

TITLE 17
CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

CHAPTER 16
WYOMING BUSINESS CORPORATION ACT

ARTICLE 1
GENERAL PROVISIONS

17-16-101. Short title.

This act shall be known and may be cited as the "Wyoming Business Corporation Act."

17-16-102. Reservation of power to amend or repeal.

The legislature has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

17-16-120. Filing requirements.

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

(b) This act shall require or permit filing the document in the office of the secretary of state.

(c) The document shall contain the information required by this act. It may contain other information as well.

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

(e) The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by an English translation acceptable to the secretary of state.

(f) The document shall be executed:

(i) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

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

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

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

(i) The corporate seal;

(ii) An attestation by the secretary or an assistant secretary;

(iii) An acknowledgment, verification or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under W.S. 17-16-121, the document shall be in or on the prescribed form.

(j) The document shall be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact copy to be delivered with the document, except as provided in W.S. 17-28-103. and shall be accompanied by:

~~(i) One (1) exact or conformed copy except as provided in W.S. 17-28-103;~~

~~(ii) The correct filing fee; and~~

~~(iii) Any franchise tax, license fee, or penalty required by this act or other law.~~

(k) When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any

franchise tax, license fee or penalty required to be paid therewith by this act or other law shall be paid or provision for payment made in a manner provided by the secretary of state.

17-16-121. Forms.

(a) If the secretary of state so requires, use of forms provided by the secretary of state pursuant to this subsection is mandatory. The secretary of state may prescribe and furnish on request forms for:

(i) An application for a certificate of existence;

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

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

(iv) The annual report;

(v) A foreign corporation's application for a certificate of continuance;

(vi) An application for a certificate of transfer;

(vii) A foreign corporation's application for certificate of domestication; and

(viii) A consent of registered agent to appointment.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

17-16-122. Filing, service and copying fees.

The secretary of state shall set and collect filing, service and copying fees to recover his costs to administer this act. Fees shall not exceed the costs of providing these services.

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

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

(i) At the time of filing on the date it is filed, as evidenced by ~~the secretary of state's date and time endorsement on the original document~~ such means as the secretary of state may use for the purpose of recording the date and time of filing; or

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

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth (90th) day after the date it is filed.

17-16-124. Correcting filed document.

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

(i) Contains an ~~incorrect statement~~ inaccuracy; ~~or~~

(ii) Was defectively executed, attested, sealed, verified, or acknowledged; or

(iii) The electronic transmission was defective.

(b) A document is corrected:

(i) By preparing articles of correction that:

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

(B) Specify the ~~incorrect statement and the reason it is incorrect or the manner in which the execution was defective~~ inaccuracy or defect to be corrected; and

(C) Correct the incorrect statement or ~~defective execution~~ defect.

(ii) By delivering the articles of correction to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

17-16-125. Filing duty of secretary of state.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of W.S. 17-16-120, the secretary of state shall file the document.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his official title and the date and time of filing, on both the original and the document copy and on the receipt for the filing fee. The secretary of state may proscribe rules for filing of electronic transmissions. After filing a document, except as provided in W.S. 17-28-103, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative. The secretary of state, in his discretion, may issue a certificate evidencing the filing of a document upon the payment of the requisite fee.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

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

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

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

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

17-16-126. Appeal from secretary of state's refusal to file document.

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may, within thirty (30) days after the return of the document, appeal the refusal to the district court of the county where the corporation's principal office is located in the state or, if the corporation does not have a principal office in the state, the district court of the county where its registered office is or will be located, or the district court of the county of residence of an incorporator for a domestic corporation, or in the district court of Laramie county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

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

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

17-16-127. Evidentiary effect of copy of filed document.

A certificate ~~attached to a copy of a document filed by~~ from the secretary of state, ~~bearing his signature (which may be in facsimile) and the seal of this state,~~ delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

17-16-128. Certificate of existence.

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

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

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

(ii) That:

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

(B) The foreign corporation is authorized to transact business in this state.

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

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

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

(iv) That its most recent annual report required by W.S. 17-16-1630 has been filed by the secretary of state;

(v) That articles of dissolution have not been filed; and

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

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

17-16-129. REPEALED

17-16-130. Powers.

The secretary of state has the power reasonably necessary to perform the duties required of him by this act. The secretary of state shall promulgate reasonable forms, rules and regulations necessary to carry out the purposes of this act.

17-16-140. Definitions.

(a) In this act:

(i) "Articles of incorporation" ~~include amended and restated~~ means the original articles of incorporation, ~~and articles of merger~~ all amendments thereof and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under any provision of this act. If an amendment of the articles or any other document filed under this act restates the articles in their entirety thenceforth the articles shall not include any prior documents;

(ii) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;

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

(iv) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this act;

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

(vi) "Distribution" means a direct or indirect transfer of money or other property, except the corporation's own shares, or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(vii) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state;

~~(vii)~~(viii) "Effective date of notice" is defined in W.S. 17-16-141;

(ix) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation;

(x) "Eligible interests" means interests;

~~(viii)~~(xi) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee;

~~(ix)~~(xii) "Entity" includes corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, or two (2) or more persons having a joint or common economic interest, and state, United States or foreign government;

(xiii) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter;

(xiv) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;

~~(x)~~(xv) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state;

~~(xi)~~(xvi) "Governmental subdivision" includes authority, county, district, municipality, and any other political subdivision;

~~(xii)~~(xvii) "Includes" denotes a partial definition;

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

(xix) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

(xx) "Interest holder" means a person who holds of record an interest;

~~(xiv)~~ (xxi) "Means" denotes an exhaustive definition;

~~(xv)~~ (xxii) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation;

(xxiii) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic document;

~~(xvi)~~ (xxiv) "Notice" is defined in W.S. 17-16-141;

(xxv) "Organic document" means a public organic document or a private organic document;

(xxvi) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;

(xxvii) "Owner liability" means personal liability for a debt, obligation or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person's status as a shareholder or interest holder; or

(B) By the articles of incorporation, bylaws or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws or an organic document to make one or more specified shareholders or interest holders liable in their capacity as shareholders or interest holders for all or specified debts, obligations or liabilities of the entity.

~~(xvii)~~ (xxviii) "Person" includes an individual, partnership, joint venture, corporation, joint stock company, limited liability company or any other association or entity, public or private;

~~(xviii)~~(xxix) "Principal office" means the office within or outside of this state, so designated in the annual report;

(xxx) "Private organic document" means any document other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated;

(xxxii) "Public organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated;

~~(xix)~~(xxxiii) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(xxxiiii) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association;

(xxxv) "Qualified director" is defined in W.S. 17-16-143;

~~(xx)~~(xxxvi) "Record date" means the date established under article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

~~(xxi)~~(xxxvii) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under W.S. 17-16-840(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

~~(xxii)~~(xxxviii) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

~~(xxiii)~~ (xxxviii) "Shares" means the units into which the proprietary interests in a corporation are divided;

(xxxix) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature;

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

~~(xxv)~~ (xli) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation;

(xlii) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States or a foreign government. The term includes, but is not limited to, a general partnership, limited liability company, limited partnership, limited liability limited partnership, registered limited liability partnership, statutory trust, cooperative, joint venture and unincorporated nonprofit association;

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

~~(xxvii)~~ (xliv) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this act to vote generally on the matter are for that purpose a single voting group;

(xlv) "Voting power" means the current power to vote in the election of directors;

~~(xxviii)~~ (xlvi) "Electronic transmission" or "transmitted electronically" means any process of communication not directly involving the physical transfer of paper that is

suitable for the retention, retrieval and reproduction of information by the recipient;

~~(xxix)~~ (xlvii) "Registered agent" means as provided in W.S. 17-28-101 through 17-28-111;

~~(xxx)~~ (xlviii) "This act" means W.S. 17-16-101 through 17-16-1803.

17-16-141. Notice.

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

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

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective: ~~when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders~~

(i) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of the shareholders; or

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

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

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

(i) When received;

(ii) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(iii) On the date shown on the return receipt, if sent by registered or certified mail, or comparable private carrier, return receipt requested, and the receipt is signed, either manually or in facsimile, by or on behalf of the addressee.

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

(g) If this act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this act, those requirements govern.

17-16-142. Number of shareholders.

(a) For purposes of this act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one (1) shareholder:

(i) Three (3) or fewer coowners;

(ii) A corporation, partnership, trust, estate, or other entity; or

(iii) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this act, shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

17-16-143. Qualified director.

(a) A "qualified director" is a director who, at the time action is to be taken under:

(i) W.S. 17-16-744, does not have:

(A) A material interest in the outcome of the proceeding; or

(B) A material relationship with a person who has such an interest;

(ii) W.S. 17-16-853 or 17-16-855:

(A) Is not a party to the proceeding;

(B) Is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under W.S. 17-16-870, which transaction or disclaimer is challenged in the proceeding; and

(C) Does not have a material relationship with a director described in either subparagraph (A) or (B) of this paragraph;

(iii) W.S. 17-16-862, is not a director as to whom the transaction is a director's conflicting interest transaction, or a director who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(iv) W.S. 17-16-870, would be a qualified director under paragraph (iii) of this subsection if the business opportunity were a director's conflicting interest transaction.

(b) For purposes of this section:

(i) "Material relationship" means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(ii) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably

be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(i) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;

(ii) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(iii) With respect to action to be taken under W.S. 17-16-744, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

17-16-144. Householding.

(a) A corporation has delivered written notice or any other report or statement under this act, the articles of incorporation or the bylaws to all shareholders who share a common address if:

(i) The corporation delivers one copy of the notice, report or statement to the common address;

(ii) The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(iii) Each of those shareholders consents to delivery of a single copy of such notice, report or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking

shareholder no later than thirty (30) days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty (60) days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

ARTICLE 2
INCORPORATION

17-16-201. Incorporators.

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

17-16-202. Articles of incorporation.

(a) The articles of incorporation shall set forth:

(i) A corporate name for the corporation that satisfies the requirements of W.S. 17-16-401;

(ii) The number of shares the corporation is authorized to issue, which may be unlimited if so stated;

(iii) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(iv) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

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

(ii) Provisions not inconsistent with law including:

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

(B) Managing the business and regulating the affairs of the corporation;

(C) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(D) A par value for authorized shares or classes of shares;

(E) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(iii) Any provision that under this act is required or permitted to be set forth in the bylaws;

(iv) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(A) The amount of financial benefit received by a director to which he is not entitled;

(B) An intentional infliction of harm on the corporation or shareholders;

(C) A violation of W.S. 17-16-833; or

(D) An intentional violation of criminal law; and

(v) A provision permitting or making obligatory indemnification of a director for liability (as defined in W.S. 17-16-850(a)(v)) to any person for any action taken, or failure to take any action, as a director, except liability for:

(A) Receipt of a financial benefit to which he is not entitled;

(B) An intentional infliction of harm on the corporation or its shareholders;

(C) A violation of W.S. 17-16-833; or

(D) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

(d) The articles of incorporation shall be accompanied by a written consent to appointment ~~manually~~ signed by the registered agent.

17-16-203. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

17-16-204. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this act, are jointly and severally liable for all liabilities created while so acting.

17-16-205. Organization of corporation.

(a) After incorporation:

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

(ii) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to:

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

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

(b) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed, ~~either manually or in facsimile,~~ by each incorporator.

(c) An organizational meeting may be held within or outside of this state.

(d) Within sixty (60) days after filing articles of incorporation, a corporation shall provide information to its registered agent as required by W.S. 17-28-107.

17-16-206. Bylaws.

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

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

(c) If bylaws are not adopted:

(i) An annual meeting shall be held within three (3) months after the close of the corporation's fiscal year;

(ii) The required officers shall be the president, the secretary and the treasurer; and

(iii) Bylaws may be adopted at any director or shareholder meeting.

17-16-207. Emergency bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(i) Procedures for calling a meeting of the board of directors;

(ii) Quorum requirements for the meeting; and

(iii) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(i) Binds the corporation; and

(ii) May not be used to impose liability on a corporate director, officer, employee, or agent.

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

ARTICLE 3
PURPOSES AND POWERS

17-16-301. Purposes.

(a) Every corporation incorporated under this act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this act only if permitted by, and subject to all limitations of, the other statute.

17-16-302. General powers.

(a) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

(i) Sue and be sued, complain and defend in its corporate name;

(ii) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(iii) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

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

(v) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

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

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

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

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

(x) Conduct its business, locate offices, and exercise the powers granted by this act within or without this state;

(xi) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(xii) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

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

(xiv) Transact any lawful business; and

(xv) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

17-16-303. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

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

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

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

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

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

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

(i) Binds the corporation; and

(ii) May not be used to impose liability on a corporate director, officer, employee, or agent.

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

17-16-304. Ultra vires.

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

(b) A corporation's power to act may be challenged in a proceeding by:

(i) A shareholder against the corporation to enjoin the act;

(ii) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative,

against an incumbent or former director, officer, employee, or agent of the corporation; or

(iii) The attorney general under W.S. 17-16-1430.

(c) In a shareholder's proceeding under paragraph (b)(i) of this section to enjoin an unauthorized corporate act the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

ARTICLE 4
NAME

17-16-401. Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by W.S. 17-16-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as, or deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from the name of any profit or nonprofit corporation, trade name, limited liability company, statutory trust company, limited partnership or other business entity organized, continued or domesticated under the laws of this state or licensed or registered as a foreign profit or nonprofit corporation, foreign limited partnership, foreign joint stock company, foreign statutory trust company, foreign limited liability company or other foreign business entity in this state or any fictitious or reserved name.

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

(i) The other ~~person whose name is not distinguishable from the name which the applicant desires to register or reserve, irrevocably~~ corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant; or

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

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated

or authorized to transact business in this state and the proposed user corporation:

(i) Has merged with the other corporation; or

(ii) Has been formed by reorganization of the other corporation; or

(iii) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation;
or-

(iv) Repealed By Laws 1996, ch. 80, § 3.

(v) Where the other corporation is affiliated with the proposed user corporation and has consented in writing to the use of the name by the proposed user corporation, and the written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two corporations using the same name will be temporary.

(e) This act does not control the use of fictitious names.

(f) A name is distinguishable from other names, on the records of the secretary of state, if it contains one (1) or more different letters or numerals, or if it has a different sequence of letters or numerals from the other names on the secretary of state's records. Differences which are not distinguishable are:

(i) The words or abbreviations of the words "corporation," "company," "incorporated," "limited partnership," "L.P.," "limited," "ltd.," "limited liability company," "limited company," "L.C." or "L.L.C.";

(ii) The presence or absence of the words or symbols of the words "the," "and" or "a";

(iii) Differences in punctuation and special characters;

(iv) Differences in capitalization; or

(v) Differences between singular and plural forms of words.

(g) The secretary of state has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed by this section.

17-16-402. Reserved name.

(a) A person may apply to reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, he shall ~~file the application pursuant to W.S. 17-16-125 and~~ reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty (120) day period.

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

ARTICLE 5
OFFICE AND AGENT

17-16-501. Registered office and registered agent.

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

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all corporations.

17-16-502. repealed.

17-16-503. Repealed.

17-16-504. Repealed.

17-16-505. repealed.

17-16-506. repealed.

17-16-507. Repealed.

17-16-508. repealed.

17-16-509. repealed.

ARTICLE 6
SHARES AND DISTRIBUTIONS

17-16-601. Authorized shares.

(a) The articles of incorporation shall ~~prescribe~~ set forth the classes of shares and series of shares within a class, and the number, which may be unlimited, of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and shall prescribe, prior to the issuance of shares of a class or series, the terms, including preferences, rights and limitations, ~~and relative rights~~ of that class ~~shall be described in the articles of incorporation or series~~. Except to the extent varied as permitted by this section, all shares of a class or series shall have terms, including preferences, rights and limitations, ~~and relative rights that are~~ identical with those of other shares of the same class ~~except to the extent otherwise permitted by W.S. 17-16-602 or series~~.

(b) The articles of incorporation shall authorize:

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

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

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

(i) Have special, conditional, or limited voting rights, or no right to vote, except to the extent ~~prohibited otherwise provided~~ by this act;

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

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

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

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

(iii) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(iv) Have preference over any other class or series of shares with respect to distributions, including ~~dividends and~~ distributions upon the dissolution of the corporation.

(d) The description of the ~~designations,~~ preferences, rights and limitations, ~~and relative rights~~ of ~~share classes~~ classes or series of shares in subsection (c) of this section is not exhaustive.

(e) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation.

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

17-16-602. Terms of class or series determined by board of directors.

(a) If the articles of incorporation so provide, the board of directors ~~may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in W.S. 17-16-601, of~~ is authorized, without shareholder approval, to:

~~(i) Any class of shares before the issuance of any shares of that class; or~~

~~(ii) One (1) or more series within a class before the issuance of any shares of that series.~~

(iii) Classify any unissued shares into one (1) or more classes or into one (1) or more series within a class;

(iv) Reclassify any unissued shares of any class into one (1) or more classes or into one (1) or more series within one (1) or more classes; or

(v) Reclassify any unissued shares of any series of any class into one (1) or more classes or into one (1) or more series within a class.

~~(b) Each series of a class shall be given a distinguishing designation—~~If the board of directors acts pursuant to subsection (a) of this section, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under W.S. 17-16-601, of:

(i) Any class of shares before the issuance of any shares of that class, or

(ii) Any series within a class before the issuance of any shares of that series.

~~(c) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.—~~

(d) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment, ~~which are effective without shareholder action, that set forth: effecting the provisions of this section in accordance with article 10 of this act and setting forth the terms determined under subsection (a) of this section.~~

~~(i) The name of the corporation;—~~

~~(ii) The text of the amendment determining the terms of the class or series of shares;—~~

~~(iii) The date the amendment was adopted; and—~~

~~(iv) A statement that the amendment was duly adopted by the board of directors.—~~

17-16-603. Issued and outstanding shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to W.S. 17-16-640.

(c) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

17-16-604. Fractional shares.

(a) A corporation may:

(i) Issue fractions of a share or pay in money the value of fractions of a share;

(ii) Arrange for disposition of fractional shares by the shareholders; or

(iii) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required by W.S. 17-16-625(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(i) That the scrip will become void if not exchanged for full shares before a specified date; and

(ii) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripolders.

17-16-620. Subscription for shares before incorporation.

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to W.S. 17-16-621.

17-16-621. Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for

services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

(f) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders, at a meeting at which a quorum exists, if:

(i) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents; and

(ii) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent (20%) of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(g) In subsection (f) of this section:

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of:

or

(A) The voting power of the shares to be issued;

(B) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated if consummation of one (1) transaction is made contingent on consummation of one (1) or more of the other transactions.

17-16-622. Liability of shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to W.S. 17-16-621 or specified in the subscription agreement pursuant to W.S. 17-16-620.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

17-16-623. Share dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(i) The articles of incorporation so authorize;

(ii) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(iii) There are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

17-16-624. Share options.

(a) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, ~~their form and content~~, and the terms, including the consideration for which the shares are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

(b) The terms and conditions of such rights, options or warrants, including those outstanding on the effective date of this section, may include, without limitation, restrictions or conditions that:

(i) Preclude or limit the exercise, transfer or receipt of such rights, options or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of any such person; or

(ii) Invalidate or void such rights, options or warrants held by any such person or transferee.

17-16-625. Form and content of certificates.

(a) Shares may but need not be represented by certificates. Unless this act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate shall state on its face:

(i) The name of the issuing corporation and that it is organized under the law of this state;

(ii) The name of the person to whom issued; and

(iii) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(i) Shall be signed, either manually or in facsimile, by two (2) officers designated in the bylaws or by the board of directors; and

(ii) May bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

(f) In no case shall a corporation issue share certificates in bearer form. For purposes of this subsection "bearer form" means a form in which the certificate is payable to the bearer of the certificate according to its terms but not by reason of an endorsement. If a corporation formed under this act or qualified to do business under this act has bearer shares outstanding, the entity shall conform those shares to comply with this section on or before October 1, 2007. Failure to do so shall be prima facie evidence of an ultra vires act pursuant to W.S. 17-16-304.

17-16-626. Shares without certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of ~~the~~its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by W.S. 17-16-625(b) and (c), and, if applicable, W.S. 17-16-627.

17-16-627. Restriction on transfer of shares and other securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by W.S. 17-16-626(b). Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(i) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(ii) To preserve exemptions under federal or state securities law; or

(iii) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(i) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(ii) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(iii) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(iv) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

17-16-628. Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

17-16-630. Shareholders' preemptive rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(i) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(ii) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(iii) There is no preemptive right with respect to:

(A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(C) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; or

(D) Shares sold otherwise than for money.

(iv) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(v) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights;

(vi) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

17-16-631. Corporation's acquisition of its own shares.

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired., ~~effective upon amendment of the articles of incorporation.~~

(c) The board of directors may adopt articles of amendment effecting the provisions of this section under ~~this section article 10 of this act~~ without shareholder action and deliver them to the secretary of state for filing. ~~The articles shall set forth:~~

~~(i) The name of the corporation;~~

~~(ii) The reduction in the number of authorized shares, itemized by class and series; and~~

~~(iii) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.~~

17-16-640. Distributions to shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to ~~restrictions imposed~~ restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one (1) involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(i) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(ii) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon

dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(i) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(A) The date money or other property is transferred or debt incurred by the corporation; or

(B) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

(ii) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(iii) In all other cases, as of:

(A) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

(B) The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for

purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under article 14 of this act.

ARTICLE 7
SHAREHOLDERS

17-16-701. Annual meeting.

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by W.S. 17-16-704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. The board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held by means of remote communication. The board shall take into consideration stockholders' ability to participate by remote communication and provide an alternative means of participation for those stockholders unable to participate by remote communication. If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures the board of directors may adopt, stockholders and proxies not physically present at a meeting of stockholders may, by means of remote communication:

(i) Participate in a meeting of stockholders; and

(ii) Be deemed present in person and vote at a meeting of stockholders, whether the meeting is held at a designated place or solely by means of remote communication, provided that the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy. The corporations shall implement reasonable measures to provide the stockholders and proxies a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceeding. If any stockholder or proxy votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the corporation.

***** Staff note: The model act deletes all of subsection (b) after the first two sentences. *****

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

17-16-702. Special meeting.

(a) A corporation shall hold a special meeting of shareholders:

(i) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(ii) If the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, ~~either manually or in facsimile,~~ date, and deliver to the corporation one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

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

(d) Only business within the purpose or purposes described in the meeting notice required by W.S. 17-16-705(c) may be conducted at a special shareholders' meeting.

17-16-703. Court-ordered meeting.

(a) The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may summarily order a meeting to be held:

(i) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(ii) On application of a shareholder who signed a demand for a special meeting valid under W.S. 17-16-702, if:

(A) Notice of the special meeting was not given within ~~sixty (60)~~ thirty (30) days after the date the demand was delivered to the corporation's secretary; or

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

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

17-16-704. Action without meeting.

(a) Action required or permitted by this act to be taken at a shareholders' meeting may be taken without a meeting if ~~notice of the proposed action is given to all voting shareholders and the action is taken by the holders of all shares~~ all the shareholders entitled to vote on the action. The action shall be evidenced by one (1) or more written consents bearing the date of signature and describing the action taken, signed, ~~either manually, by electronic transmittal or in facsimile, by the holders of the requisite number of shares~~ by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining shareholders entitled to take action without a meeting ~~is the date the first shareholder signs the consent under subsection (a) of this section~~ shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under W.S. 17-16-707 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date ~~appearing on~~ which a consent delivered to the corporation ~~in the manner~~ required by this section ~~was signed,~~ written consents signed by ~~all sufficient~~ shareholders ~~entitled to vote on to take~~ are received by ~~have been delivered to~~ the corporation. A written consent may be revoked by a writing to that effect ~~received by~~ delivered to the corporation ~~prior to the receipt by the corporation of~~ before unrevoked written consents sufficient in number to take corporate action are delivered to the corporation.

(c) A consent signed ~~under~~ pursuant to the provisions of this section has the effect of a vote taken at a meeting ~~vote~~ and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(d) If this act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the ~~proposed~~ action ~~at least not more than~~ ten (10) days ~~before the action is taken~~ after written consents sufficient to take the action have been delivered to the corporation or such later date that tabulation of consents is completed pursuant to the authorization under subsection (c) of this section. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this act, would have been required to be sent to nonvoting

shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(e) The articles of incorporation may provide that any action required or permitted by this act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its non-consenting voting shareholders written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation, or such later date that tabulation of consents is completed pursuant to an authorization under subsection (c) of this section. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (d) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

(j) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

17-16-705. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time, place and means of communication of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, place or means of communication, notice need not be given of the new date, time, place or means of communication if the new date, time place or means of communication is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under W.S. 17-16-707, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

17-16-706. Waiver of notice.

(a) A shareholder may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in

writing, be signed, ~~either manually or in facsimile,~~ or shall be sent by electronic transmission by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

(i) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(ii) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

17-16-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

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

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

17-16-708. Conduct of the meeting.

(a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

17-16-720. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list shall be available for inspection by any shareholder, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of W.S. 17-16-1602(c), to copy the list, during regular business hours and at his—the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by subsection (b) of this section, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense, order payment by the corporation of the shareholder's cost of suit including reasonable attorney fees and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

17-16-721. Voting entitlement of shares.

(a) Except as provided in subsections (b) and ~~(e)~~(d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Unless authorized by a district court, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

17-16-722. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing, ~~either manually or in facsimile,~~ an appointment form or by an electronic transmission. An electronic transmission ~~must~~ shall contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(i) A pledgee;

(ii) A person who purchased or agreed to purchase the shares;

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

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

(v) A party to a voting agreement created under W.S. 17-16-731.

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

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to W.S. 17-16-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

17-16-723. Shares held by nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(i) The types of nominees to which it applies;

(ii) The rights or privileges that the corporation recognizes in a beneficial owner;

(iii) The manner in which the procedure is selected by the nominee;

(iv) The information that shall be provided when the procedure is selected;

(v) The period for which selection of the procedure is effective; and

(vi) Other aspects of the rights and duties created.

17-16-724. Corporation's acceptance of votes.

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

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

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

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

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

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

(v) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coowners and the person signing appears to be acting on behalf of all the coowners.

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

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or W.S. 17-16-722(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section or W.S. 17-16-722(b) is valid unless a court of competent jurisdiction determines otherwise.

17-16-725. Quorum and voting requirements for voting groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this act provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(c) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this act require a greater number of affirmative votes.

(d) ~~Reserved—An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by W.S. 17-16-727.~~

(e) The election of directors is governed by W.S. 17-16-728.

17-16-726. Action by single and multiple voting groups.

(a) If the articles of incorporation or this act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in W.S. 17-16-725.

(b) If the articles of incorporation or this act provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in W.S. 17-16-725. Action may be taken by one (1) voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

17-16-727. Greater quorum or voting requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this act.

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

17-16-728. Voting for directors; cumulative voting.

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

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

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

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

(ii) A shareholder who has the right to cumulate his votes gives notice to the corporation not less than forty-eight (48) hours before the time set for the meeting of ~~his~~the shareholder's intent to cumulate his votes during the meeting. If one (1) shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

17-16-729. Inspectors of election.

(a) A public corporation ~~having any shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association~~ shall, and any other corporation may, appoint one (1) or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

(i) Ascertain the number of shares outstanding and the voting power of each;

(ii) Determine the shares represented at a meeting;

(iii) Determine the validity of proxies and ballots;

(iv) Count all votes; and

(v) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

17-16-730. Voting trusts.

(a) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing, ~~either manually or in facsimile,~~ an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing, ~~either manually or in facsimile, an extension agreement and obtaining the voting trustee's~~ written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

17-16-731. Voting agreements.

(a) ~~Any shareholder may agree with one (1)~~ Two (2) or more ~~other~~ shareholders ~~or the corporation to~~ may provide for the manner in which ~~he~~ they will vote ~~his~~ their shares by signing, ~~either manually or in facsimile,~~ an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of W.S. 17-16-730.

(b) A voting agreement created under this section is specifically enforceable.

17-16-732. Shareholder agreements.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the

shareholders and the corporation even though it is inconsistent with one (1) or more other provisions of this act in that it:

(i) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(ii) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in W.S. 17-16-640;

(iii) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(iv) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(v) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(vi) Transfers to one (1) or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(vii) Requires dissolution of the corporation at the request of one (1) or more of the shareholders or upon the occurrence of a specified event or contingency; or

(viii) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(i) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and which agreement is made known to the corporation.

(ii) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(iii) Valid for ten (10) years, unless the agreement provides otherwise. Nothing herein affects agreements in force on July 1, 1997.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by W.S. 17-16-626(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when ~~shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association~~ becomes a public corporation. If the agreement ceases to be effective for any reason, the

board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

17-16-740. Subarticle definitions.

(a) Repealed By Laws 1997, ch. 190, § 3.

(b) Repealed By Laws 1997, ch. 190, § 3.

(c) Repealed By Laws 1997, ch. 190, § 3.

(d) Repealed By Laws 1997, ch. 190, § 3.

(e) Repealed By Laws 1997, ch. 190, § 3.

(f) As used in this subarticle:

(i) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in W.S. 17-16-747, in the right of a foreign corporation;

(ii) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

17-16-741. Standing.

(a) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(i) Was a shareholder of the corporation at the time of the act or omission complained of, or became a shareholder through transfer by operation of law from one who was a shareholder at the time; and

(ii) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

17-16-742. Demand.

(a) No shareholder may commence a derivative proceeding until:

(i) A written demand has been made upon the corporation to take suitable action; and

(ii) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety (90) day period.

17-16-743. Stay of proceedings.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

17-16-744. Dismissal.

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if the panel one (1) of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the

derivative proceeding is not in the best interests of the corporation.

~~(b) The court may appoint a panel of one (1) or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of~~ Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section ~~have not been met. Shall be made by:~~

(i) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(ii) A majority vote of a committee consisting of two (2) or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

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

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

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

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met; if not, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation, the court may appoint a panel of one (1) or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff

shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

17-16-745. Discontinuance or settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

17-16-746. Payment of expenses.

(a) On termination of the derivative proceeding the court may:

(i) Order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding resulted in a substantial benefit to the corporation;

(ii) Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(iii) Order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

17-16-747. Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subarticle shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for W.S. 17-16-743, 17-16-745 and 17-16-746.

Subchapter E. PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

17-16-748. Shareholder action to appoint custodian or receiver.

(a) The district court may appoint one (1) or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(ii) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(i) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(ii) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(iii) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation authorized to transact business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(i) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to

the extent necessary to manage the business and affairs of the corporation; and

(ii) A receiver:

(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(ii) May sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

ARTICLE 8
DIRECTORS AND OFFICERS

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

(a) Except as provided in W.S. 17-16-732, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of⁷ its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under W.S. 17-16-732.

(c) Repealed By Laws 1997, ch. 190, § 3.

(d) In the case of a public corporation, the board's oversight responsibilities include attention to:

(i) Business performance and plans;

(ii) Major risks to which the corporation is or may be exposed;

(iii) The performance and compensation of senior officers;

(iv) Policies and practices to foster the corporation's compliance with law and ethical conduct;

(v) Preparation of the corporation's financial statements;

(vi) The effectiveness of the corporation's internal controls;

(vii) Arrangements for providing adequate and timely information to directors; and

(viii) The composition of the board and its committees, taking into account the important role of independent directors.

17-16-802. Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

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

(a) A board of directors shall consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

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

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under W.S. 17-16-806.

17-16-804. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class or classes of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

17-16-805. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next, or if their terms are staggered in accordance with W.S. 17-16-806, at the applicable second or third, annual shareholders' meeting following their election ~~unless their terms are staggered under W.S. 17-16-806~~ except to the extent:

(i) Provided in W.S. 17-16-1022 if a bylaw electing to be governed by that section is in effect; or

(ii) A shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

17-16-806. Staggered terms for directors.

~~If there are three (3) or more directors,~~ The articles of incorporation may provide for staggering ~~their~~ the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of

two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

17-16-807. Resignation of directors.

(a) A director may resign at any time by written notice or by electronic transmission delivered to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the ~~notice~~ resignation is delivered unless the ~~notice~~ resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

17-16-808. Removal of directors by shareholders.

(a) The shareholders may remove one (1) or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove ~~him~~ that director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect ~~him~~ the director under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove ~~him~~ the director exceeds the number of votes cast not to remove ~~him~~ the director.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing ~~him~~ the director and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

17-16-809. Removal of directors by judicial proceeding.

(a) The district court of the county where a corporation's principal office, or if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced ~~either by the corporation or by its shareholders holding at least ten percent (10%) of the~~

~~outstanding shares of any class~~ by or in the right of the corporation if the court finds that:

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

(ii) ~~Removal is~~ Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(b) The court ~~that removes~~ in addition to removing a director may bar the director from reelection for a period prescribed by the court.

(c) ~~If shareholders commence a~~ A shareholder proceeding on behalf of the corporation under subsection (a) of this section, ~~they~~ shall ~~make the corporation a party defendant~~ comply with all of the requirements of W.S. 17-16-740 through 17-16-747 excluding W.S. 17-16-741(a)(i).

(d) Nothing in this section limits the equitable powers of the court to order other relief including, but not limited to, reasonable attorney's fees.

17-16-810. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(i) The shareholders may fill the vacancy;

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

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

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by

that voting group are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a ~~specific~~-later date, by reason of a resignation effective at a later date under W.S. 17-16-807(b) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

17-16-811. Compensation of directors.

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

17-16-820. Meetings.

(a) The board of directors may hold regular or special meetings within or outside of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including electronic transmission by which all directors participating may communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

17-16-821. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one (1) or more written consents describing the action taken, signed, either manually or in facsimile, by each director, or shall be sent by electronic transmission by each director, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is ~~effective when the last director signs the consent, unless the consent specifies a different effective date~~the act of the board of directors when one (1) or more consents signed by all the directors are

delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting vote of the board of directors and may be described as such in any document.

17-16-822. Notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

17-16-823. Waiver of notice.

(a) A director may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver shall be in writing, signed, ~~either manually or in facsimile,~~ by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to ~~him~~ the director of the meeting unless the director at the beginning of the meeting or promptly upon his arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

17-16-824. Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this act, a quorum of a board of directors consists of:

(i) A majority of the fixed number of directors if the corporation has a fixed board size; or

(ii) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) The right to dissent or abstention is not available to a director who votes in favor of the action taken. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(i) ~~He~~The director objects at the beginning of the meeting or promptly upon his arrival to holding the meeting or transacting business at the meeting;

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

(iii) ~~He~~The director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

17-16-825. Committees.

(a) Unless this act, the articles of incorporation or bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint one (1) or more members of the board of directors to serve on ~~them~~any such committee.

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

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

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

(ii) The number of directors required by the articles of incorporation or bylaws to take action under W.S. 17-16-824.

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

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under W.S. 17-16-801.

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

(i) Authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(ii) Approve or propose to shareholders action that this act requires to be approved by shareholders;

(iii) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees;

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

(v) Adopt, amend or repeal bylaws;

~~(vi) Approve a plan of merger not requiring shareholder approval;~~

~~(vii) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or~~

~~(viii) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.~~

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in W.S. 17-16-830.

(g) The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

17-16-830. General standards for directors.

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

(i) In good faith; and

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

**** Note this is similar to language in new section (f)**

(iii) In a manner he reasonably believes to be in or at least not opposed to the best interests of the corporation.

(b) ~~In discharging his duties~~ A director is entitled to rely in accordance with subsections (h) and (j) of this section on ~~information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:~~

(i) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented functions performed or the information, opinions, reports or statements provided;

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

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

(B) As to which the particular person merits confidence; or

(iii) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

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

~~(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.~~

(e) For purposes of subsection (a) of this section, a director, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(i) The interests of the corporation's employees, suppliers, creditors and customers;

(ii) The economy of the state and nation;

(iii) The impact of any action upon the communities in or near which the corporation's facilities or operations are located;

(iv) The long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation; and

(v) Any other factors relevant to promoting or preserving public or community interests.

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

(g) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(h) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (b)(1) or (3) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

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

~~17-16-831. Director conflict of interest.~~

~~(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:—~~

~~(i) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;—~~

~~(ii) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or ratified the transaction; or—~~

~~(iii) The transaction was fair to the corporation.—~~

~~(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:—~~

~~(i) Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or—~~

~~(ii) Another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.—~~

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

~~(a)(i) of this section if the transaction is otherwise authorized, approved or ratified as provided in that paragraph.~~

~~(d) For purposes of paragraph (a)(ii) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in paragraph (b)(i) of this section, may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under paragraph (a)(ii) of this section. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.~~

17-16-831.1. Standards of liability for directors.

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(i) No defense interposed by the director based on the following precludes liability:

(A) Any provision in the articles of incorporation authorized by W.S. 17-16-202(b)(iv); or

(B) The protection afforded by W.S. 17-16-861 for action taken in compliance with W.S. 17-16-862 or 17-16-863; or

(C) The protection afforded by W.S. 17-16-870;
and

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

(A) Action not in good faith; or

(B) A decision:

(I) Which the director did not reasonably believe to be in or at least not opposed to the best interests of the corporation; or

(II) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) 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 challenged 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 or at least not opposed to the best interests of the corporation; or

(D) A 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 significant concern materialize that would alert a reasonably attentive director to the need therefor; or

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

(b) The party seeking to hold the director liable:

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

(A) Harm to the corporation or its shareholders has been suffered; and

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

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

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

(c) Nothing contained in this section shall:

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

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

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

~~17-16-832. Loans to directors.~~

~~(a) Except as provided by subsection (c) of this section, a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:~~

~~(i) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or~~

~~(ii) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either~~

~~approves the specific loan or guarantee or a general plan authorizing loans and guarantees.~~

~~(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.~~

~~(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.~~

17-16-833. Liability for unlawful distributions.

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

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

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

(ii) Recoupment from each shareholder ~~for the amount 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 ~~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)~~ to enforce:

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

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

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

17-16-834. Repealed By Laws 1997, ch. 190, § 3.

17-16-840. Required officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

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

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

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

17-16-841. Functions of officers.

Each officer has the authority and shall perform the ~~duties~~ functions set forth in the bylaws or, to the extent consistent with the bylaws, the ~~duties~~ functions prescribed by the board of

directors or by direction of an officer authorized by the board of directors to prescribe the ~~duties~~ functions of other officers.

17-16-842. Standards of conduct for officers.

(a) An officer ~~with discretionary authority shall discharge his duties under that authority~~ when performing in such capacity, has the duty to act:

(i) In good faith;

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

(iii) In a manner ~~he~~ the officer reasonably believes to be in or at least not opposed to the best interests of the corporation.

(b) In discharging his duties an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on: ~~information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:~~

(i) The performance of properly delegated responsibilities by one (1) or more ~~officers or~~ employees of the corporation whom the officer reasonably believes to be reliable and competent in ~~the matters presented~~ performing the responsibilities delegated; or

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

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

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

~~(e) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.~~

(d) An officer ~~is~~ shall not be liable to the corporation or its shareholders for any decisions to take or not to take action ~~taken~~ as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section. Whether an officer who does not comply with this section shall have liability shall depend in such instance on applicable law, including those principles of W.S. 17-16-831.1 that have relevance.

(e) For purposes of subsection (a) of this section, an officer, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(i) The interests of the corporation's employees, suppliers, creditors and customers;

(ii) The economy of the state and nation;

(iii) The impact of any action upon the communities in or near which the corporation's facilities or operations are located;

(iv) The long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation; and

(v) Any other factors relevant to promoting or preserving public or community interests.

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

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

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

17-16-843. Resignation and removal of officers.

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

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

(i) The board of directors;

(ii) The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or

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

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

17-16-844. Contract rights of officers.

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

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

17-16-850. Subarticle definitions.

(a) In this subarticle:

(i) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger;

(ii) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another ~~domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other~~ entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if ~~his~~ the individual's duties to the corporation also impose duties on, or otherwise involve services by, ~~him~~ the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer;

~~(iii) "Disinterested director" means a director who, at the time of a vote referred to in W.S. 17-16-853(c) or a vote or selection referred to in W.S. 17-16-855(b) or (c), is not:~~

~~(A) A party to the proceeding; or~~

~~(B) An individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.~~

~~(iv) "Expenses" includes counsel fees;~~

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

(vi) "Official capacity" means:

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

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

~~(vi)~~(vii) "Party" means an individual who was, is or is threatened to be made, a defendant or respondent in a proceeding;

~~(vii)~~(viii) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative and whether formal or informal.

17-16-851. Permissible indemnification.

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

(i) ~~He~~The director conducted himself in good faith; and

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

(iii) In the case of any criminal proceeding, ~~he~~the director had no reasonable cause to believe his conduct was unlawful; or

(iv) ~~He~~The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by W.S. 17-16-202(b)(v).

(b) A director's conduct with respect to an employee benefit plan for a purpose ~~he~~the director 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) of this section.

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

(i) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the standard of conduct under subsection (a) of this section; or

(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 the director's capacity.

(e) Repealed By Laws 1997, ch. 190, § 3.

17-16-852. Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which ~~he~~the director was a party because he was a director of the corporation against reasonable expenses incurred by ~~him~~the director in connection with the proceeding.

17-16-853. Advance for expenses.

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

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

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

(iii) Repealed By Laws 1997, ch. 190, § 3.

(b) The undertaking required by paragraph (a)(ii) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(i) By the board of directors:

(A) If there are two (2) or more ~~disinterested~~ qualified directors, by a majority vote of all the ~~disinterested~~ qualified 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~~ 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~~ are not 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.

17-16-854. Court-ordered indemnification and advance for expenses.

(a) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(i) Order indemnification if the court determines that the director is entitled to mandatory indemnification under W.S. 17-16-852;

(ii) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by W.S. 17-16-858(a); or

(iii) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(A) To indemnify the director; or

(B) To advance expenses to the director, even if he has not met the relevant standard of conduct set forth in W.S. 17-16-851(a), failed to comply with W.S. 17-16-853 or was adjudged liable in a proceeding referred to in W.S. 17-16-851(d)(i) or (ii), but if ~~he~~the director was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under paragraph (a)(i) of this section or to indemnification or advance for expenses under paragraph (a)(ii) of this section, it shall also order the corporation to pay the director's ~~reasonable~~ expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under paragraph (a)(iii) of this section, it may also order the corporation to pay the director's ~~reasonable~~ expenses to obtain court-ordered indemnification or advance for expenses.

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

(b) The determination shall be made:

(i) If there are two (2) or more ~~disinterested~~ qualified directors, by the board of directors by majority vote of all the ~~disinterested~~ qualified 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;

(ii) Repealed By Laws 1997, ch. 190, § 3.

(iii) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (i) of this subsection; or

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

(iv) 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 determination.

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

17-16-856. Indemnification of officers.

(a) A corporation may indemnify and advance expenses under this subarticle to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation:

(i) To the same extent as a director; and

(ii) If he is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors or contract, except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(I) Receipt by him—the officer of a financial benefit to which he is not entitled;

(II) An intentional infliction of harm on the corporation or the shareholders; or

(III) An intentional violation of criminal law.

(iii) A corporation may also indemnify and advance expenses to a current or former officer, employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors or contract.

(b) The provisions of paragraph (a)(ii) of this section shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under W.S. 17-16-852, and may apply to a court under W.S. 17-16-854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

17-16-857. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him—the individual in that capacity or arising from his status as a director or officer whether or not the

corporation would have power to indemnify or advance expenses to ~~him~~ the individual against the same liability under this subarticle.

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

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with W.S. 17-16-851 or advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in W.S. 17-16-853(c) and 17-16-855(c). Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by W.S. 17-16-1106(a)(iii).

(c) A corporation may, by provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(d) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(e) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

17-16-859. Exclusivity of subarticle.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subarticle.

SUBARTICLE 6

DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

17-16-860. Subarticle definitions.

(a) In this subarticle:

(i) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation:

(A) To which, at the relevant time, the director is a party; or

(B) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(C) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(ii) "Control", including the term "controlled by", means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(iii) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with W.S. 17-16-862; or

(B) If the transaction is not brought before the board of directors of the corporation or its committee for action under W.S. 17-16-862, at the time the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(iv) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(v) "Related person" means:

(A) The director's spouse;

(B) A child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of the director or of the director's spouse;

(C) An individual living in the same home as the director;

(D) An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above in this paragraph;

(E) A domestic or foreign:

(I) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director;

(II) Unincorporated entity of which the director is a general partner or a member of the governing body; or

(III) Individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is, or an entity that is controlled by, an employer of the director.

(vi) "Fair to the corporation" means, for purposes of W.S. 17-16-861(b)(iii), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(vii) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's conflicting interest; and

(B) All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

17-16-861. Judicial action.

(a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:

(i) Directors' action respecting the transaction was taken in compliance with W.S. 17-16-862 at any time; or

(ii) Shareholders' action respecting the transaction was taken in compliance with W.S. 17-16-863 at any time; or

(iii) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

17-16-862. Directors' action.

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b)(i) if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two (2), of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section, provided that:

(i) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(ii) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:

(A) The committee was composed of all the qualified directors on the board of directors; or

(B) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subparagraph (E) or (F) of W.S. 17-16-860(a)(v) is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:

(i) All information required to be disclosed that is not so violative;

(ii) The existence and nature of the director's conflicting interest; and

(iii) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two (2), of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements shall be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

17-16-863. Shareholders' action.

(a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b)(ii) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(i) Notice to shareholders describing the action to be taken respecting the transaction;

(ii) Provision to the corporation of the information referred to in subsection (b) of this section; and

(iii) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under

subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section:

(i) "Holder" means and "held by" refers to shares held by both a record shareholder, as defined in W.S. 17-16-1301(a)(vi), and a beneficial shareholder as defined in W.S. 17-16-1301(a)(i); and

(ii) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by:

(A) A director who has a conflicting interest respecting the transaction; or

(B) A related person of the director, excluding a person described in W.S. 17-16-860(a)(v)(F).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

SUBARTICLE 7
BUSINESS OPPORTUNITIES

17-16-870. Business opportunities.

(a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in W.S. 17-16-862, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in W.S. 17-16-863, as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in W.S. 17-16-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

ARTICLE 10
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

17-16-1001. Authority to amend.

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

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose, or duration of the corporation.

17-16-1002. Amendment by board of directors.

(a) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt ~~one (1) or more~~ amendments to the corporation's articles of incorporation without shareholder ~~action to approval~~:

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

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

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

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

(A) To change each issued and unissued authorized share of ~~an outstanding the~~ class into a greater number of whole shares ~~if the corporation has only shares~~ of that class ~~outstanding~~; or

(B) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(v) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; ~~or~~

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

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

~~(vi)(viii)~~ To make any ~~other~~ change expressly permitted by ~~this act~~ W.S. 17-16-602(a) or (b) to be made without shareholder ~~action~~ approval.

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

~~(a) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.~~

(b) ~~For the amendment to~~ If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

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

~~(i)(ii)~~ Except as provided in W.S. 17-16-1002, 17-16-1007 and 17-16-1008, after adopting the proposed amendment the board of directors shall recommend-submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of

directors ~~determines~~ makes a determination that because of conflict of interest or other special circumstances it should ~~make no not make such a~~ recommendation and communicates in which case the board of directors shall transmit the basis for ~~its~~ that determination to the shareholders; ~~with the amendment; and~~

~~(ii) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (e) of this section.~~

~~(e)(iii)~~ The board of directors may condition its submission of the ~~proposed~~ amendment to the shareholders on any basis; ~~:-~~

~~(d)(iv)~~ If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the ~~proposed~~ shareholders' meeting in accordance with W.S. 17-16-705 at which the amendment is to be submitted for approval. The notice ~~of meeting~~ shall ~~also~~ state that the purpose, or one (1) of the purposes, of the meeting is to consider the ~~proposed~~ amendment and shall contain or be accompanied by a copy ~~or summary~~ of the amendment.

~~(e)(v)~~ Unless ~~this act,~~ the articles of incorporation, or the board of directors acting pursuant to subsection (c) of this section require a greater vote or a ~~vote by voting groups~~ greater number of shares to be present, approval of the amendment ~~to be adopted shall be approved by:~~ requires the approval of the shareholders at a meeting at which a quorum 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 such separate voting group at a meeting at which a quorum of the voting group exists.

~~(i) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and~~

~~(ii) The votes required by W.S. 17-16-725 and 17-16-726 by every other voting group entitled to vote on the amendment.~~

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:

~~(i) Increase or decrease the aggregate number of authorized shares of the class;~~

(ii) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(iii) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(iv) Change the ~~designation,~~ rights, preferences, or limitations of all or part of the shares of the class;

(v) Change the shares of all or part of the class into a different number of shares of the same class;

(vi) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, or superior, ~~or substantially equal~~ to the shares of the class;

(vii) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, or superior, ~~or substantially equal~~ to the shares of the class;

(viii) Limit or deny any existing preemptive right of all or part of the shares of the class; or

(ix) Cancel or otherwise affect rights to distributions ~~or dividends~~ that have accumulated but not yet been ~~declared~~ authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (a) of this section, the holders of shares of that

series are entitled to vote as a separate voting group on the proposed amendment.

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

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

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

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

17-16-1006. Articles of amendment.

(a) ~~A~~ After an amendment to the articles of incorporation has been adopted and approved in the manner required by this act and by the articles of incorporation, the corporation ~~amending its articles of incorporation~~ shall deliver to the secretary of state for filing articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment adopted;

(iii) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself which may be made dependent upon facts objectively ascertainable outside the articles of amendment;

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

(v) If an amendment:

(A) Was adopted by the incorporators or board of directors without shareholder ~~action approval~~, a statement ~~to that effect~~ that the amendment was duly approved by the incorporators or by the board of directors as the case may be and that shareholder ~~action approval~~ was not required; ~~and or~~

(B) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation.

~~(vi) If an amendment was approved by the shareholders:~~

~~(A) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and~~

~~(B) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.~~

17-16-1007. Restated articles of incorporation.

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

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

~~(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with W.S. 17-16-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that~~

~~identifies any amendment or other change it would make in the articles.~~

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate ~~setting forth:~~

~~(i) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or~~

~~(ii) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by W.S. 17-16-1006 which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under W.S. 17-16-1006.~~

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d) of this section.

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

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under ~~federal statute if the articles of incorporation after amendment contain only provisions required or permitted by W.S. 17-16-202~~ the authority of a law of the United States.

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

(i) The name of the corporation;

(ii) The text of each amendment approved by the court;

(iii) The date of the court's order or decree approving the articles of amendment;

(iv) The title of the reorganization proceeding in which the order or decree was entered; and

(v) A statement that the court had jurisdiction of the proceeding under federal statute.

~~(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.~~

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

17-16-1009. Effect of amendment.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

17-16-1020. Amendment by board of directors or shareholders.

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

(i) The articles of incorporation, W.S. 17-16-1022 or ~~this act~~ if applicable W.S. 17-16-1023 reserve this power exclusively to the shareholders in whole or part; or

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

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

~~17-16-1021. Bylaw increasing quorum or voting requirement for shareholders.~~

~~(a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this act. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect.~~

~~(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) of this section may not be adopted, amended or repealed by the board of directors.~~

17-16-1022. Bylaw increasing quorum or voting requirement for directors.

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

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

(ii) If ~~originally~~ adopted by the board of directors, either by the shareholders or by the board of directors.

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

(c) Action by the board of directors under ~~paragraph (a)(ii)~~ subsection (a) of this section to ~~adopt or amend~~ or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under

the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

17-16-1023. Bylaw provisions relating to the election of directors.

(a) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in W.S. 17-16-728(a) or provide for cumulative voting, a public corporation may elect in its bylaws to be governed in the election of directors as follows:

(i) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;

(ii) To be elected, a nominee shall have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of ninety (90) days from the date on which the voting results are determined pursuant to W.S. 17-16-729(b)(v) or is the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which W.S. 17-16-810 applies. Subject to paragraph (iii) of this subsection, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period referenced above; and

(iii) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(b) Subsection (a) of this section does not apply to an election of directors by a voting group if at the expiration of the time fixed under a provision requiring advance notification of director candidates, or absent such a provision, at a time fixed by the board of directors which is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An

individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(c) A bylaw electing to be governed by this section may be repealed:

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

(ii) If adopted by the board of directors, by the board of directors or the shareholders.

ARTICLE 11
MERGER, SHARE EXCHANGE, CONSOLIDATION AND CONVERSION

17-16-1101. Merger.

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

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

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

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

(iii) The manner and basis of ~~converting the disposition, if any, of~~ the shares of each domestic or foreign business corporation into shares, obligations or other securities of the surviving or any other corporation or into cash or other property in whole or part .and eligible interests of each domestic or foreign eligible entity;

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

(v) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any such party.

(c) The terms of the plan of merger may set forth: be made dependent on facts objectively ascertainable outside the plan.

~~(i) Amendments to the articles of incorporation of the surviving corporation; and~~

~~(ii) Other provisions relating to the merger.~~

(d) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the foreign business corporation or eligible entity. If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this article and article 13 of this act. For the purposes of applying this article and article 13:

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

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

(e) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(i) The disposition of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property, if any, to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(ii) The articles of incorporation of any corporation,

or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by W.S. 17-16-1002 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

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

(f) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted or devised, unless and until the eligible entity obtains an order of the district court specifying the disposition of the property to the extent required by and pursuant to the laws of this state.

17-16-1102. Share exchange.

(a) Through a share exchange:

(i) A domestic corporation may acquire all of the ~~outstanding~~ shares of one (1) or more classes or series of shares of another domestic or foreign corporation ~~if the board of directors of each corporation adopts and, if required by W.S. 17-16-1103, its shareholders approve the exchange~~, or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

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

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

(i) The name of ~~the each~~ corporation or other entity whose shares or interests will be acquired and the name of the

acquiring corporation or other entity that will acquire those shares or interests;

(ii) The terms and conditions of the share exchange;
and

(iii) The manner and basis of exchanging the shares ~~to~~ of a corporation or interests in an other entity whose shares or interests will be acquired for under the share exchange into shares or other securities, interests, obligations or, rights to acquire shares, other securities of the acquiring or any other corporation or for cash or other property in whole or part or interests, cash, other property or any combination of the foregoing; and

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

(c) ~~The Terms of a~~ plan of share exchange may ~~set forth other provisions relating to the exchange~~ be made dependent on fact objectively ascertainable outside the plan.

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

(e) A foreign corporation or eligible entity, may be a party to a share exchange only if the share exchange is permitted by the corporation or other entity is organized or by which it is governed. If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in this article and article 13 of this act. For the purposes of applying this article and article 13:

(i) The other entity, its interest holders, interests and organic documents taken together shall be deemed to be a

domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

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

(f) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

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

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

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

(a) In the case of a domestic corporation that is a party to a merger or share exchange, the plan of merger or share exchange shall be adopted by the board of directors. After adopting a plan of merger or share exchange, the board of directors ~~of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger,~~ except as provided in subsection (g) of this section and W.S. 17-16-1105, or share exchange for approval by its shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

~~(b) For a plan of merger or share exchange to be approved:~~

~~(i) The board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and~~

~~(ii) The shareholders entitled to vote shall approve the plan.~~

(c) The board of directors may condition its submission of the proposed merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with W.S. 17-16-705 at which the plan is to be submitted for approval. The notice shall ~~also~~ state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan ~~of merger or share exchange~~ and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless ~~this act,~~ the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote or a ~~vote by voting groups~~ greater number of votes to be present, approval of the plan of merger or share exchange ~~to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group~~ requires the approval of the shareholders at a meeting at which a quorum exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of

merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group is present.

(f) Separate voting by voting groups is required:

~~(i) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under W.S. 17-16-1004; or~~ by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or

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

(ii) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) ~~Action by the~~ Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders ~~of the surviving corporation on~~ of a plan of merger or share exchange is not required if:

~~(i) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in W.S. 17-16-1002, from its articles before the merger;~~

~~(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights, immediately after;~~

~~(iii) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and~~

***** Staff note: The model act is management friendly and does not include sections (g)(ii) and (iii). *****

~~(iv) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.~~

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

(vi) Except for amendments permitted by W.S. 17-16-1002, its articles of incorporation will not be changed;

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

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

~~(h) As used in subsection (g) of this section:~~

~~(i) "Participating shares" means shares that entitle their holders to participate without limitation in distributions; and~~

~~(ii) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.~~

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

(k) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

17-16-1104. Merger between parent and subsidiary.

(a) A domestic parent corporation ~~owning~~that owns shares of a domestic or foreign subsidiary corporation that carry at least eighty percent (80%) of the ~~outstanding shares~~voting power of each class and series of the outstanding shares of of a subsidiary ~~corporation~~that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without approval of the board of directors or shareholders of the ~~parent or~~ subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

~~(b) The board of directors of the parent shall adopt a plan of merger that sets forth:~~

~~(i) The names of the parent and subsidiary; and~~

~~(ii) The manner and basis of converting the shares of the subsidiary into shares, obligations or other securities of the parent or any other corporation or into cash or other property in whole or part.~~

~~(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.~~

~~(d) The parent may not deliver articles of merger to the secretary of state for filing until at least thirty (30) days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.~~

~~(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in W.S. 17-16-1002.~~

(f) If under subsection (a) approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

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

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

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

~~(i) The plan of merger or share exchange;~~

~~(ii) If shareholder approval was not required, a statement to that effect; and~~

~~(iii) If approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required;~~

~~(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting~~

~~group entitled to vote separately on the plan as to each corporation; and~~

~~(B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.~~

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

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

(vi) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this act and the articles of incorporation;

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

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

(b) A Articles of merger or share exchange ~~takes~~ shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take effect upon the effective ~~date of the articles of merger or share exchange~~ time provided in W.S. 17-16-123. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if

the combined filing satisfies the requirements of both this section and the other organic law.

17-16-1106. Effect of merger or share exchange.

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

(i) ~~Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation~~ The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be and the separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(ii) ~~The title to all real estate and other~~ All property owned by, and every contract right possessed by, each corporation ~~party to the merger or eligible entity that merges into the survivor~~ is vested in the ~~surviving corporation~~ survivor without reversion or impairment;

(iii) ~~The surviving corporation has~~ All liabilities of each corporation ~~party to the merger or eligible entity that is merged into the survivor~~ are vested in the survivor;

(iv) ~~A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation~~ The name of the survivor may, but need not be, substituted in ~~the any pending~~ proceeding for the ~~corporation name of any party to the merger~~ whose separate existence ceased in the merger;

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

(vi) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, eligible interests, obligations ~~or other securities of the surviving or any other corporation or into cash or other property,~~ rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided in the ~~articles~~ plan of merger or to ~~their~~

any rights they may have under article 13 or the organic law of the eligible entity; and

(vii) 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 or 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.

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

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

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

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

(i) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent

any such owner liability arose before the effective time of the articles of merger or share exchange.

(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 (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 (i) of this subsection, as if the merger or share exchange had not occurred.

~~17-16-1107. Merger or share exchange with foreign corporation.~~

~~(a) One (1) or more foreign corporations may merge or enter into a share exchange with one (1) or more domestic corporations if:—~~

~~(i) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;—~~

~~(ii) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;—~~

~~(iii) The foreign corporation complies with W.S. 17-16-1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and—~~

~~(iv) Each domestic corporation complies with the applicable provisions of W.S. 17-16-1101 through 17-16-1104 and,~~

~~if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with W.S. 17-16-1105.~~

~~(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:~~

~~(i) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and~~

~~(ii) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under article 13.~~

~~(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.~~

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

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary

of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

17-16-1110. Consolidation.

(a) Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

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

(i) The names of the corporations proposing to consolidate, and the name of the new corporation into which they proposed to consolidate, which is hereinafter designated as the new corporation;

(ii) The terms and conditions of the proposed consolidation;

(iii) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or of any other corporation or, in whole or in part, into cash or other property;

(iv) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this act; and

(v) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

17-16-1111. Abandonment of consolidation.

(a) The board of directors of each corporation, upon approving the plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record whether or not entitled to vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose or

one (1) of the purposes of the meeting is to consider the proposed plan of consolidation, whether the meeting be an annual or a special meeting. A copy of a summary of the plan of consolidation shall be included in or enclosed with the notice.

(b) At the shareholder's meeting for each corporation, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote. However, if any class of shares of each corporation is entitled to vote as a class, the plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote as a class. Any class of shares of each corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle the class of shares to vote as a class.

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

17-16-1112. Articles of consolidation.

(a) Upon approval, articles of consolidation shall be delivered to the secretary of state for filing. The articles of consolidation shall set forth:

(i) The plan of consolidation;

(ii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class;

(iii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan respectively.

17-16-1113. Effect of consolidation.

(a) A consolidation becomes effective upon filing by the secretary of state, or on a later date, not more than thirty (30) days subsequent to filing the plan with the secretary of state, as shall be provided in the plan.

(b) When a consolidation takes effect:

(i) The several corporations party to the plan of consolidation are a single corporation, which is the new corporation provided for in the plan of consolidation;

(ii) The separate existence of all corporations party to the plan of consolidation except the new corporation ceases;

(iii) The new corporation has all the rights, privileges, immunities and powers and is subject to all the duties and liabilities of a corporation organized under this act;

(iv) The new corporation has all the rights, privileges, immunities and franchises, public or private, of each corporation party to the plan of consolidation. The title to all real estate and other property owned by each corporation party to the plan of consolidation is vested in the new corporation without reversion or impairment;

(v) The new corporation has all the liabilities and obligations of each corporation party to the plan of consolidation. Any claim existing or proceeding pending by or against any corporation party to the plan of consolidation may be continued as if the consolidation did not occur or the new corporation may be substituted for the corporation whose existence ceased. Neither the rights of creditors nor any liens upon the property of any corporation party to the plan of consolidation shall be impaired by the consolidation;

(vi) The statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this act shall be deemed to be the original articles of incorporation of the new corporation;

(vii) The shares of each corporation party to the plan of consolidation that are to be converted into shares, obligations or other securities of the new corporation or into

cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the plan of consolidation or to their rights under article 13 of this act.

17-16-1114. Consolidation of domestic and foreign corporations.

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be consolidated in the following manner, if the consolidation is permitted by the laws of the state under which each foreign corporation is organized:

(i) Each domestic corporation shall comply with the provisions of this act with respect to the consolidation of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized;

(ii) If the new corporation in a consolidation is to be governed by the laws of any state other than Wyoming, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in Wyoming, and in every case it shall file with the secretary of state of Wyoming:

(A) An agreement that it may be served with process in Wyoming in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the new corporation;

(B) An irrevocable appointment of the secretary of state of Wyoming as its agent to accept service of process in any such proceeding; and

(C) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this act with respect to the rights of dissenting shareholders.

17-16-1115. Conversion of corporation to limited liability company.

(a) A domestic corporation may be converted to a domestic limited liability company pursuant to ~~this section~~ chapter 26.

(b) A foreign corporation may be converted to a domestic limited liability company pursuant to ~~this section~~ chapter 26.

~~(c) The terms and conditions of a conversion of a corporation to a limited liability company shall be approved by all the shareholders or by a number or percentage specified in the articles of incorporation or bylaws, provided that any shareholders who will be liable to a greater extent after conversion, solely by reason of being an owner, shall approve the terms and conditions of the conversion.~~

(d) After the conversion is approved by the shareholders, the limited liability company shall file articles of organization which satisfy the requirements of W.S. 17-15-107 and include:

(i) A statement that the corporation was converted to a limited liability company;

(ii) Its former name;

(iii) The state of formation and the date of organization; and

(iv) A statement of the number of votes cast by the shareholders for and against conversion and if the vote is less than unanimous, the number or percentage required to approve the conversion under the articles of incorporation or bylaws.

(e) The conversion takes effect when the articles of organization are filed or at any later date specified in the articles.

17-16-1116. Effect of conversion.

(a) Upon conversion:

(i) All property owned by the corporation remains in the limited liability company;

(ii) All obligations of the converting corporation continue as obligations of the resulting limited liability company; and

(iii) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred.

ARTICLE 12
DISPOSITION OF ASSETS

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

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

(i) To sell, lease, exchange, or otherwise dispose of any or all, or substantially all, of its property the coporation's assets in the usual and regular course of business;

(ii) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property the corporation's assets whether or not in the usual and regular course of business; or

(iii) To transfer any or all of its property the corporation's assets to a corporation one (1) or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

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

~~(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) of this section is not required.~~

17-16-1202. Shareholder approval of certain dispositions.

(a) ~~A corporation may sell~~ sale, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction other disposition of assets, other than a disposition described in W.S. 17-16-1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a significany business

activity of the corporation prior to any such disposition of assets was the active or passive holding, maintenance or management of investments, then such holding, maintenance or management of investments shall be considered a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) ~~For a transaction to be authorized:~~ A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

~~(i) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and~~

~~(ii) The shareholders entitled to vote shall approve the transaction.~~

(c) ~~The board of directors may condition its submission of the proposed transaction~~ a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the

~~proposed shareholders' meeting in accordance with W.S. 17-16-705~~
of shareholders at which the disposition is to be submitted for approval. The notice shall ~~also~~ state that the purpose, or one (1) of the purposes, of the meeting is to consider the ~~sale, lease, exchange, or other~~ disposition ~~of all, or substantially all, the property of the corporation~~ and shall contain ~~or be accompanied by~~ a description of the ~~transaction~~ disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

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

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

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

(h) For purposes of this section, the ownership interests of a parent corporation in its subsidiaries, whether owned directly by the parent corporation or indirectly through other subsidiaries shall be valued at the net asset values of such subsidiaries, without application of any discount to the valuation of such ownership interests on account of a lack of marketability or otherwise.

ARTICLE 13
DISSENTERS' RIGHTS

17-16-1301. Definitions.

(a) As used in this article:

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

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

~~(iii) "Dissenter" means a shareholder who is entitled to dissent from corporate action under W.S. 17-16-1302 and who exercises that right when and in the manner required by W.S. 17-16-1320 through 17-16-1328;~~

(iv) "Fair value," ~~with respect to a dissenter's shares,~~ means the value of the corporation's shares determined:

(A) Immediately before the effectuation of the corporate action to which the dissenter shareholder objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;

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

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

(v) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at a rate that is fair and equitable under all the circumstances;

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

(vii) "Shareholder" means the record shareholder or the beneficial shareholder;:-

(viii) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof;

(ix) "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the recordholder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group;

(x) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

17-16-1302. Right to appraisal.

(a) A shareholder is entitled to ~~dissent from appraisal~~ rights, and to obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

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

(A) Shareholder approval is required for the merger or the consolidation by W.S. 17-16-1103 or 17-16-1111 ~~or~~

~~the articles of incorporation~~ and the shareholder is entitled to vote on the merger or consolidation, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(B) The corporation is a subsidiary that is merged with its parent under W.S. 17-16-1104.

(ii) Consummation of a ~~plan of~~ share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the ~~plan exchange,~~ except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

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

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

(A) Alters or abolishes a preferential right of the shares;

(B) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

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

~~(v) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.~~

(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 under this article may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.~~

(c) Notwithstanding subsection (a), the availability of appraisal rights under subsections (a)(i), (ii), (iii), (iv), (vii) and (ix) shall be limited in accordance with the following provisions:

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

(A) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(B) Traded in an organized market and has at least 2,000 shareholders and a market value of at least \$20 million, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10% of such shares; or

(C) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

(ii) The applicability of paragraph (c)(i) of this subsection shall be determined as of:

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

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

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

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

(a) A record shareholder may assert ~~dissenters'~~appraisal rights as to fewer than all the shares registered in ~~his~~the record shareholder's name but owned by a beneficial shareholder only if ~~he dissents~~the record shareholder objects with respect to all shares ~~beneficially owned by any one~~ ~~(1) person asserted~~ of the class or series owned by the beneficial shareholder and

notifies the corporation in writing of the name and address of each ~~person~~ beneficial shareholder on whose behalf ~~he asserts dissenters' rights~~ appraisal rights are being asserted. The rights of a ~~partial dissenter under this subsection~~ are record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which ~~he dissents the record shareholder objects~~ and ~~his the record shareholder's~~ other shares were registered in the names of different record shareholders.

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

(i) ~~He~~ Submits to the corporation the record shareholder's written consent to the ~~dissent~~ assertion of those rights not later than the ~~time the beneficial shareholder asserts dissenters' rights~~ date provided in W.S. 17-16-1322(b)(ii)(B); and

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

17-16-1320. Notice of appraisal rights.

(a) If proposed corporate action ~~creating dissenters' rights under~~ described in W.S. 17-16-1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice shall state that corporation has concluded that shareholders are, are not or may be entitled to assert ~~dissenters'~~ appraisal rights under this article and be accompanied by a copy of this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) ~~If corporate action creating dissenters' rights under W.S. 17-16-1302 is taken without a vote of shareholders in a merger pursuant to W.S. 17-16-1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert dissenters' appraisal rights that the corporate action was taken and send them the dissenters' notice described in W.S. 17-16-1322 became effective. The notice shall~~

be sent within ten (10) days after the corporate action became effective and include the materials described in W.S. 17-16-1322.

(c) Where any corporate action specified in section 13.02(a) is to be approved by written consent of the shareholders pursuant to W.S. 17-16-704:

(i) Written notice that appraisal rights are, are not or may be available shall be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article; and

(ii) Written notice that appraisal rights are, are not or may be available shall be delivered together with the notice to nonconsenting and nonvoting shareholders required by W.S. 17-16-704(e) and (f), may include the materials described in W.S. 17-16-1322 and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article.

(d) Where corporate action described in W.S. 17-16-1302(a) is proposed, or a merger pursuant to W.S. 17-16-1105 is effected, the notice referred to in subsection (a) or (c), if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(i) The annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen (16) months before the date of the notice and shall comply with W.S. 17-16-1620(b); provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(ii) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) may be waived in writing by a shareholder before or after the corporate action.

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

(a) If proposed corporate action ~~creating dissenters' rights~~ requiring appraisal under W.S. 17-16-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert ~~dissenters' appraisal~~ rights with respect to any class or series of shares:

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

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

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

(c) If a corporate action specified in W.S. 17-16-1302(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares shall not execute a consent in favor of the proposed action with respect to that class or series of shares.

17-16-1322. Appraisal notice and form.

(a) If ~~proposed~~ corporate action ~~creating dissenters' rights under W.S. 17-16-1302 is authorized at a shareholders' meeting~~ requiring appraisal under W.S. 17-16-1302(a) becomes effective, the corporation shall deliver a written ~~dissenters' appraisal~~ notice to all shareholders who satisfied the requirements of W.S. ~~17-16-1321~~ 17-16-1321(a) or (b). In the case of a merger under W.S. 17-16-1105, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The ~~dissenters' appraisal~~ notice shall be sent no later than ten (10) days after the corporate action ~~was taken~~ specified in W.S. 17-16-1302(a) became effective, and shall:

~~(i) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;~~

~~(ii) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;~~

(iii) Supply a form ~~for demanding payment~~ that:

(A) Specifies the first date of the first any announcement to news media or to shareholders made prior to the the date the corporate action became effective of the principal terms of the proposed corporate action; and

(B) If such announcement was made, requires that the ~~person~~ shareholder asserting ~~dissenters'~~ appraisal rights certify whether ~~or not he acquired~~ beneficial ownership of the shares for which appraisal rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction.

~~(iv) Set a date by which the corporation shall receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the notice required by subsection (a) of this section is delivered; and~~

(v) Be accompanied by a copy of this article; and

(vi) State:

(A) Where the form shall be sent and where certificates for certificated shares shall be deposited and the date by which those certificates shall be deposited, which date may not be earlier than the date for receiving the required form under paragraph (vi)(B) of this subsection;

(B) Date by which the corporation shall receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the

shares unless the form is received by the corporation by such specified date;

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

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

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

17-16-1323. Duty to demand payment.

(a) A shareholder ~~sent a dissenters'~~ who receives notice described in ~~pursuant~~ W.S. 17-16-1322 shall demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to W.S. 17-16-1322(b)(iii), and ~~and~~ who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit his certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to W.S. 17-16-1322(b)(ii)(B). In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to W.S. 17-16-1322(b)(i). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under W.S. 17-16-1325. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) The shareholder who ~~demands payment and deposits his share certificates under subsection (a) of this section~~ retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action ~~has complied with subsection (a) of this section~~ may

nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to W.S. 17-16-1322(b)(ii)(E). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

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

~~17-16-1324. Share restrictions.~~

~~(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under W.S. 17-16-1326.~~

~~(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.~~

17-16-1325. Payment.

(a) Except as provided in W.S. 17-16-1327, ~~as soon as the proposed corporate action is taken, or upon receipt of a payment demand within thirty (30) days after the form required by W.S. 17-16-1322(b)(ii)(B) is due,~~ the corporation shall pay each dissenter in cash to those shareholders who complied with W.S. 17-16-1323 the amount the corporation estimates to be the fair value of his shares, plus ~~accrued~~ interest.

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

(i) The corporation's balance sheet as of the end of a fiscal year annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen (16) months before the date of payment and shall comply with W.S. 17-16-1620(b), an income statement for that year, a statement of changes in shareholders' equity for that year, and provided that if such annual financial statements are not

reasonably available, the corporation shall provide reasonably equivalent financial information. The corporation shall also provide the latest available ~~interim~~ quarterly financial statements, if any;

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

~~(iii) An explanation of how the interest was calculated;~~

(iv) A statement ~~of the dissenter's~~ that shareholders described in subsection (a) of this section have the right to demand further payment under W.S. 17-16-1328 and that if any the shareholder does not do so within the time period specified therein, the shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.; ~~and~~

~~(v) A copy of this article.~~

~~17-16-1326. Failure to take action.~~

~~(a) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.~~

~~(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under W.S. 17-16-1322 and repeat the payment demand procedure.~~

17-16-1327. After-acquired shares.

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

set forth in the appraisal notice sent pursuant to W.S. 17-16-1322(b)(i).

~~(b) To the extent the corporation elects to withhold payment under subsection (a) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under W.S. 17-16-1328~~
If the corporation elected to withhold payment under subsection (a) of this section, it shall, within thirty (30) days after the form required by W.S. 17-16-1322(b)(ii)(B) is due, notify all shareholders described in subsection (a) of this section:

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

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

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

(iv) That those shareholders who wish to accept the offer shall so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

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

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

(d) Within forty (40) days after sending the notice described in subsection (b) of this section, the corporation shall pay in cash the amount it offered to pay under subsection

(b)(ii) of this section to each shareholder described in subsection (b)(v) of this section.

17-16-1328. Procedure if shareholder dissatisfied with payment or offer.

(a) A dissenter-shareholder paid pursuant to W.S. 17-16-1325 who is dissatisfied with the amount of the payment may notify the corporation in writing of his own-that shareholder's estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate plus interest, less any payment under W.S. 17-16-1325., or reject the corporation's offer under W.S. 17-16-1327 and demand payment of the fair value of his shares and interest due, if: A shareholder offered payment under W.S. 17-16-1327 who is dissatisfied with that offer shall reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

~~(i) The dissenter believes that the amount paid under W.S. 17-16-1325 or offered under W.S. 17-16-1327 is less than the fair value of his shares or that the interest due is incorrectly calculated;~~

~~(ii) The corporation fails to make payment under W.S. 17-16-1325 within sixty (60) days after the date set for demanding payment; or~~

~~(iii) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.~~

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) of this section within thirty (30) days after the corporation made or offered payment for his shares. A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty (30) days after receiving the corporation's payment or offer of payment under W.S. 17-16-1325 or 17-16-1327, respectively, waives the right to demand payment under this section and shall be entitled

only to the payment made or offered pursuant to those respective sections.

17-16-1330. Court action.

(a) If a shareholder makes a demand for payment under W.S. 17-16-1328 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded pursuant to W.S. 17-16-1328 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all ~~dissenters~~shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in the amendment to it. The ~~dissenters~~shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings.

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

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

(ii) The fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under W.S. 17-16-1327.

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

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

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

(i) Against the corporation and in favor of any or all dissenters—shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of W.S. 17-16-1320 through 17-16-1328; or

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

(c) If the court in an appraisal proceeding finds that the services of counsel and any other expenses incurred for any dissenter—shareholder demanding appraisal were of substantial benefit to other dissenters—shareholders similarly situated, and that the fees for those services and other expenses should not be assessed against the corporation, the court may award to these counsel reasonable fees to direct that those fees and expenses be paid out of the amounts awarded the dissenters shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to W.S. 17-16-1325, 17-16-1327 or 17-16-1328, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

17-16-1340. Other remedies limited.

(a) The legality of a proposed or completed corporate action described in W.S. 17-16-1302(a) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(i) Was not authorized and approved in accordance with the applicable provisions of:

(A) Articles 9, 10, 11 or 12 of this act;

(B) The articles of incorporation or bylaws; or

(C) The resolution of the board of directors authorizing the corporate action.

(ii) Was procured as a result of fraud, a material misrepresentation or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(iii) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in W.S. 17-16-862 and has been approved by the shareholders in the same manner as is provided in W.S. 17-16-863 as if the interested transaction were a director's conflicting interest transaction; or

***** Note: working group chose not to include the definition of "interested transaction". Need to decide if the definition should be included or this subsection is necessary.*****

(iv) Is approved by less than unanimous consent of the voting shareholders pursuant to W.S. 17-16-704 if:

(i) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected; and

(ii) The proceeding challenging the corporate action is commenced within ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

ARTICLE 14
DISSOLUTION

17-16-1401. Dissolution by incorporators or initial directors.

(a) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(i) The name of the corporation;

(ii) The date of its incorporation;

(iii) Either:

(A) That none of the corporation's shares has been issued; or

(B) That the corporation has not commenced business.

(iv) That no debt of the corporation remains unpaid;

(v) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(vi) That a majority of the incorporators or initial directors authorized the dissolution.

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

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(i) The board of directors shall recommend dissolution to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(ii) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

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

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a vote by voting groups, adoption of the proposal to dissolve ~~to be adopted~~ shall ~~be approved by a~~ require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of ~~all~~ the votes entitled to be cast ~~on that proposal~~ exists.

17-16-1403. Articles of dissolution.

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

(i) The name of the corporation;

(ii) The date dissolution was authorized;

(iii) If dissolution was approved by the shareholders a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this act and by the articles of incorporation.+

~~(A) The number of votes entitled to be cast on the proposal to dissolve; and~~

~~(B) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.~~

~~(iv) If voting by voting groups was required, the information required by paragraph (iii) of this subsection shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.~~

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this article, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

17-16-1404. Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of the effective date of the dissolution.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

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

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

(ii) The effective date of the dissolution that was revoked;

(iii) The date that the revocation of dissolution was authorized;

(iv) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(v) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

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

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

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

17-16-1405. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(i) Collecting its assets;

(ii) Disposing of its properties that will not be distributed in kind to its shareholders;

(iii) Discharging or making provision for discharging its liabilities;

(iv) Distributing its remaining property among its shareholders according to their interests; and

(v) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(i) Transfer title to the corporation's property;

(ii) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(iii) Subject its directors or officers to standards of conduct different from those prescribed in article 8;

(iv) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(v) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(vi) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(vii) Terminate the authority of the registered agent of the corporation.

17-16-1406. Known claims against dissolved corporation.

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

(b) ~~The dissolved corporation shall notify its known claimants in writing, by mail or private carrier or by personal delivery, of the dissolution at any time after its effective date.~~ The written notice shall:

(i) Describe information that shall be included in a claim;

(ii) Provide a mailing address where a claim may be sent;

(iii) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(iv) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(i) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(ii) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

17-16-1407. Unknown claims against dissolved corporation.

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

(b) The notice shall:

(i) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(ii) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

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

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within ~~four (4)~~ three (3) years after the publication date of the newspaper notice:

(i) A claimant who did not receive written notice under W.S. 17-16-1406;

(ii) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(iii) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by W.S. 17-16-1406(c) or subsection (c) of this section may be enforced:~~under this section.~~

(i) Against the dissolved corporation, to the extent of its undistributed assets; or

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

17-16-1408. Court Proceedings.

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

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

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

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

W.S. 17-16-1409. Directors duties.

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

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

17-16-1420. Grounds for administrative dissolution.

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

(i) The corporation is without a registered agent or registered office in this state;

(ii) The corporation does not notify the secretary of state within thirty (30) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(iii) The corporation's period of duration stated in its articles of incorporation expires;

(iv) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(v) It is in the public interest and the corporation:

(A) Failed to provide records to the registered agent as required in W.S. 17-28-107;

(B) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(C) Cannot be served by either the secretary of state or the registered agent at its address provided pursuant to W.S. 17-28-107.

(vi) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(vii) The corporation has failed to respond to a valid and enforceable subpoena.

(b) Prior to commencing a proceeding under W.S. 17-16-1421 the secretary of state may classify a corporation as delinquent awaiting administrative dissolution if the corporation meets any of the criteria in subsection (a) of this section.

17-16-1421. Procedure for and effect of administrative dissolution.

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1420 for dissolving a corporation, he shall serve the corporation with written notice of his determination under W.S. 17-28-104, except for W.S. 17-16-1420(a)(iii) in which case dissolution is by choice and therefore automatic.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of

state shall administratively dissolve the corporation by signing, either manually or in facsimile, a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under W.S. 17-28-104.

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

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Repealed by Laws 2008, Ch. 91, § 3.

17-16-1422. Reinstatement following administrative dissolution.

(a) An officer or other person with proper authority at the time a corporation was administratively dissolved under W.S. 17-16-1421 may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution. Reinstatement may be denied by the secretary of state if the corporation has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the corporation was engaged in illegal operations. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) Repealed By Laws 1999, ch. 196, § 2.

(iv) If the corporation was administratively dissolved for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630, include payment of a sum equal to double the amount of fees and taxes then delinquent and a reinstatement certificate fee prescribed pursuant to W.S. 17-16-122; and

(v) If the corporation was administratively dissolved for failure to maintain a registered agent, include payment of a two hundred fifty dollar (\$250.00) reinstatement fee and payment of a sum equal to double the amount of any fees and taxes then delinquent.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(d) The corporation shall retain its registered corporate name during the two (2) year reinstatement period.

(e) A person who files any document under this section without proper corporate authority to do so is in violation of W.S. 6-5-308.

17-16-1423. Appeal from denial of reinstatement.

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under W.S. 17-28-104 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

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

17-16-1430. Grounds for judicial dissolution.

(a) The district court may dissolve a corporation:

(i) In a proceeding by the attorney general if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(ii) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted.

(iii) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(iv) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(v) In a proceeding by a shareholder, if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

17-16-1431. Procedure for judicial dissolution.

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Laramie county district court. Venue for a proceeding brought by any other party named in W.S. 17-16-1430 lies in the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares

under W.S. 17-16-1434 and accompanied by a copy of W.S. 17-16-1434.

17-16-1432. Receivership or custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) The receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in his own name as receiver of the corporation in all Wyoming courts.

(ii) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

17-16-1433. Decree of dissolution.

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in W.S. 17-16-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with W.S. 17-16-1405 and the notification of claimants in accordance with W.S. 17-16-1406 and 17-16-1407.

17-16-1434. Election to purchase in lieu of dissolution.

(a) In a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one (1) or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under W.S. 17-16-1430(a)(ii) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one (1) or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase

shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one (1) or more shareholders, the proceeding under W.S. 17-16-1430(a)(ii) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale or other disposition.

(c) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value in terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the W.S. 17-16-1430(a)(ii) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under W.S. 17-16-1430(a)(ii) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by the shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that the holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable,

but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under W.S. 17-16-1430(a)(ii)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under W.S. 17-16-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase order pursuant to subsection (e) of this section shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to W.S. 17-16-1402 and 17-16-1403, which articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with provisions of W.S. 17-16-1405 through 17-16-1407, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of W.S. 17-16-640.

17-16-1440. Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount

deposited, the state treasurer shall pay him or his representative that amount.

ARTICLE 15
FOREIGN CORPORATIONS

17-16-1501. Authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(i) Maintaining, defending or settling any proceeding;

(ii) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(iii) Maintaining bank accounts;

(iv) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(v) Selling through independent contractors;

(vi) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(vii) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(viii) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(ix) Owning, without more, real or personal property;

(x) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(xi) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation, foreign limited partnership or foreign limited liability company which is either an organizer, a manager or member of a company is not required to obtain a certificate of authority to undertake its duties in these capacities.

17-16-1502. Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and license taxes, plus interest of eighteen percent (18%), which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by law, and in addition shall be liable for a penalty in the amount of five thousand dollars (\$5,000.00), reasonable audit expenses and reasonable attorney fees. The secretary of state may refuse to issue a certificate of authority until all taxes, fees, interest, expenses and penalties due under this section

have been paid to him. The attorney general may collect all penalties and other sums due under this subsection.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

17-16-1503. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of W.S. 17-16-1506;

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

(iii) Its date of incorporation and period of duration;

(iv) The street address of its principal office;

(v) The address of its registered office in this state and the name of its registered agent at that office;

(vi) The names and usual business addresses of its current directors and officers; and

~~(vii) An estimate, expressed in dollars, of the value of the property of the corporation located and employed in the state of Wyoming;~~

(viii) A statement that the corporation accepts the constitution of the state of Wyoming in compliance with the requirement of article 10, section 5 of the Wyoming constitution. ; ~~and~~

~~(ix) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate~~

~~of authority to transact business in this state and to determine and assess the fees and license taxes under the laws of this state.~~

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, dated not more than sixty (60) days prior to filing in Wyoming, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) The application for certificate of authority shall be accompanied by a written consent to appointment executed by the registered agent.

17-16-1504. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (i) Its corporate name;
- (ii) The period of its duration; or
- (iii) The state or country of its incorporation.

(b) The requirements of W.S. 17-16-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

17-16-1505. Effect on certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(c) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

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

(a) If the corporate name of a foreign corporation does not satisfy the requirements of W.S. 17-16-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

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

(c) A foreign corporation may apply to the secretary of state for authorization to use a—~~in this state the~~ name ~~of another corporation, incorporated or authorized to do business in this state,~~ that is not distinguishable in accordance with the provisions of W.S. 17-16-401(c).

(i) Repealed By Laws 1996, ch. 80, § 3.

(ii) Repealed By Laws 1996, ch. 80, § 3.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has:

(i) Merged with the other corporation; or

(ii) Been formed by reorganization of the other corporation; or

(iii) Acquired all or substantially all of the assets, including the corporate name, of the other corporation; or—

(iv) Repealed By Laws 1996, ch. 80, § 3.

(v) Has received the written consent of the other corporation, which written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two (2) corporations using the same name will be temporary.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of W.S. 17-16-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of W.S. 17-16-401 and obtains an amended certificate of authority under W.S. 17-16-1504.

17-16-1507. Registered office and registered agent of foreign corporation.

(a) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all foreign corporations.

17-16-1508. Repealed by Laws 2008, Ch. 90, § 3.

17-16-1509. Repealed by Laws 2008, Ch. 90, § 3.

17-16-1510. Repealed by Laws 2008, Ch. 90, § 3.

17-16-1511. Merger of foreign corporation authorized to transact business in this state.

(a) Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country of incorporation, it shall, within thirty (30) days after a merger becomes effective, file with the secretary of state a current certificate of evidence issued by the proper officer of the state or country of incorporation which sets forth:

(i) The date of filing;

(ii) The names of each corporation involved and the states of incorporation; and

(iii) The name of the surviving corporation.

(b) It shall not be necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed by merger or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

17-16-1520. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

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

(ii) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(iii) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(iv) A mailing address to which the secretary of state may mail a copy of any process served on him under paragraph (iii) of this subsection; and

(v) A commitment to notify the secretary of state in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

17-16-1530. Grounds for revocation.

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

(i) The foreign corporation is without a registered agent or registered office in this state;

(ii) The foreign corporation does not inform the secretary of state under W.S. 17-28-102 or 17-28-103 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within thirty (30) days of the change, resignation or discontinuance;

(iii) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(iv) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(v) The corporation has failed to respond to a valid and enforceable subpoena; or

(A) Has provided fraudulent information or has failed to correct false information upon request of the

secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(vi) It is in the public interest and the corporation:

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(b) Prior to commencing a proceeding under W.S. 17-16-1531 the secretary of state may classify a foreign corporation as delinquent awaiting administrative revocation if the foreign corporation meets any of the criteria in subsection (a) of this section.

17-16-1531. Procedure for and effect of revocation.

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1530 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under W.S. 17-28-104.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state may revoke the foreign corporation's certificate of authority by signing, either manually or in facsimile, a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under W.S. 17-28-104.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(f) Repealed by Laws 2008, Ch. 91, § 3.

17-16-1532. Appeal from revocation.

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority pursuant to W.S. 16-3-114, within thirty (30) days after service of the certificate of revocation is perfected under W.S. 17-28-104. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

17-16-1533. Applicability of chapter 15 to foreign limited liability companies.

To the extent not inconsistent with the Wyoming Limited Liability Act, W.S. 17-15-101 through 17-15-144, a limited liability company organized in another jurisdiction may do business in Wyoming by complying with W.S. 17-16-1501 through 17-16-1507, 17-16-1520, 17-16-1530 through 17-16-1532 and 17-28-101 through 17-28-111. The certificate of organization of a limited liability company organized in another jurisdiction may be revoked as provided in W.S. 17-16-1530 through 17-16-1532.

17-16-1534. Applicability of chapter 23 to foreign statutory trust companies.

To the extent not inconsistent with the Wyoming Statutory Trust Act, W.S. 17-23-101 through 17-23-302, a statutory trust as defined in W.S. 17-23-102(a)(v), which is organized in another jurisdiction may do business in Wyoming by complying with W.S. 17-16-1501 through 17-16-1507, 17-16-1520 and 17-16-1530 through 17-16-1532.

ARTICLE 16
RECORDS AND REPORTS

17-16-1601. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

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

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

(i) Its articles or restated articles of incorporation and all amendments to them currently in effect;

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

(iii) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(iv) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(v) All written communications to shareholders generally within the past three (3) years, including the

financial statements furnished for the past three (3) years under W.S. 17-16-1620;

(vi) A list of the names and business addresses of its current directors and officers; and

(vii) Its most recent annual report delivered to the secretary of state under W.S. 17-16-1630.

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

***** Staff note: This section is different from the model act. The working group did not recommend changing substantively. *****

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in W.S. 17-16-1601(e) if ~~he~~the shareholder gives the corporation written notice of ~~his~~the shareholder's demand at least five (5) business days before the date on which ~~he~~the shareholder wishes to inspect and copy.

(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~~the shareholder's demand at least five (5) business days before the date on which ~~he~~the shareholder wishes to inspect and copy:

(i) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under W.S. 17-16-1602(a);

(ii) Accounting records of the corporation; and

(iii) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(i) ~~His~~The shareholder's demand is made in good faith and for a proper purpose;

(ii) ~~He~~The shareholder describes with reasonable particularity his purpose and the records he desires to inspect; and

(iii) The records are directly connected with ~~his~~the shareholder's purpose.

(d) The right of inspection granted by this section may not be abolished or limited, but may be expanded, by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(i) The right of a shareholder to inspect records under W.S. 17-16-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(ii) The power of a court, independently of this act, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

17-16-1603. Scope of inspection right.

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

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

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not

exceed the estimated cost of production, ~~or~~ reproduction or transmission of the records.

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

17-16-1604. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with W.S. 17-16-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with W.S. 17-16-1602(b) and (c) may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

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

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

***** Staff note: In 17-16-1605 the language differs from the model act in the inclusion of language regarding "counsel fees unless refused in good faith" to correspond with the language in 17-16-1604. *****

17-16-1605. Inspection of records by directors.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses, including reasonable counsel fees, incurred in connection with the application unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the director to inspect the records demanded.

17-16-1606. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this act to any shareholder, the notice shall not be required to be given if:

(i) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between the two (2) consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(ii) All, but not less than two (2), payments of dividends on securities during a twelve (12) month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to the

shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any shareholder shall deliver to the corporation a written notice setting forth the shareholder's then current address, the requirement that notice be given to the shareholder shall be reinstated.

17-16-1620. Financial statements for shareholders.

(a) A corporation shall furnish, upon request, to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis. If detailed financial statements are not prepared for the corporation on an annual basis, then a copy of its federal income tax return will satisfy the requirements of this section.

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

(i) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

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

(c) A corporation shall mail, upon request, the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail ~~him~~the shareholder the latest financial statements.

17-16-1621. Other reports to shareholders.

(a) If a corporation indemnifies or advances expenses to a director under W.S. 17-16-851 through 17-16-854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

17-16-1630. Filing of reports and payment of tax required; amount of tax; exemptions; records.

(a) Every corporation organized under the laws of this state and every foreign corporation which obtains the right to transact and carry on business within this state (except banks, insurance companies and savings and loan associations) shall file with the secretary of state on or before the first day of the month of registration of every year a certification, under the penalty of perjury, by its treasurer or other fiscal agent setting forth its net capital, property and assets located and employed in the state of Wyoming. The statement shall give the names and addresses of its officers and directors and the address of its principal office. On or before the first day of the month of registration of every year the corporation shall pay to the secretary of state in addition to all other statutory taxes and fees a license tax based upon the sum of its net capital, property and assets reported, of fifty dollars (\$50.00) or two-tenths of one mill on the dollar (\$.0002), whichever is greater.

***** Staff note: Inclusion of the word "net" may have a \$7 to 8 million dollar negative fiscal impact. *****

(b) The provisions of W.S. 17-16-1630(a) shall be modified as follows:

(ii) Any corporation engaged in the public calling of carrying goods, passengers or information interstate is not

required to comply with the provisions of W.S. 17-16-1630(a) except to the extent of capital, property and assets used in intrastate business in this state;

(iii) The value of all mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or shall be produced is deemed equivalent to the assessed value of the gross product thereof, for the previous year;

(iv) The assessed value of any property shall be its actual value.

(c) Financial information in the annual report shall be current as of the end of the corporation's fiscal year immediately preceding the date the annual report is executed on behalf of the corporation. All other information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

(e) Every corporation registered or authorized to do business in the state of Wyoming shall preserve for three (3) years at its principal place of business, suitable records and books as may be necessary to determine the amount of tax for which it is liable for under this act. All records and books shall be available for examination by the secretary of state or his designee during regular business hours except as arranged by mutual consent.

(f) In addition to other fees provided under this section, each corporation shall pay one hundred dollars (\$100.00) to the secretary of state for initial incorporation or qualification to do business in Wyoming.

ARTICLE 17
DOMESTICATION AND CONTINUANCE OF FOREIGN CORPORATIONS; TRANSFER
OF DOMESTIC CORPORATIONS

17-16-1701. Domestication of foreign corporations.

Any corporation incorporated under the laws of any of the several states of the United States for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) may become a domestic corporation of this state by delivering or causing to be delivered to the secretary of state articles of domestication. Upon filing the articles of domestication, the secretary of state shall issue to the foreign corporation a certificate of domestication which shall continue the corporation as if it had been incorporated under this act. The articles of domestication, upon being filed by the secretary of state, constitute the articles of the domesticated foreign corporation and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic corporations under the provisions of the Wyoming Business Corporation Act. A corporation does not become a resident for the purpose of W.S. 16-6-101 through 16-6-118 solely because it becomes a domestic corporation under this section.

17-16-1702. Application for certificate of domestication; articles of domestication.

(a) A foreign corporation, in order to procure a certificate of domestication shall file articles of domestication with the secretary of state, which articles shall include and set forth:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization, and a certificate of good standing not more than thirty (30) days old;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation and the jurisdiction under the laws of which it is incorporated;

(v) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(x) A statement that the corporation accepts the constitution of this state in compliance with the requirement of article 10, section 5 of the Wyoming constitution;

(xi) Any additional information as may be necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of domestication evidencing its authority to transact business in this state, and to determine and assess the fees and license taxes under the laws of this state.

17-16-1710. Continuance of foreign corporations.

(a) Subject to subsection (b) of this section, any corporation incorporated for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) under the laws of any jurisdiction other than this state may, if the jurisdiction will acknowledge the corporation's termination of domicile in the foreign jurisdiction, apply to the secretary of state for registration under this act, thus continuing the foreign corporation in Wyoming as if it had been incorporated in

this state. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued subject to any limitations and conditions and may contain any provisions as may appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the jurisdiction in which the corporation was previously incorporated.

(c) The articles of continuance filed by a foreign corporation with the secretary of state shall contain:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation;

(v) The address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at the address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and respective business addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of

shares, shares without par value and series, if any, within a class;

(x) Such additional information concerning capital structure or financial status as the secretary of state deems necessary to establish fees;

(xi) A statement that the corporation accepts the constitution of this state in compliance with the requirements of article 10, section 5 of the Wyoming constitution;

(xii) Any additional information necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of registration evidencing its authority to transact business in the state and to determine and to assess any fees and taxes under the laws of this state;

(xiii) Any additional information permitted in articles of incorporation under W.S. 17-16-202.

(d) The application shall be executed by the corporation by its president or other officer, director, trustee, manager or person performing functions equivalent to those of a president and who is authorized to execute the application on behalf of the corporation and shall be verified by the officer signing the application.

(e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the corporation's articles of incorporation or equivalent basic corporate charter or other authorization, if the variation is one which a corporation incorporated under the Wyoming Business Corporation Act could effect by way of amendment to its articles of incorporation. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of incorporation of the continued corporation. The corporation may elect to incorporate by reference in the articles of continuance its basic corporate charter or other authorization which had been adopted by the corporation in the foreign jurisdiction, in order to permit the same to continue to act as the articles of incorporation of the corporation, provided, however, that such basic corporate charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

(f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any corporation heretofore or hereafter issued a certificate of continuation under this act shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being. The laws of Wyoming shall apply to a corporation continuing under this act to the same extent as if the corporation had been incorporated under the laws of Wyoming from and after the issuance of a certificate of continuation under this act by the secretary of state to the corporation. When a foreign corporation is continued as a corporation under this act, such continuance shall not affect the corporation's ownership of its property or liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, convictions, rulings, orders, judgments, or any other characteristics or aspects of the corporation and its existence.

(g) A share of stock of a foreign corporation issued before the corporation's continuance in Wyoming is deemed to have been issued in compliance with the Wyoming Business Corporation Act and the provisions of the articles of continuance, irrespective of whether the share is fully paid and nonassessable, and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and irrespective of whether the certificate is in registered or bearer form. Continuance under this act does not deprive a stockholder of any right or privilege that he claims under, or relieve the stockholder of any liability in respect of, an issued share.

(h) As used in this section, the term "corporation" shall include any incorporated organization, foundation, trust, association, or similar entity which appears to the secretary of state to possess characteristics sufficiently similar to those of a corporation organized under the Wyoming Business Corporation Act.

(j) This act applies to all corporations continued in Wyoming on the effective date of this act. The repeal of any statute or part thereof by this act shall have such effect as is provided in W.S. 17-16-1803.

17-16-1720. Transfer of a Wyoming corporation to another jurisdiction.

(a) A corporation incorporated or continued under this act may, if authorized by resolution duly adopted by a vote of two-thirds (2/3) of the holders of the issued shares of each class of stock of the corporation, whether or not entitled to vote on any other issue, and by the laws of any other jurisdiction, apply to the proper officer of the other jurisdiction for a certificate of registration, and to the secretary of state of this state for a certificate of transfer.

(b) The secretary of state shall require that the corporation maintain within the state an agent for service of process for at least one (1) year after the transfer is effected and shall impose any conditions he considers appropriate for the protection of creditors and stockholders, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate depository located in Wyoming and subject to the jurisdiction of the courts of Wyoming, and if such conditions are not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state, upon compliance by the applicant and the secretary with subsections (a) and (b) of this section and receipt of payment of the special toll charge prescribed by subsection (e) of this section shall immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the jurisdiction to which the corporation is transferred.

(d) Upon issuance of a certificate of transfer, the corporation shall be continued as if it had been incorporated under the laws of the other jurisdiction and becomes a corporation under the laws of the other jurisdiction upon issuance by such jurisdiction of a certificate of registration.

(e) Every corporation organized, domesticated or continued under the laws of this state in order to receive a certificate of transfer pursuant to subsection (c) of this section shall pay to the secretary of state, in addition to all other statutory taxes and fees, a special toll charge equal to the percentage of the net actual value of its assets, wherever located, as follows, but in no case shall any special toll charge be less than one thousand dollars (\$1,000.00):

(i) Upon the first one million dollars
(\$1,000,000.00).....one percent (1%);

(ii) Upon the second million dollars
(\$2,000,000.00).....nine-tenths of one percent (0.9%);

(iii) Upon the third million dollars
(\$3,000,000.00).....eight-tenths of one percent (0.8%);

(iv) Upon the fourth million dollars
(\$4,000,000.00).....seven-tenths of one percent (0.7%);

(v) Upon the fifth million dollars
(\$5,000,000.00).....six-tenths of one percent (0.6%);

(vi) Upon the sixth million dollars
(\$6,000,000.00).....five-tenths of one percent (0.5%);

(vii) Upon the seventh million dollars
(\$7,000,000.00).....four-tenths of one percent (0.4%);

(viii) Upon the eighth million dollars
(\$8,000,000.00).....three-tenths of one percent (0.3%);

(ix) Upon the ninth million dollars
(\$9,000,000.00).....two-tenths of one percent (0.2%); and

(x) Upon the tenth million dollars (\$10,000,000.00) and
each additional million dollars or fraction thereof
.....one-tenth of one percent (0.1%).

(f) The secretary of state shall determine the net actual value of the assets of a corporation liable for the special toll charge imposed by subsection (e) of this section. The secretary of state shall withhold issuance of a certificate of transfer until payment of the special toll charge is made or guaranteed in a form satisfactory to the secretary of state.

ARTICLE 18
TRANSITION PROVISIONS

17-16-1801. Application to existing domestic corporations.

(a) Except as provided in subsection (b) of this section, this act applies to domestic corporations in existence on its

effective date that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

(b) For corporations incorporated in Wyoming prior to the effective date of this act, the cumulative voting and shareholder preemptive rights provisions contained in former W.S. 17-1-123 and 17-1-130 are continued for a period of four (4) years from the effective date of this act unless the corporation amends its articles of incorporation to provide otherwise.

17-16-1802. Applications to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

17-16-1803. Saving provisions.

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this act does not affect:

(i) The operation of the statute or any action taken under it before its repeal;

(ii) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(iii) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

(iv) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

CHAPTER 28
REGISTERED OFFICES AND AGENTS

17-28-101. Registered office and registered agent.

(a) Each business entity shall continuously maintain in this state:

(i) A registered office that may be the same as any of its places of business but shall be located at a street address in Wyoming which shall be a physical location where the business entity's registered agent, or a natural person who has an agency relationship with the registered agent, can accept service of process as provided in W.S. 17-28-104 and is physically present at that location; and

(ii) A registered agent, who shall be:

(A) An individual who is at least eighteen (18) years of age, resides in this state and whose business office is identical with the registered office;

(B) A domestic business entity whose business office is identical with the registered office and which has a written agreement creating an agency relationship with an individual providing for acceptance of service of process as provided in W.S. 17-28-104;

(C) A foreign business entity authorized to transact business in this state whose business office is identical with the registered office and which has a written agreement creating an agency relationship with an individual providing for acceptance of service of process as provided in W.S. 17-28-104; or

(D) A business entity or an individual, at least eighteen (18) years of age, who is:

(I) In the business of serving as a registered agent for more than ten (10) entities, including a registered agent which serves as a registered agent for the entities served by another commercial registered agent; and

(II) Registered as a commercial registered agent under W.S. 17-28-105 and whose business office is identical with the registered office. A business entity registered as a commercial registered agent shall have a written agreement creating an agency relationship with a natural person providing for acceptance of service of process as provided in W.S. 17-28-104.

(b) For purposes of this chapter, "business entity" means a corporation, nonprofit corporation, limited liability company, limited partnership, cooperative marketing association, statutory trust or registered limited liability partnership, whether foreign or domestic.

(c) Every registered agent shall certify compliance with the requirements of this chapter on a form prescribed by the secretary of state on the date of registration.

(d) For purposes of this chapter, "written agreement" or "contract creating an agency relationship" means any written document granting a natural person representing a registered agent the authority to accept service of process on behalf of any entity served by the registered agent. A single document may serve as authorization for each natural person representing the registered agent without listing each natural person individually.

17-28-102. Change of registered office or registered agent.

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

(i) The name of the business entity;

(ii) The street address of its current registered office;

(iii) If the current registered office is to be changed, the street address of the new registered office;

(iv) The name of its current registered agent;

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

(vi) That the new registered office and registered agent comply with the requirements of W.S. 17-28-101 through 17-28-111; and

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

(b) If a registered agent changes the street address of his business office, he shall change the street address of the registered office of any business entity for which he is the registered agent by notifying the business entity in writing of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) of this section and recites that every entity which the registered agent serves has been notified of the change.

(c) If a registered agent changes its name, it shall change the name of the registered agent of any business entity for which it is the registered agent by notifying the business entity in writing of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) of this section and recites that every entity which the registered agent serves has been notified of the change.

17-28-103. Resignation of registered agent.

(a) A registered agent may resign his agency appointment by signing and delivering to the secretary of state for filing the signed original and one (1) exact or conformed copy of a statement of resignation for each entity from which the registered agent resigns. The statement may include a statement that the registered office is also discontinued. The statement of resignation shall state that the registered agent has sent notice to each affected entity at least thirty (30) days prior to the filing of the statement of resignation to the address of the entity last known to the registered agent. The statement shall be addressed to any officer or other authorized person of the entity other than the registered agent.

(b) Upon receiving the resignation of a registered agent where no successor is appointed, the entity shall provide the secretary of state with a statement of change in compliance with W.S. 17-28-102(a) within thirty (30) days following receipt by the business entity of the statement of resignation by a registered agent.

(c) A registered agent may resign his agency appointment and appoint a new registered agent that complies with W.S. 17-28-101(a) by signing and delivering to the secretary of state on a statement of change of registered agent form designated by the secretary of state:

(i) A signed original and one (1) exact or conformed copy of a statement of resignation for each entity from which the registered agent resigns;

(ii) A statement from each affected entity ratifying and approving the appointment of the new registered agent;

(iii) A statement designating a new registered office for each entity affected; and

(iv) A statement from the new registered agent certifying his compliance with all requirements of this chapter and acknowledging his appointment to serve as registered agent for each entity affected.

(d) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement of resignation was filed under subsections (a) and (b) of this section. The agency appointment is terminated, the registered office discontinued if so provided, and the new registered agent and registered office are effective on the date on which the statement of change of registered agent was filed under subsection (c) of this section.

(e) If an agency appointment is terminated under the provisions of this section and no successor is appointed, service of process on the business entity shall be upon the secretary of state until a new appointment is made or until the entity is administratively dissolved or revoked.

(f) Upon receipt of resignation by a registered agent where no successor is appointed, the secretary of state shall classify the entity as delinquent awaiting administrative dissolution, revocation or forfeiture of its articles of organization as appropriate.

(g) Failure of a commercial registered agent to register pursuant to W.S. 17-28-105 shall not constitute a resignation of the registered agent pursuant to this section and the registered agent shall remain responsible for all the requirements of this chapter with respect to each entity represented.

17-28-104. Service on business entity.

(a) A business entity's registered agent, or the natural person having an agency relationship with the registered agent as provided in W.S. 17-28-101(a), shall accept service of process, notice, or demand required or permitted by law that is served on the entity.

(b) If a business entity has no registered agent, or the agent cannot with reasonable diligence be served, the

entity may be served by registered or certified mail, return receipt requested, addressed to the entity at its principal office. Service is perfected under this subsection at the earliest of:

(i) The date the entity receives the mail;

(ii) The date shown on the return receipt, if signed, either manually or in facsimile, on behalf of the entity; or

(iii) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) A business entity may be served as provided in this section or as provided in the Wyoming Rules of Civil Procedure.

(d) Every entity shall provide to its registered agent, or to the secretary of state as provided in W.S. 17-28-107(b), and keep current the name, business address and business telephone number of a natural person who is an officer, director, employee or designated agent of the entity who is authorized to receive communications from the registered agent and is deemed the designated communications contact for the entity.

17-28-105. Commercial registered agent registration required.

(a) Except as provided in subsection (b) of this section, no person shall transact business in this state as a registered agent unless the person is registered with the secretary of state in accordance with the provisions of this section and W.S. 17-28-106. Violation of this section is punishable under W.S. 17-28-109.

(b) The registration requirements of this section and W.S. 17-28-106 shall not apply to a person who serves as registered agent for ten (10) or fewer business entities, unless the registered agent is serving as registered agent for an entity or entities that is serving as registered agent for more than ten (10) business entities.

(c) Any person claiming to be exempt from registration requirements based upon the provisions of subsection (b) of this section shall have the burden of proving the exemption in any administrative or other civil action.

(d) For purposes of W.S. 17-28-106, "commercial

registered agent" means a registered agent required to register under this section.

(e) A commercial registered agent shall not:

(i) Have been convicted of any felony;

(ii) Have any officer, director, partner, manager or other authorized person who has been convicted of any felony;

(iii) Engage in conduct in connection with acting as a registered agent that is intended or likely to deceive or defraud the public; nor

(iv) Have any officer, director, partner, manager or other authorized person whose ability to act as a registered agent has been revoked by the secretary of state or a comparable official in another state for engaging in conduct in connection with acting as a registered agent that is intended or likely to deceive or defraud the public, or who was an officer, director, partner, manager or other authorized person of an entity whose ability to act as a registered agent has been so revoked.

17-28-106. Registration requirements.

(a) A commercial registered agent shall obtain a registration by filing an application with the secretary of state. The application shall be executed and sworn under penalty of perjury and contain information the secretary of state requires by rule including:

(i) The legal name of the applicant;

(ii) The applicant's physical street address of its registered office in this state where service may be made. A separate mailing address may be included in addition to the physical street address;

(iii) Whether the applicant, or in the case of a corporation or other business entity its officers or directors, members, partners or persons serving in a similar capacity, has ever been convicted of a felony;

(iv) The name, address and phone number of the person who has authority to act on behalf of the commercial registered agent;

(v) A statement that the applicant is eighteen (18) years or older if the applicant is a natural person;

(vi) The name, physical street address, phone number and normal business hours of the registered office where the natural person with whom the agent has an agency agreement for purposes of receiving service of process, if applicable may be served; and

(vii) Other information the secretary of state deems appropriate in the registration and identification of registered agents.

(b) Every applicant for registration shall pay a filing fee as set by rule adopted pursuant to this chapter. The fee shall be designed to recover the cost of administering the provisions of this chapter relating to registered agents. If an application is withdrawn or denied, the secretary of state shall retain the entire fee.

(c) Registration of a commercial registered agent shall be valid for the calendar year of registration and shall expire December 31 of each year.

(d) The secretary of state may publish or cause a listing of registrants to be disseminated to interested persons under such rules as the secretary of state prescribes.

17-28-107. Duties of the registered agent; duties of the entity.

(a) The registered agent shall:

(i) Maintain a physical address in accordance with W.S. 17-28-102(a)(ii) and as defined by the secretary of state by rule;

(ii) Accept service of process in accordance with W.S. 17-28-104(a);

(iii) Maintain the address of record to which all service of process is to be delivered for each entity represented;

(iv) Register as a commercial registered agent pursuant to W.S. 17-28-105 if applicable; and

(v) Maintain at the registered office, the following information for each domestic entity represented which shall be current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state and thereafter when the annual report is due for filing and shall be maintained in a format that can be reasonably produced on demand:

(A) Names and addresses of each entity's directors, officers, limited liability company managers, managing partners, trustees or persons serving in a similar capacity;

(B) The name, address and business telephone number of a natural person who is an officer, director, employee or designated agent of each entity represented who is authorized to receive communications from the registered agent;

(C) A copy of the written contract or agreement creating an agency relationship between the registered agent and a natural person with respect to accepting service of process on behalf of each business entity represented by the registered agent.

(b) If the registered agent and the entity agree, the entity shall file with the secretary of state the information specified in paragraph (a)(iii) and subdivisions (a)(v)(A) and (B) of this section and the information specified in W.S. 17-28-104(d). As verification of the agreement, the entity shall file with the secretary of state a consent form, as provided by that office, which acknowledges the entity's election under this subsection. If the information or form acknowledging the entity's election is filed with the secretary of state, then the registered agent has complied with the requirement to maintain such information under this section.

17-28-108. Production of records.

(a) All records maintained pursuant to W.S. 17-28-107 are subject to periodic, special or other examination by the secretary of state or his representatives as deemed necessary or appropriate in investigations.

(b) The secretary of state may compel production of records required to be maintained pursuant to W.S. 17-28-107 in accordance with the provisions of the Wyoming Administrative Procedure Act.

(c) The secretary of state shall hold any records obtained pursuant to this section confidential except for information already on file with the secretary of state as part of a public document and information required to be in the annual report required by W.S. 17-16-1630(a). The secretary of state may release any such confidential information only pursuant to court ordered subpoena or to a bona fide law enforcement agency for use in a criminal investigation.

(d) Failure to produce or denial of access to records maintained pursuant to W.S. 17-28-107 to the secretary of state on demand or failure to answer a validly issued and enforceable subpoena shall be punishable as provided in W.S. 17-28-109.

(e) Any business entity which provides false records required to be maintained pursuant to W.S. 17-28-107 to the entity's registered agent shall be punished as provided in W.S. 17-16-129.

17-28-109. Actions against registered agents.

(a) The secretary of state may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each violation, with respect to each entity represented, of this chapter for which no other specific penalty is provided, and may deny or revoke any registration, require enhanced recordkeeping and refuse to accept filings for business entities served by a registered agent if the registered agent, or in the case of registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity:

(i) Has failed to make application for registration as a commercial registered agent under W.S. 17-28-105 if applicable;

(ii) Has failed to maintain records as required by W.S. 17-28-107;

(iii) Cannot be served at the address of the registered office;

(iv) Has willfully violated or willfully failed to comply with any provision of this chapter; or

(v) Cannot be located at the address on the application provided to the secretary of state.

(b) A registered agent has complied with W.S. 17-28-107 if he has timely requested from the entity, either by certified letter or through an engagement letter or other similar document, that the required information be provided and be kept current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state. It shall be a defense to an action under paragraph (a)(ii) of this section if the registered agent notifies the secretary of state of the entity's failure to provide the required

information or of the registered agent's belief that the information is inaccurate, and the registered agent resigns within sixty (60) days after the date the certified letter requesting information has been sent. No fee shall be assessed a registered agent resigning pursuant to this subsection.

(c) The secretary of state may deny or revoke the registration of a registered agent who has been convicted of any felony or has had an application for commercial registered agent denied or revoked, or in the case of a registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity have been convicted of any felony or have had an application for commercial registered agent denied or revoked.

(d) In any action pursuant to this section the prevailing party may recover costs of investigation, court costs and attorney's fees.

(e) It shall be a defense to any violation under this section if the agent, in the exercise of reasonable diligence could not have known that:

(i) The information maintained by the agent is inaccurate;

(ii) The information provided by the entity represented is inaccurate; or

(iii) An entity used the registered agent's identity or address without the registered agent's knowledge or consent.

(f) The secretary of state may deny registration, require enhanced recordkeeping and refuse to accept filings from any registered agent pursuant to this section without a contested case hearing. If a contested case hearing is requested, this authority shall only apply until the hearing is resolved.

17-28-110. Reinstatement after administrative dissolution or revocation of authority.

(a) Except as otherwise provided by law for specific business entities, a business entity administratively dissolved or whose certificate of authority is revoked for violation of any provision of this chapter may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution or revocation. Reinstatement may be denied by the secretary of state if

the business entity has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the business entity was engaged in illegal operations.

(b) If the secretary of state determines that the business entity is in compliance with this chapter, he shall cancel the certificate of dissolution or revocation and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the business entity as provided in this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution or revocation and the business entity resumes carrying on its business as if the administrative dissolution or revocation had never occurred.

17-28-111. Rules and regulations.

The secretary of state shall have the power reasonably necessary to perform the duties required of him by this chapter. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this chapter.