this section, the corporate name, including a fictitious  
17 name, of a foreign corporation shall not be the same as, or  
18 deceptively similar to the name of any trademark or service  
19 mark registered in this state and shall be distinguishable  
20 upon the records of the secretary of state from: ~~other~~  
21 ~~business names as required by W.S. 17-16-401.~~

22

1           (i) The corporate name of a corporation  
2 incorporated or authorized to transact business in this  
3 state;

4  
5           (ii) A corporate name reserved or registered  
6 under W.S. 17-16-402 or 17-16-403;

7  
8           (iii) The fictitious name of another foreign  
9 corporation authorized to transact business in this state;  
10 and

11  
12           (iv) The corporate name of a nonprofit  
13 corporation incorporated or authorized to transact business  
14 in this state.

15  
16           (c) A foreign corporation may apply to the secretary  
17 of state for authorization to use ~~a~~ in this state the name  
18 of another corporation incorporated or authorized to  
19 transact business in this state that is not distinguishable  
20 ~~in accordance with the provisions of W.S. 17-16-401(c) upon~~  
21 his records from the name applied for. The secretary of  
22 state shall authorize use of the name applied for if:

23

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

6  
7           (iv) The applicant delivers to the secretary of  
8 state a certified copy of a final judgment of a court of  
9 competent jurisdiction establishing the applicant's right  
10 to use the name applied for in this state.

11  
12           **17-16-1530. Grounds for revocation.**

13  
14           (a) The secretary of state may commence a proceeding  
15 under W.S. 17-16-1531 to revoke the certificate of  
16 authority of a foreign corporation authorized to transact  
17 business in this state if:

18  
19           (vi) The secretary of state receives a duly  
20 authenticated certificate from the secretary of state or  
21 other official having custody of corporate records in the  
22 state or country under whose law the foreign corporation is  
23 incorporated stating that it has been dissolved or  
24 disappeared as a result of a merger.

1

2

**17-16-1602. Inspection of records by shareholders.**

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**17-16-1603. Scope of inspection right.**

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(b) A shareholder ~~who has been of record for at least six (6) months immediately preceding his demand and who shall be the holder of record of at least five percent (5%) of all the outstanding shares of a corporation~~ is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder ~~he represents~~ represented.

(b) The right to copy records under W.S. 17-16-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means, including

1 copies through an electronic transmission if available and  
2 so requested by the shareholder.

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4 (d) The corporation may comply at its expense with a  
5 shareholder's demand to inspect the record of shareholders  
6 under W.S. 17-16-1602(b)(iii) by providing him with a list  
7 of its shareholders that was compiled no earlier than the  
8 date of the shareholder's demand.

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10 **17-17-111. Share transfer prohibition.**

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12 (b) Except to the extent the articles of  
13 incorporation provide otherwise, this section does not  
14 apply to a transfer:

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16 (v) By merger, consolidation or share exchange  
17 under W.S. 17-16-1101 through ~~17-16-1114~~17-16-1109, or an  
18 exchange of existing shares for other shares of a different  
19 class or series in the corporation;

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21 **17-18-301. Definitions.**

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23 (a) As used in this article:  
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1           (iii) "Control share acquisition" means the  
2 acquisition directly or indirectly by any person of  
3 ownership of, or the power to direct the exercise of voting  
4 power with respect to, issued and outstanding control  
5 shares. Shares acquired within ninety (90) days or shares  
6 acquired pursuant to a plan to make a control share  
7 acquisition are considered to have been acquired in the  
8 same acquisition. Control share acquisition does not  
9 include the acquisition of shares:

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11           (B) Of an issuing public corporation  
12 consummated:

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14           (V) Pursuant to a merger, share  
15 exchange or consolidation effected in compliance with W.S.  
16 17-16-1101 through ~~17-16-1114~~ 17-16-1109 or an agreement or  
17 plan for a merger, share exchange or consolidation, if the  
18 issuing public corporation is a party to the agreement or  
19 plan of merger, share exchange or consolidation;

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21           **Section 3.** W.S. 17-16-120(j)(i) through (iii),  
22 17-16-401(f), 17-16-601(d), 17-16-744(b), 17-16-803(c),  
23 17-16-809(b) and (c), 17-16-830(b) through (e), 17-16-831,  
24 17-16-842(b) through (e), 17-16-850(a)(iii),

1 17-16-856(a)(iii), 17-16-1002, 17-16-1003(a), (b), (d) and  
2 (e), 17-16-1004(a)(i), 17-16-1006(a)(vi), 17-16-1007(c),  
3 (d)(i) and (ii), 17-16-1008(c), 17-16-1021, 17-16-1101(c),  
4 17-16-1102(c), 17-16-1103(a) through (j), 17-16-1104(b)  
5 through (e), 17-16-1105(a)(i) through (iii) and (b),  
6 17-16-1106(a)(i) through (iv), 17-16-1107, 17-16-1110  
7 through 17-16-1116, 17-16-1201(b), 17-16-1202(b),  
8 17-16-1301(a)(iii), 17-16-1302(a)(iv)(A) through (E),  
9 17-16-1322(b)(i), (ii) and (iv), 17-16-1324,  
10 17-16-1325(b)(iii) and (v), 17-16-1326, 17-16-1328(a) and  
11 (b), 17-16-1403(a)(iii)(A) through (B) and (iv), 17-16-  
12 1420(a)(v), 17-16-1421(e), 17-16-1422(a)(iv) and (d) and  
13 17-16-1501(d) are repealed.

14

15 **Section 3.** This act is effective July 1, 2007.

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(END)